

STAND. COM. REP. NO.

2123

Honolulu, Hawaii

FEB 13 2012

RE: S.B. No. 2060

S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2060 entitled:

"A BILL FOR AN ACT RELATING TO ACCUSED TO TRANSPORT WITNESS
OR WITNESSES,"

begs leave to report as follows:

The purpose and intent of this measure is to allow the court
to order a defendant to transport a material witness to court in
situations where the defendant resides with the witness, or the
defendant has sole physical or legal custody of the witness.

Your Committee received testimony in support of this measure
from the Department of the Prosecuting Attorney of the City and
County of Honolulu, and the Department of the Prosecuting Attorney
of the County of Maui. Testimony in opposition to this measure
was submitted by the Office of the Public Defender.

Your Committee finds that approximately ten domestic violence
cases each year do not proceed to trial because the court does not
have statutory authority to order the defendant to transport a
minor, elderly, or incapacitated witness to court. Although the
Department of the Prosecuting Attorney of the City and County of
Honolulu has tried various measures to secure the presence of
these witnesses via subpoena, guardian ad litem, or other means,
some cases do not proceed to trial because the defendant, as sole
guardian or cohabitant of the witness, has actual or effective
control over the witness' ability to appear in court.



Your Committee recognizes that this measure proposes to place the burden on the defendant to present evidence that could potentially secure a conviction against the defendant's self. Your Committee finds that this measure relates to domestic violence cases involving the abuse of a minor, elderly person, or incapacitated person. Moreover, this measure provides an additional tool for a judge to compel a witness to appear in court under these circumstances relating to domestic violence.

As such, your Committee believes that this issue merits further discussion and the language needs further streamlining to prevent unintended consequences while ensuring that domestic violence cases are brought to trial. Your Committee notes that the Judiciary did not submit written testimony and urges the Judiciary to participate in the ongoing discussion as this measure moves through the legislative process.

Your Committee has amended this measure by:

- (1) Inserting an effective date of July 1, 2050, to ensure further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2060, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2060, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




CLAYTON HEE, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2060	JDL, WAM	1/31/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les				✓
SLOM, Sam			✓	
TOTAL	3	0	1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes