

STAND. COM. REP. NO.

2064

Honolulu, Hawaii

FEB 08 2012

RE: S.B. No. 2062  
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. 2062 entitled:

"A BILL FOR AN ACT RELATING TO USE OF FORCE BY PERSONS WITH  
SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF  
OTHERS,"

begs leave to report as follows:

The purpose and intent of this measure is to place  
limitations on the parental discipline defense while maintaining a  
parent's general right to safeguard and promote the welfare of the  
child.

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

Your Committee finds the parental discipline defense is  
intended to limit the amount of force that parents and guardians  
can legally use in disciplining their children to the extent the  
force is reasonable or moderate. However, the courts have held  
that the plain language of the law specifically ties the defense  
to the nature of the force used as opposed to the result of the  
force used. As such, the courts have upheld the parental  
discipline defense as justifiable in cases where the parent or  
guardian acted with the purpose of deterring or punishing the  
minor's misconduct without the intent or knowledge that their

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actions would cause substantial bodily injury, or extreme pain or mental distress. The Department of the Prosecuting Attorney of the City and County of Honolulu testified that as a result, the courts have set the bar for unjustifiable discipline so high that many cases have applied the parental discipline defense to permit disciplinary action that would be considered unacceptable by the public. Thus, this measure aims to establish reasonable limitations to the parental discipline defense while maintaining a parent's general right to safeguard and promote the welfare of the child.

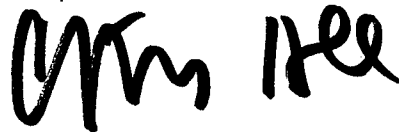
Your Committee notes the testimony submitted by the Office of the Public Defender indicating concerns regarding the vagueness in applying the limitations to the parental discipline defense and thereby potentially causing confusion among litigants in court. Your Committee recognizes that this measure deals with child abuse issues that merit further discussion as this measure proceeds 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. 2062, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2062, S.D. 1, and be placed on the calendar for Third Reading.

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



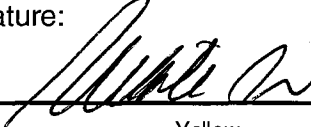
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CLAYTON HEE, Chair



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 2062	JDL	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		✓		
<b>TOTAL</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>1</b>
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