

STAND. COM. REP. NO. **2060**

Honolulu, Hawaii

FEB 08 2016

RE: S.B. No. 2312
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2312 entitled:

"A BILL FOR AN ACT RELATING TO THE PENAL CODE,"

begs leave to report as follows:

The purpose and intent of this measure is to redefine "sexual
conduct" as that term is used in the offenses of promoting child
abuse in the first, second, and third degrees.

Your Committee received testimony in support of this measure
from the Hawaii State Commission on the Status of Women; Police
Department, City and County of Honolulu; The Sex Abuse Treatment
Center; Women's Caucus, Democratic Party of Hawai'i; Hawaii Women's
Coalition; and two individuals. Your Committee received testimony
in opposition to this measure from the Department of the
Prosecuting Attorney, City and County of Honolulu and Office of
the Prosecuting Attorney, County of Kauai. Your Committee
received comments on this measure from the Department of the
Attorney General.

Your Committee finds that this measure amends the definition
of "sexual conduct" under the offenses of promoting child abuse in
the first, second, and third degrees to reflect similar
terminology under federal law. This measure repeals references to
"sexual penetration" under the definition of "sexual conduct" in
sections 707-750, 707-751, and 707-752, Hawaii Revised Statutes
(HRS). The Department of the Attorney General testified that the
term "sexual penetration" as defined in section 707-700, HRS, has

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been used in local prosecutions and cited by state courts for many years. Although "sexual penetration" under section 707-700, HRS, substantively encompasses the federally derived statutory language proposed in this measure, it is your Committee's intent that the language proposed by this measure add to and clarify the statutory tools available to law enforcement in combatting child abuse rather than create confusion or give rise to specious motions or dilatory procedural tactics in adjudication.

Based on testimony provided by the Department of the Attorney General and Department of the Prosecuting Attorney of the City and County of Honolulu, your Committee further finds that substituting the words "any person" for "a minor" in the definition of "sexual conduct" under sections 707-750, 707-751, and 707-752, HRS, may lead to unintended consequences. Lastly, your Committee agrees that use of the terms "homosexuality" and "lesbianism" is unnecessary in the current gender-neutral scheme of the Penal Code, and that their continued use may unfairly stigmatize certain relationships.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the suggestions made by the Department of the Attorney General and Department of the Prosecuting Attorney of the City and County of Honolulu that reinstates "sexual penetration" and references to "a minor" rather than "any person" in the definition of "sexual conduct" under the offenses of promoting child abuse in the first, second, and third degrees;
- (2) Adopting the language suggested by the Department of the Prosecuting Attorney of the City and County of Honolulu that amends the definition of "sexual conduct" as applied to obscenity offenses to repeal references to homosexuality and lesbianism;
- (3) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (4) 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. 2312, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2312, 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,



GILBERT S.C. KEITH-AGARAN, Chair



