



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 13, 2008

LATE TESTIMONY

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Senate Bill 2363, SD2 – Relating to Sexual Assault

The Disability and Communication Access Board (DCAB) is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. The Board's mission is to advocate and promote full integration, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

We support Senate Bill 2363, SD2, as it holds perpetrators strictly liable for sexual assault against persons who are "mentally defective." Although we support the bill, the terminology "mentally defective" and "mentally incapacitated" as defined under Section 707-700, Hawaii Revised Statutes and used here in this bill are obsolete and offensive to individuals with disabilities. We understand that definitions for disability-related terminology as used in this section may require more research before any modifications or updates can be made.

We recommend that this measure be passed as written with the intention of making corrections to the language at a later time. The substantive issue of providing additional protections, for individuals with cognitive or learning disabilities or who are incapable of making their own decisions, takes precedence at this time.

Thank you for the opportunity to testify.

Respectfully submitted,

PATRICIA M. NIELSEN
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director

**Representative Tommy Waters, Chair
House Committee on the Judiciary**

LATE TESTIMONY

Testimony in Support of SB 2363, SD2

**Thursday, March 13, 2008
3:15pm Conference Room 325**

Aloha Chair Waters and Committee members. My name is Teresa Lavatai and I reside in Honolulu. I'm testifying in strong support of SB 2363, SD2 to make sexual assault against a mentally disabled person a "strict liability" offense.

In August 2006, my sister was working for McDonald's. At the time she was 17 years old. She has a disability, which is mental retardation, averaging an IQ of 3.8. Her mental state of mind is below a 4th grade level.

While at work on August 12, 2006, she was sexually assaulted by another co-worker. He was a man 26-29 years of age. At the time of the incident, the manager on duty was looking for the guy. The manager found the guy and my sister in the walk-in freezer engaging in some type of sexual activity. Automatically jumping to a conclusion, the manager assumed it must have been consensual. Not bothering to question the situation, he had them both sit side by side outside where the customers dine. The manager returned to assisting customers and disregarded the situation at hand.

He did not immediately notify my mother of the situation. The whole time he was serving customers; and my sister was sitting and being threaten by the guy. It had been an hour since the incident and my mother out of the blue called McDonald's to check on my sister. This is when the manager told my mother that she needed to come to McDonald's. My mother asked what was wrong and the manager stated that he preferred to talk to her in person. My mother immediately rushed over to McDonald's. Upon her arrival, my sister went straight up to my mother and told her "mommy the guy did bad things to me and made me do bad things." My mother asked what bad things and my sister described the incident to her. At this time my mother told the manager to call the police and let them know that my sister had been raped. The authorities were notified.

The process began: the guy was arrested, my sister went to on-going interviews. A rape kit was conducted and everything ended about 6:00 am on August 13, 2006. But then, 72 hours later the guy was released and the prosecutor told us that it would be hard to go to trial because of my sister's disability. He said that there was no indication that the perpetrator knew my sister was mentally disabled. And because of this it would be extremely difficult to prove this case. It has now been close to two years ago that this crime happened and the guy is still free.

What kind of standard are we setting if we can't protect the very people that need the most protection? Isn't this violation of the 14 Amendment of the U.S. Constitution? What happened to equal opportunity? Where is the justice for victims with disabilities?

Please pass SB 2363 SD2 so this kind of thing doesn't happen to others.