

Honolulu, Hawaii

FEB 14 2013

RE: S.B. No. 870
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 870 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 a
child by:

- (1) Specifying types of force that are presumed
unjustifiable; and
- (2) Altering the state of mind requirement with respect to
other types of force to impose a requirement that the
force used does not intentionally, knowingly,
recklessly, or negligently create a risk of causing
substantial bodily injury, disfigurement, extreme pain
or mental distress, or neurological damage.

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



Your Committee finds that 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 that the force is reasonable or moderate. However, according to the Department of the Prosecuting Attorney of the City and County of Honolulu, courts and attorneys have struggled with properly interpreting and applying the parental discipline defense. This measure clarifies the parental discipline defense by specifying the types of force that are not appropriate for the purpose of safeguarding or promoting the welfare of a minor.

Your Committee notes the concerns raised by the Office of the Public Defender with respect to the vagueness in applying the limitations to the parental discipline defense, which may potentially cause confusion among litigants in court. Furthermore, creating an irrebuttable presumption relating to certain types of force takes the decisions away from the trier of fact and adds an element of strict liability to the defense. The Office testified that the decision on whether a form of corporal punishment is permissible under the parental discipline defense should be appropriately made by a jury.

In balancing the need to clarify the parental discipline defense with the concern that creating an irrebuttable presumption may result in unintended legal consequences, your Committee further finds that this measure should be amended to create a rebuttable presumption regarding the specified types of physical force. A rebuttable presumption gives particular effect to certain group of facts in absence of further evidence and shifts the burden of proof to the defendant to show evidence to contradict the facts presumed. Your Committee believes that the types of force specified under this measure merit further discussion as this measure moves through the legislative process.

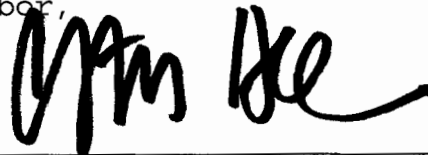
Accordingly, your Committee has amended this measure by:

- (1) Establishing a rebuttable presumption that specified types of physical force when used to discipline minors are not justified;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (3) 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. 870, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 870, 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,



CLAYTON HEE, Chair



