

THIRTY-EIGHTH DAY

Monday, March 25, 2013

The House of Representatives of the Twenty-Seventh Legislature of the State of Hawaii, Regular Session of 2013, convened at 12:05 o'clock p.m., with Vice Speaker Mizuno presiding.

The invocation was delivered by Bishop Kelsey Lewis of Pacific Revival Center, after which the Roll was called showing all Members present.

By unanimous consent, reading and approval of the Journal of the House of Representatives of the Thirty-Seventh Day was deferred.

SENATE COMMUNICATIONS

The following communications from the Senate (Sen. Com. Nos. 404 and 405) were received and announced by the Clerk:

Sen. Com. No. 404, transmitting H.B. No. 1282, HD 1, entitled: "A BILL FOR AN ACT RELATING TO MILITARY SERVICE," which passed Third Reading in the Senate on March 22, 2013.

Sen. Com. No. 405, transmitting H.C.R. No. 241, entitled: "HOUSE CONCURRENT RESOLUTION EXPRESSING CONDOLENCES ON THE SECOND ANNIVERSARY OF THE TOHOKU EARTHQUAKE AND TSUNAMI AND EXTENDING CONTINUED SUPPORT TO THE PEOPLE OF JAPAN," which was adopted by the Senate on March 22, 2013.

INTRODUCTIONS

The following introductions were made to the Members of the House:

Representative McDermott introduced wives and family members of today's honorees: Ms. Stephanie Bates, Ms. Nina Castagnetti, Ms. Susan Page, Ms. Carole Hickerson and Ms. Vivien Stackpole; and his wife, Mrs. Utu McDermott.

Representative Takai introduced Mr. Clayton Fujie, former Deputy Superintendent of the Department of Education, and his wife, Mrs. Gwen Fujie, facilitator of the 70th anniversary of the Go For Broke celebration.

Representative Ward introduced Mrs. Pasha Christian and Mr. Kerry Christian.

Representative Coffman introduced Mr. Trevor Tanaka, Senior at Konawaena High School and Harvard Book Award recipient and honorable mention awardee of County of Hawaii's Student Malama Award; and Ms. Nancy Redfeather, Program Director of Kohala Center's Hawaii Islands Garden Network and Hawaii State Director for Food Care.

Representative Cachola introduced his friend, Mr. Wes Deguchi, son of Mr. Yasunori Deguchi.

Representative Oshiro introduced his aunt, Mrs. Nancy Higa, wife of Mr. Masayuki Higa.

Representative Awana introduced her legislative intern, Mr. Jared Dmello.

Representative Awana also submitted the following:

"Mr. Dmello is a legislative intern in my office who will be graduating with his bachelor's degree in Political Science and a Certificate in Hindi Language from the University of Hawaii at Manoa. At the ripe old age of 19, his chosen area of expertise is in International Affairs with an emphasis on the South Asian region. His senior thesis is relating to the plausibility of the case for Reverse Partition of the Indian Sub-continent.

"Jared also gave presentations at the Jet Propulsion Laboratory Dryden Flight Research Symposium Student Symposium and before the NASA Cassini-Huygen's team.

"Mr. Dmello also finds passions with enhancing human rights and education. One of his biggest goals is combating the significant lack of proficiency of mathematics in the state. He is also trying to work in conjunction with the Office of the United Nations High Commissioners for Refugees to be an advocate for Refugee Rights.

"His intention is to obtain a PhD in Intelligence Studies from Henley-Putnam University.

"At the age of 13, Mr. Dmello won the Cassini Scientist for a Day Contest at the National Level. The resulting image of Saturn's rings was an unprecedented advanced in Cassini-Huygens' mission to deeper understand the astronomical phenomena surrounding Saturn and her beautiful rings. In his paper, Mr. Dmello offered some predictions that were never heard of before; all members of the Cassini-Huygens team discredited his predications. When the image was captured and completed, the resulting image gave us the first picture of Atlas and Daphne in the same line of view. In addition, the image also provided concrete evidence for the intertwining of Saturn's Stranded F-ring within itself, showing the fluidity and dynamics of the rings as a system, not a rigid body.

"Mr. Dmello went on to be awarded the Excellence in Science Award awarded to the National Aeronautics and Space Administration. Mr. Dmello also was asked to present a heart-wrenching presentation at the dedication of Columbia Middle School as a NASA Explorer School in honor of those individuals who lost their lives in the Columbia disaster; there was not a dry eye in the theater when he was finished!

"I am extremely proud to have Jared serving as a legislative aide in our office. He is a shining example of the hope that is brought to our future. Thank you, Mr. Speaker."

Representative Cullen introduced Ms. Stacey Hayashi, author of the 100th/442nd RCT Manga/Graphic Novel.

ORDER OF THE DAY

INTRODUCTION OF RESOLUTIONS
(FLOOR PRESENTATIONS)

The following resolution (H.R. No. 206) was announced by the Clerk and the following action taken:

H.R. No. 206, entitled: "HOUSE RESOLUTION CONGRATULATING THE UNITED STATES ARMY 442ND REGIMENTAL COMBAT TEAM ON ITS SEVENTY-YEAR ANNIVERSARY," was jointly offered by Representatives Nishimoto and Takai.

Representative Nishimoto moved that H.R. No. 206 be adopted, seconded by Representative Takai.

Representative Nishimoto recognized the 442nd Regimental Combat Team "Go For Broke" for going above and beyond the call of duty in service to their country and helping to define America at its best, and introduced honorees seated on the Floor of the House:

Mr. Ron Oba
Mr. Satoru Shikasho
Mr. Robert Kishinami
Mr. William Bill Thompson
Mr. Moriso Teraoka
Mr. Terry Aratani
Mr. Frank Takao
Mr. Takashi Shirakata
Mr. Masayuki Higa
Mr. Don Seki

Representative Takai acknowledged the honor and bravery of the Japanese Americans of the 442nd Regimental Combat Team in their contributions to their country and thanked their families for their

dedication and support, and recognized and thanked additional honorees seated on the Floor of the House:

Mr. Shigeru Nakamura
Mr. Yasunori Deguchi
Mr. Frank Nishimura
Mr. Ted Sukiyama
Mr. Harry Matsumoto
Mr. Eddie Yamasaki
Mr. George Nakasato
Mr. Richard Murishige
Mr. Takamori Miyagi

The motion was put to vote by the Chair and carried, and H.R. No. 206 was adopted.

The following resolution (H.R. No. 207) was announced by the Clerk and the following action taken:

H.R. No. 207, entitled: "HOUSE RESOLUTION HONORING COLONEL JOHN BATES, COLONEL GENE CASTAGNETTI, CAPTAIN GERALD COFFEE, CAPTAIN JAMES HICKERSON, AND LIEUTENANT GENERAL HENRY STACKPOLE III, RETIRED VETERANS WHO CONTINUE TO GIVE BACK TO HAWAII," was offered by Representative McDermott.

Representative McDermott moved that H.R. No. 207 be adopted, seconded by Representative Takai.

Representative McDermott acknowledged the unsung heroes and their remarkable service and contributions to our community, and recognized honorees seated on the Floor of the House:

Col. John Bates, USMC (Ret.)
Col. Gene Castagnetti, USMC (Ret.)
Capt. Jerry Coffee, USN (Ret.)
Capt. Jim Hickerson, USN (Ret.)
Lt. Gen. Hank C. Stackpole, USMC (Ret.)

Representative Takai honored the Vietnam War veterans and thanked them for fighting for our nation, and recognized additional Vietnam War veterans in the gallery, including Representative Gene Ward.

Representative Ward thanked the honorees for being mentors to himself and many others, and thanked them for their service to the people of this nation and to the State of Hawaii.

Representative Belatti, as the daughter of a retired Marine, shared an "Oorah" with the honorees.

The motion was put to vote by the Chair and carried, and H.R. No. 207 was adopted.

At 12:46 o'clock p.m., the Chair declared a recess subject to the call of the Chair.

The House of Representatives reconvened at 12:58 o'clock p.m.

REPORTS OF STANDING COMMITTEES

Representative Tsuji, for the Committee on Economic Development & Business, presented a report (Stand. Com. Rep. No. 1228), recommending that H.C.R. No. 47 be referred to the Committee on Consumer Protection & Commerce.

On motion by Representative Saiki, seconded by Representative Awana and carried, the report of the Committee was adopted and H.C.R. No. 47, entitled: "HOUSE CONCURRENT RESOLUTION REQUESTING THE EXTENSION OF THE GOVERNMENT CONTRACTING TASK FORCE TO DEVELOP RECOMMENDATIONS TO ADDRESS ISSUES THAT AFFECT PROCUREMENT FOR GOODS AND SERVICES

PURCHASED THROUGH NONPROFIT ORGANIZATIONS, INCLUDING HUMAN SERVICE NONPROFIT ORGANIZATIONS THAT DELIVER PIVOTAL GOODS AND SERVICES TO INDIVIDUALS, FAMILIES, COMMUNITIES, AND OTHER SMALL BUSINESSES," was referred to the Committee on Consumer Protection & Commerce, with Representatives Cabanilla and Cullen being excused.

SUSPENSION OF RULES

On motion by Representative Awana, seconded by Representative Fukumoto and carried, the rules were suspended for the purpose of considering a certain Senate Bill for Third Reading by consent calendar. (Representative Cabanilla was excused.)

THIRD READING

S.B. No. 870, SD 1, HD 1:

Representative Saiki moved that S.B. No. 870, SD 1, HD 1 pass Third Reading, seconded by Representative Awana.

Representative Oshiro rose to speak in support of the measure with reservations, stating:

"Thank you, Mr. Speaker. I'll be voting with reservations. Essentially my reservations have to do with the rebuttable presumption and the listing of certain offenses under that rebuttable presumption. I ask for permission to submit written comments. Thank you."

Representative Oshiro's written remarks are as follows:

"Mr. Speaker, I support this bill with reservations.

"This measure would create a rebuttable presumption that certain types of forces are unjustifiable under the parental discipline defense law. Among the types of force included in this prohibition are: throwing, kicking, burning, biting, cutting, striking with a closed fist, shaking a minor under three years of age, interfering with breathing, or threatening with a deadly weapon.

"The bill would also alter the state of mind requirement or mens rea, 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 causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage. The current state of mind and law focuses on whether the force used is 'designed to cause or be known to cause' the aforementioned types of injury.

"The proposed amendment to the defense which would alter the state of mind is troublesome. The measure includes reckless and negligent conduct. Such conduct would only have to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage. No actual harm is required. Thus, if a child is spanked and the parent is deemed to have negligently created the mere risk of mental distress, the defense would be unavailable. This may inadvertently have a chilling effect upon parental discipline of a child.

"I feel this measure is not necessary to the fair application of the parental discipline law and is vague to the point that it is likely to cause confusion among litigants in court and among judges and juries. Specifically, are the nine (9) acts exclusive to the rebuttable presumption? Does the list, by its exclusivity to these nine (9) acts mean or suggest all other acts are appropriate and therefore justifiable? What does this mean for jury instructions and how will jurors be instructed?

"Under the current parental discipline law, a parent can only use disciplinary force which is not designed to cause 'substantial bodily injury, disfigurement, extreme pain or mental distress or neurological damage'. In fact, this current provision already prohibits many of the acts specified in the bill. For instance, of the nine (9) listed acts, burning or cutting a child would definitely be designed to cause either 'substantial bodily injury',

'disfigurement' (scarring), or 'extreme pain' and are most assuredly covered under the current law. Likewise, two of the other acts listed and presumed unjustifiable – threatening someone with a deadly weapon, and interfering with breathing (i.e., choking, arm lock, etc.) can already be prosecuted as felony Terroristic Threatening and felony Abuse of Household Member, respectively. Both are serious Class B and C felonies.

"The parental discipline defense also currently requires that a parent or guardian employ force 'with due regard to the age and size of a minor'. Thus, the law already prevents such acts as the shaking of an infant or the punching or throwing or kicking of a young child. These incidents would obviously not be in compliance with the 'due regard to age and size' requirement. But, again, does the listing of specific types of force upon a certain aged minor excuse or exonerate a shaking of a minor who is three years and one day or more, regardless of the 'age or size'? My reading of the current case law and law suggest that these four (4) acts – shaking an infant, punching or throwing or kicking of a child, are covered under the present law. Also, consider that the specific facts may also suggest an appropriate application of the parental discipline defense even when there is 'striking with a closed fist' or 'kicking'.

"For example, when kicking an infant would no doubt be prohibited under current law, when you take into account the age and size of the minor, a similar kick to the leg of a 17 year old who is rebelling in a physical way might be appropriate as a form of discipline. Likewise, an act which would be presumed unjustifiable is 'striking on the face' which would include a slap. Again, such a slap might be an appropriate form of discipline on a teenager.

"In closing, please be assured that I am not condoning any degree of corporal punishment that in fact is nothing less than assault and battery or abuse of a household member. I have in my previous career as a Deputy Prosecuting Attorney tried and gotten many convictions and very similar with a myriad defenses and alibis tried and tested. Violators of our criminal codes should be prosecuted to the full extent of the law and held accountable for their actions. Especially with the elderly and children. There should be no tolerance. But here in this measure with these amendments, I am not certain that it will lead to better outcomes for both victims and defendants. And, whether the old legal adage, 'bad facts make bad law', may be an appropriate description here.

"Currently, the decision on whether a form of corporal punishment is permissible under the parental discipline law is made, in most cases, by a jury. This is the appropriate Body to decide on this issue. A jury, but its very makeup, brings community values and morals to each case. Corporal punishment is a controversial issue with many differing opinions regarding when, if ever, it should be employed. The legislature should leave the decision on this issue to the people in the form of juries.

"Thank you, Mr. Speaker."

Representative Jordan rose and asked that the Clerk record an aye vote with reservations for her, and the Chair "so ordered."

Representative Fale rose and asked that the Clerk record an aye vote with reservations for him, and the Chair "so ordered."

The motion was put to vote by the Chair and carried, and S.B. No. 870, SD 1, HD 1, entitled: "A BILL FOR AN ACT RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS," passed Third Reading by a vote of 51 ayes.

At 1:00 o'clock p.m., the Chair noted that the following bill passed Third Reading:

S.B. No. 870, SD 1, HD 1

ANNOUNCEMENTS

Vice Speaker Mizuno: "The Chair would like to remind everyone that on Wednesday we will hold our Regular Session at noon and then convene

in a Joint Session at 2:00 pm. This will be in the Senate Chamber for the Hawaii Medal of Honor ceremony."

COMMITTEE REASSIGNMENTS

The following measures were re-referred to committee by the Speaker:

H.R. Nos.

Re-referred to:

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| 35 | Committee on Health, then to the Committee on Finance |
| 47 | Committee on Veterans, Military, & International Affairs, & Culture and the Arts |
| 131 | Committee on Water & Land |

H.C.R. Nos.

Re-referred to:

- | | |
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| 53 | Committee on Health, then to the Committee on Finance |
| 102 | Committee on Agriculture, then to the Committee on Finance |
| 163 | Committee on Water & Land |

S.B. Nos.

Re-referred to:

- | | |
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| 458,
SD1 | Committee on Finance |
| 479,
SD2 | Committee on Transportation |

ADJOURNMENT

At 1:01 o'clock p.m., on motion by Representative Awana, seconded by Representative Fukumoto and carried, the House of Representatives adjourned until 12:00 o'clock noon, Wednesday, March 27, 2013.