

Honolulu, Hawaii

FEB 14 2013

RE: S.B. No. 880  
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. 880 entitled:

"A BILL FOR AN ACT RELATING TO SENTENCE OF IMPRISONMENT FOR  
SEXUAL ASSAULT OF A MINOR UNDER THE AGE OF TWELVE YEARS,"

begs leave to report as follows:

The purpose and intent of this measure is to require the  
court to impose a mandatory minimum term of imprisonment without  
the possibility of parole or probation for a person convicted of  
certain acts of sexual assault against a minor under the age of  
twelve years.

Your Committee received testimony in support of this measure  
from the Department of the Prosecuting Attorney, City and County  
of Honolulu; Police Department, City and County of Honolulu;  
Office of the Prosecuting Attorney, County of Kaua'i; IMUAlliance;  
and two private individuals. Testimony in opposition to this  
measure was submitted by the Office of the Public Defender and  
American Civil Liberties Union of Hawai'i.

Your Committee finds that according to the "Sexual Assault  
Victims in Honolulu, A Statistical Profile", during the eleven-  
year period between 1990 and 2001, the Sex Abuse Treatment Center  
assisted an average of four hundred sixty victims per year in  
Honolulu, with almost one-third of the victims under the age of  
twelve. Specifically, of the approximately four hundred sixty  
victims each year, 18.8 percent of the victims are between the  
ages of zero and five, and 13.7 percent of the victims are between



the ages of six to eleven. This measure helps to curb sexual assault on minors in Hawaii by creating mandatory minimum terms of imprisonment for any person convicted of sexual assault in the first, second, or third degree where the victim was subjected to sexual penetration. The Department of the Prosecuting Attorney of the City and County of Honolulu clarified that this measure is focused on offenders who are convicted of certain sexual offenses that involve sexual penetration of a minor under the age of twelve and excludes statutory sexual offenses and sexual offenses solely involving sexual contact.

The Office of the Public Defender and the Department of the Prosecuting Attorney of the City and County of Honolulu have differing opinions on certain issues in this measure. Your Committee notes the concern raised by the Office of the Public Defender that this measure may force more child victims to go through a trial where they will be required to relive the sexual assault in a public setting in the presence of their perpetrator. However, the Department of the Prosecuting Attorney of the City and County of Honolulu testified that deputy prosecutors are trained to prepare child victims to testify in court and that the experience to testify against their perpetrator can be an empowering experience for them.

The Office of the Public Defender testified that the Hawaii Paroling Authority should continue to bear the responsibility to assess each case and determine the minimum and maximum terms for a convicted felon to serve. Furthermore, in cases where the defendant is charged with a class B or class C felony, the chance of serving probation in lieu of imprisonment is an incentive for the defendant to plead guilty thereby expediting a resolution. The defendant may also be required under the terms of probation to receive certain program services. A convicted felon serving a minimum mandatory prison sentence is not eligible for these types of programs. However, the Department of the Prosecuting Attorney of the City and County of Honolulu testified that defendants charged with certain acts of sexual assault against a minor under the age of twelve do not deserve probation for the type and nature of the crime committed.

Accordingly, your Committee has amended this measure by:

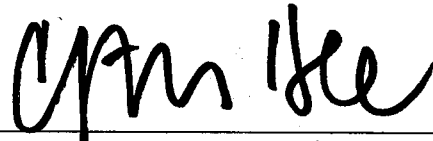
- (1) Inserting an effective date of July 1, 2050, to encourage further discussion; and



- (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. 880, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 880, 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-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:*	Committee Referral:	Date:
SB 880	JDL	01-30-2013

The committee is reconsidering its previous decision on this measure.  
 If so, then the previous decision was to: \_\_\_\_\_

The Recommendation is:

Pass, unamended 2312    
  Pass, with amendments 2311    
 Hold 2310    
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	5			

Recommendation:  Adopted                       Not Adopted

Chair's or Designee's Signature: 

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\*Only one measure per Record of Votes