

Honolulu, Hawaii

February 12, 2016

RE: H.B. No. 1044  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1044 entitled:

"A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT,"

begs leave to report as follows:

The purpose of this measure is to prohibit sexual contact between an adult who holds a position of trust, power, authority, or supervision over a minor, and the subject minor is 16 or 17 years of age, and at least five years younger than the adult.

The Honolulu Police Department and two concerned individuals testified in support of this measure. The Office of the Public Defender testified in opposition. The Honolulu Prosecuting Attorney provided comments.

Your Committee finds that sexual relationships between an adult and a minor who is over the age of consent may be the result of the adult's abuse of the adult's position of power or influence over the minor, calling into question the consensual nature of the relationship. Sexual relationships between a teacher and the teacher's high school student or an employer and the employer's teenage employee are examples of an adult's abuse of power.

Sexual relations between a person who is younger than 16 years (the age of consent) and a person who is not less than five years older is a crime even if the younger person consents. However, once a minor attains 16 years of age, consensual sexual



activity is not a crime and the minor is not protected from adults who abuse the power of their position to obtain consent.

Your Committee finds that individuals in positions of trust, power, authority, or supervision must adhere to the highest standards of conduct to protect minors from abuses of power and exploitation. This measure is intended to be broadly applied to any person who "holds a position of trust, power, authority, or supervision over that minor." The factual determination of whether a person holds a position of trust, power, authority, or supervision over a minor must be made by the trier of fact.

Your Committee notes that this measure does not change the statutory age of consent. Also, the misdemeanor penalty for an adult who engages in sexual penetration with a 16 or 17 year old is significantly less severe than the Class A felony penalty of up to 20 years imprisonment if the adult commits the offense against a young person who is younger than 16 years old.

Your Committee has amended this measure to prohibit "sexual penetration" in addition to "sexual contact"; both terms are defined in chapter 707, Hawaii Revised Statutes.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1044, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1044, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



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KARL RHOADS, Chair



