

STAND. COM. REP. NO.

3309

Honolulu, Hawaii

APR 04 2016

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

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 1044, H.D. 1, entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to amend the offense of sexual assault in the fourth degree to include a person who knowingly engages in or causes sexual contact or sexual penetration with a person who is at least sixteen years old but less than eighteen years old and the person holds a position of trust, power, authority, or supervision over that minor, with certain exceptions.

Your Committee received testimony in support of this measure from the Police Department, City and County of Honolulu; and one individual. Your Committee received testimony in opposition to this measure from the Office of the Public Defender. Your Committee received comments on this measure from the Department of the Prosecuting Attorney, City and County of Honolulu.

Your Committee finds that this measure is aimed at persons, such as teachers or employers, who abuse their position of trust, power, authority, or supervision to engage in sexual contact with a teenager who is sixteen or seventeen years old. However, the Department of the Prosecuting Attorney of the City and County of Honolulu and Office of the Public Defender raised concerns in written testimony that the phrase "position of trust, power,



authority, or supervision" is vague and could apply to a number of relationships that the law might not intend to criminalize.

Your Committee notes the concerns raised by the Department of the Prosecuting Attorney of the City and County of Honolulu that including sexual penetration under the offense of sexual assault in the fourth degree is inappropriate as this offense encompasses sexual contact only.

Accordingly, your Committee has amended this measure by:

- (1) Replacing language referring to a position of trust, power, authority, or supervision with language that specifies that a person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor;
- (2) Adopting the language suggested by the Department of the Prosecuting Attorney of the City and County of Honolulu that:
  - (A) Removes references to sexual penetration from the offense of sexual assault in the fourth degree; and
  - (B) Amends the offense of sexual assault in the second degree to include a person who knowingly subjects to sexual penetration a minor at least sixteen years of age and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, with certain exceptions;
- (3) Changing the effective date from upon its approval to July 1, 2016; and
- (4) 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 H.B. No. 1044, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1044, H.D. 1, 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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GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Eighth Legislature  
 State of Hawai'i

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

Bill / Resolution No.:* <b>HB 1044 HD1</b>	Committee Referral: <b>JDL</b>	Date: <b>3/18/16</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended <span style="margin-left: 100px;"><input checked="" type="checkbox"/> Pass, with amendments</span> <span style="margin-left: 100px;"><input type="checkbox"/> Hold</span> <span style="margin-left: 100px;"><input type="checkbox"/> Recommit</span> <div style="display: flex; justify-content: space-around; font-size: small;"> <span>2312</span> <span>2311</span> <span>2310</span> <span>2313</span> </div>				
<b>Members</b>	<b>Aye</b>	<b>Aye (WR)</b>	<b>Nay</b>	<b>Excused</b>
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike	/			
KAHELE, Kaiali'i	/			
KIM, Donna Mercado	/			
THIELEN, Laura H.	/			
SLOM, Sam	/			
<b>TOTAL</b>	7			
Recommendation: <input checked="" type="checkbox"/> Adopted <span style="margin-left: 200px;"><input type="checkbox"/> Not Adopted</span>				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original                      Yellow                      Pink                      Goldenrod File with Committee Report      Clerk's Office      Drafting Agency      Committee File Copy				

\*Only one measure per Record of Votes