

Honolulu, Hawaii

April 8, 2016

RE: S.B. No. 2811
S.D. 2
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 S.B. No. 2811, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PARENTAL RIGHTS,"

begs leave to report as follows:

The purpose of this measure is to enable the family court to terminate the parental rights of a natural parent, if the court determines by clear and convincing evidence that the child was conceived as a result of an act of rape or sexual assault that was perpetrated by the natural parent. This measure establishes a presumption that the termination of parental rights in these circumstances is in the best interest of the child.

The Department of the Attorney General, Hawaii State Commission on the Status of Women, Hawaii State Democratic Women's Caucus, Planned Parenthood Votes Northwest and Hawaii, The Sex Abuse Treatment Center, American Association of University Women of Hawaii, Hawaii Women's Coalition, and one concerned individual testified in support of this measure.

Your Committee finds that in May 2015, President Obama signed the Rape Survivor Child Custody Act (Act), Public Law No. 114-22, which encourages states to adopt the clear and convincing standard for the factual finding that a child was conceived in an act of sexual assault or rape to support the termination of the parental rights of the perpetrator. The Supreme Court in *Santosky v. Kramer*, 455 U.S. 745 (1982), held that the clear and convincing



evidence standard satisfies due process rights in proceedings to terminate or restrict parental rights. The clear and convincing evidence standard is the most common standard for the termination of parental rights among the fifty states. This measure protects the due process rights of the parent who is accused of sexual assault or rape by requiring the clear and convincing evidence standard and, at the same time, enables the victims of rape or sexual assault to petition the courts to terminate the perpetrator's parental rights without a criminal conviction that requires the standard of proof beyond a reasonable doubt.

Your Committee has amended this measure by:

- (1) Clarifying that the conclusive effect of a conviction or guilty plea applies to the element of the occurrence of the sexual assault;
- (2) Deleting the term rape and retaining the term sexual assault, as that term is used in the Hawaii Revised Statutes to describe the relevant offenses;
- (3) Clarifying that termination of parental rights pursuant to this measure is a complete and final termination of rights to custody, guardianship, visitation, and inheritance rights;
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style; and
- (5) Making this measure effective upon its approval.

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 S.B. No. 2811, S.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2811, S.D. 2, H.D. 1.



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

Karl Rhoads

KARL RHOADS, Chair



