

STAND. COM. REP. NO. 1211

Honolulu, Hawaii

MAR 25 2021

RE: H.B. No. 177
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 177, 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 offenses of sexual assault in the first and third degree perpetrated against a person who is mentally defective to provide that there is a rebuttable presumption that the person assaulted was mentally defective.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu and two individuals. Your Committee received testimony in opposition to this measure from the Office of the Public Defender.

Your Committee finds that mentally disabled persons need additional protection from sexual predators. Among adults who are developmentally disabled, as many as eighty-three percent of females and thirty-two percent of males are victims of sexual assault. Your Committee further finds that anywhere from fifteen thousand to nineteen thousand people with developmental disabilities are sexually assaulted each year in the United States. Forty percent of people with developmental disabilities



who are victims of sexual violence will experience ten or more abusive incidents. Your Committee additionally finds that mentally disabled persons and developmentally disabled persons have limited, if any, capacity to give knowing and willing consent to sexual acts. Although your Committee finds that a need exists to extend protection to mentally disabled persons who have a diminished capacity to consent to sexual acts, the rebuttable presumption that a victim is mentally disabled could present constitutional challenges under the Fifth Amendment to the United States Constitution if a defendant is forced to testify to rebut the presumption.

Accordingly, your Committee has amended this measure by:

- (1) Changing the state of mind element that a victim is mentally defective to negligence; 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 that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 177, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 177, 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,



KARL RHOADS, Chair



The Senate
Thirty-First Legislature
State of Hawai'i

**Record of Votes
Committee on Judiciary
JDC**

Bill / Resolution No.:*	Committee Referral:	Date:
HB 177, HD1	JDC	3/18/2024

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
RHOADS, Karl (C)	✓			
KEOHOKALOLE, Jarrett (VC)	✓			
ACASIO, Laura			✓	
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
LEE, Chris	✓			
FEVELLA, Kurt			✓	
TOTAL	5	0	2	0

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: *Karl Rhoads*

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*Only one measure per Record of Votes