

STAND. COM. REP. NO.

2721

Honolulu, Hawaii

FEB 23 2022

RE: S.B. No. 2092
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2092 entitled:

"A BILL FOR AN ACT RELATING TO CHILD TORTURE,"

begs leave to report as follows:

The purpose and intent of this measure is to establish the Class A felony offense of child torture.

Your Committee received testimony in support of this measure from the Office of the Prosecuting Attorney of the County of Hawai'i, Department of the Prosecuting Attorney of the City and County of Honolulu, Hawaii Family Advocacy Team, and eleven individuals. 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 Attorney General.

Your Committee finds that tragically, child abuse is an all-too-common occurrence across our nation, which spans all races and genders. Out of all cases involving child maltreatment, it is estimated that one to two percent fall into the category of "child torture". Currently, the only relevant references to torture found in Hawaii's Penal Code are in section 706-657, Hawaii Revised Statutes, as a sentencing enhancement for second degree murder, or section 711-1100, Hawaii Revised Statutes, in relation to the offense of cruelty to animals in the first degree. Despite



these references, and despite the fact that at least thirty-three states across the nation have criminal codes addressing both the physical and mental aspects of child torture, Hawaii continues to be without any child torture statute. Your Committee further finds that many cases of child torture do not result in severe physical injury to the child, but rather the long-term developmental, psychological, and behavioral ramifications in these cases can be devastating. This measure will help close any gaps in the current laws that may allow perpetrators to sometimes receive lenient sentences for these horrific and inhumane abuses by establishing the class A felony offense of child torture.

Your Committee has amended this measure by:

- (1) Clarifying that the factfinder shall apply a reasonable person standard, and that a finding of guilt would be based on a gross deviation from that standard of providing necessities to a minor;
- (2) Clarifying that the factfinder shall apply a reasonable person standard, and that a finding of guilt would be based on a gross deviation from that standard in situations where minors are being unreasonably restrained;
- (3) Adding a definition for "mental anguish"; 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 that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2092, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2092, 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.:* SB 2092	Committee Referral: JDC	Date: 02-18-22
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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	7	-	-	-

Recommendation: Adopted Not Adopted

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

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*Only one measure per Record of Votes