

Honolulu, Hawaii

March 2, 2006

RE: H.B. No. 3256
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 3256 entitled:

"A BILL FOR AN ACT RELATING TO THE PENAL CODE,"

begs leave to report as follows:

The purpose of this bill is to make technical and substantive changes to Penal Code chapters 704, 706, 707, 708, 709, 710, 711, and 712.

Specifically this bill:

- (1) Provides guidelines for sentencing of first-time property offenders and expungement of such records;
- (2) Establishes laws and provisions for charging, sentencing, and restitution for burglary offenses;
- (3) Separates the crime of unauthorized entry into a dwelling (a misdemeanor) from the crime of engaging in such conduct "with the intent to commit therein a crime against a person or against property rights" (a class C felony);
- (4) Adds the crime of unauthorized entry into a motor vehicle in the second degree (a misdemeanor);
- (5) Adds bribery in the second degree;



- (6) Adds methamphetamine trafficking in the first and second degree;
- (7) Allows all certified examiners who evaluate a defendant's fitness to proceed or claims of physical or mental disease or disorder to confer without restriction upon submittal of all reports to the court;
- (8) Adds all existing mental health records to the list of records that the court must obtain and make available for inspection by examiners in cases involving examination of a defendant with respect to physical or mental disease, disorder, or defect;
- (9) Clarifies that upon finding a defendant to be affected by a physical or mental disease, disorder, or defect and therefore remains unfit to proceed, the defendant may be committed to the custody of the Director of Health to be placed in an appropriate institution but only subject to the law governing involuntary civil commitment;
- (10) Declares that in a post-acquittal hearing, a defendant's fitness shall not be an issue for a person who has been acquitted on the grounds of physical or mental disease, disorder, or defect;
- (11) Clarifies the laws relating to acquittal on the ground of physical or mental disease, disorder, or defect and related conditional release provisions by ensuring that the person's physical or mental disease, disorder, or defect be considered in commitment and release provisions;
- (12) Requires the court to amend an examiner's report upon finding that any correction, modification, or addition is needed;
- (13) Requires that when restitution is ordered, the amount ordered not be based on the defendant's financial ability to make restitution but such ability may be considered in establishing time and manner of payment;
- (14) Allows a six-month extension of probation for a petty misdemeanor if good cause is found;



- (15) Expands the explicit conditions of probation provided to a defendant to include the prohibition of a defendant from engaging in criminal conduct in any foreign or military jurisdiction that would constitute a crime under Hawaii law during the term of probation;
- (16) Provides as a condition of probation, that a defendant make restitution to the victim if so ordered by the court;
- (17) Lengthens the terms of imprisonment that may be imposed as part of a sentence of probation and includes five days' imprisonment for petty misdemeanor cases;
- (18) Adds ammunition as an item a person under probation may be prohibited from possessing;
- (19) Provides that consideration shall be given to public safety in deciding on imposing an extended sentence, and when an extended sentence is ordered it shall be for the maximum length of imprisonment;
- (20) Clarifies that a defendant who has been convicted of a felony qualifies for an extended term of imprisonment under section 706-661, Hawaii Revised Statutes (HRS);
- (21) Defines the term "genital opening" as used within the definition of "sexual penetration" in section 707-700, HRS;
- (22) Clarifies that for the killing of a person known by the defendant to be a witness in a criminal prosecution to be murder in the first degree;
- (23) Limits the charge of terroristic threatening in the first degree against a public servant to such actions arising out of the performance of the public servant's official duties;
- (24) Adds date rape to the offenses that qualify as sexual assault in the first degree;
- (25) Adds knowingly damaging the property of another without consent and in an amount exceeding \$500 to the list of actions that constitute criminal property damage in the third degree;



- (26) Raises from \$200 to \$300 the value of gasoline or related petroleum products the theft of which constitutes theft in the third degree;
- (27) Adds goats to the type of live animal or meat, the theft of which constitutes theft of livestock;
- (28) Establishes motor vehicle theft as part of the offense of robbery in the first and second degree;
- (29) Provides that each separate use of a stolen credit card that exceeds \$300 can be charged as a separate incident;
- (30) Adds strangulation to domestic violence, making it a Class C felony; and
- (31) Adds peering or peeping into windows and trespassing on property for sexual gratification to the offense of violation of privacy in the second degree.

The Department of the Attorney General, Disability and Communication Access Board, Crime Compensation Commission, Department of the Prosecuting Attorney of the City and County of Honolulu, Department of the Prosecuting Attorney of the County of Maui, Honolulu Police Department, Hawaii Disability Rights Center, and the Hawaii State Coalition Against Domestic Violence supported this bill. The Office of the Prosecuting Attorney of the County of Kauai supported this measure with amendments. A concerned individual opposed this bill. The Office of the Public Defender provided comments.

Your Committee has amended this bill by:

- (1) Inserting a sunset date of June 30, 2007, for sections 23 and 24 of this bill;
- (2) Deleting the provision which created the offense of Bribery in the Second Degree;
- (3) Eliminating the offense of "Bribery in the First degree" and reinstating the offense of "Bribery" in section 710-1040, HRS;
- (4) Changing the effective date to July 1, 2006, to encourage further discussion; and



- (5) Making technical, nonsubstantive changes for clarity, consistency, and style.

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. 3256, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 3256, H.D. 1, and be placed on the calendar for Third Reading.

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

Sylvia Luke
for _____
SYLVIA LUKE, Chair



