

Testimony of the State Office of the Public Defender
To the Senate Committee on Judiciary and Labor

March 12, 2008

RE: HB 3383 Relating to Hawaii Penal Code

Senator Taniguchi and Members of the Committee:

HB No. 3383 proposes an amendment to Hawaii Revised Statutes (HRS) § 706-668.5 regarding when concurrent vs. consecutive sentencing is imposed. We support this proposal.

Currently, if a defendant is sentenced on the same day to more than one term of imprisonment (i.e. "multiple terms"), the terms run concurrently unless the court specifically orders that the terms run consecutively. In other words, if a person is sentenced to imprisonment for more than one offense in the same proceeding, the terms run at the same time unless the court specifically states that the terms are to run on top of each other, i.e. the defendant must finish first one term and then the other.

However, our current law also provides that if a defendant is sentenced to multiple terms of imprisonment at different times, the terms run consecutively unless the court specifically orders that the terms run concurrently.

We believe this inconsistency is inappropriate and should be changed. Obviously, consecutive sentencing is harsher than concurrent sentencing. It simply makes good policy that the standard sentence should be the concurrent sentence in both instances and the harsher sentence of consecutive time should be specifically stated by the court in both instances.

If a defendant has previous offenses for which he or she has received a sentence of imprisonment, it is well known to the court when imposing a sentence for a subsequent offense. If the judge determined that consecutive sentencing was merited, the court would still be able to impose such a sentence under this proposal.

We support the passage of HB 3383. We note the concerns of the Department of Public Safety (DPS) regarding implementation of the bill and would have no objection to making the effective date of the legislation 90 days after it becomes law in order to give DPS sufficient time to process the cases that would be effected by this legislation. It is not our intention that this legislation create any liability on the part of DPS.

Thank you for the opportunity to comment on this matter.

LINDA LINGLE
GOVERNOR



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No. _____

TESTIMONY ON HOUSE BILL 3383
RELATING TO HAWAII PENAL CODE
by

Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Wednesday, March 12, 2008, 9:00 a.m.
State Capitol, Conference Room 016

Senator Taniguchi, Senator Hee, and Members of the Committee:

The Department of Public Safety (PSD) has serious concerns regarding Section 2 of House Bill 3383, which seeks to require retroactive application of the intent of this act on all previous criminal sentences. As written, this measure amends Hawaii Revised Statutes Section 706-668.5 to read that judgments with multiple criminal sentences that do not specify whether the sentences are to run concurrently or consecutively shall all run concurrently.

The existing statute reads where the judgment is silent as to concurrent or consecutive sentences, sentences that are issued at the same time are to run concurrently. However, multiple sentences imposed at different times are to run consecutively. PSD has been computing criminal sentences to follow the existing statute. Due to the grandfather clause in House Bill 3383, if the Bill was enacted into law, PSD would be required to review thousands of individual inmate files and amend the sentence computations immediately.

This requirement would be impossible to accomplish without additional staff and resources as the average file review takes two hours to conduct, and there are over six thousand individual inmate files that would need to be audited. Further, if this measure were to be enacted as currently written, the State would be exposed to extensive liability for overstayed detention on a number of cases.

Therefore, PSD strongly urges this Committee to amend the language of this act to take effect on all sentences issued after the effective date of the law on July 1, 2008, excluding sentences issued prior to the effective date.

Thank you for this opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawai'i

March 12, 2008

RE: H.B. 3383; RELATING TO HAWAII PENAL CODE

Chair Taniguchi and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following comments in opposition to H.B. 3383.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 706-668.5 regarding multiple terms of imprisonment to provide that multiple terms of imprisonment imposed at different times run concurrently unless the court orders that the terms run consecutively.

We oppose this bill due to the portion of Section 2 which makes the provisions of this bill applicable to sentences imposed *before* the effective date of the Act. Under the current law, multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms run concurrently. Sentences have been imposed under the current law since 1986 when this section was enacted, by judges who are presumed to know the law and have acted in accordance with that knowledge. If the bill should pass with retroactive effect, all the prior sentences in which the judge did not specify that the sentence was to run concurrently, would be subject to litigation and speculation as to whether a judge did or did not realize the implication of his or her silence on whether the sentences ran concurrently. We believe this would cause a number of cases, which were final, to now be reopened because of this legislative enactment. We believe that the retroactive application of this section will negatively affect the court's efficiency and workload to reopen final judgments.

For this reason, we oppose H.B. 3383 and thank you for this opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair

Sen. Clayton Hee, Vice Chair

Tuesday, March 11, 2008

9:00 AM

Room 016

SUPPORT FOR HB 3383 - CONCURRENT SENTENCING

Aloha Chair Taniguchi, Vice Chair Hee and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai`i for a decade. I respectfully offer our testimony, always being mindful that Hawai`i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 3383 requires that multiple terms of imprisonment run concurrently unless the court orders or the law mandates that the terms run consecutively. Effective upon approval and applies to call terms of imprisonment imposed before or after the effective date.

Community Alliance on Prisons supports this bill. We have been receiving numerous letters from inmates who have said that their prison sentences were being 'recalculated'. In one case, a gentleman's wife came to see me and told me a story that seemed unbelievable. Her husband was to be released in 2009. They had been working toward his coming home. Then he received a letter, she thought from the Department of Public Safety, saying that his sentence was recalculated and he would be serving several more years. She was devastated. We thought only the courts could sentence individuals. That seems fair and the way we thought our system works. If that is not how the individual was sentenced, how could anyone else have the right to alter the court's sentence?

Please pass this bill that clarifies the law so that we can help people rebuild their lives, restore their families, and return to the community as engaged, participating and rehabilitated citizens.

Mahalo for this opportunity to testify.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 3383, RELATING TO HAWAII PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 12, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol Room 016
Deliver to: Committee Clerk, Room 219, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General opposes this measure.

The purpose of this bill is to amend section 706-668.5, Hawaii Revised Statutes, to provide that multiple terms of imprisonment imposed at different times run concurrently unless the court orders that the terms run consecutively.

We oppose this bill because of the portion of section 2 that makes the provisions of this bill applicable to sentences imposed before the effective date of the Act. We believe this is inappropriate.

Under current law, multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms run concurrently. Sentences have been imposed under the current law since 1986, when this section was enacted, by judges who are presumed to know the law and have acted in accordance with that knowledge. This bill attempts to affect those previously imposed sentences. If this bill applies retroactively, it appears that all prior final judgments and sentences that do not specify consecutive sentencing will be legislatively amended to run concurrently. Such legislative reopening of final judgments and sentences would be inappropriate.

For this reason, we respectfully requests that this measure be held.