

Testimony of the State Office of the Public Defender  
To the House Committee on Judiciary

February 12, 2008

RE: HB 3383 Relating to Hawaii Penal Code

Chair Waters 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. Thank you for the opportunity to comment on this matter.

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**TESTIMONY ON HOUSE BILL 3383  
RELATING TO HAWAII PENAL CODE**

by  
Clayton A. Frank, Director  
Department of Public Safety

House Committee on Judiciary  
Representative Tommy Waters, Chair

Tuesday, February 12, 2008, 2:05 p.m.  
State Capitol, Conference Room 325

Representative Waters 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. If HB 3383 were enacted into law, the Department 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, the department 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.

Thank you for this opportunity to testify on this measure.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair

Rep. Blake Oshiro, Vice Chair

Tuesday, February 12, 2008

2:05 PM

Room 325

## SUPPORT FOR HB 3383 – CONCURRENT SENTENCING

Aloha Chair Waters, Vice Chair Oshiro 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 all 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.

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