

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

ON THE FOLLOWING MEASURE:

S.B. NO. 3182, S.D. 1, RELATING TO EXTENDED SENTENCING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 13, 2008 **TIME:** 3:15 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

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

Chair Waters and Members of the Committee:

The Department of the Attorney General supports the intent of this bill, but recommends amendments.

The purpose of this bill is to amend Hawaii's extended term sentencing law to allow an extended term of imprisonment for defendants who commit or attempt to commit murder, manslaughter, a felony sexual assault, robbery, a felony assault, burglary, or kidnapping and, in the course of committing the crime, inflicts serious or substantial bodily injury to a "good Samaritan." The bill defines a "good Samaritan" as a person who, whether through justifiable use of force, contacting proper authorities, or other lawful means, renders or attempts to render emergency assistance or care without compensation to a crime victim.

People who aid victims of crime may expose themselves to danger and further criminal conduct directed against them. In some cases, perpetrators, or people who are with perpetrators, have turned on "good Samaritans" who have stepped forward to protect victims or to provide care and assistance. Such "good Samaritan" conduct should be encouraged and protected. We support the intent of this bill, which provides for additional possible sanctions against defendants who injure "good Samaritans."

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We have worked with the Department of the Prosecuting Attorney, City and County of Honolulu, on amendments to improve this bill and address concerns about the clarity of the definition of "good Samaritan," the restriction of the "good Samaritan" provision to only certain specified violent crimes, the limited application of the "good Samaritan" provision to only the perpetrator of the initial offense and not to others with the perpetrator, and the placement of the proposed extended term provision in section 706-662(5), Hawaii Revised Statutes, which requires that the defendant know or reasonably should know that the person is a "good Samaritan." In some instances, it may be difficult to establish that the defendant knew the "good Samaritan" was acting "in good faith and without compensation for the protection of another person."

The proposed amendment below would expand the protections of this bill to encompass "good Samaritans" who attempt: (1) to protect victims of crimes that are not enumerated in the current bill, such as a misdemeanor abuse of a family or household member or a petty misdemeanor harassment; or (2) to prevent other crimes, such as property crimes involving breaking into a car or theft.

We recommend that all of the amendments in S.B. No. 3182, S.D. 1, be deleted from pages 3, 4, and 5 of the bill and be replaced by the following new paragraph to section 706-662, Hawaii Revised Statutes:

- (7) The defendant is an offender against an intervenor to a crime in that defendant, inflicts serious or substantial bodily injury upon a person who is not acting within the course and scope of the person's employment and who intervenes in the commission or attempted commission of a crime by:
 - (a) Preventing or attempting to prevent the commission or attempted commission of a crime;

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- (b) Protecting or attempting to protect another person from the commission or attempted commission of a crime;
- (c) Contacting or attempting to contact proper authorities to:
 - (i) Report the commission or attempted commission of a crime; or
 - (ii) Summon medical assistance or emergency care for the victim of a crime; or
- (d) Rendering or attempting to render emergency aid or care to the victim of a crime.

We respectfully request that you pass S.B. No. 3182 with the proposed amendments.

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**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

Hrg: Thursday, March 13, 2008, 3:15 pm
5 copies required

S.B. NO. 3182 SD1: RELATING TO EXTENDED SENTENCING

Chair Waters and Members of the Committee:

We oppose S.B. No. 3182 SD1 which seeks to expand the extended term sentencing law to include an offender against a good Samaritan. The current penalties for the infliction of serious or substantial bodily injury, which the suggested amendment to the extended term statute covers, are sufficient to allow for the imposition of serious prison terms for one who causes such injury to a "good Samaritan" as defined by this bill. This penalty currently can be imposed in addition to the sentence imposed for injury to the intended victim. For example, under the current law, if an offender kills someone and, in the process, causes serious bodily injury to another who is trying to assist the victim, the sentence would be life imprisonment (Murder 2°) + 10 years (Assault 1°). We assert that this type of sentence is sufficient to deter those who would be inclined to harm good Samaritans.

Passage of this measure would have the unintended consequence of punishing the offender more seriously for harm against the good Samaritan than for harm against the intended victim himself or herself. For instance, if a person assaults his spouse and then turns his assaultive behavior against a neighbor who attempts to intervene, under this measure, the assault against the neighbor will receive a heavier sentence than the assault against the spouse.

Oftentimes, assaultive incidents occur in domestic situations or illicit activities such as drug transactions. In these circumstances, you will have persons claiming the classification of a good Samaritan even though their presence at the scene of the incident and eventual involvement in the incident will have been prompted by either improper motives, or, in the case of domestic situations, emotional involvement.

Current sentencing laws are sufficient to cover the conduct contemplated by this bill and the extended term law need not be amended. Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

March 13, 2008

RE: S.B. 3182, S.D. 1; RELATING TO EXTENDED SENTENCING.

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 3182, S.D. 1, but with recommendations for amendments.

The purpose of this bill is to amend Hawaii's extended term sentencing law to allow an extended term of imprisonment for defendants who commit or attempt to commit murder, manslaughter, a felony sexual assault, robbery, a felony assault, burglary or kidnapping and in the course of committing the crime, inflicts serious or substantial bodily injury to a "good Samaritan." The bill defines a "good Samaritan" as a person who whether through justifiable use of force, contacting proper authorities, or other lawful means, renders or attempts to render emergency assistance or care without compensation to a crime victim.

We support this bill, which provides for additional possible sanctions against defendants who injure "good Samaritans" who come to the aid of crime victims. We note that Hawaii Revised Statutes (HRS) section 663-1.6 already contains a statutory duty to assist crime victims; it requires any person at the scene of a crime who knows that a victim is suffering from serious physical harm, shall obtain or attempt to obtain aid from law enforcement or medical personnel if the person can do so without danger or peril to any person. In addition HRS 663-1.6 also provides for immunity from civil damages for the "good Samaritan." Clearly, the public policy behind such a statute is to reinforce the inclination of others to assist crime victims as much as possible.

However, in certain cases, the perpetrator has turned on the "good Samaritan" who has stepped forward to either protect the victim or to provide care and assistance. We believe that if the public policy is to encourage people to step forward to aid crime victims, greater protections should be afforded to "good Samaritans" though enhanced sentencing of persons who inflict injury on them.

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We are proposing that this bill be amended to create a new section in the extended term sentencing statute rather than putting the amendment in current section 5(b) which requires the defendant knows or reasonably should know that the person is a "good Samaritan," i.e. acting in good faith and isn't being paid to assist. We believe that these issues are irrelevant to the defendant, who is presumably attacking the "good Samaritan" for somehow intervening to prevent the defendant from committing the crime rather than because of any perceived or known disability or vulnerability such as being young, blind, physical disabled or elderly.

We would also suggest that the legislature consider expanding the protections of this bill to encompass "good Samaritans" who attempt: 1) to protect victims of crimes that are not enumerated such as a misdemeanor abuse of a family or household member or a petty misdemeanor harassment; or 2) to prevent crimes such as property crimes such as breaking into a car or a theft. It is foreseeable that a "good Samaritan" could step into a domestic abuse situation and could be assaulted by one of the parties and actually suffer injuries greater than the injuries to the original victim or that a "good Samaritan" could attempt to prevent a theft or car break in and be injured.

Finally, we would ask that the legislature considering broadening this proposal to include persons other than the defendant who may attack the "good Samaritan" for intervening. There are instances where the defendant is among a group of people, such as family or friends who are watching the defendant commit the crime but who are not participating but who do attack a third party "good Samaritan" who attempts to prevent or report the crime. One example of this is the Kupahu case, which was a 2003 animal cruelty case (a misdemeanor) where a good Samaritan tried to call police and also stepped in to stop the defendant from beating and drowning his dog. The good Samaritan ended up getting assaulted by the defendant and defendant's relatives. We have attached an article describing the case to our testimony.

Based upon our suggestions for amendment, we recommend that all the amendments in S.B. 3182, S.D. 1 be deleted from pages 3, 4 and 5 of the bill and be replaced with the following:

- (7) The defendant is an offender against an intervenor to a crime in that defendant, inflicts serious or substantial bodily injury upon a person who is not acting within the course and scope of the person's employment and who intervenes in the commission or attempted commission of a crime by:
- (i) preventing or attempting to prevent the commission or attempted commission of a crime;
 - (ii) protecting or attempting to protect another person from the commission or attempted commission of a crime;
 - (iii) contacting or attempting to contact proper authorities to:
 - (A) report the commission or attempted commission of a crime; or
 - (B) summon medical assistance or emergency care for the victim of a crime; or
 - (iv) rendering or attempting to render emergency aid or care to the victim of a crime.

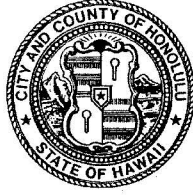
For this reason, we respectfully request that you pass S.B. 3182, S.D. 1 with the amendments proposed in this testimony and thank you for this opportunity to testify.

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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE RR-NTK

March 13, 2008

The Honorable Tommy Waters, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

Subject: Senate Bill No. 3182, S.D. 1, Relating to Extended Sentencing

I am Carlton S. Nishimura, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 3182, S.D. 1, Relating to Extended Sentencing.

The proposed amendment to Section 706-662, Hawaii Revised Statutes, Criteria for extended terms of imprisonment, will provide additional protection for good samaritans who come to the aid of victims of criminal acts. Patrol officers oftentimes witness cases where good samaritans came forward at their own peril to assist victims of crimes. Their actions change a negative situation into a positive one through their caring and unselfish acts. Providing these good samaritans with added protection is not only consistent with our laws but also with our unique culture of caring for one another in Hawaii. These good samaritans are not only courageous but represent the best of Hawaii and the aloha spirit.

The Honolulu Police Department urges you to support Senate Bill No. 3182, S.D. 1, Relating to Extended Sentencing.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carlton S. Nishimura".

CARLTON S. NISHIMURA, Major
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Boisse P. Correa".

BOISSE P. CORREA
Chief of Police

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