

TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. NO. 1058, S.D. 1, RELATING TO CONTROLLED SUBSTANCES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Friday, February 27, 2009 **TIME:** 9:30 AM

LOCATION: State Capitol, Room 016

TESTIFIER(S): WRITTEN TESTIMONY ONLY. For more information, contact Lance Goto, Deputy Attorney General, at 586-1160.

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General appreciates the intent, but opposes this bill.

The purpose of this bill is to convene a task force coordinated by the Attorney General to review the impact that diversion of minor drug possession offenders into drug treatment would have on the criminal justice system, drug treatment program resources, and public safety. The bill defines "minor drug possession offenders" as persons charged with a class B or C felony drug possession offense. The bill defines "diversion" as placement of the offender into drug treatment in lieu of charging the offender, or allowing the offender to plead to a misdemeanor offense and be placed in treatment.

This is a very ambitious project that will require significant costs, resources, and expertise, yet the bill appropriates no funds for these expenses. Given the current fiscal difficulties, it would not be prudent to undertake this project at this time.

Moreover, the purpose of the project is unclear. Many forms of diversion are already available to class B and C drug offenders, including: (1) Drug Court; (2) first-time drug offender sentencing under section 706-622.5, Hawaii Revised Statutes (HRS), that results in probation, treatment, and possible expungement of the conviction record;

(3) deferred pleas under chapter 853, HRS, that do not result in convictions; and (4) conditional discharge under section 712-1255, HRS, that may result in the discharge and dismissal of the charge without an adjudication of guilt.

With respect to the proposal that felony offenders plead to a misdemeanor offense and undergo treatment, it is a concern that a misdemeanor can only result in a six-month period of probation. Six months is not generally an adequate period for drug treatment.

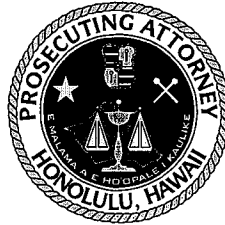
Finally, it is a concern that B and C felony drug offenses are characterized by this bill as "minor" offenses.

We respectfully request that this bill be held.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

February 27, 2009

RE: S.B. 1058, S.D. 1; RELATING TO CONTROLLED SUBSTANCES.

Chair Taniguchi and members of the Senate Committee on Judiciary and Government Operations, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 1058, S.D. 1.

The purpose of S.B. 1058, S.D. 1 is to convene a task force to review the impact diversion of minor drug offenders into drug treatment would have on the criminal justice system, drug treatment programs and public safety. S.B. 1058 defines “minor drug offenders” to be persons charged with a class B or C felony drug possession offense. The bill further proposes that the “minor drug offender” be allowed to a misdemeanor and be placed in treatment in lieu of imprisonment.

We oppose this bill since we believe that the concept to be studied by the task force will not assist persons to enter and remain in drug treatment. First of all, probation for a misdemeanor offense can only be for a maximum period of six months, which will generally be insufficient to get into and complete drug treatment. In contrast, probation for a class B or C felony is for a maximum period of five years which allows for sufficient time for defendants to get into and complete drug treatment programs and obtain supervision to assist in maintaining sobriety. In addition, we observe that are multiple avenues of diversion already extant in the criminal justice system that are available to class B and C drug addicted offenders; these include Drug Court, drug treatment as a condition of probation or parole, and mandated probation with drug treatment under Hawaii Revised Statutes sections 706-622.5 and 706-622.9.

For these reasons, we feel that conceptual basis of the task force is flawed and we therefore respectfully oppose the passage of S.B. 1058, S.D. 1. Thank you for the opportunity to testify.