

**Testimony of the Office of the Public Defender
State of Hawaii
to the Senate Committee on Judiciary and Government Operations**

March 3, 2009

S.B. No. 968: RELATING TO ESCAPE

Chair Taniguchi and Members of the Committee:

S.B. No. 968 proposes to create a new category for the offense of Escape in the Second Degree which would include conduct which is NOT an escape from custody. We believe the rationale behind this bill is misguided and that the change proposed is unnecessary.

Currently, H.R.S. § 710-1021 defines Escape in the Second Degree as follows:

A person commits the offense of escape in the second degree if the person intentionally escapes from a correctional or detention facility or from custody.

This statute encompasses the conduct of escaping from one of our prisons or jails, escaping from the custody of police officers (by jumping out of the patrol car and running away, for example) and failing to return to custody from a temporary pass (such as work furlough). All of the conduct involves being in custody and then engaging in conduct by which the person intentionally absents him or herself from custody. S.B. No. 968 seeks to go outside this long-established concept of escape to include behavior by persons who have not yet been placed in custody.

One of the justifications offered for this proposal is so people who do not appear on the specified date and time for confinement can be “held accountable”. In fact, we already have provisions in our law by which to hold such persons accountable, specifically our contempt and bail jumping statutes. For example, H.R.S. § 710-1024 provides:

A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a felony, the person knowingly fails to appear as ordered.

H.R.S. § 710-1024 makes it a class C felony to fail to appear as ordered in connection with a felony charge. H.R.S. § 710-1025 likewise provides for a misdemeanor bail jumping offense for failing to appear in connection to a misdemeanor charge. S.B. 968 would make it a felony offense not to appear as ordered to serve a misdemeanor sentence which would bring the two statutes into conflict.

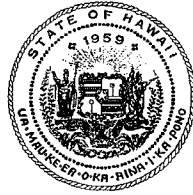
The proponents of this bill also advocate this change because it will give prosecutors “the option to ask for prosecution”. In other words, the legislature should abandon the current rational basis for our escape statutes so that prosecutors have more options. We do not believe this reasoning supports the change advocated.

Finally, proponents advocate this bill citing the additional “work for correctional staff with little to no consequences for the defendants”. As demonstrated above, our penal code already provides consequences for defendants which are far more in line with the charged offense than this bill proposes. Additionally, what about the expense and added workload for the entire court system when these cases have to be taken to trial as they surely will be?

The justifications offered for S.B. 968 are not meritorious. This legislation is not needed. For these reasons we oppose passage of this bill.

Thank for the opportunity to comment on this measure.

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TESTIMONY ON SENATE BILL 968
RELATING TO ESCAPE

By
Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

Tuesday, March 3, 2009; 9:30AM
State Capitol, Conference Room 016

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

The Department of Public Safety (PSD) supports Senate Bill 968, which seeks to expand the charge of escape in the second degree to adult offenders who fail to present themselves to the specified correctional or detention facility on the date and at the time ordered by the court for service of a term of confinement.

At present, convicted and sentenced adults are often allowed to remain free in the community in order see to personal affairs in preparation for their period of incarceration. Unfortunately, at times, these same offenders willfully fail to report to the correctional or detention facility as ordered by the court. In such cases, these offenders can only be charged with contempt of court, which is a misdemeanor even if the underlying offense(s) was a felony conviction.

In addition, if an offender is ordered by the court to be temporarily released from a facility to attend a community-based program, but fails to return, the offender cannot be charged with escape under the current statute, but rather contempt of court, which is a

misdemeanor. This amendment would address both of these critically important public safety issues.

Senate Bill 968 seeks to provide language that will allow for the prosecution of a Class C Felony when someone does not comply with the courts directive to report to a correctional or detention facility. The United States Code accomplishes this objective by stating in United States Code Title 18 Section 751, "Whoever escapes or attempts to escape from the custody of the Attorney General or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge...". The federal government has historically prosecuted inmates for escape, when they fail to present themselves to a correctional facility after being permitted to stay in the community for a period of time after sentencing using this federal statute. Likewise, PSD believes this proposed amendment to the statute will provide the offender with the necessary incentive to comply with the court's order. If enacted, this measure will also allow for an immediate response to activate an all points bulletin for the arrest of the non-compliant offender. In many instances, Adult Client Services staff (Probation) must go back to the court to file a motion for revocation for non-compliance to have a warrant of arrest issued. The present process is inefficient, time consuming, and places the community at risk of continued victimization from the non-compliant and previously convicted offender.

Thank you for this opportunity to provide testimony on this important public safety matter.

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TITLE 18 > PART I > CHAPTER 35 > § 751

§ 751. Prisoners in custody of institution or officer

(a) Whoever escapes or attempts to escape from the custody of the Attorney

General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than five years, or both; or if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined under this title or imprisoned not more than one year, or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title.

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