



HB141 HD1 Proposed SD1
RELATING TO THE HAWAII PENAL CODE
Senate Committee on Judiciary and Labor

April 7, 2011

9:30 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) understands that the Proposed SD1 of HB141 replaces the original contents of the bill with language relating to labor trafficking. OHA supports HB141 HD1 and respectfully asks the committee to retain the HD1 language of the bill, which authorizes retroactive application of the requirement that multiple terms of imprisonment run concurrently unless directed to run consecutively by law or court order.

OHA recognizes that Act 193 of 2008 revised HRS §706-668.5 to clarify and be consistent that if a defendant faces multiple terms, the sentences run concurrently unless explicitly court ordered or mandated by statute to be consecutive. Unfortunately, when it comes to implementing terms of sentencing, anecdotal reports indicate that the law is not being properly followed. HB141 HD1 will help to clarify the intent and implementation of the law.

OHA's recent report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," shows that the Native Hawaiians in the criminal justice system are more likely to have longer sentences than other groups. This bill will aid in reducing that disparity and correct the injustice that lead to Act 193.

This bill creates an administrative mechanism to allow the bill to be effective retroactively. The bill should be amended to require DPS to create rules under Chapter 91, HRS, to outline how the request for recalculation from inmates will be handled including reasonable deadlines for action by DPS.

OHA urges the committee to PASS HB141 HD1. Mahalo for the opportunity to testify on this important measure.

LATE TESTIMONY

TESTIMONY IN SUPPORT OF HB 141

HEARING DATE: 4-7-11, SENATE JUDICIARY AND LABOR COMMITTEE

Dear Chair Senator Clayton Hee and Vice Chair Senator Maile S. L. Shimabukuro and Members of the Senate Judiciary and Labor Committee:

I write in strong support of HB 141. I am an attorney in private practice. Recently, a former client of mine wrote to tell me that the Dpt. Of Public Safety (DPS) was adding on more prison time to his parole date because his sentence was to be served consecutively, not concurrently, even though there was no such sentence given by the Judge. Enclosed is a memorandum from DPS which states Mr. Rabellizza's sentence and parole date was recalculated to reflect a consecutive prison term instead of concurrent. I responded by establishing the sentence in Cr. No.88-1186 was concurrent as can be seen on the judiciary's web site.

Needless to say, my client is devastated . He had planned his parole and has family support. He has been incarcerated nearly 19 years. The parole was very important to him and then at the last minute he receives a letter authored by Thomas Read, DPS, stating they unilaterally changed his sentence and parole date. According to the letter, which is enclosed, DPS determined that his sentence "shall run consecutive" due to a "discrepancy". There is no discrepancy nor is there a sentence of consecutive time handed out by a Judge in this case. Neither the legislature nor Judges delegated the authority to sentence defendants consecutively to Department of Public Safety.

Please pass this bill. It ensures that all incarcerated persons are treated equally and that judicial sentences are read accurately by DPS. Unless a Judge sentences a defendant to consecutive time, this additional punishment should not be unilaterally "determined" by Dpt. Of Public Safety employees.

Thank you.

Daphne Barbee-Wooten

Attorney at Law

Encl.

LATE TESTIMONY



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