



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2011

ON THE FOLLOWING MEASURE:

H.B. NO. 141, RELATING TO THE HAWAII PENAL CODE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 22, 2011 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General opposes this measure.

The purpose of this bill is to retroactively require that multiple terms of imprisonment run concurrently unless the court orders or the law mandates that the terms run consecutively. It does this by amending section 3 of Act 193, Session Laws of Hawaii 2008, which amended section 706-668.5 of the Hawaii Revised Statutes (Multiple sentence of imprisonment).

We oppose this bill because of the portion of the bill that makes the provisions of this bill applicable to sentences imposed before the effective date of the Act. We believe this is inappropriate and a violation of the separation of powers doctrine.

Under previous law, multiple terms of imprisonment imposed at different times were to run consecutively unless the court ordered that the terms run concurrently. Until the 2008 amendment, sentences had been so imposed since 1986, when the law was enacted, by judges who were presumed to have known the law and to have acted in accordance with that knowledge. This bill attempts to affect those previously imposed sentences. If this bill applies retroactively, it appears that all prior final

judgments and sentences that do not specify consecutive sentencing will be legislatively amended to run concurrently regardless of the facts of each case or the judges' considerations in rendering their sentences. Such legislative reopening of final judgments and sentences would be inappropriate.

For this reason, we respectfully request that this measure be held.

Sonny Le

From: Karl Rhoads [rhoadsk001@Hawaii.rr.com]
Sent: Saturday, February 19, 2011 3:29 PM
To: Rep. Karl Rhoads
Subject: FW: Support for your bills -

From: VIRGINIA HENCH [mailto:sk8legal@prodigy.net]
Sent: Saturday, February 19, 2011 2:10 PM
To: Karl Rhoads
Subject: Support for your bills -

LATE TESTIMONY

Hi Karl - thanks for supporting these bills:

STRONG SUPPORT – HB 141 – MULTIPLE TERMS OF IMPRISONMENT

<http://www.capitol.hawaii.gov/emailtestimony>

Download hearing notice: http://www.capitol.hawaii.gov/session2011/hearingnotices/HEARING_JUD_02-22-11_.HTM

HB 141 – RELATING TO HAWAI`I PENAL CODE – CONCURRENT IMPRISONMENT TERMS

JUD

http://www.capitol.hawaii.gov/session2011/bills/HB141_.htm

Authorizes retroactive application of the requirement that multiple terms of imprisonment run concurrently unless directed to run consecutively by law or court order.

I also strongly support them.

Aloha, Ginny Hhench