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

ON THE FOLLOWING MEASURE:
S.B. NO. 106,   RELATING TO THE HAWAII PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY

DATE: Tuesday, February 15, 2011   TIME: 2:45 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
              Lisa M. Itomura, Deputy Attorney General

Chair Espero 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 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.

Under current law, multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms run concurrently. Sentences have been imposed under the current law since 1986, when this section was enacted, by judges who are presumed to know the law and 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 requests that this measure be held.