



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY- FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 895, RELATING TO CREDIT FOR TIME OF DETENTION PRIOR TO SENTENCE..

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 17, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Landon M.M. Murata, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General (the Department) strongly supports this bill.

The purpose of this bill is to amend section 706-671(3), Hawaii Revised Statutes (HRS) to clarify that a defendant who is convicted of a crime committed while serving a term of imprisonment cannot receive credit for any presentence detention time served for the new offense that overlaps with time being served for the old offense.

When the Legislature passed section 706-671(3), HRS, in 2012, it indicated in its final report from the Senate Committee on Judiciary and Labor that “[t]he purpose and intent of this measure is to clarify that a defendant will not earn credit for time served for a subsequent crime while the defendant is serving an imprisonment sentence for a separate, unrelated offense.” Senate Stand. Com. Rep. No. 3188, at 1 (2012). It also stated that “[t]his measure creates uniform application and deters imprisoned offenders from incurring new offenses.” Id.

In 2020, however, the Hawaii Supreme Court held that a plain reading of section 706-671(1), HRS, which entitles a defendant who is sentenced to imprisonment to credit for time served prior to the defendant’s sentence, required the Court to give defendant credit for the time that he had been detained pretrial, even though he had been serving a sentence of imprisonment for a separate unrelated felony offense when he committed the new offense. State v. Abihaj, 146 Hawai’i 398, 408, 453 P.3d 1055, 1065 (2020). In

giving the Abihai defendant credit for the time that he had been detained pretrial, the Hawaii Supreme Court reasoned that the time the defendant was serving “was not just ‘time being served for the separate unrelated felony conviction’ but was also ‘time being served for the escape’” Id. at 409, 453 P.3d at 1066.

The Abihai court concluded that the current language of section 706-671(3) does not eliminate defendant’s entitlement to presentence detention credit pursuant to the plain language of section 706-671(1), HRS. Id.

We believe that the court’s holding was inconsistent with the original intent of the Legislature as expressed when section 706-671(3) was added in 2012. The amendments in this bill are needed to clarify that the limitations of section 706-671(3) are applicable to imprisoned offenders, notwithstanding any other law to the contrary, including section 706-671(1), and that an imprisoned offender is not entitled to credit for the period of detention served for the subsequent offense.

The Department respectfully requests the passage of this bill.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawai'i 96814

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 895
RELATING TO CREDIT FOR TIME OF DETENTION PRIOR TO SENTENCE
by
Max N. Otani, Director

House Committee on Judiciary & Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 17, 2021; 2:00 p.m.
Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

House Bill (HB) 895 seeks to clarify that defendants may not earn credit for time served on a new unrelated term of imprisonment for a subsequent conviction while serving time on an unexpired previous felony conviction until the defendant is sentenced on the new felony conviction.

The Department of Public Safety (PSD) strongly supports this measure as its intent is to ensure defendants in custody for a previous felony conviction(s), who are subsequently convicted of a new felony offense(s) are not provided with credit for time served on the new felony offense(s) prior to sentencing on the new felony offense(s). This clarification to Hawaii Revised Statutes (HRS) 706-671(3) is needed as result of the recent Hawaii Supreme Court Opinion in the case of Abihai vs. State of Hawaii.

Thank you for the opportunity to present this testimony in strong support of HB 895.