
HOUSE RESOLUTION

REQUESTING THE JUDICIAL COUNCIL TO APPOINT A COMMITTEE TO REVIEW
AND RECOMMEND REVISIONS TO THE HAWAII PENAL CODE.

1 WHEREAS, although the Hawaii Penal Code generally provides
2 judicial discretion in sentencing repeat offenders, it appears
3 that judges are not utilizing this discretionary authority in a
4 consistent and fair manner; and
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6 WHEREAS, according to prosecutors, the outcomes for repeat
7 offenders often depends on the judge assigned to the case — with
8 sentences ranging from prison time to same-day release; and
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10 WHEREAS, judges should be utilizing their judicial
11 discretion to sentence individuals consistently and fairly
12 depending on the circumstances involved, including whether the
13 individual is a repeat offender and may benefit from substance
14 abuse treatment or diversion to one of the Judiciary's
15 specialized programs such as the Drug Court or HOPE Probation
16 (Hawaii's Opportunity Probation with Enforcement); and
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18 WHEREAS, the news reported on a story earlier this year
19 involving an individual who, over the past fifteen years, has
20 been convicted one hundred sixty-one times for various crimes,
21 including theft, harassment, open lewdness, and alcohol-related
22 offenses; and
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24 WHEREAS, the number of convictions this individual has
25 amassed over fifteen years suggests that the laws for sentencing
26 individuals need to be revisited to better address repeat
27 offenders; and
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29 WHEREAS, in 2015, the Legislature requested under House
30 Resolution No. 155, Senate Draft 1, Regular Session of 2015, for
31 the Judicial Council to appoint a committee to review the Hawaii
32 Penal Code and recommend to the Legislature revisions to the
33 Code that will help ensure that sentences are fair and



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1 proportionate to the crime committed with particular attention
2 paid to Hawaii Penal Code sections that base culpability on
3 dollar amounts; and

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5 WHEREAS, this resulted in the enactment of various
6 amendments to the Hawaii Penal Code the following year under Act
7 231, Session Laws of Hawaii 2016, to ensure more fair and
8 proportionate sentencing; and

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10 WHEREAS, given the success of the previous Penal Code
11 Review Committee in updating the Hawaii Penal Code to address
12 sentencing disparities, a similar committee should be appointed
13 to help ensure judicial discretion, consistency, and fairness in
14 sentencing repeat offenders; now, therefore,

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16 BE IT RESOLVED by the House of Representatives of the
17 Thirty-first Legislature of the State of Hawaii, Regular Session
18 of 2022, that the Judicial Council, established pursuant to
19 section 601-4, Hawaii Revised Statutes, is requested to appoint
20 a committee to review the Hawaii Penal Code and recommend to the
21 Legislature revisions to the Code that the committee concludes
22 will help ensure judicial discretion, consistency, and fairness
23 in sentencing repeat offenders; and

24
25 BE IT FURTHER RESOLVED that the members of the committee
26 include:

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28 (1) The prosecuting attorney of the City and County of
29 Honolulu, who shall serve as chairperson of the
30 committee;
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32 (2) A representative from the Judiciary;
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34 (3) A member of the Senate Committee on Judiciary;
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36 (4) A member of the House of Representatives Committee on
37 Judiciary & Hawaiian Affairs;
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39 (5) The Administrator of the Office of Hawaiian Affairs or
40 the Administrator's designee;
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- (6) The Attorney General, or the Attorney General's designee;
- (7) A representative from the Intake Services Center Division of the Corrections Division of the Department of Public Safety;
- (8) A representative from the Office of the Public Defender;
- (9) The prosecuting attorney from the counties of Hawaii, Maui, and Kauai, or each prosecuting attorney's designee;
- (10) A representative from the police department of each county;
- (11) Public or private sector economists;
- (12) Psychologists or social workers;
- (13) Private citizens interested in criminal law and civil liberties;
- (14) Hawaii attorneys in private practice who handle criminal cases;
- (15) A representative from a prisoner advocacy group; and
- (16) Representatives from victim advocacy groups;

provided that the committee shall include at least one member from each county; and

BE IT FURTHER RESOLVED that the committee shall recommend updates to the Hawaii Penal Code by reviewing HOPE Probation (Hawaii's Opportunity Probation with Enforcement), which is designed to reduce probation violations by drug offenders and others at high risk of recidivism by providing swift, predictable, and immediate sanctions - typically resulting in several days in jail - for each detected violation, such as



1 detected drug use or missed appointments with a probation
2 officer; and

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4 BE IT FURTHER RESOLVED that the committee may accept
5 assistance in the performance of its duties; and

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7 BE IT FURTHER RESOLVED that the Judicial Council may
8 request the Legislative Reference Bureau to assist the committee
9 with research and reporting assistance, as needed; and

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11 BE IT FURTHER RESOLVED that the Judicial Council is
12 encouraged to use, to the greatest extent possible, the faculty
13 and students of the University of Hawaii William S. Richardson
14 School of Law in performing its work; and

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16 BE IT FURTHER RESOLVED that the members of the committee
17 serve without compensation; provided that members of the
18 committee may be reimbursed for the costs of mileage, parking,
19 and transportation from the neighbor islands; and

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21 BE IT FURTHER RESOLVED that no member of the committee
22 shall be made subject to chapter 84, Hawaii Revised Statutes,
23 solely because of that member's participation as a member of the
24 committee; and

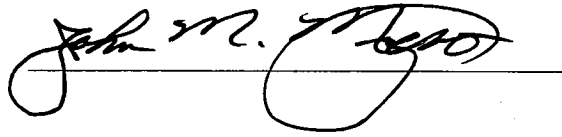
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26 BE IT FURTHER RESOLVED that the Judicial Council is
27 requested to submit its findings and recommendations, including
28 any proposed legislation, to the Governor and Legislature no
29 later than twenty days prior to the convening of the Regular
30 Session of 2023; and

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32 BE IT FURTHER RESOLVED that certified copies of this
33 Resolution be transmitted to the Chief Justice of the Hawaii
34 Supreme Court, President of the Senate, Speaker of the House of
35 Representatives, Administrator of the Office of Hawaiian
36 Affairs, Attorney General, Director of Public Safety, State
37 Public Defender, Director of the Legislative Reference Bureau,
38 Prosecuting Attorneys of each of the counties, and police chiefs
39 of each of the counties.



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OFFERED BY:

A handwritten signature in black ink, appearing to read "John M. Flaherty", is written over a horizontal line.

FEB 28 2022

