



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile Shimabukuro, Vice Chair

Wednesday, March 18, 2015, 9:00 a.m.

State Capitol, Conference Room 016

By

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WRITTEN TESTIMONY ONLY

Resolution No. and Title: Senate Concurrent Resolution No. 18 Requesting the Judiciary to convene a working group to examine Hawaii’s enhanced sentencing and extended sentencing laws.

Judiciary's Position:

The judiciary takes no position on the merits of this resolution but respectfully offers the following comments.

Roughly every decade since 1983, the legislature has convened a committee, consisting of members from the judiciary, the department of the attorney general, the department of public safety, the Hawaii paroling authority, the office of the public defender, the county prosecutors’ offices and police departments, victim advocacy groups, and interested attorneys and private citizens, to conduct a comprehensive review of the Hawaii penal code. The last of these committees was created in 2005 by Act 125, which included a \$75,000 appropriation to cover the costs of the review.

This session, while there is no bill calling for a comprehensive review of the penal code, the judiciary is aware of several concurrent resolutions, each providing for a limited review concerning specified sentencing provisions within the code. The measure before you, SCR No. 18, requests that the judiciary “convene a working group to examine Hawaii’s enhanced sentencing and extended sentencing laws.” Related SCR No. 146 and House versions HCR No. 155 and HR No. 93 request that the judicial council establish a committee whose review “will



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help ensure that sentences are fair and proportionate to the crime committed with particular attention paid to ... sections that base culpability on dollar amounts," including review of the American Law Institute Model Penal Code and assessing the principles of "Justice Reinvestment in Hawaii: Analyses & Policy Options." In addition, HCR No. 84 and HR No. 43 propose a working group (not including the judiciary) to "study, review, and revise the definition of murder in the first degree." Matters like these have effectively been incorporated into past ten-year comprehensive penal code reviews.

Given the broad, state-wide membership of the committees proposed by SCR Nos. 18 and 146 and HCR No. 155 and HR No. 93 – and assuming that the legislature favors these resolutions – it is perhaps more desirable, in terms of cost and efficiency, to have one committee do the work described in all resolutions on updating the penal code.

We would also point out that it has been about ten years since the last comprehensive penal code review and, if the legislature is contemplating another such review in the near future, the substance of SCR Nos. 18 and 146 can expressly be made a part of it. This may be the most efficient and cost effective approach.

Lastly, the judiciary believes that an appropriation based on the scope of the review ultimately to be done will be necessary to cover its costs.

Thank you for the opportunity to testify on Senate Concurrent Resolution No. 18.