

STAND. COM. REP. NO. 1

Honolulu, Hawaii

**October 25**, 2007

RE: H.B. No. 2

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Second Special Session of 2007  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2, entitled:

"A BILL FOR AN ACT RELATING TO SENTENCING,"

begs leave to report as follows:

The purpose of this measure is to amend Hawaii's extended term sentencing statutes to ensure that the procedures used to impose extended terms of imprisonment comply with the requirements set forth by the United States Supreme Court and the Hawaii Supreme Court.

Specifically, this measure:

- (1) Requires a jury to determine the facts necessary to impose an extended term of imprisonment under section 706-662, Hawaii Revised Statutes, unless the right to a jury determination is waived by the defendant, in which case the determination is to be made by the judge;
- (2) Requires facts necessary to impose an extended term of imprisonment to be proven beyond a reasonable doubt; and
- (3) Applies retroactively to sentencing or resentencing proceedings pending on or commenced after its effective date, whether the offense was committed prior to, on, or after the effective date.



This measure does not entitle a defendant who has previously been sentenced to an extended term to be resentenced pursuant to the procedures set forth in the measure unless the defendant is otherwise legally entitled to be resentenced.

Your Committee received testimony in support of the measure from the Attorney General, the Prosecuting Attorneys of the City and County of Honolulu and of the County of Maui, the police departments of the City and County of Honolulu and the counties of Hawaii and Kauai, the Hawaii Family Forum, and three private citizens. The Public Defender had no objection to the measure insofar as its purpose is to amend Hawaii's extended term sentencing law to comply with the requirements set forth by the United States Supreme Court and the Hawaii Supreme Court but objected to making the amendments retroactive.

Your Committee notes that a line of decisions by the United States Supreme Court beginning in 2000 has steadily eroded the ability of state courts to impose prison terms longer than those provided in the statute defining the crime for which a defendant is convicted. As a result, convicted persons who pose a danger to the public may not now be sentenced to an extended term of imprisonment even though such a term may be both appropriate and necessary.

Your Committee finds that this measure will rectify this problem by requiring that juries determine the facts necessary to impose extended terms of imprisonment, unless the defendant waives the right to jury, and requiring that these facts be proven beyond a reasonable doubt. Your Committee further finds that this measure is necessary for the protection of the public.

Your Committee has left unchanged the measure's retroactive provision because the measure does not subject any offender to sentences longer than those provided by Hawaii's current extended term sentencing laws. Rather, the measure provides the procedures necessary to ensure that dangerous offenders who have had their extended term sentences vacated because of the court decisions can be resentenced to extended terms and that offenders who are sentenced after the effective date of this measure can also be sentenced pursuant to the procedures provided by this measure.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2



and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

A large, bold, handwritten signature in black ink, appearing to read "Tommy Waters", is written over a horizontal line.


TOMMY WATERS, Chair



State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

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Record of Votes of the Committee on Judiciary

Bill/Resolution No.: HB 2		Date: 10/25/07		
Committee Referral: JUD		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended <input type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommitment for further consideration				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. WATERS, Tommy (C)	✓			
2. OSHIRO, Blake K. (VC)	✓			
3. CALDWELL, Kirk	✓			
4. EVANS, Cindy	✓			
5. GREEN, Josh, M.D.	✓			
6. ITO, Ken	✓			
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.	✓			
9. MORITA, Hermina M.				✓
10. SONSON, Alex M.	✓			
11. SOUKI, Joseph M.				✓
12. TSUJI, Clift	✓			
13. YAMANE, Ryan I.	✓			
14. YAMASHITA, Kyle T.	✓			
15. MARUMOTO, Barbara C.				✓
16. PINE, Kymberly Marcos	✓			
17. THIELEN, Cynthia				✓
TOTAL	13			4
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – HMSO Duplicate (Pink) – Clerk's Office				