

STAND. COM. REP. NO. 7

Honolulu, Hawaii

OCT 30 2007

RE: H.B. No. 2

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Second Special Session of 2007  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, 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 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 requires that:

- (1) A jury determine the facts necessary to impose an extended term of imprisonment, unless the right to a jury determination is waived by the defendant; and
- (2) Facts necessary to impose an extended term of imprisonment are proven beyond a reasonable doubt.

In addition, the provisions of this measure apply 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.

Testimony in support of the measure was submitted by the Attorney General, the Department of the Prosecuting Attorney of City and County of Honolulu, the County of Hawai'i Police Department, and one individual.



Comments were submitted by the Office of the Public Defender, which did not object to the purpose of the measure in terms of amending Hawaii's extended sentencing law to comply with the requirements of the United States Supreme Court and the Hawaii Supreme Court, but did raise an issue as to making the amendments to the current law apply retroactively.

Your Committee finds that as a result of a line of United States Supreme Court cases, and *State v. Maugaotega*, \_\_\_ P.3d \_\_\_, 2007 WL 2823760, Oct. 1, 2007 (No. 26657), Hawaii's current extended sentencing procedure was deemed unconstitutional because it requires a judge and not a jury to find facts, other than those of prior or concurrent convictions, necessary to enhance a defendant's sentence beyond the ordinary or standard term authorized by the jury's verdict.

Your Committee further finds that this measure remedies this issue by amending the existing enhanced sentencing law to conform it to the requirements set forth by the United States Supreme Court and the Hawaii Supreme Court.

Your Committee notes that this measure does not entitle a defendant who has previously been sentenced to an extended term of imprisonment to be resentenced pursuant to the procedures set forth in this measure unless the defendant is otherwise legally entitled to be resentenced.

Your Committee also notes the concerns raised by the Office of the Public Defender with regards to the retroactive application of this measure. However, your Committee finds that this measure does not subject any defendant to additional punishment or other disadvantage and that this imposes a more significant burden on the prosecution than under past and current law.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor 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 and  
Labor,

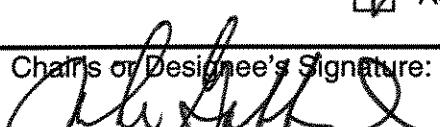


BRIAN T. TANIGUCHI, Chair



The Senate  
Twenty-Fourth Legislature  
State of Hawaii

Record of Votes  
Committee on Judiciary and Labor  
JDL

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 2	JDL	10/29/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, BRIAN T. (C)	✓			
HEE, Clayton (VC)				✓
GABBARD, Mike	✓			
KOKUBUN, Russell S.				✓
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	4			2
Recommendation:	<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted			
Chair's or Designee's Signature: 				
Distribution:	Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy

\*Only one measure per Record of Votes