



The Judiciary, State of Hawai'i

Testimony to the House Committee on Public Safety

Representative Gregg Takayama, Chair

Representative Matthew S. LoPresti, Vice Chair

Thursday, February 9, 2017

State Capitol, Conference Room 312

WRITTEN TESTIMONY ONLY

by

Judge Rom A. Trader

First Judicial Circuit

Bill No. and Title: House Bill No. 1517, Relating to Minimum Terms of Imprisonment.

Purpose: Requires judges, instead of the Hawaii paroling authority, to determine the minimum term of imprisonment a convicted offender must serve before becoming eligible for parole

Judiciary's Position:

The Judiciary takes no position on the merit of House Bill No. 1517, which is a broad and systemic change to sentencing procedures in criminal cases. However, we wish to respectfully reiterate and endorse the concern of the 2015 Penal Code Review Committee regarding the need for a more comprehensive study of sentencing in Chapter 706 of Hawai'i Revised Statutes. Link to the 2015 Penal Code Review Committee Report, submitted to the Legislature on December 30, 2015:

http://www.courts.state.hi.us/docs/news_and_reports_docs/2015_PENAL_CODE_REVIEW_REPORT-FINAL-12-30-15.pdf

Chief Justice Recktenwald convened this Committee in response to House Concurrent Resolution No. 155, Senate Draft 1, adopted by the Twenty-eighth Legislature, 2015 Session. The 2015 Penal Code Review Committee, chaired by Judge Steven Alm, comprised 29 members, including judges (appellate, circuit and district courts); the Chair of the Senate Committee on Judiciary and Labor; the Chair of the House Judiciary Committee; the Attorney General; the Director of the Department of Public Safety; the Prosecuting Attorney or designee from every



county; a representative from the Office of the Public Defender; representatives from the Honolulu Police Department; a representative from the Office of Hawaiian Affairs; a member of the Judicial Council; representatives of the criminal defense bar; crime victim advocates; and community advocates. Moreover, Committee members were encouraged to reach out to relevant stakeholders throughout the community for suggestions and input into the Committee's work. Statutory changes recommended by the Committee were enacted as amended by the 2016 Legislature in Act 231, Session Laws of Hawai'i 2016.

As a member of the 2015 Penal Code Review Committee, I chaired the Chapter 706 Subcommittee, which conducted extensive research and consultation with criminal justice agencies, the Hawai'i Paroling Authority, the Department of Public Safety, victim treatment providers, offender treatment providers, and community advocates. The list of the Chapter 706 Committee members, government and community contacts, and publications consulted appears on pages 1-5 of Appendix B of the Committee Report.

The full Committee endorsed 16 recommendations of the Chapter 706 Subcommittee, discussed in pages 22-41 of the 2015 Penal Code Review Committee Report, and made the final recommendation on sentencing:

The Committee strongly recommends the Legislature conduct a further and more comprehensive study of Chapter 706, Hawaii Revised Statutes, with regard to sentencing and the setting of minimum terms of imprisonment by the Hawaii Paroling Authority. During the course of the Committee's work, there was substantial discussion concerning the continuing efficacy of many of these provisions. In order to consider possible reforms, a thorough examination is required to identify concerns, gather information and feedback from a broad variety of perspectives, and consider the potential alternatives and the anticipated impact these changes may have across the entire criminal justice system. The views and concerns of key stakeholders such as law enforcement agencies, corrections officials, probation officers, parole officers, prosecutors, crime victims, and advocacy groups, as well as, offenders, defense counsel, treatment providers, judges and the community should be compiled and considered.

While the Committee has labored to make our review of the penal code as thorough as possible, given the time constraints within which we were required to complete our work, the consensus was that it would not be possible to make fully informed recommendations involving complex systemic changes to our current sentencing scheme and the setting of minimum terms of incarceration. Therefore, it is recommended that the Legislature consider and best decide how to further explore system-wide criminal justice reforms in these areas.



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The Judiciary notes that the broader scope and extended time needed to do a comprehensive sentencing study would require significant funding. If the Judiciary is tasked in the future to conduct a comprehensive study with appropriate resources, we respectfully request that any funding be in addition to the Judiciary's current budget request contained in House Bill No. 320 and Senate Bill No. 469.

We further note that House Bill No. 1295, proposing a Governor's Commission on Criminal Justice and Sentencing Reform is also scheduled to be heard by the House Public Safety Committee on Thursday, February 9, 2017. This 30-plus member Commission includes two members representing the Judiciary and is charged to develop a statewide framework of sentencing and corrections policies to reduce the State's incarcerated population by 25 percent by 2025, with a report back to the 2019 Legislature. Although the purpose of the Governor's Commission is focused on addressing prison populations, rather than the overall sentencing structure, it may be prudent to delay significant changes until after the Legislature receives the report.

Thank you for the opportunity to comment on this measure.