

Testimony on behalf of the
Office of the Public Defender, State of Hawai'i
to the House Committee on Judiciary

February 7, 2012

RE: H.B. No. 2842: Relating To Public Safety.

Chair Keith-Agaran and Members of the Committee:

H.B. 2842 proposes to create a new offense of "Commission of an offense while released on bail". We believe this statute is not sufficiently thought out and oppose its passage.

We do not believe it makes sense to trigger a felony offense on the basis of a violation, a petty misdemeanor or a misdemeanor. For example, a homeless person could be arrested for the petty misdemeanor of criminal littering (knowingly place, throw or drop litter on any public or private property) and post \$25. bail. If that person was thereafter arrested and subsequently convicted for another petty misdemeanor (open container of alcohol, or being in a park after closing, for example) committed while out on bail on the first offense, under this proposed legislation, the person in question would also now be guilty of a felony offense.

This legislation would have significant costs associated with its implementation. In the example above, a person who would otherwise likely not be in custody for a lengthy pre-trial period for misdemeanor charges would face months of pre-trial incarceration for the felony charge. That incarceration would be at taxpayer expense.

If convicted of the felony offense, the person would face either a five-year term of imprisonment or, more likely, a five-year term of probation. The probationary supervision and any services imposed by the court as conditions of probation would, again, be at taxpayer expense. When there are insufficient funds to pay for everything that is needed for real felony offenders, it does not make sense to create felons out of misdemeanor offenders to place further burdens on those limited resources.

We believe the wiser course is to take a defendant's behavior on bail into consideration at sentencing for the underlying offense. In fact, HRS Chapter 706 already has provisions that provide for such information to be taken into account in determining whether a person should be given the opportunity to serve a probationary term rather than go to prison.

Thank you for the opportunity to comment on this bill.

TESTIMONY

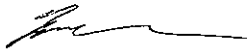
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To the House Committee on Judiciary
Regarding HB2842 relating to public safety
To be heard Tuesday February 7, at 2 PM in Conference Room 325

Dear Committee Members:

We oppose this bill. It may sound good, but is not well thought out. A person on bail has not been convicted of a crime and is entitled to the presumption of innocence. Stating that additional penalties will accrue to crimes committed by persons on bail violates this basic rule of law by subjecting a person who may be completely innocent of the first crime to increased penalties for the second. As such it may well be found unconstitutional. Furthermore, an allegation of a crime committed is not the same as a conviction. The additional time spent on litigation for the second crime may go well beyond the trial date of the first one creating confusion for our courts. Finally the attitude that this measure be applied to crimes committed outside the jurisdiction of the State of Hawaii is particularly worrisome. Many locations may have criminal laws that are onerous to our sense of justice. Until the US Supreme Court struck them down a few years ago some states could still prosecute homosexuals under sodomy laws.

Sincerely:



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