

Honolulu, Hawaii

FEB 19 2015

RE: S.B. No. 213
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committees on Judiciary and Labor and Public Safety,
Intergovernmental and Military Affairs, to which was referred S.B.
No. 213 entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII PENAL CODE,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require multiple terms of imprisonment imposed on a defendant prior to June 18, 2008, to run concurrently unless the court orders or statute mandates that the terms run consecutively; and
- (2) Authorize multiple terms of imprisonment imposed on or after the effective date of this measure to run concurrently unless the terms are mandated by the court or statute to run consecutively.

Your Committees received testimony in support of this measure from the Office of the Public Defender, Hawaii Association of Criminal Defense Lawyers, Hawaii Innocence Project, Community Alliance on Prisons, and three individuals. Your Committees received testimony in opposition to this measure from the Department of the Attorney General; Office of the Prosecuting Attorney, County of Kauai; and Department of the Prosecuting Attorney, City and County of Honolulu.



Your Committees find that from 1986 through 2008, section 706-668.5, Hawaii Revised Statutes (HRS), provided multiple terms of imprisonment imposed at different times to run consecutively unless the court specifically ordered that the terms run concurrently. On June 18, 2008, Act 193, Session Laws of Hawaii 2008 (Act 193), was enacted, and section 706-668.5, HRS, was amended to provide multiple terms of imprisonment to run concurrently unless the court orders or the statute mandates that the terms run consecutively. Accordingly, for multiple terms of imprisonment, the default sentencing changed from the terms running consecutively to running concurrently unless the court or statute specifically mandated otherwise. Due to concerns regarding inconsistencies in determining whether multiple imprisonment sentences were to be served concurrently or consecutively, this measure attempts to treat defendants sentenced to multiple terms of imprisonment prior to June 18, 2008, the same as those defendants sentenced on and after June 18, 2008.

Your Committees note the oral testimony that indicated that a recalculation by the Department of Public Safety of a defendant's multiple imprisonment sentence running concurrently to running consecutively could result in a defendant serving time beyond the defendant's original release date. Your Committees believe that if a defendant's multiple terms of imprisonment are recalculated, notice should be provided to the defendant regarding the possibility of recalculation and the defendant's right to have the court review the defendant's sentence.

Accordingly, your Committees have amended this measure by:

- (1) Deleting the amendments made to subsection (1) of section 706-668.5, HRS, and instead adding language to that section that:
 - (A) Requires the Department of Public Safety to send written notice to a defendant with multiple terms of imprisonment imposed prior to June 18, 2008, no later than six months prior to the defendant's scheduled release date; and
 - (B) Requires the written notice to include notice that the Department of Public Safety may recalculate the multiple terms of imprisonment imposed on the defendant and the defendant's right to have the court review the defendant's sentence;



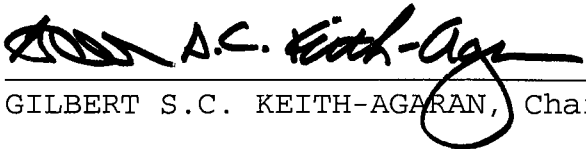
- (2) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Public Safety, Intergovernmental and Military Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 213, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 213, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Labor and Public Safety,
Intergovernmental and Military
Affairs,



WILL ESPERO, Chair



GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

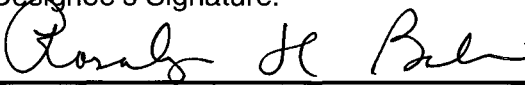
Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB213	Committee Referral: JDL/PSM, WAM	Date: 2/12/15		
<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 type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
ESPERO, Will	✓			
GABBARD, Mike				✓
IHARA, Jr., Les				✓
THIELEN, Laura H.	✓			
SLOM, Sam				✓
TOTAL	4			3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Public Safety, Intergovernmental and Military Affairs
PSM

Bill / Resolution No.:* SB 213	Committee Referral: JDL/PSM, WAM	Date: 2-12-2015		
<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 type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
ESPERO, Will (C)	✓			
BAKER, Rosalyn H. (VC)	✓			
GALUTERIA, Brickwood				✓
KEITH-AGARAN, Gilbert S.C.	✓			
SLOM, Sam				✓
TOTAL	3	-	-	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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