

Honolulu, Hawaii

FEB 28 2013

RE: S.B. No. 194

S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 194 entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE,"

begs leave to report as follows:

The purpose and intent of this measure is to exclude certain
offenses from eligibility to be granted a deferred acceptance of
guilty plea, including:

- (1) A defendant who has been charged with a petty
misdemeanor offense and has been previously granted
deferred acceptance of guilty plea status for a prior
felony, misdemeanor, or petty misdemeanor for which the
term of deferral has not yet expired; and
- (2) The offense charged is prostitution, street solicitation
of prostitution, solicitation of prostitution near
schools or public parks, or habitual solicitation of
prostitution.

Your Committee received testimony in support of this measure
from the Department of the Prosecuting Attorney, City and County
of Honolulu; Equality Now; Courage House Hawai'i; Pacific Alliance
to Stop Slavery; IMUAlliance; and seven individuals. Testimony in
opposition to this measure was submitted by the Office of the
Public Defender and one individual.



Your Committee finds that existing law does not provide a limit to the number of times a defendant may be granted a deferred acceptance of guilty plea for petty misdemeanor offenses. The Department of the Prosecuting Attorney of the City and County of Honolulu indicated in written testimony that while petty misdemeanors are considered the lowest level of criminal offenses, these offenses are still considered criminal and include offenses such as harassment, criminal property damage in the fourth degree, theft in the fourth degree, and prostitution. This measure provides that a defendant is not granted a deferred acceptance of guilty plea when the defendant is charged with a petty misdemeanor offense and was previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the term of deferral has not yet expired.

Your Committee further finds that this measure will strengthen laws to combat domestic minor sex trafficking by excluding certain prostitution violations from eligibility to be granted a deferred acceptance of guilty plea.

During the public hearing of this measure, your Committee raised a question as to whether status offenders, as defined under section 571-2, Hawaii Revised Statutes, should be excluded from eligibility to be granted a deferred acceptance of guilty plea. Subsequently, your Committee researched this matter and consulted with the Department of the Prosecuting Attorney of the City and County of Honolulu and Office of the Public Defender. Your Committee determined that status offenders are under the jurisdiction of the Family Court pursuant to section 571-11(2)(B), (C), or (D), Hawaii Revised Statutes, to determine the case and take any action accordingly. Thus, amending this measure to exclude status offenders from eligibility to be granted a deferred acceptance of guilty plea is not necessary.

Your Committee has amended this measure by inserting an effective date of July 1, 2050, to encourage further discussion.

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 S.B. No. 194, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 194, S.D. 1, and be placed on the calendar for Third Reading.



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



CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 194	Committee Referral: JDL	Date: 2-15-13.		
<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
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)				✓
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	4	—	—	1
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