

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2005

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1796

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1796, entitled "A Bill for an Act Relating to the Disposition of Convicted Defendants."

The purpose of this bill is to allow individuals sentenced for a first-time drug offense prior to July 1, 2002, to apply for re-sentencing, provided that the person is able to demonstrate to the court a satisfactory record of drug treatment and abstinence, and a record free of any criminal conviction from the date of the person's sentencing for the first-time drug offense. The person may also apply for expungement of related arrest and conviction records.

This bill is objectionable, because it will cause unintended results that will undermine the intent and purpose of Act 161, Session Laws of Hawaii 2002. The purpose of Act 161 is to require first-time nonviolent drug possession offenders to be sentenced to undergo and complete drug treatment instead of incarceration.

This bill is broader than and contrary to Act 161, because its eligibility criteria is less restrictive than that of Act 161, now incorporated in section 706-622.5, Hawaii Revised Statutes. This bill would allow a person convicted of first-time drug offenses involving the distribution and manufacture of drugs, prior to the July 1, 2002, to apply for re-sentencing.

However, section 706-622.5, restricts sentencing for first-time drug offenses to those involving possession or use, but not including cases involving the distribution or manufacture of drugs.

It is conceivable, under this bill, that a person convicted, prior to July 1, 2002, for a first-time drug offense of Promoting a Dangerous Drug in the First Degree, which involved distribution or manufacturing of drugs, could apply for re-sentencing if the person demonstrated to the court a satisfactory record of drug treatment and drug abstinence and a record free of any criminal conviction from the date of the person's prior sentencing. Therefore, this bill would permit a person convicted of a class A felony and sentenced to an indeterminate term of imprisonment of twenty years to apply for re-sentencing and request probation. This is absolutely contrary to the intent and purpose of Act 161.

In addition, under section 706-622.5, a person is eligible to be sentenced to probation if the person meets certain criteria, including a determination by the court that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense, and any other relevant information. This bill does not require a person to meet the same criteria of an individual applying for sentencing under section 706-622.5, Hawaii Revised Statutes, and thus may be contrary to existing statutory probation standards.

The vagueness of the bill's language may also cause unintended results and require appeals to the appellate courts. This bill would allow a person convicted for a first-time drug offense to apply for re-sentencing if that person can demonstrate "to the court a satisfactory record of drug treatment and drug

abstinence." Due to the vagueness of the language and a lack of objective criteria, different courts may apply different standards in determining whether a person has demonstrated a "satisfactory record of drug treatment and drug abstinence." This provision will add more uncertainty to the law and will promote appeals.

This bill would also authorize the court to expunge the person's related conviction and arrest records if the person could "demonstrate to the court a satisfactory record of drug treatment and drug abstinence, and a record free of any criminal conviction from the date of the person's sentencing for the first time drug offense to the date of the application for re-sentencing." If the person also had an associated non-drug felony conviction related to the seizure of the drugs that lead to the conviction, that conviction would also be expunged.

Senate Bill No. 1796's provision on expungement goes much further than section 706-622.5, which limits expungement to the record of conviction for that particular offense.

While it appears that the Legislature intended to afford the benefits of Act 161 retroactively to cases prior to July 1, 2002, this bill will have the inappropriate result of permitting individuals who would not have met the eligibility criteria of Act 161 to benefit from it.

For the foregoing reasons, I am returning Senate Bill No. 1796 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii