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THE HONORABLE CINDY EVANS, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

January 31, 2008

RE: H.B. 2147; RELATING TO PAROLE.

Chair Evans and members of the House Committee on Public Safety and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to House Bill 2147.

The purpose of this bill is to provide that convicted defendants can receive up to ten days per month credit deducted from their sentence for progress in counseling, therapy, work, vocational, or occupational training and skills, education or literary programs and social adjustment. In addition, this bill prohibits its application to any person sentenced to a mandatory minimum term of imprisonment or a life term without parole or sentenced to a class A felony. The bill also prohibits any earned time reduction that is more than twenty-five per cent of the person's minimum term.

We oppose this bill because it is duplicative of what the Hawaii Paroling Authority (HPA) already considers in determining a minimum sentence or reducing the minimum sentence. Furthermore, in determining the minimum or reducing the minimum sentence, HPA considers utilizes written guidelines and procedures which include more extensive criteria. Moreover, the significant information, such as victim input is included in the HPA's determinations on sentences which would be missing from the determinations made under this proposal. In essence, this proposal would subvert the authority of HPA and its more comprehensive review process.

For this reason, we strongly oppose House Bill 2147 and ask that it be held.

Thank you for this opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Cindy Evans, Chair

Rep. Sharon Har, Vice Chair

Thursday, January 31, 2008

8:30 AM

Room 309

STRONG SUPPORT - HB 2147 – EARNED TIME PROGRAM

Aloha Chair Evans, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai'i for a decade. I respectfully offer our testimony, always being mindful that Hawai'i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 2147 establishes an earned-time program that provides incentives for inmate rehabilitation by allowing inmates to become eligible for parole when they make consistent progress in completing programs while incarcerated. Appropriates funds.

Community Alliance on Prisons strongly supports this measure. The purpose of earned time originally was to ease overcrowding, but it was then recognized as a management tool. Most states have some variation of earned time programs to incentivize inmates, focus individuals on their rehabilitation, and help prison management. Many of today's prisoners are incarcerated for drugs or drug-related crimes. The data show that incentives work with drug offenders, not sanctions. Earned time is an incentive program. It provides hope – a goal that people can work toward.

Although this bill provides one system of calculation, there are many variations on this type of incentive and Community Alliance on Prisons is testifying in support of instituting an earned-time program for Hawai'i inmates who are actively working to better themselves. These inmates are going above and beyond the programming offered and exhibit a willingness to do whatever it takes to change their old ways to become better partners, parents, community members, etc.

The department of public safety's ongoing re-classification project is based on corrections best practices, which involve classifying inmates (determining custody levels) so that they move through the different levels of the system eventually down to community custody and are prepared to safely reenter the community.

An earned time program goes hand in hand with this philosophy....having people move through the system toward less restrictive environments and incentivizing those who demonstrate a strong desire to better themselves. Most states have earned-time/early release programs because providing incentives to incarcerated people provides hope and guidance to move individuals through the system.

Mahalo for this opportunity to testify.

LINDA LINGLE
GOVERNOR



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ALBERT TUFONO
CHAIR

DANE K. ODA
MEMBER

ROY W. REEBER
MEMBER

MAX OTANI
A/ADMINISTRATOR

No. _____

TESTIMONY ON HOUSE BILL 2147
RELATING TO PAROLE

HAWAII PAROLING AUTHORITY
Alfred Tufono, Chairman

Committee on Public Safety & Military Affairs
Representative Cindy Evans, Chair
Representative Sharon E. Har, Vice Chair

Thursday, January 31, 2008; 8:30 a.m.
State Capital, Conference Room 309

Chair Evans, Vice Chair Har and Members of the Committee:

The Hawaii Paroling Authority (HPA) does not support House Bill 2147, establishing a system of earned-time that would allow inmates to earn credit toward their minimum time of imprisonment. HPA and the Department of Public Safety (Department) currently have procedures in place to address reduction of minimum terms.

While HPA acknowledges that reinforcement of positive behavior is important in rehabilitation, HB 2147, as written, would be in conflict with minimum term sentencing procedures that are in place today. Under HRS 706-669(7), the prosecuting attorney can be present at the minimum term of incarceration hearing to present testimony to the parole board and victims, or their designees, the right to submit testimony at this hearing.

Under current procedures, this right is extended each time an inmate submits an application for reduction of minimum term and testimony could be submitted before a decision to reduce the term is made. Under HB 2147, this extended right to the prosecuting attorney and victims would be removed and notification would be made after the term is reduced.

Also, under current sentencing practices, information such as length of criminal history, seriousness of the crime, and impact to the community are key factors that the parole board will look at when determining minimum terms. There have been situations where minimum terms were equal to maximum terms due to the parole board's determination that the crime was so heinous or the inmates criminal record so lengthy that punishment and public safety was priority in their decision. HB 2147 would diminish the authority and intent of the parole board as the inmate would be able to reduce the minimum term by up to twenty five percent with good behavior.

HB 2147, as written, would create a tremendous workload issue for the Department and impact other agencies in the criminal justice system. The daily monitoring of credit time for thousands of inmates would be a difficult task for the Department without additional funding and staff. Failure to comply with this enormous undertaking would increase litigation against the State.

Thank you for this opportunity to testify on this important public safety matter.



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 2147, RELATING TO PAROLE.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Thursday, January 31, 2008 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 309
Deliver to: Committee Clerk, Room 313, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
Lisa M. Itomura, Deputy Attorney General

Chair Evans and Members of the Committee:

The Department of the Attorney General opposes this bill as drafted because it will generate considerable and unnecessary logistical, litigation, and financial burdens upon the State.

This bill proposes to amend chapter 353, Hawaii Revised Statutes (HRS), to require the Department of Public Safety (PSD) to establish an "earned-time program." Under this bill, eligible inmates will earn ten days of "earned time" for each month served if they "demonstrat[e] progress toward rehabilitation" in each of several categories to the extent that the services are available at the correctional facility:

1. Work, vocational, or occupational training and skills;
2. Social adjustment;
3. Counseling sessions and self-help groups;
4. Therapeutic and other similar departmental programs; and
5. Education or literacy programs.

This "earned time" would then be used to reduce the minimum terms of imprisonment set for each inmate by the Hawaii Paroling Authority (HPA) by up to 25 percent, regardless of criminal history,

the crime committed, or the effect of the crime on victims and their families. PSD is required to develop and implement "objective standards for measuring progress" in each of the five categories set out, and impose procedures for evaluating and recording the "earned time."

By reducing an inmate's minimum term of imprisonment without regard to the inmate's criminal history, the crimes committed, and the crimes' effect on victims and their families, this bill minimizes the punitive and deterrence aspects of imprisonment, which are two of the factors considered in imposing a sentence under section 706-606, HRS. Accordingly, an individual who committed a particularly heinous crime or one with unusually significant impact on a victim or a victim's family could not be held in custody for the full maximum term on the basis of deterrence or punishment.

This bill also duplicates the work of the HPA. The HPA already considers the behavior of the inmate, among other factors, when setting the inmate's minimum term of imprisonment. The HPA assumes that inmates will behave appropriately and will strive to rehabilitate themselves while in custody, and sets the length of the minimum term accordingly. If the inmate's behavior and rehabilitation progress as anticipated, HPA has the discretion to grant the inmate release on parole at the end of the minimum term; if the inmate demonstrates poor behavior or a lack of progress in rehabilitation, the HPA has the discretion to not release the inmate on parole. If an inmate finishes the inmate's recommended programming and demonstrates unusual progress in rehabilitation and behavior after serving a third of the inmate's minimum term, the inmate can then request a reduction in the minimum term and the HPA has the discretion to reduce the minimum term and grant parole. This bill, therefore, does nothing more than reduce the HPA's discretion, and may be intended by some to reduce the length of minimum terms set by the HPA solely because inmates and others disagree with the HPA's decisions.

The "rehabilitation" inmates are encouraged to show is also suspect. Under this bill, inmates would earn up to a 25 percent reduction in their minimum term simply by keeping their cells clean and taking a shower every day (Category 2, "social adjustment skills"). Any argument that PSD can somehow set procedures to avoid this situation is negated by the language of this bill: an inmate shall be eligible for parole before the expiration of his or her minimum term upon demonstrating progress in each of the five categories. "Rehabilitation" for the inmates then simply becomes defined as "progress" demonstrated in each category of this bill.

It is anticipated that arguments over "rehabilitation" and time credits earned under this bill will generate considerable litigation and would require additional manpower at both PSD and the HPA. The United States Supreme Court has held that if a state institutes an earned time program, inmates have a liberty interest in the time credits protected by the Due Process Clause of the United States Constitution. Once given, such credits cannot be taken away or withheld without a hearing. *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). This means that PSD must hold a hearing before withholding or withdrawing any earned time from an inmate, and each decision is subject to a constitutional challenge. There is, then, not only potential lawsuits against PSD challenging the outcome of any hearing to withhold, withdraw, or deny any earned time, but also potential lawsuits against PSD challenging each of its decisions to grant or restore earned time, with the inmate disputing how much, not to mention lawsuits against case managers for not certifying "progress" or not certifying enough "progress" for inmates.

We are also informed that other logistical and financial problems imposed on PSD by this bill arise out of the need to accurately calculate the earned time for every eligible inmate and to ensure that victims and their families are timely notified of inmate's adjusted minimum terms of imprisonment. PSD will require

significant new funding and positions to work specifically on this program, which this measure does not provide.

We respectfully request that this measure be held.