



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2343 RELATING TO PAROLE

**BEFORE THE:**

SENATE COMMITTEE ON PUBLIC SAFETY

**DATE:** Tuesday, January 29, 2008 **TIME:** 2:45 PM

**LOCATION:** State Capitol, Room 225  
*Deliver to: Committee Clerk, Room 204, 1 copy*

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

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**LATE**

Chair Espero 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.

# LATE TESTIMONY

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January 29, 2008

## COMMITTEE ON PUBLIC SAFETY

Sen. Will Espero, Chair

Sen. Clarence Nishihara, vice chair

Tuesday, January 29, 2008

2:45 PM

Room 225

SUPPORT – Bill SB 2343

Relating to Parole

I strongly support time off for good behavior, which is a regular practice in most U.S. prisons. In fact, I was surprised to find out that this state didn't award good-time credits. No wonder the return rate of offenders is so high in Hawaii.