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GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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Deputy Director  
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Deputy Director  
Corrections

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Deputy Director  
Law Enforcement

No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 1983  
RELATING TO CRIMINAL OFFENDERS**

By  
Clayton A. Frank, Director  
Department of Public Safety

House Committee on Public Safety  
Representative Faye Hanohano, Chair  
Representative Henry J.C. Aquino, Vice Chair

Thursday February 11, 2010; 9:30AM  
State Capitol, Conference Room 309

Representative Hanohano, Representative Aquino, and Members of the Committee:

The Department of Public Safety (PSD) sincerely appreciates the legislatures interest in authorizing the Director of PSD to release those convicted of misdemeanor offenses from jail after the offenders have served at least two-thirds of their maximum sentence imposed by the court as outlined in HB 1983. We believe the legislatures intent is to reduce the jail population by early release of sentenced misdemeanants with a minimum or lower security classification when serious overcrowding of the jails occurs.

However, PSD is concerned with several aspects of this measure. First, the measure should state that the Director can only act upon this measure when there is serious overcrowding in the jail facilities. In addition, it would be very difficult for PSD staff to determine whether misdemeanants have a propensity to commit further crimes.

Persons sentenced by the court to jail sentences for misdemeanor offenses have relatively short sentences, and PSD receives little to no background information on these inmates. Therefore, PSD knows very little about their cases, making it difficult to make a serious determination as to whether the inmate would commit a further crime if released.

Therefore, based on the aforementioned concerns, PSD requests either that this measure be held or amended to address our concerns.

Thank you for the opportunity to provide testimony on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE  
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DOUGLAS S. CHIN  
FIRST DEPUTY  
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**THE HONORABLE FAYE HANOHANO, CHAIR**  
**HOUSE PUBLIC SAFETY COMMITTEE**  
**Twenty-fifth State Legislature**  
**Regular Session of 2010**  
**State of Hawai`i**

February 11, 2010

**RE: H.B. 1983; RELATING TO CRIMINAL OFFENDERS.**

Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney submits the following comments in opposition to H.B. 1983.

The purpose of this bill is to add a new section in Hawaii Revised Statutes (HRS) chapter 353 that authorizes the director of the Department of Public Safety to release a person convicted of a misdemeanor offense if the Director has a reasonable belief that a propensity to commit further crimes does not exist and the person has served at least two-third of the maximum sentence imposed by the court pursuant to HRS section 706-663.

We oppose this bill for several reasons. First, we note that under Hawaii's sentencing scheme, the sentences for misdemeanants are determinate sentences unlike the sentences for felons which are indeterminate sentences. Under this system, if the court sentences a person to imprisonment, it sentences a misdemeanant to a specific fixed period rather than to a sentence without a specific fixed period for a felon. In case of a felon, the Hawaii Paroling Authority is given the task of determining when the felon is released during the indeterminate term. In both these cases, i.e. the court sentencing a person to a fixed term of imprisonment and the Hawaii Paroling Authority, *far more is reviewed than a reasonable belief that there is no propensity to commit further crimes*. The Hawaii Paroling Authority is required by its guidelines to look at

several factors, such as whether the offense was against person or property and the degree of injury or loss to person or property. And in imposing any sentence, the court is required to consider the following factors in determining the specific sentence:

§706-606 Factors to be considered in imposing a sentence. The court, in determining the particular sentence to be imposed, shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed:
  - (a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;
  - (b) To afford adequate deterrence to criminal conduct;
  - (c) To protect the public from further crimes of the defendant; and
  - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available; and
- (4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

We think any release program that does not consider criteria of the underlying crime's seriousness or its effect on victims, is flawed and fails to recognize the societal impact of the crime.

Furthermore, under HRS section 706-624(2)(a) the court can give a sentence of six months imprisonment as a condition of probation and several misdemeanor offenses (such as Abuse of a Family or Household Member) carry mandatory minimum sentence. We are unsure how this the provisions of this bill are intended to apply in those situations. For example, if a person is sentenced to the mandatory minimum two days imprisonment for a first offense or the required thirty days mandatory minimum for a second offense of abusing a family or household member, are they eligible for early release if the director has a reasonable belief that the person does not have a propensity to commit further crimes?

We are also unsure whether the determinations made by the director require hearings and if whether or not the inmate has an opportunity to present evidence to support his or her case for release. We are also unsure of whether the inmate has a right to appeal any decision of the director. We also feel that the standard "a reasonable belief that a propensity to commit further crimes does not exist" is fraught with ambiguity. Exactly what factors should the director consider in this determination? Past criminal history? Successful completion of treatment? Restitution to victims?

Lastly, we'd like to point out that although the purpose clause of this bill mentions the department's ability to furlough misdemeanants, furlough is unlike the outright early release of the misdemeanants. Under furlough, the person is still under supervision and furlough can be revoked if the person commits a new crime or fails to follow furlough requirements. Under this bill, the person is released outright, there is no recourse provided if the person commits a new crime or proves unsuitable for release.

For these reasons, we oppose the passage of House Bill 1983 and respectfully request that you hold this bill. Thank you for this opportunity to testify.

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

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## COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, February 11, 2010

9:30 AM

Room 309

STRONG SUPPORT HB 1983 - Misdemeanor Early Release

[PBSTestimony@capitol.hawaii.gov](mailto:PBSTestimony@capitol.hawaii.gov)

Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety by supporting smart justice policies. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that almost 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 1983 allows the department of public safety to release a committed person serving a misdemeanor sentence if the person has served at least two-thirds of the sentence imposed by the court.

Community Alliance on Prisons is in strong support of this measure.

Many jurisdictions are working on ways to reduce their incarcerated populations because of budget constraints. This economic crisis actually gives us pause to look at what we are doing and ask - does incarcerating low level lawbreaker accomplish the outcomes that we want to achieve?

Since the majority of Hawai'i lawbreakers are incarcerated for drugs or drug related crimes, doesn't it make more sense to directly address that individual's pathway to crime?

Let's use this economic crisis as an opportunity to rethink what we are doing. TREATMENT WORKS - PRISONS DON'T.

Mahalo for this opportunity to support HB 1983.

THE HEPATITIS NETWORK OF HAWAII  
PRISONER REINTEGRATION PROGRAM

Andy Botts, Director  
1286 Queen Emma Street  
Honolulu, Hawaii, 96813

Tuesday, February 11, 2010

COMMITTEE ON PUBLIC SAFETY

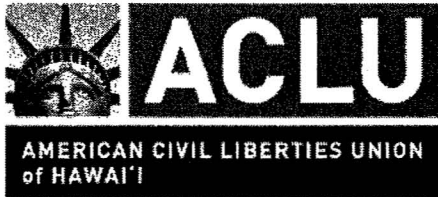
Rep. Faye P. Hanohano, Chair  
Rep. Henry J.C. Aquino, Vice Chair

Thursday, February 11, 2010  
9:30 am  
Conference room 309  
Hawaii State Capitol  
HB 1983 - **SUPPORT**  
RELATING TO CORRECTIONS

Reducing the length of short term offenders by a third is a cost-saving approach that addresses the over-budgeted Corrections costs that we have today. While this measure in itself isn't the solution, it is an avenue that will reduce overcrowding without compromising public safety. I strongly support this creative proposal.

Mahalo,

Andrew Botts, Director



Committee: Committee on Public Safety  
Hearing Date/Time: Thursday, February 11, 2010, 9:30 a.m.  
Place: Room 309  
Re: Testimony of the ACLU of Hawaii in Support of H.B. 1983, Relating to Criminal Offenders

Dear Chair Hanohano and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B. 1983, allowing the Department of Public Safety to release a committed person serving a misdemeanor sentence if the person has served at least two-thirds of the sentence imposed by the court.

As the Legislature is aware, many of Hawaii's prisons are overcrowded. Last year, a three-judge federal judicial panel in California ruled that overcrowding was so severe and pervasive in California's prisons that the release of prisoners was the only way to resolve the innumerable constitutional violations. *Plata v. Schwarzenegger*, Civ. Nos. S-90-0520, C01-1351 (E.D. Cal. & N.D. Cal., Feb. 9, 2009). The Legislature should take proactive steps to manage its prison population, and early release programs are a common method throughout the United States for relieving some of the pressure on the prison system.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie Temple  
Staff Attorney

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
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the  
**Drug Policy  
Forum**  
of hawai'i

February 11, 2010

To: Rep. Faye Hanohano, Chair  
Rep. Henry Aquino, Vice Chair and  
Members of the Committee on Public Safety

From: Jeanne Y. Ohta, Executive Director

Re: HB 1983 Relating to Criminal Offenders (Early Release)  
Hearing: Thursday, February 11, 2010, 9:30 a.m., Room 309

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of HB 1983 Relating to Criminal Offenders which would allow the Director of Public Safety to release a committed person serving a sentence for a misdemeanor if two-thirds of the sentence has been served.

This early release policy is another tool to allow the director of the agency to manage the prison population and budget shortfalls. The majority of the prison population has substance abuse problems. DPFH believes that Hawai'i should focus on substance abuse treatment rather than incarceration. Incarceration is an extremely expensive policy that does not necessarily improve public safety because most of the prison population are non-violent drug offenders.

Incarceration costs have increased dramatically and recidivism rates continue to be unacceptably high. Early release can be used as an incentive for good behavior while incarcerated and could also be used as an incentive to participate in programs which would reduce recidivism.

DPFH urges the committee to pass this measure to enable better prison population management and reduce prison costs.

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TO: COMMITTEE ON PUBLIC SAFETY  
Rep. Faye Hanohano, Chair  
Rep. Henry Aquino, Vice Chair  
Thursday, February 11, 2010  
9:30 A.M.  
Room 309, Hawaii State Capitol

RE: Support of HB 1983 – Earned Time Credit Corrections

FROM: Atty Daphne Barbee-Wooten  
1188 Bishop Street, Suite 1909, Honolulu, Hawaii 96813

Dear Representative Hanohano and Members of the Committee on Public Safety:

My name is attorney Daphne Barbee-Wooten. I am an attorney in private practice and I practice in the area of civil rights and criminal defense law. I strongly support HB 1983, which allows Department of Public Safety to release a person convicted of misdemeanor if they have served two-thirds of the sentence imposed by the Court. The prisons are overcrowded and this will relieve the Constitutional violations of overcrowding inmates. It is a shame to know that some people incarcerated for such minor crimes such as trespassing and camping without a permit. Some people who are poor and homeless often have to resort to stealing food from stores just to survive and end up incarcerated. HB 1983 is a way to eliminate overcrowding and reward persons for good behavior while incarcerated. Please pass this bill. Thank you for your consideration.

Dated: Honolulu, Hawaii      February 9, 2010 .

/s/ Daphne Barbee-Wooten  
Daphne Barbee-Wooten  
Attorney at Law