



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 ALAKEA STREET, GROUND FLOOR
Honolulu, Hawaii 96813

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No. _____

TESTIMONY ON HOUSE BILL 2118
RELATING TO CORRECTIONS

HAWAII PAROLING AUTHORITY
Alfred Tufono, Chairman

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

Thursday, February 11, 2010, 9:30a.m.
State Capital, Conference Room 309

Chair Hanohano, Vice Chair Aquino and Members of the Committee:

The Hawaii Paroling Authority (HPA) does not support House Bill 2118, 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 2118 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 have 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 2118, this extended right to the prosecuting attorney and victim 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 2118 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 2118 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.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON HOUSE BILL 2118
RELATING TO CORRECTIONS**

By
Clayton A. Frank, Director
Department of Public Safety

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

Thursday, February 11, 2010; 9:30 a.m.
State Capitol, Conference Room 309

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

The Department of Public Safety (PSD) strongly opposes House Bill 2118 that creates an earned time program that would permit up to ten days for each month of service of a sentence to be deducted from an inmate's sentence upon demonstration by the inmate and certification by the inmate's case manager that the inmate has made consistent progress in a number of areas.

PSD has several serious issues of concern with this measure. First, to implement this process would require a minimum of 22 additional staff to perform the computations on the sentences and the certifications of consistent progress by the inmates in the facilities currently in operation. There is no funding provided for new positions in this measure, nor is there funding for the development of the standards, the information systems that would be required to maintain the proposed program, or the modification of other existing systems that would be affected such as the inmate discipline system.

The measure also requires that the earned time vests upon being granted. This type of system has proven to be problematic around the country because inmates may build up earned time for a number of years and then commit a serious violation of institutional rules. An accepted sanction in the professional correctional community for a serious violation is the forfeiture of earned time, which is prohibited by this measure. As written, HB 2118 is not consistent with sound correctional management practices of correctional facilities, nor is it conducive to having inmates follow the rules throughout their entire period of incarceration.

Further, this measure does not specify that earned credit applies to felony convictions, but instead states that the earned time is applicable for each inmate committed to the custody of the director. Therefore, earned time for misdemeanor sentences in excess of a month would apply, creating a serious issue of when the earned time is to be deducted for short sentences, especially for a one month sentence. In addition, under this measure, an inmate serving a one-month sentence could earn ten days for consistent progress, but would then be released before the ten days can be deducted, providing for a potential claim of over detention.

The implementation of this measure would drastically increase the amount of computations required on each sentence within PSD, creating a greater probability of errors leading to over detention of inmates and extremely costly litigation. This program only applies to the maximum term release date, and does not affect the possibility of parole. The majority of Hawaii inmates are released on parole, thus negating the effect of an earned time program.

Overall, the cost to implement this program would be excessive, the liability for PSD and the State would be greater, and the impact on the initial release dates of inmates would be minimal. Therefore, PSD strongly opposes this measure, as it is impractical, very costly, and would have a negative impact on the priorities set forth in the Executive Supplemental Budget for Fiscal Year 2010-2011.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 2118, RELATING TO CORRECTIONS.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, February 11, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 309

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

Chair Hanohano and Members of the Committee:

The Department of the Attorney General opposes this measure. We believe it will impose considerable logistical and financial burdens on the State, and generate litigation. Additionally, it duplicates existing responsibilities and practices.

This bill proposes to amend chapter 353, Hawaii Revised Statutes, to require the Department of Public Safety (PSD) to establish an "earned-time program." Under this bill, eligible inmates will earn up to ten days of "earned time" for each month of incarceration if they "demonstrat[e] . . . consistent progress" in each of several categories:

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 sentences for each inmate by up to 25 percent, regardless of criminal history, the crime committed, or the effect of the crime on

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Testimony of the Department of the Attorney General
Twenty-Fifth Legislature, 2010
Page 2 of 3

victims and their families. PSD is required to develop and implement "objective standards for measuring consistent 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 crime(s) committed, and the crime(s)'s 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 is also redundant, in that the Hawaii Paroling Authority (HPA) already considers the behavior of the inmate, among other factors, when setting his or her minimum term of imprisonment or when deciding whether to grant parole. 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 an inmate's behavior and rehabilitation progresses 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 his or her recommended programming and demonstrates unusual progress in rehabilitation and behavior after serving a third of his or her minimum term, the inmate can then request a reduction in the minimum term and the HPA has the discretion to reduce the

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Testimony of the Department of the Attorney General
Twenty-Fifth Legislature, 2010
Page 3 of 3

minimum term and grant parole. This bill severely reduces the HPA's discretion.

We anticipate that arguments over whether an inmate has earned time may generate considerable litigation and will require additional manpower at PSD, HPA, and this department. If a state institutes an earned time program, the United States Supreme Court has held that 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. Thus, there is not only the potential for 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.

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POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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MAYOR

LOUIS M. KEALOHA
CHIEF

DELBERT T. TATSUYAMA
RANDAL K. MACADANGDANG
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

February 11, 2010

The Honorable Faye P. Hanohano, Chair
and Members
Committee on Public Safety
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hanohano and Members:

Subject: House Bill No. 2118, Relating to Corrections

I am Richard C. Robinson, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 2118, Relating to Corrections. The majority of serious crime in Honolulu is committed by a small number of career criminals whose only means of financial support are their criminal actions. These repeat offenders complete their prison sentences and shortly after their release, they return to their criminal activities. In December 2009, there were 190 adults arrested for non-drug felony offenses in Honolulu. Of those, 45 were previously convicted felons who committed 75 new felony offenses in just the month of December. More importantly, of the 47 solved homicides that have occurred in the last three years, 23 or 49 percent were committed by convicted felons. The recent decrease in crime in Honolulu is due in part to more of these career criminals being in custody and not on the streets preying on the citizens of Honolulu.

The notion that there is some type of division between a non-violent offender and a violent offender, property crime offenders and violent offenders, or drug offenders and violent offenders is a fallacy. A "property crime" offender can become a vicious, violent offender with just one chance encounter with the property owner. A "drug offender" can become an armed robber if the cravings for the drugs are strong enough. All of these offenders have severely violated the norms of our community. To excuse their past bad behaviors and grant early release, via earned time credit, due to good behavior while imprisoned will only embolden them.

Serving and Protecting With Aloha

The Honorable Faye P. Hanohano, Chair
and Members
Page 2
February 11, 2010

The Honolulu Police Department urges you to oppose House Bill No. 2118, Relating to Corrections.

Thank you for the opportunity to testify.

Sincerely,



RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:



FOR

LOUIS M. KEALOHA
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE FAYE HANOHANO, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY**

Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

February 11, 2010

RE: H.B. 2118; RELATING TO PAROLE.

Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to House Bill 2118.

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.

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.

We also note that this bill lacks restrictions that previous bills on this subject had before. Previous legislation on earned time prohibited 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. Given that the most serious offenders are likely to have a mandatory minimum, a life term without parole or a class A felony, we object to their inclusion in any earned time program.

For these reasons, we strongly oppose House Bill 2118 and respectfully ask that it be held.

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

9:00 AM

Room 309

STRONG SUPPORT HB 2118 -EARNED TIME

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 2118 allows an inmate to receive "earned time" credit to reduce the length of a prison sentence.

Community Alliance on Prisons is in **STRONG SUPPORT** of this measure. Good time or Earned time was started as a management tool. Today, the majority of jurisdictions have some form of earned time to provide incentives for incarcerated persons and as a correctional management tool.

In particular, Washington, which has a model Re-entry Program, has earned time credits. In its The State of Sentencing 2007 Report, the Sentencing Project applauded Nevada for expanding its earned credit/good time eligibility programs.

The majority of Hawai'i's incarcerated population has substance abuse problems and the data show that incentives work for these folks much better than do sanctions. Good/Earned time credit provides positive incentives for individuals to take programs (i.e. education, substance abuse treatment, work) and use their sentenced time to plan for their release.

Although Good/Earned time programs vary in effectiveness, in general, studies demonstrate that participation in substance abuse treatment programs, education, higher education, vocational, trade etc. reduce recidivism.

In addition to providing positive incentives, one of the goals of earned time eligibility programs is to reduce overcrowding "on account of good behavior and successful participation in rehabilitative activities, such as vocational, educational and substance abuse treatment programs."

(Source: The State of Sentencing 2007: Developments in Policy and Practice, The Sentencing Project.)

Dr. Edward Latessa of Center for Criminal Justice Research reported in "What Works and What Doesn't in Reducing Recidivism: The Principles of Effective Intervention," a meta analysis, that people who appear to be resistant to punishment are: 1) Psychopathic risk takers 2) Those under the influence of a substance and 3) Those with a history of being punished.

In a personal conversation with Dr. Latessa several years ago, I asked him what works for drug lawbreakers. His immediate response was INCENTIVES!

Let's provide incentives/hope for our incarcerated citizens. More than 95% of incarcerated persons return to our communities - let's offer them redemption.

Community Alliance on Prisons urges the committee to pass HB 2118 - IT'S ABOUT TIME!

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 2118 - SUPPORT

RELATING TO CORRECTIONS

Time-off for good behavior is a long overdue practice utilized in every state and throughout the world, with the exception of Hawaii and Utah. The benefit of implementing this practice will save the taxpayers millions of dollars spent on warehousing offenders beyond what is necessary, while achieving the same if not better results. I strongly support immediate implementation of this bill.

Mahalo,

Andy 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. 2118, Relating to Corrections

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. 2118, allowing an inmate to receive "earned time" credit to reduce their prison sentence length.

The ACLU of Hawaii supports every effort to develop programs aimed at rehabilitating Hawaii's inmates. Good-time credits incentivize good behavior (rather than simply punishing bad behavior), helping inmates to develop positive habits and thereby reducing recidivism rates. Every effort should be made to provide Hawaii's inmates with the support and services they need to become productive and responsible community members.

Furthermore, 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 offering earned-time programs is 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 Hawai'i
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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 2118 Relating to Corrections (Earned Time)
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 2118 Relating to Corrections which allows an inmate to received "earned time" credit to reduce the length of prison sentences.

Hawai'i uses incarceration as the main criminal justice tool. It is an expensive choice. As the prison budget has skyrocketed, we are poorer, but not safer. Drug treatment programs are less expensive and more effective than prison; yet, we continue to send those with drug problems to prison rather than treatment. Since Hawai'i has taken this path to use incarceration instead of other alternatives, an earned time policy makes sense.

Earned time is a concept that provides incentives to participate in programs while in prison. It allows inmates the ability to reduce the length of prison sentences. While in prison, attendance in programs like drug treatment, vocational training, and education should be encouraged. Earned time is the incentive.

Earned time allows prison officials to better manage prison populations and release those who are most appropriate for early release. It is also a fiscally responsible way to reduce prison costs while keeping the community safe. DPFH urges the committee to pass the measure so that prison costs can be kept under control during these tough economic times.

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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 2118 – 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:

I am an attorney in private practice here in Honolulu. I represent inmates who have been incarcerated. I strongly support HB 2118, which allows earned time, or good time, and early release for good behavior. This is needed as an incentive and will assist in reintegrating inmates into society and eliminate the overcrowding. The majority of states have earned time credit programs. Indeed, the federal prison also has earned credit time. Incentives for good behavior will be more effective than punishment and sanctions as has been shown in Washington State and Nevada State with their earned credit program. 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