



*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the House Committee on Public Safety**

The Honorable Faye P. Hanohano, Chair

The Honorable Henry J.C. Aquino, Vice Chair

Thursday, March 18, 2010, 9:00 a.m.

State Capitol, Conference Room 309

by

Thomas R. Keller

Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

---

**Bill No. and Title:** House Concurrent Resolution No. 149, Requesting the Judiciary to Report to the Legislature on the Probable Impact of Sentencing Nonviolent Drug Offenders to Treatment Instead of Imprisonment

**Judiciary's Position:**

House Concurrent Resolution No. 149 requests that the Judiciary report to the Legislature on the probable impact of sentencing nonviolent drug offenders to an alternative program of treatment instead of imprisonment. It further specifies that these offenders should be those sentenced to possession of drug and/or drug paraphernalia, assessed by a certified substance abuse counselor to be in need of drug treatment, and whose offense is related to substance abuse. Unfortunately, the current adult probation case management system is unable to track the offenders specified in the resolution, and in order to obtain this data probation staff would need to manually search each case file for this information. This would not be an efficient use of resources, because due to the loss of 24 positions during the last legislative session staff currently have extensive caseloads and have difficulty servicing all of their offenders. Staff time should be spent working with their clients to change thinking and behavior so offenders do not continue to recidivate.

It should be noted that the Judiciary's Adult Probation Branch envisions adding an ad hoc reporting capability and other features to its current case management system to capture the treatment information referenced in this measure; however, adding such features would cost



House Concurrent Resolution No. 149  
House Committee on Public Safety  
March 18, 2010  
Page 2

approximately \$30,000, and the Judiciary does not have funds to do so at this time. Hopefully, when the economy improves, the Judiciary will be able to accomplish these upgrades to provide the Legislature with the requested data.

If the Legislature would like the latest research on why treatment is more effective than incarceration, the Judiciary is able to provide this general information.

Thank you for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

ALII PLACE  
1060 RICHARDS STREET, HONOLULU, HAWAII 96813  
AREA CODE 808 • 768-7400

PETER B. CARLISLE  
PROSECUTING ATTORNEY



DOUGLAS S. CHIN  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE FAYE HANOHANO, CHAIR**  
**HOUSE PUBLIC SAFETY COMMITTEE**  
Twenty-fifth State Legislature  
Regular Session of 2010  
State of Hawai'i

March 18, 2010

**RE: H.C.R 149/H.R. 88; REQUESTING THE JUDICIARY TO REPORT TO THE  
LEGISLATURE ON THE PROBABLE IMPACT OF  
SENTENCING NONVIOLENT DRUG OFFENDERS  
TO TREATMENT INSTEAD OF PRISON.**

Chair Hanohano and members of the House Public Safety Committee, the Department of the Prosecuting Attorney submits the following comments on H.C.R. 149/H.R. 88.

The purpose of these resolutions is to request the Judiciary study and report to the legislature on the probable impact of sentencing nonviolent drug offenders to an alternative program of treatment instead of imprisonment.

We do not take any position on this resolution but would like to note that the resolution appears to assume that nonviolent drug offenders are *not* being sentenced to treatment rather than prison. We would like to point out there are numerous avenues of diversion for nonviolent drug offenders all of which can and often do include an assessment and treatment of substance abuse. These diversions include mandated probation for first time drug offenders under Hawaii Revised Statutes (HRS) section 706-622.5, mandated probation for first time property offenders under HRS section 706-622.9, conditional discharge under HRS section 712-1255, deferred acceptance of guilty or no contest pleas under HRS chapter 853, drug court, HOPE probation, and of course

probation itself under part II of HRS chapter 706. We would also note that the mandated probation under HRS sections 706-622.5 and 706-622.9 are even available to persons who would otherwise be subject to mandatory terms of imprisonment under Hawaii's repeat offender statute (HRS 706-606.5). Therefore, we are unclear on what this resolution asks the Judiciary to study.

Is the intent to ask the Judiciary to study the impact of further diversions of persons who have been previously been diverted but who either did not want to enter treatment or failed to successfully complete the program? Or is this requesting the judiciary to study the impact of expanding a specific diversion such as drug court or HOPE probation?

Lastly, one clause in the resolution states that the prosecutor's office has testified that seventy per cent of crimes committed in Honolulu were motivated by drugs. We are uncertain where this figure came from. We realize that a large number of defendants do have substance abuse problems, but would hesitate to suggest a specific number. As there seems to be a misunderstanding, we would respectfully request that this portion of the resolution be deleted.

Thank you for this opportunity to testify.

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/[kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, March 18, 2010

9:00 a.m.

Room 309

**SUPPORT - HCR 149 - Diversion of nonviolent drug law breakers**

[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 diverse community initiative working to improve conditions of confinement for Hawai'i's incarcerated individuals, enhance the 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.

HCR 149 requests the Judiciary to report to the Legislature on the probable impact of sentencing nonviolent drug offenders to treatment instead of prison.

Community Alliance on Prisons supports this measure. The preliminary reclassification study - paid for by taxpayers - projected that 68.1% of the women and 62% of the men should be classified as minimum or community custody - the least restrictive levels of confinement. The data show that long prison sentences and holding people in higher custody levels actually promote criminality.

Several reports have been released recently. "**Downscaling Prisons: Lessons from Four States**," released by Justice Strategies and The Sentencing Project, finds that four states - Kansas, Michigan, New Jersey, and New York - have reduced their prison populations by 5-20% since 1999, without any increases in crime. This came about at a time when the national prison population increased by 12%; and in six states it increased by more than 40%. The reductions were achieved through a mix of legislative reforms and changes in practice by corrections and parole agencies.

The reforms included:

- Kansas - Changed sentencing guidelines to divert lower-level drug cases to treatment rather than incarceration; Expanded supportive services to people on parole supervision.
- Michigan - Eliminated most mandatory minimum sentences for drug offenses; enacted statewide initiative to reduce parole revocations and enhance employment, housing, and treatment services for people leaving prison.
- New Jersey - Increased parole releases by adopting risk assessment instruments and utilizing day reporting centers and electronic monitoring.
- New York - Scaled back harsh drug penalties, established Drug Treatment Alternative to Prison programs, and applied "merit time" credits to speed up parole consideration.

The Sentencing Project's report, "**The State of Sentencing 2009: Developments in Policy and Practice**," by Nicole D. Porter, highlights reforms in at least 19 states that hold the potential of further prison population reductions. Key among these reforms are:

- Three states - Minnesota, New York, and Rhode Island - significantly scaled back the scope of mandatory sentencing laws for certain drug offenses.
- Seven states increased the proportion of "good time" credits to be earned in prison to expedite parole eligibility.
- Four states Arkansas, Illinois, Nebraska and New Jersey - established oversight committees to examine sentencing policies, prison overcrowding and reentry services.

Our jails and prisons are filled with individuals who have substance abuse problems. Mandatory sentencing has created this nightmare.

This report will help guide policymakers in taking the necessary steps to stem the flow of individuals who are incarcerated for nonviolent drug crimes.

TREATMENT WORKS, PRISONS DON'T

Mahalo for this opportunity to testify.

## **HAWAII DISABILITY RIGHTS CENTER**

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: [info@hawaiidisabilityrights.org](mailto:info@hawaiidisabilityrights.org) Website: [www.hawaiidisabilityrights.org](http://www.hawaiidisabilityrights.org)

### **THE HOUSE OF REPRESENTATIVES THE TWENTY-FIFTH LEGISLATURE REGULAR SESSION OF 2010**

**Committee on Public Safety  
Testimony in Support of HCR 149  
Thursday, March 18, 2010, 9:00 A.M.  
Conference Room 309**

Chair Hanohano and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in support of this Concurrent Resolution .

We are very supportive of the state's efforts to address the underlying causes of criminal behavior and we do believe that in many cases treatment is more effective than incarceration. We have had first hand experiences with both the Drug Court as well as the Mental Health Court. We think they are very effective models and should be expanded. Currently, they are limited in terms of the numbers of individuals that can enter their programs.

This study would likely provide the empirical data to support this view. For that reason, we support the Resolution and hope that if the study, as expected, does prove the efficacy of this model, that the Legislature will then appropriate sufficient resources to expand the capability of both the Drug Court and the Mental Health Court.

Thank you for the opportunity to testify in support of this Concurrent Resolution.

**COMMITTEE ON PUBLIC SAFETY**

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, March 18, 2010

9:00 a.m.

Room 309

**STRONG SUPPORT for HCR149**

Aloha Chair Hanohano, Vice-Chair Aquino,

I strongly support treatment as opposed to incarceration when possible. It is more effective in preventing crime -- and is less costly.

I additionally respectfully request that the legislature extend an invitation to Justice Reinvestment to conduct a comprehensive feasibility study of Hawaii's entire criminal justice and incarceration system. We can't afford, either in human suffering, nor in dollars to continue down the "punishment" path any longer.

Netra Halperin, MA

Kihei, Maui