

SB 2342

Measure Title:
Relating To Sentencing.



SB2342 RELATING TO SENTENCING

Senate Committee on Public Safety and Military Affairs
February 2, 2010 1:25 p.m.
Room: 229

The Office of Hawaiian Affairs supports SB 2342.

The United States has the highest rate of incarceration compared to the rest of the world. The state of Hawai'i ranks fifth (5th) when compared to countries such as; Russia, Cuba, and South Africa with an incarceration rate of 332 per 100,000 individuals (see *Unlocking Justice* 2009).

In 2008, approximately 1,000 individuals were arrested for drug abuse violations in the Honolulu County.

Hawai'i spends approximately \$36,000 a year to incarcerate an individual, and to divert offenders into rehabilitation will incur much less. The proposed SB 2342 is viable to providing offenders the opportunities in becoming self-sustaining, positive contributors to their families and communities.

There are local and national publications that promote the use of alternative programs, instead of prison. The outcomes to alternative programs demonstrate a significant decrease in recidivism rates, and drug relapse. These programs are highly recognized for promoting resiliency and strengths in a therapeutic approach to recovery. They also instill work force development, financial literacy, and social skill building in the curriculum.

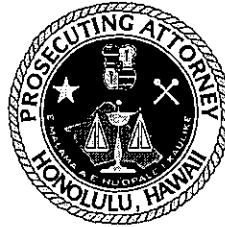
Alternative programs that integrate land and water-based cultural interventions show even higher rates of success. The program produces even higher rates of abstinence from drugs, and longer retention in rehabilitative programming. Beneficiaries who graduated from the cultural alternative programs report feeling good about their self-identity, gaining new healthy skills, and developing the courage to strengthen their relationship with `ohana.

Mahalo nui loa for allowing us to provide testimony on this important matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE WILL ESPERO, CHAIR
SENATE PUBLIC SAFETY AND MILITARY AFFAIRS COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai`i

February 2, 2010

RE: S.B. 2342; RELATING TO SENTENCING.

Chair Espero and members of the Senate Committee on Public Safety and Military Affairs, the Department of the Prosecuting Attorney submits the following testimony in opposition to S.B. 2342.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 706-606.5 regarding repeat offender sentencing. The bill provides that a sentencing court can sentence certain drug offenders to house arrest, electronic monitoring, drug court, regimental discipline or treatment instead of a mandatory minimum term of imprisonment.

We strongly oppose this bill because we believe it is based upon a mistaken belief that these offenders have not had the opportunity for less serious sanctions and treatment. All of these offenders have had multiple opportunities for assessment and treatment as a condition of their previous convictions. They have had opportunities for drug court, deferred pleas with expungement under HRS chapter 853, conditional discharge with expungement under HRS sections 712-1255 and 1256, probation and mandated probation with treatment and expungement under HRS sections 706-622.5 and 706-622.9. While on probation, their probation officers have made many efforts to get the offender into treatment and programs and when the offender has failed enough for a motion to revoke to be filed, these offenders are generally resentenced back on probation and treatment. The fact that they are now under repeat offender sentencing indicates that they have not been amenable to changing their behavior and that more serious sanctions should be applied to encourage these offenders to change. We believe that the state's sentencing policy regarding repeat offenders should not minimize the consequences of repeated illegal behavior after numerous opportunities to change.

For these reasons, we oppose the passage of S.B. 2342 and respectfully request that you hold this bill.

Testimony in Opposition to SB 2342
Relating to Sentencing
Hearing before Senate Committee on Public Safety and Military Affairs
February 2, 2010
1:25 p.m.
Senate Conference Room 229

Submitted by Jay T. Kimura, Prosecuting Attorney, County of Hawaii

TO: Chair Will Espero and Committee Members:

We oppose Senate Bill 2342.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 706-606.5 regarding repeat offender sentencing. The bill provides that upon a finding of strong mitigating circumstances, the sentencing court can sentence certain drug offenders to house arrest, electronic monitoring, drug court, regimental discipline or treatment instead of a mandatory minimum term of imprisonment. We support these programs for deserving offenders when they first enter the criminal justice system, and even when they get revoked on their original offense. Many of these offenders get Drug Court upon their failure on regular probation. The law allows drug offenders many chances to get treatment without much punishment.

They have had opportunities for drug court, deferred pleas with expungement under HRS chapter 853; even after they go to trial, they are allowed conditional discharge with expungement under HRS sections 712-1255 and 1256. While on probation, their probation officers have made many efforts to get the offender into treatment and programs and when the offender has failed enough for a motion to revoke to be filed, these offenders are generally resentenced back on probation and treatment.

Since 2006, even repeat felony offenders are given second opportunities for probation and mandated probation with treatment and expungement under HRS sections 706-622.5 (Sentencing for first-time drug offenders with previous non-violence felony offenses) and 706-622.9 (Sentencing for first-time felony property offenders who have a prior drug felony conviction). Many offenders also have subsequent misdemeanor convictions that do not require jail or imprisonment while they are on probation. Many, in our county, continue to drive without

Testimony in Opposition to SB 2342

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being properly licensed or insured. Hawaii's criminal justice system favors treatment for the offenders.

The situation this proposed bill appears to cover is a felony drug offender who gets another felony drug possession crime. This lenient treatment is given even if the drug possession are quantities that are known to be "dealer" quantities (class A or B felony amounts); they will be given another chance even if they are possessing cocaine, heroin, LSD, and pain-killers in large quantities. Most drug offenders in Drug Court admit that they have distributed and sold drugs for profit, fueling the more drug usage and the underground organized illegal drug economy.

Currently, a subsequent felony drug paraphernalia charge does not trigger a mandatory prison sentence. So, if the defendant is truly a drug addict, prosecutors may give these offenders another chance by dismissing the drug offense that may trigger the mandatory prison sentence.

Repeated criminal drug use is more than drug addiction. Working with Drug Court, we realize the problem is inseparable from criminal thinking and behaviors. It is very rare to find a person who is law abiding that has a drug addiction only. Many drug offenders' thinking and behavior have become criminogenic, and when they get sober, they become sober criminals, who many times do not get caught. The fact that they are now under repeat offender sentencing indicates that they have not been amenable to changing their behavior with the help of probation and more serious sanctions should be applied to encourage these offenders to change.

We oppose this bill because we believe it is based upon a mistaken belief that these offenders have not had the opportunity for less serious sanctions and treatment. All of these offenders have had multiple opportunities for assessment and treatment as a condition of their previous convictions. We believe that the state's sentencing policy regarding repeat offenders should not minimize the consequences of repeated illegal behavior after numerous opportunities to change.

Under the current sentencing, these defendants have opportunities to get their mandatory minimums terms reduced and to get earlier release in addition to

Testimony in Opposition to SB 2342

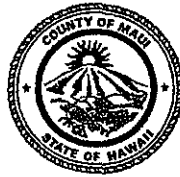
Page 3

getting drug treatment in prison before they get released. Some defendants need "forced" sobriety when they demonstrate that they cannot stay sober in the community with community treatment and supervision. The Department of Public Safety can "furlough" prisoners into residential treatment programs. Fiscally, Federal grants for "second chance" and prisoner re-entry are available to leverage state monies earmarked for re-integration programs and treatment funding.

Appropriate funding must be given to all segments of the criminal justice system to support criminal offenders' drug treatment and rehabilitation, both in community treatment while on probation and within the correctional institutions for the "hard core" drug offender who cannot do it themselves without forced institutional sobriety. When these offenders are released, they can maintain their sobriety through community social supports.

For these reasons, we oppose the passage of SB 2342 and respectfully request that you hold this bill.

CHARMAINE TAVARES
Mayor



BENJAMIN M. ACOB
Prosecuting Attorney
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February 1, 2010

HONORABLE WILL ESPERO, CHAIR
HONORABLE ROBERT BUNDA, VICE CHAIR
COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,
IN OPPOSITION TO S.B. NO. 2342
RELATING TO SENTENCING.

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui strongly opposes S.B. 2342 Relating to Sentencing.

At the outset, it appears that the intent of S.B. 2342 is to provide alternatives, other than incarceration, to persons convicted of drug related offenses. These alternatives already exist under current law. For example, under HRS Section 706-622.5, a defendant who is a "first time drug offender" may be sentenced to probation despite being subject to sentencing as a repeat offender under HRS Section 706-606.5. See HRS Section 706-622.5(2). Indeed, the provisions of S.B. 2342 are very similar to HRS 706-622.5.

However, unlike the provisions under HRS § 706-622.5 which only apply to first time drug offenders, the proposal under S.B. 2342 allows repeat drug offenders to have an unlimited supply of "get-out-of-jail-free cards" when facing mandatory prison. This sends the wrong message to these defendants by not holding them responsible for their own actions.

Finally, in addition to the above, drug possession offenders have other options instead of incarceration. Specifically, our Department has repeatedly allowed defendants who are subject to

the repeat offender law a chance to participate in the Maui Drug Court Program.

Accordingly, our Department strongly opposes S.B. 2342. Thank you for the opportunity to testify.

(S.B. 2342, Relating to Sentencing)

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Tuesday, February 2, 2010

1:25 PM

Room 229

SUPPORT SB 2342 - Alternatives for Non-Violent Offenders

PSMTestimony@capitol.hawaii.gov

Aloha Chair Espero, Vice Chair Bunda 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.

SB 2342 permits certain non-violent repeat offenders convicted of drug possession to be sentenced to alternative programs instead of to prison.

Community Alliance on Prisons supports alternatives to incarceration for non-violent drug lawbreakers. We also agree with the prosecutor that some programs already exist - HOPE (Hawai'i's Opportunity Probation with Enforcement) and DAG (Deferred Acceptance of Guilt).

The question is, Are there enough program slots for those who could be helped?

We suggest that the committee ask for data on how many nonviolent drug offenders (where drugs and/or property crimes are the primary conviction) cycle through our correctional system each year. You would then have an idea of what's needed.

Community Alliance on Prison supports smart justice policies that are data driven and based on science.

Mahalo for this opportunity to share our thoughts on this proposal.



the
**Drug Policy
Forum**
of hawai'i

February 2, 2010

To: Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair and
Members of the Committee on Public Safety and Military Affairs

From: Jeanne Ohta, Executive Director

RE: SB 2342 Relating to Sentencing
Hearing: February 2, 2010, 1:25 p.m., Room 229

Position: Support

The Drug Policy Forum of Hawai'i writes in support of SB 2342 Relating to Sentencing. This measure would permit certain non-violent repeat offenders convicted of drug possession to be sentenced to alternative programs instead of prisons.

DPFH strongly supports alternatives to prisons for those convicted of drug possession. There should be an array of different programs available instead of incarceration for non-violent offenders. Incarceration has a high recidivism rate, much higher than programs such as the HOPE probation program.

Incarceration is also a costly program, much more expensive than drug treatment. Unless there is a commitment to reducing incarceration, our prison costs will continue to increase, and recidivism rates will also continue to be high. Hawai'i simply cannot afford to use incarceration as the main solution to drug possession, drug use, and drug addiction.

This measure deals with drug possession effectively and responsibly. We encourage the committee to pass this measure. Thank you for this opportunity to provide testimony.

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THE HEPATITIS NETWORK OF HAWAII
PRISONER REINTEGRATION PROGRAM

Andy Botts, Director
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Tuesday, February 2, 2010

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

Tuesday, February 2, 2010
1:25 P.M.
Conference Room 229
State Capitol, Hawaii
STRONG SUPPORT- SB 2342
RELATING TO SENTENCING

I support alternatives to incarceration for non-violent offenders who have a history of drug and/or alcohol abuse and commit certain crimes as a consequence of their addiction. This Bill addresses the issue of allowing a sentencing judge the discretion, **under strong mitigating circumstances**, the authority to deviate from the mandatory minimum laws that they are bound to under the present laws, and only for a defendant who has a history of substance abuse, under the condition that such person doesn't have a history of violence.

It may seem that this particular offender has been given numerous chances and that they have failed. In actuality, this is the type of offender who is exhausted with the cycle of addiction and incarceration, and has tried to live a productive life without the use of drugs or alcohol. To allow a judge the discretion under mitigating circumstances won't lead to a mass release of repeat offenders, it only provides an option. Given the success of the HOPE program as an example, this merely gives judges the option to less costly alternatives that have proved to succeed when all else has failed.

Thank you for the opportunity to be heard.
Andy Botts

Sent: Monday, February 01, 2010 4:26 PM

To: PSM Testimony

Subject: SUPPORT FOR SB 2342 ALTERNATIVE FOR NON-VIOLENT OFFENDERS

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Tuesday, February 2, 2010

1:25 PM

Room 229

SUPPORT SB 2342 - Alternatives for Non-Violent Offenders

PSMTestimony@capitol.hawaii.gov

Aloha Chair Espero, Vice Chair Bunda and Members of the Committee!

MY NAME IS LYNNETTE MAU . I AM A VERY CONCERNED PRIVATE CITIZEN & PUBLIC & PRIVATE FAMILY ADVOCATE HELPING TO CLEAR THE PATHWAYS OF RECOVERY FOR THOSE WITH INTEGRATIVE COGNITIVE DISORDER - stigmatized as Mental Illness. & I AM AN ADVOCATE FOR GREATER JUSTICE FOR THOSE WHO ARE IMPRISONED UNJUSTLY UNWISELY.

BY CHANGING ARCHAIC & UNFAIR PRACTISES & PREJUDICES IN OUR COURTS & PRISON SYSTEMS WE CAN ALLEVIATE THE STRESS IN MANY AREAS PHYSICALLY, MENTALLY, EMOTIONALLY & FINANCIALLY.

I am a Family Advocate Representing Families & the Public with the SAMHSA Federally Granted program TWG-Transformational Working Grant - Criminal Justice -WHICH is trying to TRANSFORM LAWS IN THE STATE OF HAWAII REGARDING TREATMENT EDUCATION & PREVENTION & RECOVERY FOR THOSE WITH INTEGRATIVE COGNITIVE DISORDER-mental illness IN & OUT OF THE CRIMINAL JUSTICE SYSTEM FROM YOUTH THOUGH ADULT.

Our monies can definitely be BEST used most worthwhile practically & functionally by providing treatment & recovery for those incarcerated with addictions

ALTERNATIVE TREATMENT & RECOVERY PROGRAMS RATHER THAN \$80,000+ PER YR PER INMATE IN CORRECTIONS would also help one move forward in life, contribute back into society by being less of a burden and more of an asset to oneself & others.

Drug & alcohol abuse..& 'over the counter drugs' HAS BEEN known to cause chemical imbalance to the brain & damaging the ability o the brains function to make good decision making. this makes for a greater opportunity for the need to treat NOT punish as the solution to this growing problem.

. .. establishing treatment & rehab facilities for our people WILL PROVIDE ELEMENTS for NECESSARY HUMAN CHANGE FOR ALL IN ORDER FOR PROGRESSION AS A COMMUNITY STATE & NATION. we need to find & make alternatives now!!!

WHAT has NOT been tried is greater COMPASSION.. AND THIS BEGINS WITHIN EACH ONE OF US.

I AM IN **DEFINITE SUPPORT OF SB 2342-ALTERNATIVES FOR NON-VIOLENT OFFENDERS**

**Without Divine Wisdom Clarity & Compassion
A Society & government FAIL in its PURPOSE FOR THE
HIGHEST GOOD to THOSE THEY SERVE & inevitably
cause the self-destruction of a state & nation.**

**NATIONs WHO HAVE embraced the health & welfare &
HEALING OF ALL ITS CITIZENS as One & embraces
THOSE MOST VULNERABLE..WILL PROSPER IN
GREATNESS & SPIRIT.**

**'LET THE STRONG COMPASSIONATE & WISE BE
THE LEADERS FOR THOSE WHO HAVE FALLEN
ALONG THE SIDE.. AND LET US ALL RISE IN
GREATNESS & HONOR AS SPIRIT BEINGS.'**

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'what is the BLESSING in your life?'

Look no further than the very breath that comes INTO YOU"

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Robert Bunda, Vice Chair

Tuesday, February 2, 2010; 1:25 PM; Room 229, State Capitol

SUPPORT SB 2342

RELATING TO SENTENCING

Permits certain non-violent repeat offenders convicted of drug possession to be sentenced to alternative programs instead of to prison.

Aloha Senators Espero and Bunda and members of the Committee on Public Safety and Military Affairs! My name is Samuel Kaleleiki, Jr., President of Ohana Hoopakele, an organization dedicated to rescuing our *pa`ahao* or incarcerated brothers and sisters in prisons. Our vision is to build a *pu`uhonua* or a Wellness Center that heals rather than punishes. We have been sending spiritual advisors to lead our *paahao* in the Makahiki ceremonies at both Diamondback prison in Watonga, Oklahoma and Suguaro prison in Eloy, Arizona.

We first want to commend Senators Espero, Kidani, Bunda, English, Gabbard, Galuteria and Hemmings for introducing this bill to the session of the State legislature. It requires guts to introduce this bill which attempts to reverse the trend of filling our prisons with violators of our drug laws. It takes guts and forward vision to state that the War on Drugs has failed. It takes guts, forward vision and a sense of history to begin the process of decriminalizing drugs. The War on Drugs has just filled our prisons with *pa`ahao* who need healing and are not received the healing that they need.

On the island of Hawai`i where I come from, one County of Hawaii councilman Mr. Kelly Greenwell has introduced a bill into our County Council to decriminalize marijuana. Councilman Greenwell's efforts and yours are forward-looking trends that seek solutions, not play up to the fears of voters who tend to vote for any measures that sound like a war against crime.

I did not have enough time to prepare for this testimony. I am willing to gather others to support this bill. I am willing to gather petitions supporting your effort.

Again, congratulations for introducing this bill. Please do whatever is necessary to pass it on so that it will raise the consciousness of other legislators to truly find a solution for our overcrowded prisons, and sending our *pa`ahao* up to Arizona and Tennessee, far from family and to a country where they do not belong.

Thank you for this opportunity to testify on behalf of our members of Ohana Hoopakele and on behalf of our *pa`ahao* who have been and are presently incarcerated both here in Hawaii and in Arizona and Tennessee.