

SB 2442

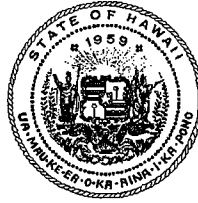
Measure Title:

RELATING TO PAROLE HEARINGS

Report Title:

Parole Hearings; Violation of Privacy; Psychosexual Evaluation

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
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Honolulu, Hawaii 96813

ALBERT TUFONO
CHAIR

DANE K. ODA
MEMBER

ROY W. REEBER
MEMBER

MAX OTANI
ADMINISTRATOR

No. _____

TESTIMONY ON SENATE BILL 2442
RELATING TO PAROLE HEARINGS

HAWAII PAROLING AUTHORITY
Albert Tufono, Chairman

Committee on Public Safety and Military Affairs
Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

The Hawaii Paroling Authority (HPA) does not support Senate Bill 2442, requiring a psychosexual evaluation to be prepared for a prisoner convicted of violation of privacy in the first and second degree prior to the prisoner's parole hearing. HPA does not have jurisdiction over inmates that have been sentenced to a determinate jail sentence for a misdemeanor conviction. Therefore, defendants sentenced to jail for violation of privacy in the second degree would not appear before the parole board for a parole hearing for that crime.

Under SB 2442, it would appear that HPA would be responsible for preparing the psychosexual evaluation. At the current time, HPA does not have the expertise on staff nor the funding to complete such an evaluation. It is estimated that each evaluation could cost \$3000.

HPA currently conducts administrative hearings to determine if inmates that have not been convicted of sex offenses should be evaluated and receive sex offender treatment. These hearings, better known as “Neal Hearings”, are conducted during or after the setting of minimum term of incarceration. The parole board can order an evaluation and possible treatment if the outcome of this hearing warrants such action.

We thank you for this opportunity to testify and ask that this bill be held.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Sen. Brian Taniguchi, Chair

Sen. Dwight Takamine, Vice Chair

Thursday, February 18, 2010

1:15 p.m.

Room 229

OPPOSE SB 2442 – Psychosexual Evaluation for Parole Hearing

PSMTestimony@capitol.hawaii.gov

Aloha Chairs Espero and Taniguchi and Members of the Committees!

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.

SB2442 requires a psychosexual evaluation to be prepared for a prisoner convicted of violation of privacy in the first or second degree prior to the prisoner's parole hearing. It also authorizes the Hawai'i Paroling Authority to consider the evaluation when considering parole of the prisoner.

Community Alliance on Prisons opposes this measure because it is so disingenuous. Sex offenders who have been transferred from Kulani Correctional Facility – some from August 2009 – are still awaiting the continuation of their program at the Federal Detention Center.

What will happen to individuals who approach max out dates without the required programming completed – through no fault of their own?

How will it protect public safety if individuals are deprived of the programming?

Will these individuals be released into the community with no treatment?

Or will individuals be over-detained?

Will Hawai'i be sued for over-detention (like the Tapaoan case?)

The crime in all of this is that the Department of Public Safety sent federal funds back to the federal government. The Department of Public Safety *HAD* \$13 million in federal funds that they could have used for reentry – for a number of things that they obviously didn't want to do. Instead, they returned the money to the feds. Why weren't they creative enough to get the feds to agree to use the money for things like sex offender

treatment? They profess to care about our community, but when push comes to shove, this administration wimps out.

In these fiscal times, we need administrators and policymakers who are willing to think outside the box. For an administration that has put so much emphasis on child pornography, sexual assault, and sex offending in general, this is a total black eye.

This administration closed Kulani Correctional Facility (minimum security) - a facility with the BEST SEX OFFENDER TREATMENT PROGRAM IN THE NATION (less than 2% recidivism for another sex offense in 22 years) and transferred individuals, some one month away from program completion, to serve dead time at medium security Halawa and now at the medium security Federal Detention Center.

What happens if someone maxes out - has served his maximum sentence - and has not completed treatment? Do we over-detain that person?

This bill is outrageous to Community Alliance on Prisons because it requires an evaluation, which will cost money, but there is **currently no sex offender treatment at the Federal Detention Center**, where individuals from Kulani were sent and promised 'uninterrupted programming'.

How can we spending money 'evaluating' without 'treating' those that will return to our community?

We must always remember that

TODAY'S INMATE IS TOMORROW'S NEIGHBOR

Mahalo for this opportunity to share our mana`o.

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

Senator Brian Taniguchi, Chair
Senator Dwight Takamine, Vice Chair
Members of the Committee on the Judiciary & Government Operations

FROM: Dara Carlin, M.A.
Domestic Violence Survivor Advocate
881 Akiu Place
Kailua, HI 96734

DATE: February 18, 2010

RE: Support for SB2442, Relating To Parole Hearings

Conducting psycho-sexual evaluations before an offender's parole hearing would be a good source of information when considering an offender's release back into the community (and hopefully a psycho-sexual evaluation was conducted at intake so a comparison on improvement - or lack thereof - could be taken into consideration).

The problem with looking at the recidivism rate for sex offenses is that the rates are different for different types of offenses and there are "no guarantees" because assaults and victimizations are so holistically under-reported. Excerpts from a report entitled "Recidivism Of Sex Offenders" published in May 2001 by the Center for Sex Offender Management under the US Department of Justice illustrate these points:

For a variety of reasons, **sexual assault is a vastly underreported crime**. The National Crime Victimization Surveys (Bureau of Justice Statistics) conducted in 1994, 1995, and 1998 indicate that only 32 percent (one out of three) of sexual assaults against persons 12 or older are reported to law enforcement. A three-year longitudinal study (Kilpatrick, Edmunds, and Seymour, 1992) of 4,008 adult women found that **84 percent of respondents who identified themselves as rape victims did not report the crime to authorities**. (No current studies indicate the rate of reporting for child sexual assault, although it is generally assumed that these assaults are equally underreported.) Many victims are afraid to report sexual assault to the police. They may fear that reporting will lead to the following:

- further victimization by the offender;
- other forms of retribution by the offender or by the offender's friends or family;
- arrest, prosecution, and incarceration of an offender who may be a family member or friend and on whom the victim or others may depend;
- others finding out about the sexual assault (including friends, family members, media, and the public);
- not being believed; and
- being traumatized by the criminal justice system response.

These factors are compounded by the shame and guilt experienced by sexual assault victims, and, for many, a desire to put a tragic experience behind them. Incest victims who have experienced criminal justice involvement are particularly reluctant to report new incest crimes because of the disruption caused to their family. This complex of reasons makes it unlikely that reporting figures will change dramatically in the near future and bring recidivism rates closer to actual reoffense rates.

Marshall and Barbaree (1990) compared official records of a sample of sex offenders with "unofficial" sources of data. They found that **the number of subsequent sex offenses revealed through unofficial sources was 2.4 times higher than the number that was recorded in official reports**. In addition, research using information generated through polygraph examinations on a sample of imprisoned sex offenders with fewer than two known victims (on average), found that **these offenders actually had an average of 110 victims and 318 offenses** (Ahlmeyer, Heil, McKee, and English, 2000). Another polygraph study found a sample of imprisoned sex offenders to have extensive criminal histories, **committing sex crimes for an average of 16 years before being caught** (Ahlmeyer, English, and Simons, 1999).

Marshall and Barbaree (1990) found in their review of studies that the recidivism rate for specific types of offenders varied:

- Incest offenders ranged between 4 and 10 percent.
- Rapists ranged between 7 and 35 percent.
- Child molesters with female victims ranged between 10 and 29 percent.
- Child molesters with male victims ranged between 13 and 40 percent.
- **Exhibitionists ranged between 41 and 71 percent.**

In light of these findings, conducting psycho-sexual evaluations on sex offenders prior to a parole hearing would be a prudent measure towards public safety and would help to ensure the appropriate treatment methodology is provided to the offender while incarcerated.

Thank you for this opportunity to provide testimony.

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

February 17, 2010

RE: Testimony for Bill # SB 2442

Hearing for bill #sb 2442 relating to parole hearings. Scheduled for 2/18/2010 at 1:15pm conference room 229.

Aloha and thank you for taking the time to hear my testimony. In April of 2007 my family was a victim of the violation of privacy law. Below are the events that led to my testimony as well as the reason I feel this amendment will benefit not only the victims but also the convicted prisoner not to repeat their offense.

In April of 2007 my oldest daughter's ex fiancée put a digital camera in my downstairs bathroom and recorded my youngest daughter getting undressed for her shower. We turned over the evidence to the police department but they did not search his computer or the studio where he was living. He told my daughter that he had recorded me and my youngest daughter before but we never found any evidence. He started out by peeping into the outside bathroom and then recording. This has traumatized our whole family. Our home supposed to be a place of security and safety. We have had so many family get together and I am not able to assure any female who was in the house through that time period. I did not nor has anyone that I have spoken to realize that a person convicted of this crime is not considered a sex offender therefore they don't have to have or get any type of help to prevent them from acting on their urges once they are released. It was by the good sense of a judge and paroling authority that this man is still in Jail. Judge Randall Valenciano said at his sentencing that he had reviewed a lot of PSI reports that week but his was the only one that stuck out in his mind as sinister and evil. It was a victory for us as this man had been stalking my family and even broke his TRO that we had against him and he had reached a plea agreement with the prosecutor for a 1 year sentence. I later learned when I was writing a letter for his parole hearing that the paroling authority had recommended a psychosexual prior to being released for parole. I am very thankful that these individuals had the insight to see that this man was a master manipulator who has no regard to authority and believes he is smarter than the system. He is very knowledgeable about the laws of our great state and knows how to work the system as most perpetrators do. At least if there is a measure of evaluation that can help the convicted prisoner work on real urges that they cannot control. Knowing is half the battle.

In conclusion I would like to say that this amendment will help to differentiate between an ignorant or childish mistake and a real threat to our women and children of our state. If you research any of the most serious offenders you will see that most offenders have started out as peeping toms or voyeurs. Because the current laws do not make this a sex offense they receive no help to deter these inner urges.

This bill would help to weed out those with poor judgment or youthful ignorance and get the help for those whose life of crime is just beginning. I feel that this bill would help to save a lot of people the trauma and pain that my family still lives with today. A lot of these people who do these crimes are not aware that they have these urges or realize the pain that this causes them. With this amendment those who are a threat will be able to get the help that they need to be productive members of our society. Right now there is no way to tell if these persons are a real threat. Please think of how much better our society would be if we could prevent more serious offenses against our children and women. Thank you very much for talking the time to listen to my testimony. If there is anything more I can do for you please feel free to contact me at 808-822-4377 or on my cell phone at 808-652-7228. My email address is sherricole9165@hotmail.com.

Mahalo,

Sherri Cole

Concerned citizen Kauai, Hawaii