

# **SB 256**

## **RELATING TO CRIMINAL OFFENDERS.**

Allows the Department of Public Safety to release a qualifying committed person serving a misdemeanor sentence if the person has served at least two-thirds of the sentence imposed by the court.

NEIL ABERCROMBIE  
GOVERNOR



JODIE MAESAKA-HIRATA  
INTERIM DIRECTOR

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

Deputy Director  
Administration

Deputy Director  
Corrections

Deputy Director  
Law Enforcement

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

**TESTIMONY ON SENATE BILL 256  
RELATING TO CRIMINAL OFFENDERS**

by

Jodie F. Maesaka-Hirata, Interim Director  
Department of Public Safety

Senate Committee on Public Safety, Government Operations, and Military Affairs  
Senator Will Espero, Chair  
Senator Michelle Kidani, Vice Chair

Thursday, January 27, 2011, 2:45 PM  
State Capitol, Conference Room 224

Senator Espero, Senator Kidani, and Members of the Committee:

The Department of Public Safety (PSD) opposes Senate Bill 256. The measure is unnecessary and raises concerns regarding a conflict between the Judiciary and the Director. This measure permits the Director to release a misdemeanor inmate who has completed two-thirds of his sentence, provided that the Director has a reasonable belief that a propensity to commit further crimes does not exist. The primary concern is that the Director would be superceding the order of incarceration issued by a judge, based on a belief that the inmate does not have a propensity to commit further crimes. This results in a member of the administrative branch modifying an order from the judicial branch without due process, which could lead the judges to sentence misdemeanants to a longer sentence based on the possibility that the Director would release the misdemeanants early.

In addition, since the inmates in question serve from one day to one year, there are limited indicators and tools to accurately determine the type of behavior on which the

Director could base a reasoned opinion in such a short time. Thus, in addition to a potentially over reaching authority to modify a judicial order, there would be limited information on which to base the determination that the inmate is not going to commit further crimes.

PSD does not support this measure based on the foregoing reasons. Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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KEITH M. KANESHIRO  
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ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE WILL ESPERO, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY,  
GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS**  
Twenty-eighth State Legislature  
Regular Session of 2011  
State of Hawai'i

January 26, 2011

**RE: S.B. 256; RELATING TO CRIMINAL OFFENDERS.**

Chair Espero, Vice-Chair Kidani and members of the Senate Committee on Public Safety, Government Operations, and Military Affairs, the Department of the Prosecuting Attorney submits the following testimony in opposition to Senate Bill 256.

The purpose of Senate Bill 256 is to add a new section to the Hawaii Revised Statutes, allowing the director of public safety to release misdemeanor offenders outright, where there is reasonable belief that an offender does not have a propensity to commit further crimes, and the offender has served at least two-thirds of the maximum sentence imposed by the court.

When courts impose a jail sentence on a misdemeanor offender, this is done for good reason. Due to the classification of misdemeanor crimes, misdemeanor offenders are generally not subject to much, if any, jail time, and the vast majority of misdemeanor sentences are in the form of fines, community service and/or other remunerations. In cases where jail time is mandated by statute, sentencing has already been decided, based on important policy considerations and decisions by lawmakers, and after careful public discussion. In other cases, jail time may be imposed where a court feels that fines or other sentences would be insufficient or inappropriate for a particular case/offender, and it is important that we respect the court's judgment and discretion on these decisions.

To summarily release a misdemeanor offender after serving only 2/3 of the jail time ordered, would not only undermine the court's duties and judgment, but also severely impedes the deterrence value and the overall *message* to offenders and the public. As noted above, jail sentences handed down for misdemeanor offenses are very limited, so those that are imposed are

clearly warranted. Already, many courts seem to have a policy of minimizing jail sentences for misdemeanor offenses, so decreasing that further would significantly lessen the effect of imposing jail sentences at all.

While this Office maintains that all jail sentences handed down by the court are warranted, cases involving domestic violence or abuse are of particular concern. For those types of cases, it is of utmost importance that offenders be given a clear message, that it is "not OK" to hurt their household members or loved ones. Because domestic violence can have long-lasting effects and affect multiple generations, a clear message needs to be given, not only to offenders, but to their families, their children, and the community.

By allowing "suitable" misdemeanor offenders to get out of jail after serving only 2/3 of their sentence, the Department of the Prosecuting Attorney strongly believes that Senate Bill 256 will undermine the judicial process and purpose, and severely detract from the deterrence value of jail sentences.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes this bill. Thank you for the opportunity to testify on this matter.

# 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 AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Thursday, January 27, 2011

2:45 PM

Room 224

SB 256 - Early Release of Misdemeanants

**STRONG SUPPORT**

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

Aloha Chair Espero, Vice Chair Kidani 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 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.

SB 256 Allows the Department of Public Safety to release a qualifying 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.

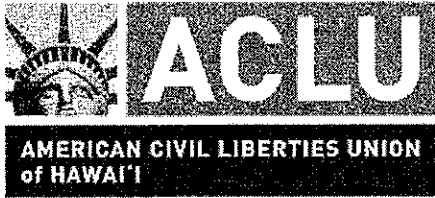
Other jurisdictions are implementing early release for misdemeanants because of overcrowding and cost.

We believe that it is better to directly address an individual's pathway to crime - i.e. substance abuse treatment, anger management, etc. than to incarcerate. Early release of misdemeanants would provide an incentive for good behavior while incarcerated, especially since the majority of our incarcerated are imprisoned for drugs or drug-related crimes.

The Classification report (2007) commissioned by the department showed that 72.2% of women and 57.1% of men jailed in Hawai'i are community or minimum custody. The same study also reported that 74% of the women and 64% of the men in jail are non-violent lawbreakers. The LSI, the instrument currently used, has helped the system determine the risk posed by an individual.

It is time to employ smart justice policies that reduce the jail population, save taxpayers money, and transfer the costs from incarceration into community programs.

Mahalo for the opportunity to testify on this measure.



Committee: Committee on Public Safety, Government Operations, and Military Affairs  
Hearing Date/Time: Thursday, January 27, 2011, 2:45 p.m.  
Place: Conference Room 224  
Re: Testimony of the ACLU of Hawaii in Support of S.B. 256,  
Relating to Criminal Offenders

Dear Chair Espero and Members of the Committee on Public Safety, Government Operations, and Military Affairs:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of S.B. 256, Relating to Public Safety, which seeks to allow the Department of Public Safety to release qualified misdemeanants who have served at least two-thirds of their court-imposed sentences.

The ACLU of Hawaii supports every effort to reduce prison overcrowding and develop a comprehensive reentry system. Early-release programs 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. The Legislature should take proactive steps to manage its prison population before the courts order the State to release inmates; offering early-release programs is a common method throughout the United States for relieving some of the pressure on the prison system.

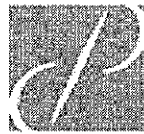
The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that 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 45 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
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the  
**Drug Policy  
Forum**  
of hawaii

January 27, 2011

To: Senator Will Espero, Chair  
Senator Michelle Kidani, Vice Chair and  
Members of the Committee on Public Safety, Government Operations, and  
Military Affairs

From: Jeanne Ohta, Executive Director

Re: SB 256 Relating to Public Safety (Misdemeanor)  
Hearing: January 27, 2011, 2:45 p.m., Conf. Room 224

Position: STRONG SUPPORT

Good afternoon Chair Espero, Vice Chair Kidani and Members of the Committee, I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii testifying today in strong support of this measure.

SB 256 allows the Department of Public Safety to release a qualifying inmate serving a sentence for a misdemeanor if the person has served at least two-thirds of the sentence imposed by the court. There must also be a belief that the person would not pose a risk to commit a future crime.

This early release policy, used in other jurisdictions, is a sensible manner in which the State can reduce the prison population. Incarceration continues to be the most expensive option and the most ineffective in reducing recidivism.

We urge you to pass this measure out of committee. Thank you for allowing me to testify today.

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Robert K. Merce  
2467 Aha Aina Place  
Honolulu, Hawai'i 96821  
January 25, 2011

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**COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Thursday, January 27, 2011

2:45 PM

Room 224

SB 256 Early Release of Misdemeanants

**FULLY SUPPORT SB 256**

**PGMTestimony@capitol.hawaii.gov**

Dear Chair Espero, Vice Chair Kidani and Members of the Committee!

I am a retired member of the Hawaii State Bar. Before retiring, my practice included the representation of prison inmates on a wide array of issues. This made me aware of the many ways in which our justice system is failing inmates and the community, and since retiring I have decided to try to do something about it.

SB 256 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 and there is a reasonable belief that a propensity to commit further crimes does not exist.

As Dr. Marilyn Brown, Associate Professor of Sociology at the University of Hawaii at Hilo wrote in the January 29, 2011 *Star-Advertiser*, our "wasteful and dangerous experiment in mass incarceration" is not cost-efficient, is not working, and is not the most efficient means of achieving public safety. Releasing misdemeanants who are not likely to commit further crimes and who have served most of their sentences makes sense and would save millions for the state at a time when it need desperately needs savings.

I urge all members of the committee to support SB 256.

Thank you.

**From:** Mary K. Dias [mailto:diasohana1@hawaiiantel.net]  
**Sent:** Wednesday, January 26, 2011 4:28 PM  
**To:** PGM Testimony  
**Subject:** SB 256

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT  
OPERATIONS, AND MILITARY AFFAIRS

Senator Will Espero, Chair

Thursday, January 27, 2011

2:45 p.m.

Conference Room 224

State Capitol

415 South Beretania Street

SB 256

RELATING TO CRIMINAL OFFENDERS.

This bill allows the Department of Public Safety to release a qualifying committed person serving a misdemeanor sentence if the person has served at least two-thirds of the sentence imposed by the court. There are statistics that show that the US is #1 and Hawaii is #4 **in the world** for incarcerating our citizens. This needs to stop. We need to get our prison system out of the 19<sup>th</sup> century. This bill is one way to start.

We support SB 256 and ask that you do the same.

Mahalo,

Mary K. Dias and Ohana

From: **Emy Furusaki** <[maukalani78@hotmail.com](mailto:maukalani78@hotmail.com)>  
Date: Tue, Jan 25, 2011 at 1:11 PM  
Subject: SB 256 -RELATING TO CRIMINAL OFFENDERS  
To: Kat Brady <[kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)>

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS  
Sen. Will Espero, Chair  
Sen. Michele Kidani, Vice Chair  
Thursday, January 27, 2011  
2:45 pm  
Rm 224  
SB 256 - Relating to Crimincal Offenders

Dear Chair Espero, Vice Chair Kidani, and Committee MembersSTRON

I STRONGLY SUPPORT this bill.

However, would like to see incorporated into this bill first time offenders (except violent criminals) considered for early release after serving at least two-thirds of the sentence imposed by the court. There are inmates presently serving time who made a mistake and are no threat to society, with outstanding behavior, still in prison because of the one mistake they made.

Thank you for offering me the opportunity to submit my testimony.

Aloha,  
E. Funakoshi  
455-9136

National Association of Reformed Criminals  
(NARC)

**COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Thursday, January 27, 2011

2:45 PM

Room 224

SB 256 – Early Release of Misdemeanants

**STRONG SUPPORT**

Time-off for good behavior and other avenues of sentence reduction are virtually non-existent and long overdue. It is also a cost-effective policy that doesn't undermine the punitive philosophy that is imposed by the courts.

Mahalo,

Andy Botts

**COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

*Sen. Will Espero, Chair*

*Sen. Michelle Kidani, Vice Chair*

Thursday, January 27, 2011

2:45 PM

Room 224

Aloha Chair Espero, Vice-Chair Kidani and Committee Members,

I am Ann Freed, representing the Women's Coalition.

SB 256 Allows the Department of Public Safety to release a qualifying committed person serving a misdemeanor sentence if the person has served at least two-thirds of the sentence imposed by the court.

**Strong Support**

Since 74% of the women and 64% of the men in jail are non-violent lawbreakers it does not make sense to keep them in prison for extended periods of time. The taxpayer suffers and the inmates are made no better.

Other States are implementing early release for misdemeanants because of overcrowding and cost.

We believe and statistics prove that it is better to directly address an individual's pathway to crime – i.e. substance abuse treatment, anger management, etc. than to incarcerate.

Early release of misdemeanants would provide an incentive for good behavior while incarcerated, especially since the majority of our incarcerated are imprisoned for drugs or drug-related crimes.

Let's rehabilitate not re-incarcerate.

Ann S. Freed  
Co-Chair Hawai'i Women's Coalition  
Mililani, HI

808-623-5676

Testimony for PGM 1/27/2011 2:45:00 PM SB256

Conference room: 224

Testifier position: support

Testifier will be present: No

Submitted by: Jo-Ann M. Adams, Esq.

Organization: Individual

Address: 411 Hobron Ln #801 Honolulu, HI 96815

Phone: 808-528-2100

E-mail: jadamesq@aol.com

Submitted on: 1/26/2011

Comments:

SB 256 allows the Department of Public Safety to release a qualifying persons serving a misdemeanor sentence if the person has served at least two-thirds of his or her sentence.

I strongly support of this measure.

Other jurisdictions are implementing early release because of overcrowding and cost. Early release would provide an incentive for good behavior, further reducing cost and more prisoners are inspired to meet the criteria of the early release program.

The majority of our incarcerated are imprisoned for drugs or drug-related crimes. It is far more cost-effective to directly address an individual's pathway to crime, e.g., substance abuse treatment, anger management, than to incarcerate. Less cost; fewer victims!

It is time to employ smart justice policies that reduce the jail population, save taxpayers money, and transfer the costs from incarceration into community programs particularly since the Governor wants to bring all our prisoners home.