

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 142, RELATING TO CONTROLLED SUBSTANCES.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Thursday, February 3, 2011 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Mark K. Miyahira, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General has significant concerns about the scope of the requested review and provides the following comments about this measure.

The purpose of this bill is to require the Department of the Attorney General to coordinate a review of the impact that diversion of minor drug possession offenders into drug treatment would have on the criminal justice system, drug treatment program resources, and the safety of the public.

The Department believes that it does not have the available resources, at present, to complete the study as described within the specified time frame. It would take at least a year's worth of preliminary or background research and meetings with the relevant agencies to identify the necessary data and assess their availability and quality to formulate a basic research plan and methodologies. It would probably also take years, rather than months, to complete the actual research.

The three-position Research and Statistics Branch of the Department's Crime Prevention and Justice Assistance Division does not have any additional resources to conduct studies beyond its present commitments. Branch staff positions were reduced by

twenty-five percent following the recent abolishment of its Research Statistician III position.

Furloughs reduced the availability of the remaining three staff positions by approximately ten percent. (Thus, we currently have the equivalent of 2.7 FTE positions, a 32.5 percent reduction from our previous 4.0 FTEs.)

The Senior Research Analyst assumed the duties of the Research Statistician position (which includes conducting the day-to-day operations of Hawaii's participation in the national Uniform Crime Reporting Program, from which all basic crime trend statistics are derived) and is already doing the work of two people.

The Interagency Council on Intermediate Sanctions (ICIS) Research Analyst position is dedicated solely to conducting research relating to the Interagency Council on Intermediate Sanctions' efforts to reduce criminal recidivism in Hawaii. This position cannot be assigned to non-ICIS duties.

The Branch Chief coordinates and supervises the work of both positions, works independently on various projects (including two legislatively mandated, annual research projects), and fills a variety of other roles.

In addition, and despite their expertise in a wide range of other methodologies, the Research and Statistics Branch has no experience in conducting impact studies of the nature and extent described in these measures. We estimate that two full-time, highly qualified and specialized researchers would need to be added to provide a progress report and preliminary findings to the Legislature in two years time. It might also be possible to contract the work out, although our ability to provide a cost estimate would depend on a greater level of specificity and detail than is currently set forth in these measures, and time

to conduct the necessary assessments of data availability and quality.

The Department is also concerned that this measure proposes to review the impact that diversion of "minor drug possession offenders" into drug treatment would have on public safety, but actually focuses the review on offenders accused of serious drug offenses.

Felony marijuana possession offenses of any grade, and class C and B felony possession offenses involving other drugs, involve criminal offenses that are hardly "minor". An individual may commit the offense of Promoting a Detrimental Drug in the First Degree, in violation of section 712-1247, Hawaii Revised Statutes, a class C felony, by being in possession of one or more substances of an aggregate weight of one ounce or more, containing marijuana.

It is not uncommon in street sales involving marijuana, that the marijuana may be packaged and sold in quantities of one-fourth, one-eighth, and one-sixteenth of an ounce, or as individually rolled marijuana cigarettes (joints). It is also well known among the vice divisions of local police departments that one ounce of marijuana can produce approximately fifty-six marijuana joints. Therefore, a street dealer of marijuana may be found to be in possession of one ounce (28.35 grams) of marijuana that may be individually packaged into sixteen small plastic bags, each weighing approximately one-sixteenth of an ounce, or that may be possessed in the form of approximately fifty-six marijuana joints. A person, in possession of one ounce of marijuana, packaged in a manner as described above, is not simply a user, but is more likely a drug dealer.

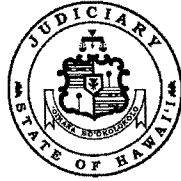
An individual may commit the offense of Commercial Promotion of Marijuana in the First Degree, in violation of

section 712-1249.4, Hawaii Revised Statutes, a class A felony, by being in possession of marijuana with an aggregate weight of twenty-five pounds or more. This individual is clearly a drug dealer.

An individual may commit the offense of Promoting a Dangerous Drug in the Second Degree, in violation of section 712-1242, Hawaii Revised Statutes, a class B felony, by being in possession of one or more substances of an aggregate weight of one-eighth of an ounce or more, but less than one ounce, containing methamphetamine, heroin, morphine, or cocaine.

It is common knowledge among the vice divisions that possession of one-eighth of an ounce (3.54 grams) of methamphetamine, heroin, morphine, or cocaine is considered a drug dealer quantity. The person in possession of this amount of a dangerous drug is likely to be a drug dealer as well as a user.

The Department believes that diversion of these "minor drug possession offenders" into drug treatment, in lieu of charging the offenders, or allowing these offenders to plead to misdemeanors and be placed in treatment in lieu of imprisonment, is inappropriate given the nature of their offenses.



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Public Safety & Military Affairs

The Honorable Henry J.C. Aquino, Chair

The Honorable Ty Cullen, Vice Chair

Thursday, February 3, 2011, 8:30 a.m.

State Capitol, Conference Room 309

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 142, Relating to Controlled Substances

Purpose: Directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice system and into treatment.

Judiciary's Position:

The Judiciary supports the intent of this bill which requires the attorney general to coordinate a review of the impact that diversion of minor drug possession offenders into drug treatment would have on the criminal justice system, drug treatment program resources, and public safety. If the diversion programs mentioned in the bill require supervision, the responsibility for that supervision might be assigned to the Judiciary. Therefore, it would be helpful for the Judiciary to gain an understanding of the possible numbers of individuals involved and the scope of responsibility related to their supervision.

Thank you for the opportunity to testify on House Bill No. 142.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

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



COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

Thursday, February 3, 2011

8:30 AM

Room 309

HB 142 - AG STUDY RE: Impact of diverting certain drug lawbreakers to treatment

STRONG SUPPORT

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Aquino, Vice Chair Cullen 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, improve the quality of justice, and enhance community safety by promoting smart justice policies. We are always mindful that there are 6,000 individuals whose voices have been silenced by incarceration with 1,750 individuals are serving their sentences abroad, thousands of miles from their loved ones and, in many cases, from their ancestral lands.

HB 142 directs the Attorney General to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice system into treatment.

Community Alliance is in strong support of HB 142.

In 2002, the Legislature passed Act 161 in 2002, which diverted first-time, nonviolent drug lawbreakers to treatment instead of prison. The opposition came from the police and prosecutors (as it has in every jurisdiction where similar laws passed) who said that first timers are never incarcerated. A cursory review of the files at Halawa by a staffer at Public Safety, however, found 48 first-time, nonviolent drug lawbreakers incarcerated there. The prosecutor's response? They shouldn't be there!

In 2004, Act 161 was changed to make it discretionary, not mandatory, to divert first-time nonviolent drug offenders to treatment. (Act 44 - HB 2003 HD1,SD1). Act 44 finally provided funding, but it changed the purpose of the law.

It is not unusual today to meet many to meet many first timers in prison - most for drugs.

The rising costs of prison and the pitiful outcomes demand that we rethink what we are doing and explore other options. During times of fiscal austerity businesses try a number of things to cut costs and improve efficiency – getting a bigger bang for the buck, so to speak.

In this same vein, the state can look upon these trying times as an opportunity to take a close look at what we are doing, how we are doing it, and ask if there is some way to do it better and at a lower cost. My Mom used to say that necessity is the mother of invention, and she was right.

A study, if it is independent, will take an unbiased look at diverting nonviolent drug lawbreakers and do a cost-benefit analysis of our current system and projections for law changes.

This is another reason that the Sentencing Simulation Model, a tool for legislators to see the impact of legislation before it becomes law, needs to be restarted. Sadly there is no funding for this terrific project, so it sits in limbo. The Sentencing Simulation Model predicts the unintended consequences of policies enacted into law that result in higher costs and many problems.

In these lean times, we need to explore every option to promote justice, protect public safety, and preserve precious resources.

Community Alliance on Prisons urges passage of HB 142.

Mahalo for this opportunity to testify.



the
**Drug Policy
Forum**
of hawaii

February 3, 2011

To: Rep. Henry Aquino, Chair
Rep. Ty Cullen, Vice Chair and
Members of the Committee on Public Safety and Military Affairs

From: Jeanne Y. Ohta, Executive Director

RE: HB 142 Relating to Controlled Substances

Position: Support with Comments

Good morning Chair Aquino, Vice Chair Cullen and members of the committee, I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii, testifying in support of the intent of this measure.

DPFH supports this request for a study and also supports the policy of diverting people with drug abuse and addiction problems into treatment rather than the criminal justice system. However, not every person charged with possessing an illegal drug needs treatment. Whether treatment is needed is a recommendation that should be made after an assessment by a treatment professional.

We note that Hawaii still has a scarcity of treatment beds and using those beds for individuals who do not need them wastes taxpayer money. In the HOPE Probation program, Judge Alm does not require treatment for all drug users, yet he has been able to gain compliance from most of the probationers under his purview.

We strongly believe that appropriate treatment for drug offenders saves money over incarceration. Incarceration does not reduce recidivism and does not address addiction, but treatment does.

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P.O. Box 241042
Honolulu, HI 96824-1042

Phone: (808)-988-4386
Fax: (808) 373-7064

Email: info@dpfhi.org
Website: www.dpfhi.org