HB 2514, HD3

RELATING TO PUBLIC SAFETY

Description:

Requires a pretrial risk assessment within three working days of commitment to a community correctional center. Increases the membership of the Hawaii paroling authority from three to five members and requires use of validated risk assessments. Limits length of incarceration for first-time parole violators. Increases the percentage deducted from inmates' earnings for restitution payments. Requires parole supervision prior to maximum sentence date. Adds positions in the Department of Public Safety. Appropriates funds. Effective January 7, 2059. (HB2514 HD3)

EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Testimony HB 2514 HD3
Relating to Public Safety

SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
Sen. Wil Espero, Chair
Sen. Michelle Kidani, Vice Chair

SENATE COMMITTEE ON JUDICIARY AND LABOR
Sen. Clayton Hee, Chair
Sen. Maile Shimabukuro , Vice Chair

March 21, 2012
10:00 am, Room 016

Chair Espero, Chair Hee, Vice Chair Kidani, Vice Chair Shimabukuro and committee members, thank you for hearing HB 2514 HD3 Relating to Public Safety. I respectfully request your support of this important measure.

I would also like to thank the Legislature for partnering with the administration and the Judiciary in a historic collaboration called the Justice Reinvestment Initiative. As you know, this is one of the priorities of my administration. We want to stop the practice of sending our prisoners out of state because it sends public dollars out of Hawaii instead of creating jobs and community service opportunities here at home.

In the last 9 months, the Justice Reinvestment Working Group has met with the Council on State Governments Justice Center consultants to analyze our criminal justice system and make policy recommendations to realize cost savings and reinvest those savings back into our system to reduce recidivism, decrease the prison population, and strengthen public safety.

I would like to defer to Robert Coombs, Senior Policy Analyst for the Council on State Governments Justice Center and Director Jodie Maesaka-Hirata and Deputy Director Martha Torney, of the Department of Public Safety, who will provide more details about the proposed legislation.

Thank you again for your consideration of this measure.

NEIL ABERCROMBIE
GOVERNOR

JODIE F. MAESAKA-HIRATA
DIRECTOR

Martha Torney
Deputy Director
Administration

Joe W. Booker, Jr.
Deputy Director
Corrections

Keith Kamita
Deputy Director
Law Enforcement

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

No. _____

March 20, 2012

TESTIMONY ON HOUSE BILL 2514, HOUSE DRAFT 3
RELATING TO PUBLIC SAFETY
By
Jodie F. Maesaka-Hirata, Director
Department of Public Safety

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

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, March 21, 2012; 10:05 a.m.
State Capitol, Conference Room 016

Chair Espero, Chair Hee, and Members of the Committee:

The Department of Public Safety (PSD) is in strong support of House Bill 2514, House Draft 3, Relating to Public Safety, the result of work by the Justice Reinvestment Working Group, which was formed pursuant to the State of Hawaii's successful application to participate in the national Justice Reinvestment Initiative (JRI). We greatly appreciate the support we have received from the Legislature and the dialogue it has generated. On several points, consensus has been reached among stakeholders as a result of these discussions which resulted in several amendments to the original bill.

Based on the continuing conversation between stakeholders and testimony submitted by other interested parties, we are requesting additional amendments to clarify parts of this measure.

Pre-trial Risk Assessment

The Department and members of the Legislature have met with representatives of bail bonds companies to clarify language pertaining to validated pre-trial risk assessment instruments. A risk assessment instrument is an actuarial tool designed to predict an offender's risk of failure to appear and recidivating. To be validated, research is conducted to ensure the tool is, in fact, accurately measuring that risk.

The Intake Service Center (ISC) will be utilizing the validated Ohio Risk Assessment Instrument: Pre-trial Assessment Tool as part of its bail study to the Courts for their consideration when determining whether to release pre-trail inmates from custody. The proposed amendments to Section 353-10, Hawaii Revised Statutes (HRS), requires the ISC complete the risk assessment within three working days, but does not influence how the courts process these cases. Those conducting the assessments will be trained and certified in its application. Recertification will also be take place on a regular basis to ensure the continued reliability of staffs' application of the assessment tool. If a worker is not current on their certification, they will not be allowed to conduct assessments until their recertification is complete.

This assessment is in addition to the completion of a bail study that considers other factors, such as residence, employment, community ties, special needs like mental health and/or medical treatment, and criminal history.

Hawaii Paroling Authority

The Department cannot stress enough the importance of increasing the number of members of the Hawaii Paroling Authority. Act 92, Session Laws of Hawaii 1976, reconstituted the former uncompensated Board of Paroles and Pardons as a professional board entitled the Hawaii Paroling Authority with a full-time paid chair and two part-time paid members. Since that time, there has been no increase in the number of members while the work load has increased by eight fold. Adding two part-time members will allow flexibility in scheduling hearings and reviewing cases. Chapter 23-700, Hawaii Administrative Rules,

would be amended upon passage of this bill to define how to incorporate the additional part-time members.

Parole of Prisoners

The members of the Hawaii Paroling Authority have worked diligently with the Administration to craft wording that would achieve the goals of the JRI without intruding on the discretion of the parole board in cases that merit further incarceration. To that end, we request amendments to several sections found in House Draft 3.

Please amend page 10, line 14, to read as follows:

(1) "Been charged with a new felony offense or with a new misdemeanor offense under chapter 707 or section 709-906;"

Page 11, line 3, please delete the words "scientifically proven" as risk assessment instruments are validated to measure their effectiveness.

Page 11, line 8, please amend by adding an introductory clause to read as follows

"Except for good cause shown to the paroling authority, a person..."

Page 16, lines 20 and 21, please delete the words "Notwithstanding section 706-605.5 (1)(c).. " and replace with the following:

"Notwithstanding a court ordered minimum, ..."

REINVESTING FUNDS

The Justice Reinvestment Initiative is premised on managing the growth of correctional populations through: 1) valid risk assessments to determine which offenders are better served in community-based programs as opposed to incarceration; evidenced-based approaches, programs and services that do not jeopardize public safety yet reduce admissions to corrections and reduce the length of stay in a correctional facility; 3) expand victim services in all counties; and, 4) reinvest savings generated from reduced corrections spending into communities.

The potential savings that may be realized by reducing the number of inmates placed in Mainland contracted beds through the passage of this measure will be reinvested to support community-based programs and services, increased probation and parole staff, and victim services. Our original budget proposal for reinvesting approximately $6 Million included 71 additional positions across State and county agencies and $1.5 Million in the first year for purchase of services. A concern was raised that there needed to be more funds dedicated to purchase of services, so we increased that part of the budget to $2 Million in the first year which was achieved by reducing the position count to 56. This is an area that requires continued discussion.

Expanding services to victims is a major thrust of our reinvestment recommendations. No other participating JRI state has been as bold in addressing needs of victims as a way to implement restorative justice by ensuring victims needs are attended to at all phases in the criminal justice system. This includes a concerted effort to ensure victim restitution is satisfied to the fullest extent possible.

The Department of Budget and Finance forwarded the Governor's Message to reappropriate the anticipated savings in PSD 808, Non-State Facilities, to the programs identified in the attachment. This includes designating funds for the Hawaii Paroling Authority, Crime Victims Compensation Commission, Judiciary, county prosecutor offices, and other PSD program IDs.

Given the anticipated acceptance of the Governor's Message, we are not recommending funding amounts be inserted into Section14 at this time.

SUMMARY

The Department of Public Safety urges this committee to support the proposals included in this measure as a means to optimize the effectiveness of the Hawaii criminal justice system by realigning our guiding principles and reinvesting in programs and services to promote public safety and reduce recidivism. We owe this to our community. We owe this to victims of crime.

Thank you for the opportunity to testify on this important measure and considering the proposed amendments to House Bill 2514, House Draft 3.

The Judiciary, State of Hawaii

Testimony to the Senate Committees on Public Safety, Government Operations, and Military Affairs
Senator Will Espero, Chair
Senator Michelle N. Kidani, Vice Chair

and

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, March 21, 2012, 10:05 a.m.
State Capitol, Conference Room 016

by
Cheryl R. Marlow
Adult Client Services Branch Administrator

Bill No. and Title: House Bill No. 2514, H.D. 3, Relating to Public Safety

Purpose: Requires a pretrial risk assessment within three working days of commitment to a community correctional center. Increases the membership of the Hawaii paroling authority from three to five members and requires use of validated risk assessments. Limits length of incarceration for first-time parole violators. Increases the percentage deducted from inmates' earnings for restitution payments. Requires parole supervision prior to maximum sentence date. Adds positions in the Department of Public Safety. Appropriates funds. Effective January 7, 2059.

Judiciary's Position:

The Judiciary supports House Bill No. 2514, H.D. 3, Relating to Public Safety, Section 15, subsection (18) and (19) which provide four social worker and two trainer positions for probation drug treatment and cognitive behavioral therapy.

The Governor, Chief Justice, Senate President, House Speaker, and Department of Public Safety Director established a bipartisan, inter-branch Justice Reinvestment Working Group comprised of leading state and local officials to receive intensive technical assistance from the Council of State Governments (CSG) Justice Center. The CSG Justice Center assisted the working group in analyzing data from every aspect of Hawaii's criminal justice and corrections system. The Judiciary supports the intent of the Justice Reinvestment Initiative process.

The analysis of data from Hawaii's criminal justice and corrections systems identifies areas of improvement and establishes a statutory structure to improve the criminal justice system by relying on the Department of Public Safety, Hawaii Paroling Authority and the Judiciary's Adult Client Services Branch to effectively implement changes to policies and practices. In order to help achieve this, the bill allocates four full-time permanent social worker positions to the probation department to supervise high risk offenders and work with them to change their thinking to change their behavior so that they do not re-offend and need incarceration. It also funds two full time Cognitive Behavioral Therapy trainers to assist criminal justice staff with techniques that can be used in working with offenders. Cognitive behavioral therapy is based on the idea that our thoughts cause our feelings and behaviors, and people can change the way they think to feel and act better even if the situation does not change. These techniques will help criminal justice staff work with offenders on pro-social goals so that they do commit further crimes.

Thank you for the opportunity to testify on House Bill No. 2514, H.D. 3

Testimony of the Office of the Public Defender, State of Hawaii, to the Senate Committee on Public Safety, Government Operations and Military Affairs and Committee on Judiciary and Labor

March 21, 2012

H.B. No. 2514 HD3: RELATING TO PUBLIC SAFETY

Chairs Espero and Hee and Members of the Committees:

We support passage of H.B. No. 2514 HD3 which contains a number of statutory changes based upon the recommendations made by the Governor's Justice Reinvestment initiative. We believe that the proposals contained in this bill will greatly relieve stress upon the criminal justice system while maintaining public safety.

In Section 3 on page 5, the bill would require a pretrial risk assessment for all adult offenders within three working days of admission to a correctional center. This expedited risk assessment would assure that those offenders who can be safely released pending their trial would be released in a prompt manner. Certain high-risk offenders such as those facing probation violations, revocations of bail and revocations of supervised release would be exempt from this provision assuring that high-risk law violators will remain in custody and not jeopardize public safety.

In section 5 on page 8, the number of members of the Hawaii Paroling Authority (HPA) would increase from the current three members to five. This would allow the HPA to conduct more hearings thus allowing for more interaction and supervision between the inmate and the parole authorities. It would also allow the HPA to conduct business when more than one HPA member is unavailable.

In section 7 on page 11, the bill would require that an incarcerated offender whose minimum sentence has expired and who is assessed as low risk for re-offending be granted parole with certain exceptions for prison misconducts, pending felony charges and convictions for sexual offenses. This would expedite the parole process by automatically determining that certain offenders be paroled. It should be emphasized that only low risk offenders would be eligible for automatic parole under this amendment and that public safety is preserved by the exclusion of certain higher risk categories of offenders.

In section 8 on page 12, the bill would require that certain non-sex offenders who sentenced to an indeterminate term of imprisonment and who are assessed as low risk for re-offending be paroled upon completing their minimum sentence unless they: 1) have committed misconducts while incarcerated; 2) have other pending felony charges; or 3) are determined by the paroling authority to constitute a risk to the community. This provision would assure that those who are low-risk offenders will not suffer from excessive prison terms.

Section 10 on pages 13 and 14 regarding restitution will assure that inmates make progress toward restitution even while incarcerated.

In section 13 on pages 16 and 17, supervised release prior to the expiration of in an inmate's maximum sentence is established. This procedure is for inmates who are approaching the expiration of their maximum sentences but who have not yet been paroled. This provision would assure that those offenders receive a period of supervision while they are still under the jurisdiction of the Department of Public Safety. Under the current laws, an offender simply walks out of prison unsupervised once he/she "maxes out" (sentences expires). This provision would protect the public against such a situation.

Hawaii is in need of reform to its criminal justice system. The Justice Reinvestment project conducted a data-driven analysis of our current system and formulated a number of suggestions to make the system more efficient while not sacrificing public safety. H.B. No. 2514 HD3 would accomplish some of the reforms suggested by this project. We strongly support these changes and urge the passage of this measure.

Thank for the opportunity to comment on this measure.

No._____

STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 ALAKEA STREET, GROUND FLOOR
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 2514, HD3, (HSCR 928-12)
RELATING TO PUBLIC SAFETY

BY

HAWAII PAROLING AUTHORITY
Bert Y. Matsuoka, Chairman

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

AND

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, March 21, 2012; 10:05 a.m.
State Capitol, Conference Room 016

Chair Espero, Chair Hee, and Members of both Committees:

The Hawaii Paroling Authority (HPA) supports HB 2514, HD3, and requests the following amendments to this measure:

1. **Section 7 – Page 10 (Line 14)** – (E)(1) Been charged with a new felony **or a new misdemeanor offense under chapter 707 or section 709-906**;

2. **Section 8 – Page 12 (Line 20 through Line 2 on Page 13)** – (1) (d) [~~Is determined by the paroling authority to currently constitute a significant risk to the safety or property of other persons that can only be mitigated by additional incarceration.~~] The paroling authority has not approved a parole plan as set forth under section 706-670(3) and (4).

Thank you for this opportunity to provide testimony on this matter.

OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

HB2514 HD3
RELATING TO CRIME
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS
SENATE COMMITTEE ON JUDICIARY AND LABOR

March 21, 2012 10:05 a.m. Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** HB2514 HD3, which would implement the changes suggested by the Justice Reinvestment Initiative.

OHA's 2010 report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," and the recently completed study by the Justice Reinvestment Initiative indicate that there is a clear need for smart justice solutions, such as those that are part of this bill. These changes bring the criminal justice system in line with the need for faster pre-trial assessments and increased capacity for the paroling authority.

OHA has two suggestions regarding the bill:

1. Part IV Section 10 takes twenty-five percent of all moneys deposited into an inmate's account. This can be detrimental for family members struggling to provide their loved ones with basic amenities for writing and personal hygiene. We suggest eliminating the deduction from deposits. This could also be accomplished by creating a separate account for deposits or allowing direct donation of basic amenities that were pre-approved or could be purchased at the facility at cost.

2. Testimony from advocates regarding bail services indicated a clear need for more telephones and greater phone access at facilities. A separate resolution or a review of this matter should be added to this bill.

OHA urges the committee to PASS HB2514 HD3. Mahalo for the opportunity to testify on this important measure.

NEIL ABERCROMBIE
GOVERNOR

MARI McCAIG
Chair

L. DEW KANESHIRO
Commissioner

THOMAS T. WATTS
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAI'I
CRIME VICTIM COMPENSATION COMMISSION
1136 Union Plaza, Suite 600
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

TESTIMONY ON HOUSE BILL 2514, HD3 RELATING TO PUBLIC SAFETY

by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair

Wednesday, March 21, 2012; 10:05 AM
State Capitol, Conference Room 016

Good morning Chair Espero, Chair Hee, and Members of the Joint Senate Committee on Public Safety, Government Operations, and Military Affairs and Committee on Judiciary and Labor. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide testimony in strong support of House Bill 2514, HD3. House Bill 2514, HD3 provides that pretrial risk assessments be conducted within three days of an offenders admission to a correctional center; increases the number of parole board members; requires that a validated risk assessment instrument be used by the parole board in determining the offender's risk for reoffense and suitability for community supervision; provides for the release on parole of certain low risk offenders who have completed their minimum sentence; limits the period of confinement for certain parole violators to six months; provides for a 25% garnishment of all inmate funds to pay restitution; and provides that offenders receive a period of supervision prior to the expiration of their minimum term; and provides for the reinvestment of savings in more effective victim and public safety strategies.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission.

House Bill 2514 and House Bill 2515, together with and a number of reinvestment funding recommendations, including $2,000,000 for victim services, are a set of policy options developed by the Justice Reinvestment Working Group (JRI) with intensive technical assistance from the Council

of State Governments Justice Center, in partnership with the Pew Center on the States. The purpose of the JRI Working Group is to improve and reform criminal justice and corrections practices in Hawai`i through the development of a comprehensive data-driven plan that would allow for the return of mainland prisoners to Hawai`i, and to redirect the cost savings to programs that hold offenders accountable, reduce recidivism, and ensure victim and public safety. JRI policy options and funding recommendations seek to assure that interventions, treatment programs, and intensive supervision are focused on individuals at the greatest risk to commit more crimes after release.

The JRI legislative package includes significant funding for a victim services component. Under this proposal, JRI Hawai`i will make Hawai`i the only state where funds are reinvested in victim services. JRI recommendations include funding for 13 new victim assistance staff in the several county prosecutors' offices, funding to continue the Statewide Automated Victim Notification Program (the "SAVIN Program"), funding to establish a Victim Services Unit in PSD, and funding for a restitution accountability program in the Commission.

The JRI reinvestment in victim services will improve restitution collections and ensure that victims receive advance notification through an automated system informing them of an offender's parole hearing and release dates. This advance notification will enable victims to exercise their right to be heard at the parole hearing. A victim services unit will also be created in PSD to staff the victim notification program, which will assist in addressing restitution shortfalls in PSD, coordinate with community victim service providers and victims to develop safety plans, and protect victims from intimidation by incarcerated offenders. Victim advocates will also be enabled to monitor and collect data on decisions made by the courts, probation, corrections, and parole.

JRI Hawai`i is the only JRI initiative that includes reinvestment funds for victim services. The JRI victim service component will ensure that victim needs, community safety, and offender accountability are in the forefront of JRI implementation, and will work hand-in-hand with other JRI initiatives to increase public safety.

The Commission serves as a member of the JRI Working Group. Part of the Commission's role as a member of the JRI Working Group has been to engage crime victims, survivors, and victim service providers and advocates in identifying key issues and concerns specific to the JRI initiative. A victim/survivor/advocate roundtable briefing and discussion was conducted in September 2011 by Anne Seymour, a consultant with the Pew Center and the Council of State Governments, and Robert Coombs from the Justice Reinvestment Team. A summary of the key priorities identified by the roundtable were presented at the September 2011 JRI Working Group meeting. The established key priorities are: 1) restitution collections shortfalls; 2) the sustainability of the SAVIN Program, which provides victim notification of changes in offender custody status and parole hearing notice; 3) the need to prioritize supervision and treatment based on offender risk and danger level; and 4) the need for information sharing with the victim services community.

Restitution Collection Shortfalls

Restitution collection shortfalls have been a significant issue for crime victims in Hawai`i. Failure of the criminal justice system to collect and pay restitution leaves many crime victims without the ability to recover from the financial impacts they suffered as the result of the crime. All agencies involved in the enforcement of restitution collection must consistently provide the coordinated leadership and uniform commitment necessary to transform the Hawai`i criminal justice system so that the system successfully works for victims.

The Commission has conducted a pilot project to collect restitution from inmates and parolees (the "Restitution Project") since 2003. Since the Restitution Project was initiated, the Commission has

opened over 3,200 restitution and compensation fee cases and collected over $1,500,000. A collateral benefit of the Restitution Project was the identification by the Commission of a number of concerns impacting the procedures for the assessment and collection of restitution. When the Commission first began the Restitution Project, correctional facilities and parole officers were unable to accurately track an inmate's restitution payments making it difficult to enforce restitution orders. The county prosecutors and victim witness advocate programs did not have standardized restitution procedures, restitution was not being requested in all eligible cases and, when restitution was ordered, victim-identifying information was not always preserved, preventing the successful assessment and collection of restitution.

While many of these issues were successfully addressed, through a recent survey of restitution collection from inmates by PSD the Commission has now identified two additional areas of concern:

1. Restitution payments from inmate workline wage deductions are not being forwarded to the Commission by the correctional facilities for payment to victims on a timely basis;
2. Court ordered restitution is not being deducted from inmate wages in all cases, as required by statute, because restitution accounts are not being opened by the correctional facilities for all inmates who have been ordered by the Court to pay restitution.

The Commission surveyed 224 inmate restitution cases to determine whether the correctional facilities were enforcing restitution orders as required by Hawai`i Revised Statutes (HRS).[1] HRS §353-22.6 provides that the PSD Director enforce restitution orders through a ten percent (10%) deduction from workline wages. Of the 224 restitution cases, 179 inmates with restitution orders worked, but there were no deductions from those inmates' workline wages for restitution and, in 65 of those cases, more than one correctional facility failed to identify that the inmate had been ordered to pay restitution. More than seven thousand dollars ($7,000.00) in workline wage deductions were not collected because the correctional facilities failed to identify that the inmate owed restitution.

While there has been progress in addressing some of the issues that obstruct the ability of Hawai`i crime victims to recover their crime-related losses from court-ordered restitution, significant institutional barriers remain. Some of the barriers were highlighted in a recent series of articles published in the *Honolulu Star-Advertiser*. These barriers include, for offenders on probation, or otherwise supervised by the Judiciary, an inability to track how many offenders owe restitution, what they owe, and how much they have paid, and the Court's failure to enforce its own restitution orders. In response to these articles the Judiciary formed a Restitution Working Group to address these issues.

In a response to the editor, Rodney A. Maile, Administrative Director of the Courts, wrote, "...offenders' failure to fully pay court-ordered restitution is a difficult, complex and long-standing problem, but one that absolutely has to be addressed because of the hurtful impact it has on victims and because non-compliance with court orders undermines public trust and confidence in the justice system."

The JRI initiative addresses some of these longstanding issues by providing funding for a restitution accountability program that tracks and reports restitution payments from PSD, parole, and the

[1] The survey was not a random survey. Cases surveyed included, but are not limited to: 1) cases where Commission received a judgment ordering an offender to pay restitution, but no payment was ever received; 2) cases where restitution was previously paid, but there was a lack of payment activity for more than a year; and 3) recently opened cases with payments from the mainland branch or the paroling authority (cases where the paroling authority began collecting restitution, and restitution was not collected by the correctional facilities). Some offenders in the survey were already off status.

Judiciary[2] (in cases where restitution is ordered to repay the Commission). A second phase of JRI should include an initiative to address the issues identified by this part of the Restitution Project.

In addition, JRI initiative funding for victim advocates in the county prosecutors' offices ensures that victims are aware of their right to receive restitution and that restitution becomes a top priority. Additionally, increasing the amount of restitution payable by inmates from 10% of inmate wages, to 25% of all funds deposited into an inmate's account will ensure that offenders make prompt and meaningful restitution payments to crime victims.

Continuing the Statewide Automated Victim Notification System
PSD currently houses the SAVIN Program that provides automated notification to crime victims by phone or victim notification of changes in offender custody status. Federal funding for SAVIN will expire in 2012. The JRI budget proposal increases community and victim safety by providing funding to continue the SAVIN Program's important function of providing information to crime victims and others about inmate custody status changes, such as the release date of offenders, if the offender has escaped, and the date of upcoming parole hearings. This information gives victims peace of mind and enables them to do safety planning. Advance notification to victims about upcoming parole hearings enables victims to exercise their right, under HRS, Section 801D, to speak at the hearing, and ensures that the paroling authority's decisions are informed by the concerns of crime victims.

Prioritize supervision and treatment by offender risk and danger level
The JRI funding proposal includes funding for additional county-based victim advocates to ensure that victim and witness safety assessments are integrated into all offender custody decisions by providing timely victim and community safety information to prosecutors, Intake Services, Parole, and other related personnel in PSD. These additional staff are essential in order to ensure that the pretrial risk assessments are informed by victim input and community safety concerns.

Concerns surrounding supervision decisions and offender risk are addressed by requiring PSD and the parole board to use a validated risk assessment instrument to determine the offender's risk for reoffense and suitability for community supervision.

Further, the new PSD Victim Service Unit will coordinate with victim services providers to ensure that victims receive timely notification of offender custody status, educate offenders about the impact of crime on victims, provide safety planning for victims where the offender is going to be released, and ensure that victims are protected from harassment by incarcerated offenders. Hawai`i is currently the only state without a corrections-based victim service program.

Share information with the victim service community
JRI funding for victim services will ensure that information about the implementation of the JRI program is shared with the victim community and, to the extent that there are issues that impact victim and community safety, that these issue are handled as a top priority.

Thank you for providing the Commission with the opportunity to testify in support of House Bill 2514, HD3.

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[2] Restitution ordered pursuant to Section 706-646(2), Hawai`i Revised Statutes, which provides, in part, that "the court shall order restitution to be paid to the crime victim compensation commission in the event that the victim has been given an award for compensation under chapter 351."

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN

Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
ADRIENNE KING
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH
CAROL ANNE PHILIPS

Executive Director
Catherine Betts, Esq.

Email:
DHS.HSCSW@hawaii.gov
Web:
www.hawaii.gov/dhs/women/
HSCSW

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

March 20, 2012

Testimony in Support, HB 2514, HD 3

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

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Catherine Betts, Esq., Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support of HB 2514, HD3, Relating to Public Safety

On behalf of the Hawaii State Commission on the Status of Women, I would like to thank the committee for this opportunity to provide testimony on this issue. I would like to express my support for HB 2514, HD 3. The Justice Reinvestment Initiative team provided an independent inquiry into the flaws of our criminal justice system. This bill is based on the sound evidence and thorough analysis performed by the Justice Reinvestment Initiative and attempts to address the huge waste of financial resources that our State pours into a broken system, year after year. This bill would amend statutes to require a quickly conducted pre trial risk assessment, an expansion of the parole board to increase frequency and efficiency of parole board hearings, an increase in restitution to victims of crime and a required period of parole supervision prior to the maximum sentence date.

Conducting validated risk assessments is crucial to preventing financial waste. It would identify those offenders who are at high risk of re-offending, and those who have a relatively low risk for re-offending. As indicated by The Pew Center on the States, "Research consistently has shown that assessing each individual's risk of reoffending, matching supervision and treatment to an offender's risk level and targeting his or her unique criminal risk factors and needs with proven programs significantly improves offender outcomes, reduces recidivism and enhances public safety."[1] Validated and evidence based risk assessments must be done in order for our criminal justice system to function intelligently and function well.

Finally, it is crucial that victims and survivors of crime be addressed throughout this process. This bill would appropriate funds for fifteen victim advocate positions, which would thereby allow the state to create an infrastructure for offender accountability through restitution. Restitution assists in helping victims and survivors of crime move forward, whether it be through treatment, rehabilitation or other forms of rehabilitative care. A quality criminal justice system must maintain some focus on victims and survivors and this bill would ensure that we stop wasting taxpayers money and instead, reinvest those funds into the safety and well being of our community. By focusing on how to best reintegrate the incarcerated and support their rehabilitation, this legislation would allow for safer communities, less recidivism by offenders and less waste of state funds. Please pass HB 2514, HD 3. Thank you for your time.

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[1] Issue Brief, Public Safety Performance Project, The Pew Center on the States, September 2011, available at www.pewcenteronthestates.org/publicsafety.

AFSCME
LOCAL 152, AFL-CIO

888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000
Facsimile: 808.528.4059

www.hgea.org

The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Public Safety, Government Operations and Military Affairs
and
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
March 21, 2012

H.B. 2514, H.D. 3 – RELATING TO PUBLIC SAFETY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2514, H.D. 3, which makes important statutory changes based upon a series of recommendations from the Justice Reinvestment Initiative's study of Hawaii's correctional and criminal justice systems. The suggested changes could save an estimated $108 - $150 million over six years by reducing the number of inmates at mainland prison facilities without compromising public safety.

The cost of housing inmates out-of-state was $45 million for FY 2011. Approximately one-third of Hawaii's inmates reside in out-of-state facilities. Easing the need to house about 1,700 prisoners on the mainland will result in more of that money remaining in Hawaii and stimulating the local economy.

More specifically, H.B. 2514, H.D. 3 amends various statutory provisions by:

(1) Requiring a pre-trial risk assessment to be conducted within three working days to reduce the number of inmates awaiting trial;

(2) Expanding the parole board from three to five members;

(3) Requiring the use of validated risk assessments to guide parole decisions;

(4) Limiting the length of incarceration for first-time parole violators to six months;

(5) Increasing victim restitution payments by inmates;

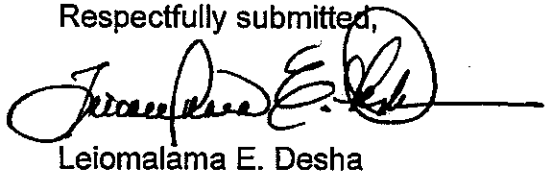
(6) Requiring a period of parole supervision prior to the maximum sentence date to reduce the likelihood of recidivism;

(7) Requiring that savings achieved by reducing the incarcerated populations must be reinvested within the criminal justice system in staffing programs to achieve the goals and objectives of the Justice Reinvestment Initiative based upon specified guidelines; and

(8) Making an unspecified appropriation to hire a wide range of personnel at the state and county levels to carry out the goals and objectives of the Justice Reinvestment Initiative.

Thank you for the opportunity to testify in support of H.B. 2514, H.D. 3 without the defective date.

Respectfully submitted,



Leiomalama E. Desha
Deputy Executive Director

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE WILL ESPERO, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai`i

March 21, 2012

RE: H.B. 2514, H.D. 3; RELATING TO PUBLIC SAFETY.

Chair Espero; Chair Hee; Vice-Chair Kidani; Vice-Chair Shimabukuro; members of the Senate Committee on Public Safety, Government Operations, and Military Affairs; and members of the Senate Committee on Judiciary and Labor; the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony expressing concerns regarding--and suggesting amendments to--H.B. 2514, H.D. 3.

Section 3 of this bill requires that the reentry intake service center be mandated to "conduct internal risk assessments...within three working days of admission to the community correctional center..." The Department is against this provision because currently there exists an assessment instrument that is used to determine whether a bail report should be prepared for the courts. If a bail report is prepared for the court, and finds the accused to be dangerous or flight risk, the court will hold an expedited bail hearing to determine whether the accused may be placed on supervised release.

Section 5 of this bill would increase the Hawai'i paroling authority from 3 to 5 members. The Department is in favor of this provision.

Section 7 of this bill would limit a parole violator to a 6-month period of reincarceration or the remaining portion of the prisoner's sentence, whichever is shorter, when a parole is revoked. The Department is against this provision. Discretion should be left with the paroling authority to

make that determination. In conformance with this rationale of not interfering with the paroling authority's discretion, the Department is also against the provision of Section 13.

We agree that additional measures are needed to facilitate payment of restitution to crime victims; however, Section 10 of this bill would do very little to improve things, as the vast majority of offenders owing restitution are not in prison, and other sections of this bill propose to release even more people from our prisons. To effectively facilitate restitution payments, the Department suggests incorporating S.B. 2892, to:

1. include unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support or judgments owed to State agencies);

2. remove a court's ability to revoke restitution once ordered as part of a defendant's sentencing (this would not affect their abilities to appeal a conviction);

3. create standards and procedures for income-withholding, similar to those used for outstanding child support payments; and

4. extend victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders civilly.

The Committees should also consider an amendment to HRS §706-746, to apply bail monies toward any restitution owed, once a defendant is sentenced.

In conclusion, before any laws releasing prison inmates are implemented, the treatment programs and personnel providing for supervision should be in place. However, the Department would ask that the Committee scrutinize the positions being requested as to whether there is a need for "research and planning" personnel. There should be more parole and probation officers.

Thank you for the opportunity to testify on H.B. 2514, H.D. 3.

OFFICE OF THE PROSECUTING ATTORNEY

COUNTY OF KAUAI, STATE OF HAWAII
3990 KAANA STREET, SUITE 210, LIHUE, HI 96766
TEL: (808) 241-1898
TOLL FREE: (800) 668-5734
FAX: (808) 241-1758

Shaylene Iseri-Carvalho
Prosecuting Attorney

Jake Delaplane
First Deputy Prosecuting Attorney

Sam Jajich
Second Deputy Prosecuting Attorney

March 19, 2012

TO: SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS AND SENATE COMMITTEE ON JUDICIARY
FR: SHAYLENE ISERI-CARVALHO, COUNTY OF KAUAI PROSECUTING ATTORNEY
RE: H.B. 2514, H.D. 3; RELATING TO PUBLIC SAFETY

Chair Espero, Chair Hee, and committee members, thank you for hearing this bill. The Honolulu Prosecuting Attorney has written to you expressing concerns regarding HB 2514, HD3, Relating to Crime. We echo these concerns. Though economic efficiency and spending concerns are a top priority in the State, we recognize that this cannot be sought after to the detriment of public safety. Therefore, we support the suggested amendments and proposals put forward by the Honolulu Department of the Prosecuting Attorney and offer our own recommendations as well.

Specifically, we agree with the Honolulu Prosecuting Attorney that the Section 3 timeline for transition needs to be in place before proposed measures can be reasonably implemented. Further, we agree that Section 12 should include discretion for the Hawai'i Paroling Authority. We also agree that Sections 7 and 12 should include an exception where the offender has local, state, or federal detainers or holds. Finally, we agree with the recommendations regarding restitution which were put forward by the Honolulu Prosecuting Attorney.

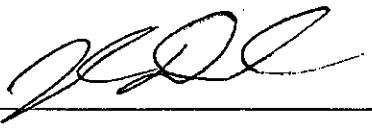
We additionally voice our own concerns as to this bill. Specifically, we object to Section 7 of HB 2514. This section amends Section 353-66 of the Hawai'i Revised Statutes by limiting the length of re-incarceration for parole violators who have violated conditions of parole, who have left the state without permission, or who have failed to meet sex offender registration requirements. Though this may be effective in limiting costs spent housing prisoners, this re-incarceration limitation lessens the severity of parole violations. This will lessen the incentive parolees have to abide by the conditions of their parole and may in the long run lead to an increase in costs as the number of parole violations increase.

We additionally recommend amendments to Section 8 of HB 2514. This section amends Section 706-670 of the Hawai'i Revised Statutes by requiring the use of validated risk assessments to guide parole decisions at parole hearings. We recommend that these assessments

be discretionary, and that they only be factors used in addition to any other factors relevant to the parole decision. This will ensure that additional considerations, not currently within the consideration of the legislature, but arising as the case may be, will not be overlooked and may be part of the parole decision process.

We understand that much thought and hard work has gone into the drafting of this bill and we realize that fiscal responsibility is of paramount importance in this State. We do, however, recognize that such fiscal responsibility, though important, cannot come before public safety. Therefore we submit the above recommendations. We thank you for this opportunity and look forward to further discussion on the matter.

Mahalo,



Jake Delaplane
First Deputy Prosecuting Attorney, County Of Kauai

ALAN M. ARAKAWA
Mayor

JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAI'I 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

HB 2514, HD 3 - RELATING TO PUBLIC SAFETY

March 21, 2012

The Honorable Will Espero
Chair
The Honorable Michell N. Kidani
Vice Chair
and Members
Senate Committee on Public Safety, Government Operations, and Military Affairs
The Honorable Clayton Hee
Chair
The Honorable *Maile S.L. Shimabukuro*
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chairs Espero and Hee, Vice Chairs Kidani and Shimabukuro and Members of the Committees:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS this measure WITH AMENDMENTS.

Section 3 of this bill requires that the reentry intake service center be mandated to "conduct internal risk assessments . . . within three working days of admission to the community correctional center . . . ." We OPPOSE this provision because there already is an assessment instrument to determine whether a bail report should be prepared. If a bail report is prepared and

finds the accused to be dangerous or a flight risk, the court holds an expedited bail hearing to determine whether the accused may be placed on supervised release.

Section 5 of this bill increases the Hawaii Paroling Authority ("HPA") from three to five members. The Department is OPPOSES of this provision. We believe that the current three member HPA format is sufficient.

Section 7 of this bill would limit a parole violator to a six-month period of reincarceration or the remaining portion of the prisoner's sentence, whichever is shorter, when a parole is revoked. We OPPOSE this provision. Discretion should be left with the HPA to make that determination. In conformance with this rationale of not interfering with the HPA's discretion, we also OPPOSE the provisions of Section 13.

While we agree that additional measures are needed to facilitate payment of restitution to crime victims; Section 10 of this bill would do very little to improve things, because a great majority of offenders owing restitution are not in prison, and other sections of this bill propose to release even more people from prison. To facilitate restitution payments effectively, we suggest incorporating SB 2892, to:

1. include unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support or judgments owed to State agencies);

2. remove a court's ability to revoke restitution once ordered as part of a defendant's sentencing (this would not affect their ability to appeal a conviction);

3. create standards and procedures for income-withholding, similar to those used for outstanding child support payments; and

4. extend victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders civilly.

The Committees should also consider an amendment to HRS § 706-746 to apply bail monies toward any restitution owed once a defendant is sentenced.

Finally, we believe that treatment programs and personnel supervising offenders should be en place before any laws releasing prison inmates are implemented. There should be more parole and probation officers, for example, the community service coordinator (the person supervising offenders sentenced to community service work) has been vacant for some time. We believe that sufficient personnel is needed to provide sufficient offender supervision in order for these proposals to work.

Thus, based on the foregoing, the Department of the Prosecuting Attorney, County of Maui, requests that the measure be PASSED WITH AMENDMENTS as set forth above. Thank you very much for the opportunity to provide this testimony.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) 533-3454, (808) 927-1214 / kat.caphi@gmail.com

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS
Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Wednesday, March 21, 2012
10:00 a.m.
Room 016

STRONG SUPPORT FOR HB 2514 HD3 - RELATING TO PUBLIC SAFETY

Aloha Chairs Espero and Hee, Vice Chairs Kidani and Shimabukuro and Members of the Committees!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered, always being mindful that 6,000 Hawai`i individuals are living behind bars, including 1,800 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

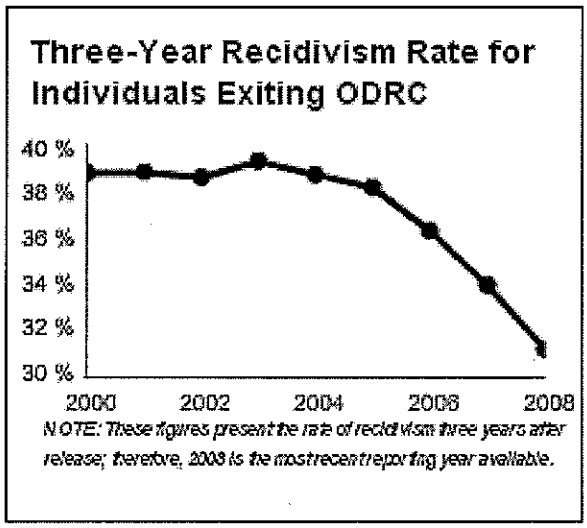
HB 2514 HD3 is based on analysis and policy options developed as part of the justice reinvestment initiative. It amends statutes to require a pre-trial risk assessment be conducted within three working days, expands the parole board and requires the use of validated risk assessments to guide parole decisions, limits the length of incarceration for first-time parole violators, increases victim restitution payments by inmates, and requires a period of parole supervision prior to the maximum sentence date.

Community Alliance is in strong support of this measure. We appreciate the focus on reentry as a strategy for reducing recidivism, victimization, and enhancing community safety. Establishing community reentry centers that focus on support will definitely help create successful transitions for individuals exiting incarceration and reintegrating with their communities.

We attach hereto an article entitled *Reforming A System: An Inside Perspective on How Ohio Achieved a Record-Low Recidivism Rate* By Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction http://www.nationalreentryresourcecenter.org/announcements/3-12-12.

> *EDITOR'S NOTE- In late 2010, Ohio's prisons were 33 percent overcapacity and projected to grow by another 3,000 people over the next four years. State leaders from across the political spectrum came together to tackle this problem – and by June 2011, enacted a policy framework (incorporated into House Bill 86) that reduces spending on corrections and increases public safety.*

Now, less than two years later, ***Ohio's recidivism rate is the lowest it's been since the state adopted its current measurement in 1991.*** *By implementing HB 86, the state hopes to avert the projected prison population growth and thereby avoid an estimated half-billion dollars in additional spending. The new statute will also ease prison crowding as the population gradually declines to levels last seen in 2008, generating $46 million in marginal cost savings by 2015.*



In this article, Director Gary Mohr, the head of the Ohio Department of Rehabilitation and Correction (ODRC), describes how his agency has helped drive down Ohio's recidivism rate by realigning its policies to focus on reentry and advance the goals of HB 86.

As Director Mohr discusses, HB 86 emerged from a process of extensive data analysis and stakeholder engagement. Using a "justice reinvestment" approach, Ohio received over 18 months of intensive technical assistance from the Council of State Governments (CSG) Justice Center (which coordinates the National Reentry Resource Center), in partnership with the Pew Center on the States and the U.S. Department of Justice's Bureau of Justice Assistance (BJA).

We find it incredibly insulting that the bail bondsmen community has tried to strong-arm the legislature complaining that they were not, as so eloquently described 'shareholders/stockholders', in the JRI process. The Justice Reinvestment Initiative is based on Hawai`i data supplied by agencies from all three branches of government. The recommendations are data driven, evidence-based and proven best practices.

The JRI working group was comprised as a POLICYMAKING body of agencies across the criminal justice system. The bail bondsmen DO NOT create policy; they follow it. Just as the community has a right to weigh in on legislation, so does the bail bondsmen community. The assertion that they should have been included in the state policymaking body is just wrong. They are businesses and as such, can provide input on any legislation affecting their business, as can any citizen.

Justice Reinvestment starts with accurate assessments and we are happy that the Department of Public Safety has taken this to heart and is training their staff. Shortening the time in which competent assessments are done is in line with correctional best practices across the nation as the goal is always to move individuals through the system and not stack up people in the front or back end, clogging the system and creating massive and expensive inefficiencies.

Community Alliance on Prisons supports restitution to make victim whole, although we have some concerns about the dramatic increase in restitution payments. The families that we work with are struggling to make ends meet and they are the ones who provide funds for their loved ones to purchase items like toiletries, food and needed clothing in the over-priced prison commissaries. Our concern is the impact of taking 25% of those funds from inmates who have little to spare. Perhaps a sliding scale can be implemented so that inmates with ample funds pay more than those with meager funds. Our concern is that the lack of funds for needed items will create a management problem at facilities and a thriving underground economy. We respectfully ask you to consider our concerns in this regard.

We support the release of individuals before their maximum term expiration with supervision, provided that it also includes support for successful reentry. The latest data from the Interagency Council on Intermediate Sanctions (ICIS) show that the rate of recidivism for those serving their maximum term and then released with no supervision or support from the 2008 cohort studied is 69.3%, while the recidivism rate for those on probation for the same period was 48.4% and parole was 48.5%. This dramatically illustrates the need for supervision and support for those exiting incarceration. We found it alarming that the prosecutors were actually recommending changes that were unconstitutional in prior hearings.

Increasing the Hawai`i Paroling Authority (HPA) by adding two part-time members is wise, as long as it is clear that three members are authorized to hold the hearings, while the other two can be reviewing files. We understand that HPA holds approximately twenty-five (25) hearings a day, thus the addition of two part-time members will reduce the burden on the current three members and expedite hearings.

This approach, however, requires a philosophical shift in how people are supervised -- a shift from looking for mis-steps to "How can we help you successfully reenter your community and reach your goals?" We have spoken with parole and probation officials in other jurisdictions and have been told that a supportive environment is what works best for most individuals and systems elsewhere. The data show and many, many experts have asserted that incentives, not sanctions, are what work for those with substance abuse problems. Since the majority of Hawai`i's crime is rooted in substance abuse, this strategy seems a logical one for us to pursue.

Please base your decisions on the thoughtful, data-driven, evidence-based and proven JRI approach and not the private businesses that profit from the current system.

Mahalo for this opportunity to testify.

Attachment:

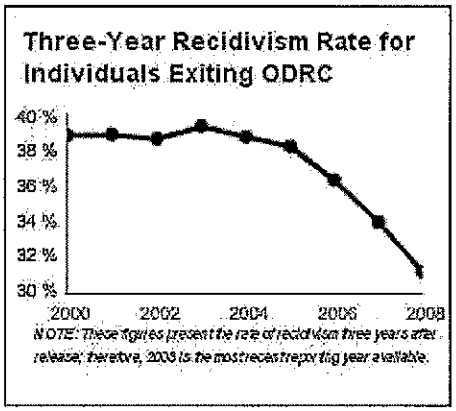
Reforming A System: An Inside Perspective on How Ohio Achieved a Record-Low Recidivism Rate
By Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction
http://www.nationalreentryresourcecenter.org/announcements/3-12-12.

Announcement for 03/12/12

Reforming A System: An Inside Perspective on How Ohio Achieved a Record-Low Recidivism Rate

By Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction
http://www.nationalreentryresourcecenter.org/announcements/3-12-12

***EDITOR'S NOTE**- In late 2010, Ohio's prisons were 33 percent overcapacity and projected to grow by another 3,000 people over the next four years. State leaders from across the political spectrum came together to tackle this problem—and by June 2011, enacted a policy framework (incorporated into House Bill 86) that reduces spending on corrections and increases public safety.*



ODRC Recidivism Trends

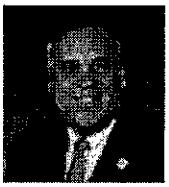
Now, less than two years later, Ohio's recidivism rate is the lowest it's been since the state adopted its current measurement in 1991. By implementing HB 86, the state hopes to avert the projected prison population growth and thereby avoid an estimated half-billion dollars in additional spending. The new statute will also ease prison crowding as the population gradually declines to levels last seen in 2008, generating $46 million in marginal cost savings by 2015.

*In this article, **Director Gary Mohr, the head of the Ohio Department of Rehabilitation and Correction (ODRC)**, describes how his agency has helped drive down Ohio's recidivism rate by realigning its policies to focus on reentry and advance the goals of HB 86.*

As Director Mohr discusses, HB 86 emerged from a process of extensive data analysis and stakeholder engagement. Using a "justice reinvestment" approach, Ohio received over 18 months of intensive technical assistance from the Council of State Governments (CSG) Justice Center (which coordinates the National Reentry Resource Center), in partnership with the Pew Center on the States and the U.S. Department of Justice's Bureau of Justice Assistance (BJA). Throughout this process, officials are exploring strategies for capitalizing on the efforts of the state's 27 Second Chance Act grantees — which include Director Mohr's agency. With continued resources and support, state leaders are now working with the CSG Justice Center, Pew, and BJA to effectively implement HB 86 (in what is known as "Justice Reinvestment Phase II").

"The drop in Ohio's recidivism rate is due to the bipartisan work of the state legislature, Governor Kasich, Ohio's reentry leaders and the success of programs made possible at the federal level by the Second Chance Act," said U.S. Senator Rob Portman, the author of the 2004 Second Chance Act (when he served in the U.S. House of Representatives).

"Ohio, like many states, is struggling with high unemployment and tight budgets," Sen. Portman continued. "That's why it's great to see this program help offenders become productive members of society, while reducing costs to taxpayers. I commend Director Mohr, Governor Kasich and other state leaders involved in Second Chance for their commitment to effective prisoner reentry programs that improve communities and save taxpayer dollars."



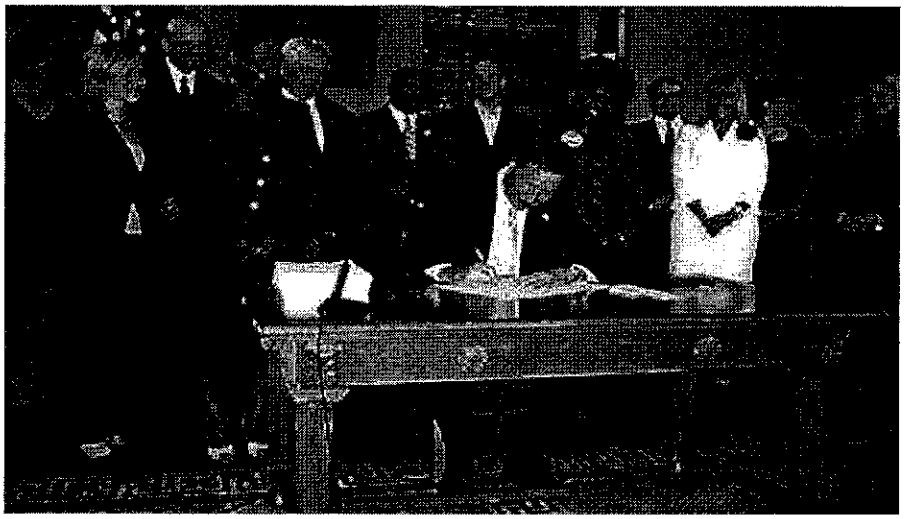
Gary C. Mohr was appointed director of the ODRC by Governor John Kasich in January 2011. (Photo credit: ODRC)

The Ohio Department of Rehabilitation and Correction (DRC) looks drastically different than it did one year ago. As 2010 came to a close, Ohio's prison system was bursting at the seams with nearly 51,000 inmates. Prison violence was staggering while at the same time the agency, as well as the entire state, was facing unprecedented budget cuts. Some would question why a retired warden would want to come back to public service to lead an agency riddled with issues of this magnitude. For me, the answer was simple. Governor John Kasich wanted to reform and stabilize Ohio's prison system and reduce the impact of criminal behavior on Ohioans. That challenge was too important for me to turn down.

I'm pleased to say that the reforms we've put in place in the last year have had a dramatic impact. Ohio's recidivism rate now stands at 31.2 percent. This is the lowest the rate has been since Ohio began tracking the figure using current methods in 1991. Ohio's recidivism rate is a three-year figure based on a cohort of offenders released in 2008. The recidivism rate for offenders released in the previous cohort (2007) was 34.03 percent. The recidivism rate for the 2003 release cohort was 39.52 percent—the highest rate recorded in Ohio (since the state adopted its current measurement). In addition, the one-year rate for offenders released in 2010 also reflects a record low—9.3 percent of released offenders recidivated within a year of their release, a reduction from 10.59 percent from the year prior (2009).

How was this possible? In short, by relying on the increased use of evidenced-based practices and modifying reception assessment process, processes for identifying treatment needs for offenders under supervision, and our prison's classification systems, Ohio is seeing fewer offenders return to prison and a greater return on our investments.

In 2010, 46 percent of offenders who entered Ohio's prison system served sentences of one year or less. These offenders spent most of their time in reception centers where they did not have access to rehabilitative programming, and many were released without supervision. Last year Ohio passed House Bill 86, the most significant sentencing reform package in the state's history. The new law aims to reduce crime by diverting first-time, non-violent offenders to intensive community programming and away from the corruptive influence of career criminals in Ohio's prison system. The law also aims to reduce overcrowding and incidents of prison violence and to better prepare inmates for a successful reentry back into the community.



Ohio Governor John Kasich signing HB 86 on June 29, 2011. (Source: CSG Justice Center)

While the impact of sentencing reform is beginning to translate into a smaller inmate population, DRC is currently transforming the entire prison operation to a unique three-tiered system aimed at reducing violence and increasing opportunities for positive change—thus decreasing the likelihood that offenders commit new crimes following their release from prison. Once fully implemented, every inmate will be placed in one of these three tiers.

- Control Units will house the most disruptive and violent offenders, and will be tightly monitored with strict security protocols.
- General Population Units will house offenders who have not violated significant institution rules, but also have not taken initiative to enroll in evidenced-based programs. Unit management teams trained to deliver evidence-based programming tailored specifically to that unit will oversee them.
- Reintegration Units will house offenders nearing release, and will provide meaningful community transition services such as job readiness opportunities and social service linkages. They will model community standards and expectations, including eight-hour work days.

An inmate can work his or way up or down these three tiers, based on individual behavior. Not only does this system give offenders a sense of hope; it also encourages pro-social behavior and participation in meaningful programming by offering incentives and privileges, such as a less restrictive environment, recreation and visitation opportunities, and increased commissary rights.

In addition to developing a three-tier prison system, DRC is reinventing how its units are managed within the prison walls. Unit management will increase the face-to-face contact offenders have with unit staff. The staff will assist them with their day-to-day issues before these issues become problematic. Coupling the three-tier system with enhancements of unit management will increase offenders' readiness for release and decrease the number of violent incidents taking place within Ohio's prisons.

Ohio's criminal justice reform efforts expanded even further when in November 2011 DRC hosted aforum examining the impact of collateral consequences on people returning from prison or jail or sentenced to a term of community supervision. The first of four such meetings, the forum brought together criminal justice professionals, lawmakers and other key stakeholders. Over the course of several months, participants have identified five strategies to effectively reduce or eliminate

barriers to returning citizens finding employment: 1) Clearly identify the magnitude of collateral sanctions that currently exist in Ohio law and policy; 2) Address collateral consequences relating to license suspensions, infractions, and indigent fees; 3) Develop an order of limited relief; 4) Focus on fair hiring practices; and 5) Modify child support orders and processes for offenders subject to license suspension due to non-payment of child support. A sub-group is also considering the impact of collateral consequences for juveniles involved with the criminal justice system.

Through input from various stakeholders, participant workgroups have developed and continue to refine recommendations to address collateral consequences. These recommendations will soon translate into policy and legislative language that will remove or significantly reduce the barriers offenders face in finding gainful employment. The connection between employment and the reduction of recidivism cannot be overstated, and these efforts will positively impact that correlation.

Ohio is quickly and steadily transforming and changing its criminal justice system—and we are already seeing dramatic returns on our investment. While these changes will impact many areas of the system, the most significant impact will be seen as DRC refines its mission surrounding these reforms – to reduce the number of offenders returning to prison and to decease crime in Ohio. This truly is a win/win situation for all Ohioans.

All announcements and events for March 2012

HAWAII SUBSTANCE ABUSE COALITION

HB2514 RELATING TO PUBLIC SAFETY pre-trial risk assessment in 3 days; expand parole board; assessments guide decisions; limit incarceration; increase restitution; parole supervision prior to sentence

- SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS: Senator Will Espero, Chair; Senator Michelle Kidani, Vice Chair
- SENATE COMMITTEE ON JUDICIARY AND LABOR: Senator Clayton Hee, Chair; Senator Maile Shimabukuro, Vice Chair
- March 21, 2012 10:05 a.m.
- Conference Room 016

HSAC Supports HB2514:

Good Morning Chair Espero; Chair Hee; Vice Chair Kidani; Vice Chair Shimabukuro; And Distinguished Committee Members. My name is Alan Johnson, Chair of the Hawaii Substance Abuse Coalition, a hui of about 20 treatment and prevention agencies across the State.

What has been the overall result?

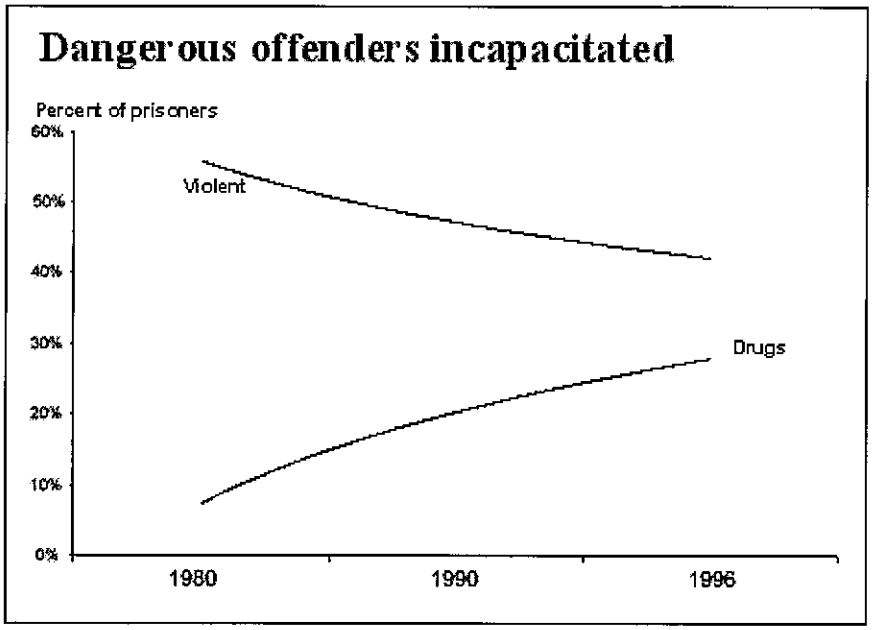
- Prisons have grown substantially over the last 25 years.
- Prisons are extremely expensive.
- 200% increase over the last 10 years only reduced violent crime by 9%.
- The huge increase is for non-violent drug addicts had little or no effect on drug dealing or use.
- Increasing the length of sentences for drug offenders costs an additional $1.5 billion a year nationwide, with no reduction in drug crimes.
- Mandatory sentencing has led to greater racial disparity.

What works According to Research

- Use mandatory sentencing only for violent crimes, not non-violent drug addicts.
- Give discretionary decision making to probation/parole who could release "reformed" offenders
- Improve upon the numerous inefficiencies between agencies.
- Reduce long sentences for non-violent drug offenders and divert to treatment.
- Use competent assessment protocols to determine safety risk and relate it to sentencing
- Employ best practices to integrate Public Safety, Judiciary and community-based programs.

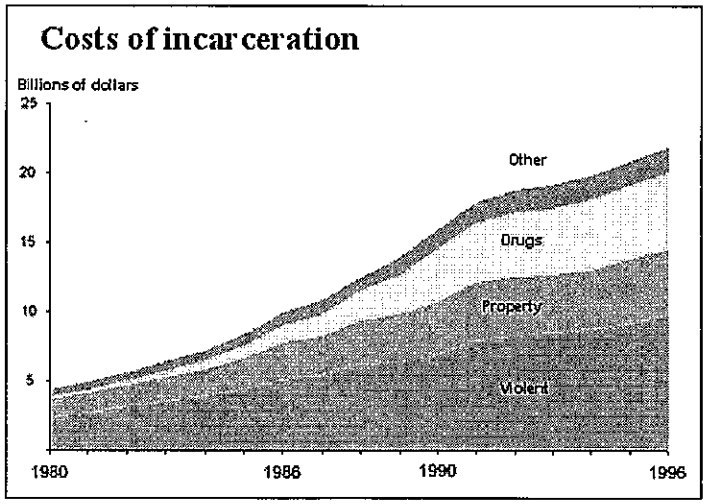
The vast majority offenders who are properly treated by supervision and community professionals are no longer committing drug related crimes.

Prisons are Full Due to Non-Violent Drug Offenders



Most incarcerated drug offenders are not violent offenders:

- 85% of drug offenders have no history of prior incarceration for violent crimes;
- 33% of drug offenders are incarcerated for possession, use, or miscellaneous drug crimes;
- 40% of federal drug offenders have no current or prior violence on their records.



As the above chart shows, more than half the cost of incarceration, which has increased dramatically since 1980, is a result of keeping non-violent offenders in prison.

We appreciate the opportunity to testify and are available for questions.

Sources:

1. William J. Sabol: Crime Control and Common Sense Assumptions Underlying the Expansion of the Prison Population, Urban Institute: May 1999. http://www.urban.org/url.cfm?ID=410405

AMERICAN CIVIL LIBERTIES UNION of HAWAI'I

Committee:	Committee on Public Safety, Government Operations & Military Affairs Committee on Judiciary & Labor
Hearing Date/Time:	Tuesday, March 21, 2012, 10:00 a.m.
Place:	Conference Room 016
Re:	*Testimony of the ACLU of Hawaii in Support of and With Comments to H.B. 2514, H.D.3, Relating to Public Safety*

Dear Chairs Espero and Hee and Members of the Committees:

The ACLU supports the elimination of excessively harsh sentencing policies that contribute to the over-incarceration of low-risk offenders. Risk assessment instruments, as provided for H.B. 2514, H.D. 3, have the potential to identify low-risk defendants or prisoners that can be released without impacting public safety, thereby saving the state the high cost of incarcerating such people. The use of these tools helps to ensure the most effective allocation of state resources, as well as the fair and objective administration of the law.

Please consider making the following amendments to H.B. 2514, H.D. 3:

- Amend section 3(b)(3) to require that all defendants receive a risk assessment prior to a bail hearing to ensure that the court can set a proper bail based on an accurate measure of the defendant's risk of endangering public safety.

We urge the adoption of several additional requirements so that the risk assessment provides the most precise and scientifically correct results.

Please note that this amendment will exclude persons with detainers placed by the federal government and save the state a significant amount of money. Currently, for example, the Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), can place a 48-hour hold on an individual, meaning that the State can legally detain the individual for 48 hours past the individual's designated release time. This gives ICE an opportunity to take the person into federal custody for the purposes of placing the person in removal (*i.e.*, deportation) proceedings. That 48 hour clock, however, typically does not begin to run until the incarcerated individual is legally "free" from the State's custody – that is, after the person has posted bail, finished his sentence, or been released on parole. What often happens – and what this legislation seeks to make permanent – is that the State simply does not bother to release the individual on the basis that the individual will simply be taken into custody by ICE. The 48-hour clock never starts running – meaning that the State is paying to incarcerate an individual merely because ICE *might* want to place the person in immigration proceedings. ICE, for its part, won't bother to

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

spend the money to incarcerate an individual if Hawaii will do it for them for free, so individuals end up serving much longer in jail or prison than necessary.

Instead, the better course is to release the person from State custody (if appropriate to do so under the circumstances) and let ICE decide for itself whether to expend the resources to take the person into custody. Consequently, a parole decision should not be based on the existence of a federal detainer. If ICE wants to deport the individual, that decision is up to ICE; Hawaii should not pay to incarcerate an individual based solely on the immigration offense – that is the federal government's responsibility.

Suggested Amendment
Section 3(b)(3). [The centers shall] Provide risk assessments on adult defendants prior to a bail hearing. For purposes of this paragraph, "risk assessment" means an independently validated actuarial tool that is objective, research-based, and scientifically proven using static and dynamic factors to determine a person's likelihood of endangering public safety and risk of flight. The department of public safety shall select an assessment tool that is tested on the state's local population for the purpose for which it will be used, and validated for accuracy at least every three years. Only adequately trained staff may conduct assessments.

- Amend section 7(e) to limit re-incarceration for technical violations of parole to a 90 day maximum sentence.

The six month confinement provided for by H.B. 2514, H.D. 3, however, is overly harsh for a violation that could be as simple as missing a meeting. We urge the adoption of a 90 day maximum sentence, and protection for innocent persons that are charged, but not convicted, of a new felony while on parole.

Suggested Amendment
Section 7(e): If the paroled prisoner is retaken and reimprisoned for violating a condition of parole but has not: (1) Been convicted of a new felony offense; . . . the paroled prisoner shall be confined for no more than 90 days or for that portion of the paroled prisoner's term remaining unserved at the time of parole, whichever is shorter, unless it is determined by the paroling authority that the prisoner constitutes a significant risk to the safety of others or the prisoner's self that can only be mitigated by additional incarceration.

- Amend section 8(1) to release prisoners who do not pose a risk to society and greatly reduce incarceration costs by allowing people to return to the workforce.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

We urge the adoption of several additional risk assessment requirements, to ensure that the results are as scientifically accurate as possible. We also support eliminating the misdemeanor exception in subsection (1)(a). A person who commits misconduct as minor as knowingly accessing a computer without authorization (equivalent to a misdemeanor under § 708-895.7, Hawaii Revised Statutes) poses no threat to public safety. Excluding such prisoners from mandatory parole upon completion of the minimum sentence would require the state to waste unnecessary resources on continued incarceration. Note that this amendment will also exclude persons with federal detainers and save the state money.

Suggested Amendment
Section 8(1): For purposes of this subsection, "validated risk assessment" means an independently validated actuarial tool that is objective, research-based, and scientifically proven using static and dynamic factors to determine a person's likelihood of endangering public safety. The department of public safety shall select an assessment tool that is tested on the state's local population for the purpose for which it will be used, and validated for accuracy at least every three years. Only adequately trained staff may conduct assessments. A person who is assessed as low risk for re-offending shall be granted parole upon completing the minimum sentence, unless the person:

(a) Is found to have committed misconduct while in prison that is equivalent to a felony crime within two years of the expiration of the minimum term of imprisonment;
(b) Has any pending felony charges in the State;
(c) Is incarcerated for a sexual offense under part V of chapter 707 or child abuse under part VI of chapter 707 and has not successfully completed a sex offender treatment program; or
(d) Is determined by the paroling authority to currently constitute a significant risk to the safety or property of other persons that can only be mitigated by additional incarceration.

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,
Laurie A. Temple, Staff Attorney

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

DATE: March 21, 2012

TO: The Honorable Will Espero, Chair
The Honorable Michelle N. Kidani, Vice Chair
Committee on Public Safety, Government Operations, and Military Affairs

The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: H.B. 2514, H.D.3
Relating to Public Safety

Good morning Chair Espero, Chair Hee, Vice Chair Kidani, Vice Chair Shimabukuro, and members of the Committee on Public Safety, Government Operations, and Military Affairs, and Committee on Judiciary and Labor. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

The SATC takes no position on H.B. 2514, H.D. 3 other than to support provisions in Sections 14 and 15 to provide positions and funding for crime victim services to the county prosecutors' offices, to establish a victim service program in PSD, funding to continue the Statewide Automated Victim Notification System, and a restitution accountability program in the Crime Victim Compensation Commission.

The SATC has worked closely with the victim assistance programs for many years to ensure that sexual assault victims receive the help they need when interfacing with the criminal justice system. Additionally, the SATC has worked closely with the Crime Victim Compensation Commission, whose restitution accountability program is crucial to ensuring that victims of sexual assault receive financial assistance to cover the costs of critical mental health treatment. The provision of victim notification services and safety planning services through the Department of Public Safety upon release of sex offenders would also be vital to the safety of victims of sexual violence and to the public at large.

In summary, the SATC strongly supports the victim-centered provisions in Sections 14 and 15 in this bill. Thank you for the opportunity to testify.

55 Merchant Street, 22nd Floor • Honolulu, HI 96813 • Telephone: (808) 535-7600 • Fax: (808) 535-7630

24-Hour Hotline: (808) 524-7273 • Website: www.satchawaii.com

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 17, 2012 6:30 PM
To: PGM Testimony
Cc: evernw@aol.com
Subject: Testimony for HB2514 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2514

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Evern Williams
Organization: Individual
E-mail: evernw@aol.com
Submitted on: 3/17/2012

Comments:
I strongly support HB2514 HD3.

Your decision must be based the data-driven, evidence-based approach and NOT the private businesses that profit from filling up our prisons.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 16, 2012 1:38 AM
To: PGM Testimony
Cc: annfreed@hotmail.com
Subject: Testimony for HB2514 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2514

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Ann S Freed
Organization: Individual
E-mail: annfreed@hotmail.com
Submitted on: 3/16/2012

Comments:
I support this Justice Reinvestment Initiative bill.

Mahalo

Ann S. Freed
Mililani
808-623-5676

From: E. Funakoshi [maukalani78@hotmail.com]
Sent: Sunday, March 18, 2012 4:36 AM
To: PGM Testimony
Subject: HB2514 HD3 Testimony

Dear Chair Espero, Vice Chair Kidani, and PGM Committee Members and Chair Hee, Vice Chair Shimabukuro and JDL Committee Members

I support HB2514 HD3. However, I oppose the Victim Restitution section of the bill. As in my previous testimonies, the inmates are penalized in many different ways, but this section penalizes the families/ohana by taking 25% of the inmate's total deposit for the Victim Restitution fund. The 25% or ($25 out of every $100) is a very severe penalty for people who did not commit any crime and are depositing hard-earned money into the inmate's account. It would be fair to take 25% out of the money that the inmates earn.

I strongly support the bill's provision to assess inmates within 3 working days of a person's commitment; increasing the parole board by two members to help expediting hearings; paroling low-risk offenders; providing for supervised release to avoid maxing out.

Funding for this bill can be offset by monies saved by not sending inmates out of state and reducing the number of inmates in prison.

HB2514 is such a breath of fresh air that I humbly ask your committees to pass this bill with the deletion of the section which increases to 25% monies taken out of the inmate's total account for the Victim Restitution Fund.

Thank you for the opportunity to submit my testimony.

With much Mahalo and Aloha,
elaine funakoshi

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 11:53 AM
To: PGM Testimony
Cc: anthonysimoneau@gmail.com
Subject: Testimony for HB2514 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2514

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: anthonysimoneau
Organization: Individual
E-mail: anthonysimoneau@gmail.com
Submitted on: 3/15/2012

Comments:
I am in support of bill with reservations. As having been a first time offender in the OCCC facility I speak with first hand knowledge that currently the "supervised release" program is NOT properly implemented for pretrial detainees. I met the screening guidlines but still was denied and not released by PSD / OCCC OIS personnel. I wasn't "supervised released" until ordered by the Judiciary at a hearing.

Often times The facility (OCCC / PSD) keeps pretrial detainee's in the facility at taxpayer expense without affording them the opportunity or means to make a phone call or "Bail Out". In my case I was detained 31 May 2011 and it wasn't until 21 Jun 2011 that I was afforded the opportunity to make a legal call. Mechanisms and Policies are in place to prevent such from accurring, but to date are NOT being effectively used. Often times and in my case pre-trial offenders that meet screening guidlines are detained at taxpayer expense without justification. I recommend a thoughrall audit of the Polices of PSD and its Corrections department regarding pre-trial incarceration and phone usage Policy and Proceedure.

U.S. Department of Justice
Civil Rights Division

Assistant Attorney General
950 Pennsylvania Avenue, NW - RFK
Washington, DC 20530

CIVIL # 08-00565

SETTLEMENT 12/30/2009

TESTIMONY OF ANTHONY SIMONEAU
[HB 2515
HB 2514 HD3]
21ST MARCH 2012
(WENSDAY)
[RM 016 @ 10:05]

March 14, 2007

The Honorable Linda Lingle
Governor of Hawaii
State Capitol
Honolulu, Hawaii 96813

① 1995 - INVESTIGATION - DOJ - SPEAR CONCENT DECREE.
② 2007 DOJ INVESTIGATION OCCC.
③ 2011 MY MEDICAL-CIVIL CLAIM. (TORT CLAIM VS PSD/OCCC)

Re: Oahu Community Correctional Center

Dear Governor Lingle:

I am writing to report the findings of the Civil Rights Division's investigation of conditions and practices of mental health care at the Oahu Community Correctional Center ("OCCC" or "Jail") in Honolulu, Hawaii. On June 16, 2005, we notified you of our intent to investigate conditions of mental health care provided to detainees and inmates at OCCC pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. CRIPA gives the Department of Justice authority to seek remedies for any pattern or practice conduct that violates the constitutional rights of persons with mental illness who are detained in public institutions. We focused our investigation on the nature of services to detainees[1] at OCCC with mental illness.

On October 11 - 14, 2005 we conducted an on-site inspection of OCCC with experts in the field of correctional mental health care. While on-site, we interviewed administrative and security staff, mental health care providers, and detainees. We also reviewed a large number of documents, including policies and procedures, incident reports, internal communication logs and medical records. In keeping with our pledge to share information and to provide technical assistance where appropriate regarding our investigatory findings, at the close of our tour, we met with several state and OCCC officials and discussed the preliminary findings of our tour. Among others, present at this meeting were

[1] OCCC houses mainly pre-trial detainees. However, the facility also houses post-adjudication inmates. For the purpose of this letter, both groups will be referred to as detainees. Further, all examples noted in this letter refer to detainees housed on OCCC's mental health modules.

the Attorney General, Mark Bennett; Interim Director of the Department of Public Safety, Frank Lopez; OCCC Warden Nolan Espinola; other counsel for Hawaii, and OCCC mental health staff.

We appreciate the full cooperation we received from OCCC and state officials throughout our investigation. We also wish to extend our appreciation to the staff and administrators at OCCC for their professional conduct and timely response to our document requests.

Having completed our investigation of OCCC, and consistent with our statutory obligations under CRIPA, I write to advise you formally of the findings of our investigation, the facts supporting them, and the minimal remedial measures that are necessary to ensure that OCCC meets minimal federal constitutional standards. 42 U.S.C. § 1997b(a). Specifically, we conclude that certain conditions at the Jail violate the constitutional rights of the detainees confined there and subject those detainees to harm and risk of harm. As detailed below, we find that OCCC: (1) subjects detainees with mental illness to harmful methods of isolation, seclusion and restraint, including a procedure referred to as "therapeutic lockdown;" (2) fails to provide adequate treatment or therapy programs and services; (3) fails to monitor adequately detainees while isolated or secluded, including while on suicide watch; (4) fails to employ sufficient mental health staff and clinical structures to care adequately for detainees; (5) fails to have adequate policies, procedures, and quality assurance structures in place to direct the delivery of mental health services; and (6) fails to ensure adequate planning is done upon detainees' discharge from OCCC. These deficiencies expose detainees to the risk of serious harm and have, in some cases, resulted in actual harm to detainees.

I. BACKGROUND

A. Description of OCCC

OCCC is the largest jail in Hawaii and is operated by the Hawaii Department of Public Safety ("DPS"). OCCC has a design capacity of 628 and an operational capacity of 954. On the first day of our October tour, OCCC had a population of 1164, with just under 1000 male and just over 100 female detainees. OCCC is the reception center for Hawaii's jail and prison system. The facility is comprised of several "modules," two-tiered pods surrounding a day room. The Jail also has a 36-cell holding area that serves as OCCC's lockdown unit.

Modules 3 and 4 house male detainees with the most serious mental illness.[2] Many of the detainees are doubled-celled. At the time of our visit, there were approximately 56 and 40 detainees residing in these modules, respectively.

Female detainees with the most serious mental illness are housed in Module 8. Female detainees who exhibit suicidal or threatening behavior are transferred to the state's prison for females, the Women's Community Correctional Center ("WCCC").

B. Legal Framework

HOUSE BILL TESTIMONY

CRIPA authorizes the Attorney General to investigate and take appropriate action to enforce the constitutional rights of detainees. 42 U.S.C. § 1997a. The Fourteenth Amendment Due Process clause protects pre-trial detainees from being punished or exposed to conditions or practices not reasonably related to the legitimate governmental objectives of safety, order, and security. Bell v. Wolfish, 441 U.S. 520, 535-36, 560-61 (1979). Pre-trial detainees "retain at least those constitutional rights . . . enjoyed by convicted prisoners [under the Eighth Amendment]." Id. at 545. The Eighth Amendment's prohibition against cruel and unusual punishment also places an affirmative duty on prison officials to provide humane conditions of confinement, including access to adequate medical care. See Farmer v. Brennan, 511 U.S. 825, 832 (1994); Estelle v. Gamble, 429 U.S. 97, 102-03 (1976). The Eighth Amendment is violated when prison officials demonstrate "deliberate indifference to serious medical needs." Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996). Adequate medical care includes a duty to provide adequate mental health care. Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994) (holding that "requirements for mental health care are the same as those for physical health care needs"); Hoptowit v. Ray 682 F.2d 1237, 1253 (9th Cir. 1982)(analyzing mental health care requirements as part of analysis of general health care requirements).

Constitutional questions regarding the conditions of confinement of pre-trial detainees are properly addressed under the Due Process clause of the Fourteenth Amendment, rather than under the Eighth Amendment's protection against cruel and unusual

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[2] The male detainees with the most serious mental illness are housed in Module 4. Module 3 serves as a step-down unit for detainees with less serious mental illness or a less-acute status.

punishment, but the guarantees of the Eighth Amendment provide a minimum standard of care for determining their rights, including the rights to medical and psychiatric care. Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1187 (9th. Cir. 2002); Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). In addressing the constitutionally minimal standards for mental health care in a prison, the district court in Coleman v. Wilson, 912 F. Supp. 1282, 1298 n.10 (E.D. Cal. 1995), held that prisons must have:

> (1) a systematic program for screening and evaluating inmates to identify those in need of mental health care; (2) a treatment program that involves more than segregation and close supervision of mentally ill inmates; (3) employment of a sufficient number of trained mental health professionals; (4) maintenance of accurate, complete and confidential mental health treatment records; (5) administration of psychotropic medication only with appropriate supervision and periodic evaluation; and (6) a basic program to identify, treat, and supervise inmates at risk for suicide.

As discussed below, the State frequently acts at odds with these legal standards.

HOUSE BILL TESTIMON

II. FINDINGS

A. OCCC subjects detainees with mental illness to harmful methods of isolation, seclusion, and restraint.

Jail officials violate the constitutional rights of detainees when officials exhibit deliberate indifference to the serious medical needs, including mental health needs, of detainees. Doty, 37 F.3d at 546; Hoptowit, 682 F.2d at 1253. In the absence of adequate mental health treatments to control the psychosis-related behavior of detainees, OCCC improperly relies on a practice it defines as "therapeutic lockdown" ("TLD"). In essence, TLD is the unorthodox use of long-term seclusion in which a detainee is isolated in his or her cell and denied any staff interaction, including contact with mental health staff. The use of lockdown as an alternative to mental health care constitutes deliberate indifference to the serious mental health needs of detainees. See also Arnold on Behalf of H.B. v. Lewis, 803 F. Supp. 246, 255-8 (D. Ariz. 1992), *rev'd on other grounds*

Lewis v. Casey, 518 U.S. 343 (1996).

OCCC's policy calls for the use of TLD whenever a detainee becomes "consistently disruptive to their housing environment or become[s] a physical threat to others..."[3] Not only is a detainee isolated while on TLD, but a detainee on TLD is also denied potentially helpful interventions or contacts. For example, according to OCCC's policy, the detainee "will be allowed no privileges (e.g., reading materials, cigarettes or social interaction with staff or detainees) while on TLD."

Mental illness often manifests itself in disruptive behaviors and/or the inability to maintain appropriate behavior. Mental illness-induced behaviors can escalate to the point where the behaviors pose a threat to the individual and to others around the person. Because we focused our tour on the units housing individuals with mental illness, the detainees subjected to TLD noted in this letter were detainees with mental illness.[4]

Thus, detainees on TLD, in accordance with facility policy, are denied a constitutionally mandated right: access to mental health care and staff. Further, TLD is used without the proper safeguards normally associated with the use of seclusion, such as intensive monitoring of the individual while in seclusion.

There is nothing "therapeutic" about OCCC's use of "therapeutic lock-down." OCCC's use of TLD harms detainees in that it often exacerbates the effects of detainees' illnesses. Casey, 834. F. Supp. at 1548-9. In part, because of the risks associated with secluding an individual with mental illness, seclusion is not recognized as a treatment intervention.[5]

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[3] DPS Policy No. COR. 10D.27.

[4] As noted earlier, because we focused our review on detainees with mental illness, we are offer no opinion on the use of TLD as a potential disciplinary mechanism for detainees who do not have a mental illness. → 18+ hrs day lockdown or Modified Lockdown.

[5] See e.g., October 29, 2002 Statement of the National Association of State Mental Health Program Directors ("NASMHPD"). NASMHPD is an organization made up of directors of state public mental healths systems. The Statement contains the following: "Because restraints and seclusion always carry significant risk of injury - both physical and psychological - we . . . emphasize that such interventions, on the rare occasions they are used, must be terminated as soon as possible." Further, the Statement

TLD, as used at OCCC, without privileges and social contacts for the detainees, can exacerbate a detainee's symptoms and impede a detainee's recovery from his or her mental illness. There was simply no discernable treatment provided to detainees on TLD except for psychotropic medications.

Detainees on TLD were reportedly on TLD for days to weeks at a time. We reviewed the records of numerous male and female detainees with mental illness who had been placed on TLD in the months preceding our tour. Detainees were often placed on TLD without adequate justification and often in contradiction to their clinical status. This practice is problematic because to take an individual suffering from depression and then seclude and isolate that person would almost guarantee an increase and worsening of depressive symptomatology.

The following examples illustrate how OCCC uses TLD on detainees with mental illness in harmful and potentially harmful ways.

♦ Detainee 1[6] - This 41-year-old man had a history of schizophrenia, with multiple hospitalizations and a suicide attempt. He had been on TLD for approximately 10 days at the time of our tour. He was still actively psychotic when we interviewed him. This detainee was not receiving constitutionally required treatment because, despite his obvious need for treatment, this detainee had been locked down in his cell (on TLD) for an extended period of time without any type of psychosocial rehabilitation interventions or regular assessments by mental health staff.

♦ Detainee 2 - This 45-year-old man had a history of post-traumatic stress disorder related to childhood sexual abuse. He had also been reporting auditory hallucinations and was taking anti-depressant medications. During his incarceration, he had been placed on TLD and suicide watch. During the approximately two weeks the detainee was on TLD, there was no evidence he was

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also refers to the position taken by NASMHPD in 1999 declaring that restraint and seclusion "are safety interventions of last resort and are not treatment interventions."

[6] Throughout this letter, when referring to a specific detainee, we use the term "Detainee" followed by a number to protect the identity of the detainees. We will provide to the State, under separate cover, a key to identify the detainees referenced in this letter.

seen by a mental health professional. It is our expert's opinion that the use of TLD on this detainee likely exacerbated the effects of his mental illness and increased his depression and aggression.

♦ Detainee 3 - This 29-year-old man had been at OCCC for approximately six months at the time of our tour. He had a history of schizophrenia and reported feeling depressed and suffering from auditory hallucinations. He had been placed on TLD several times during his incarceration. Our review of his records indicate that his only form of treatment was medication management. This detainee was in need of a more comprehensive therapeutic treatment approach than mere medication. Moreover, his placement on TLD likely contributed to the exacerbation of his psychotic symptoms.

♦ Detainee 4 - This female detainee had multiple incarcerations at OCCC with intermittent transfers to WCCC and a history of inpatient psychiatric hospitalization. She had a further history of significant psychiatric symptoms, including auditory hallucinations and delusional thinking. She had been placed in TLD while at OCCC. The use of TLD harmed this detainee by placing her in seclusion without adequate monitoring or therapeutic contact.

♦ Detainee 5 - This female detainee had multiple incarcerations at OCCC. She was diagnosed with a possible delusional disorder and a seizure disorder. She also exhibited signs of paranoia, and had a history of altercations with staff and other detainees. Additionally, she frequently would not take her medication, the possible result of her paranoia. She was subjected to TLD by OCCC. Inadequate care resulted in her increased psychosis, and OCCC's response to this detainee's worsening condition was to seclude her by placing her in TLD, again without adequate monitoring or therapeutic contact by staff.

♦ Detainee 6 - This female detainee had been exhibiting delusional thinking, auditory hallucinations, and hostile behavior towards staff. She had been placed on TLD for over three weeks. She was transferred to WCCC with suicidal ideation and paranoia. She was returned to OCCC only two days later and continued to exhibit disorganized behavior and hostility toward others. She was again placed in seclusion, where she became more withdrawn and noncompliant. At OCCC, she remained psychotic and her condition decompensated. According to our consultants, the effects of her mental illness were exacerbated by OCCC's use of seclusion and TLD because she was not monitored adequately, not

provided necessary treatment, or assessed adequately for suicide risk. This is also an example of a detainee who needed a level of intensive psychiatric care not available at OCCC.

OCCC's use of TLD on detainees with mental illness amounts to punishment and is therefore unconstitutional. Bell, 441 U.S. at 535-37, 560-61. In fact, we found evidence of staff threatening detainees with the use of TLD.

HOUSE BILL TESTIMONY

For example, in an internal communication log-book maintained by OCCC staff, a notation indicates that a detainee was "warned to behave or he would be placed on TLD." At best, this indicates a fundamental failure to understand that an individual with mental illness often lacks the capacity to be able to chose to "behave." At worst, it indicates a punitive use of TLD. In another incident it was noted that a detainee "took an attitude so [we] placed him in TLD." Another detainee who was obstructing a security camera was also "warned" about being placed on TLD. Still another notation read: "[w]e have TLD and 4 point [the practice of physically restraining a person to a bed and securing them to the bed, usually at the ankles and wrists] orders on them in case they act up." (Emphasis added) OCCC is using a practice identified as "therapeutic" lockdown as punishment. Using lockdown as punishment for actions that are often the result of mental illness violates the constitutional rights of detainees. Casey, 834 F. Supp. at 1549-50; Arnold on Behalf of H.B. v. Lewis, 803 F. Supp. at 257-58.

Warned By ACO's Noisy Module "We'll Lockdown"

OCCC also employs harmful and professionally unjustifiable seclusion on detainees by the manner in which the facility places and maintains detainees on "suicide watch." Suicide watch at OCCC involves placing a detainee isolated and alone in a single cell. This use of TLD violates the constitutional rights of OCCC detainees in two ways. First, all detainees placed on suicide watch are isolated without adequate supervision and monitoring. Second, for those detainees with a mental illness who are isolated in this manner, the detainee's mental health status is not timely assessed and reassessed by a mental health clinician or other provider of mental health services. This form of isolation often leads to a worsening of a detainee's mental illness. Constitutionally minimum standards require jails to have a program to "identify, treat, and supervise" detainees at risk of suicide. Coleman, 912 F. Supp. at 1298 n. 10. OCCC's use of TLD does not provide for the "treatment" or "supervision" required by the Coleman standards.

For example, we reviewed the records of a 34-year-old male detainee who was transferred to OCCC from another Hawaii correctional facility. He was placed on suicide watch after he attempted suicide by cutting his throat. He was noted to be

depressed and only partially compliant with his medications. This detainee was still on suicide watch during our expert's interview, a period of 16 days after placement. During the interview, the detainee was depressed and spent most of his time wrapped in a blanket. Isolating and secluding this depressed detainee for such a length of time, and without adequate contact from therapy staff, was detrimental to the detainee's mental health and was likely exacerbating his depression. In addition, our review of this detainee's records revealed a delay in initiating his needed medication - a further factor in his decline.

Similarly, we assessed the appropriateness of OCCC isolating another detainee - by admitting him directly to suicide watch upon arrival to the facility. This detainee had several previous admissions to OCCC, yet there was no explanation or written justification in the detainee's record as to why he was immediately isolated and why there had not yet been an evaluation of him at the time our expert interviewed him approximately 48 hours after he was placed on suicide watch.

OCCC's policy concerning detainees on suicide watch states that detainees "shall be assessed daily by a facility 'provider.'" This "provider," according to OCCC's policy, must be a psychiatrist, psychologist or medical doctor. However, our records review and interviews with detainees demonstrated that the providers were not following this policy and were not assessing and monitoring suicide watch detainees in a timely manner. While in isolation and on suicide watch, detainees do not have sufficient contact with security and mental health staff to provide constitutionally-required care.

For example, we evaluated one male detainee who had a history of schizophrenia requiring in-patient hospitalization. Upon a recent prior admission to OCCC, he was described as "completely incoherent." He was released less than two weeks later, only to be re-incarcerated shortly before our tour. He was placed on suicide watch, where he was at the time of our tour. There was no justification recorded as to why he was on suicide watch and no progress notes had been made during that time. During our tour, one of our experts interviewed this detainee. At that time, the detainee was still obviously seriously mentally ill. Secluding and isolating this detainee 23 hours a day was worsening his condition. This detainee is also another example of an individual who needed a more intensive level of psychiatric care than is available at OCCC.

Once on suicide watch, detainees are locked in their cells 23 hours out of the day until released by either a psychiatrist or psychologist. We found individuals who have languished in

this status for days without even a rudimentary reevaluation suicidal ideation or intent.

Generally accepted correctional practice requires adequate monitoring of suicidal detainees.[7] However, OCCC detainees are not monitored adequately while they are on suicide watch. We reviewed numerous instances where detainees, both on TLD and suicide watch, injured themselves due to psychosis-related behavior while isolated and secluded. For example, a detainee on suicide watch was "using his head to pound on the door w/sudden delusional excitement." Another inmate on suicide watch was using his blanket "as a cushion when he slams into the door." OCCC's response to this incident was to take the detainee's blanket away. Another detainee on TLD was described as "pounding, banging his door ... both feet appear to be very swollen."

Further, OCCC admitted that the facility does not follow its own policy regarding physician assessments that are supposed to occur when a detainee is placed into restraints. We found that physicians do not provide appropriate guidelines for releasing detainees from restraint and often wrote orders that called for restraint on an "as needed" basis, which is a substantial departure from accepted clinical practice. The monitoring of detainees while in restraint was also inadequate. For example, a female detainee who had been incarcerated multiple times at OCCC and suffered from severe psychosis, was both restrained and isolated at various times without adequate clinical monitoring (e.g., range of motion, toileting) or clinical contact, which resulted in a worsening of her psychotic symptoms. We also came across examples of inmates harming themselves while in restraint, such as a notation that a detainee was "banging [his] head violently" while in restraints.

HOUSE BILL TESTIMONY

B. OCCC fails to provide detainees with constitutionally adequate mental health treatment or therapy programs and services.

Jails such as OCCC are constitutionally required to provide mental health services to detainees. Madrid v. Gomez, et al., 889 F.Supp. 1146, 1255-6 (N.D. Cal. 1995). Timely mental health treatment is essential to minimize decompensation and to ensure that adequate services are provided. Detainees with mental

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[7] See e.g., the American Psychiatric Association standards of mental health services in jails which require adequate monitoring of suicidal detainees. American Psychiatric Association, Psychiatric Services in Jails and Prisons, 2nd Edition, Part 1, VIII at 14-15.

illness at OCCC do not receive adequate levels of mental health care. There are significant deficiencies in the mental health treatment programs and services for OCCC detainees. Detainees are not provided treatment programs or the range of treatment modalities, including psycho-social rehabilitation services, needed to address their illnesses. As a result of not providing access to needed levels of care, and as noted above, OCCC resorts to the harmful use of seclusion to address detainees' psychosis-induced behavior. OCCC also fails to provide adequate discharge services to detainees, increasing the detainee's risk of re-incarceration.

1. OCCC does not adequately assess or address detainee's mental health needs.

Along with assessing the manner in which OCCC treated its detainees with mental illness, we also examined the facility's ability to assess detainees with potential mental illnesses. Assessment is a critical component of a constitutionally-adequate mental health program. Coleman, 912 F. Supp. at 1298 n. 10. In general, we found that OCCC usually was able to identify detainees who may have mental health issues, however, we did note gaps in OCCC's ability to consistently do so. Upon entering OCCC, detainees are assessed by health care staff via video monitors. This system, however, has inherent weaknesses. We observed the assessment process at work. We also interviewed detainees who had potential mental health concerns that the OCCC video system failed to identify. For example, upon admission to OCCC, one detainee was experiencing serious hand tremors.[8] However, the staff member who assessed this detainee via the monitors was unable to see the detainee's hands and therefore missed this potentially serious issue. Further, when detainees are interviewed by staff, the physical layout of the facility does not provide auditory privacy. Thus, it is possible that detainees may not reveal critical information about their mental health history because of the lack of privacy.

Medical Record Inconsistant

Further, we found no detainee medical record with an adequate description of what and how mental health treatment services were to be provided for any OCCC detainee. In the absence of sufficient documentation, OCCC providers are left without an adequate understanding of a detainee's course of treatment or clinical response to treatment. Also, detainees are not routinely followed by the psychiatric social workers

[8] Hand tremors could be the result of a variety of serious health issues, including potential substance abuse and the possible reaction of an individual's not receiving a needed medication.

responsible for monitoring their treatment. OCCC's systemic failure to follow and monitor detainees with a mental illness is contrary to generally accepted correctional practice. As a result, we encountered detainees who were in need of treatment but who were essentially untreated.

HOUSE BILL TESTIMONY

2. OCCC does not provide detainees with an adequate scope or needed intensity of treatment therapies or services.

Constitutional deficiencies exist where pre-trial detainees are provided insufficient mental health programming. Casey, 834 F. Supp. at 1548, 1550. Treatment modalities at OCCC are very limited. There was no group therapy taking place. Individual counseling was an exception rather than a rule. Other treatment modalities were limited to little more than observation and monitoring. These non-medication treatment therapies are essential in the treatment of mental illness because medication therapy alone is professionally recognized as not being sufficient as the only treatment modality for persons with serious mental illnesses. For example, the American Psychiatric Association practice guideline for the treatment of schizophrenia recommends treatment that includes both psychotropic medication and psychosocial and rehabilitative interventions. OCCC does not provide these needed treatments to detainees with schizophrenia or other serious mental illnesses.

NO specialty Referral (misdiagnosed by Nurse)

The Ninth Circuit has ruled that, if a facility can not meet the needs of detainees, then the facility must refer the detainee to an another source of care. Hoptowit, 682 F.2d at 1253; Casey, 834 F. Supp. at 1550. We noted that there were very few instances of OCCC transferring seriously mentally ill detainees who needed more intensive mental health services than that available at OCCC from OCCC to the state's inpatient facility, the Hawaii State Hospital ("HSH"). Given the limited health services provided at OCCC, it is essential that detainees have access to more intensive mental health services as needed. This inability to access intensive psychiatric care was particularly problematic for women detainees.

The following examples are illustrative of the detrimental effects of OCCC's lack of effective treatment and limited range of therapy services.

♦ Detainee 7 - This is a female detainee who was incarcerated most recently at OCCC one month prior to our tour. She was diagnosed with schizophrenia and obsessive compulsive disorder and had a history of inpatient hospitalizations, including a recent escape from the HSH. She was transferred to the State's women's prison, the Women's Community Correctional Center ("WCCC"), a few days later, after she verbalized suicidal

ideations and cut her arm. She was returned from WCCC the following day, still experiencing psychotic symptoms, including auditory hallucinations. Throughout her stay at OCCC, this detainee continued to exhibit active and serious psychotic symptoms. According to our expert, this detainee clearly needed more aggressive mental health therapies than she was receiving from OCCC. The lack of these services resulted in the detainee's continued suffering the effects of her mental illness. This detainee could have also benefitted from placement in an inpatient psychiatric setting. This detainee was among a number of detainees, particularly females, who appeared to need an inpatient level of care that was not being provided.

♦ Detainee 8 - This female detainee had been at OCCC for approximately one week prior to our tour. During intake, she was unable to be interviewed because she was experiencing disorganized thinking, lability (a physical or chemical breakdown), and auditory hallucinations. She was also having suicidal thoughts. During our interview with her, she was overtly psychotic and was reported by OCCC staff to have occasional suicidal ideations, pressured speech and marked lability. These symptoms suggested an inadequately treated psychosis. According to our expert, the treatment provided to this detainee was not adequate because there was inadequate assessment of her suicide risk and she was in need of more intense psychiatric care, including possible inpatient treatment, than she was receiving. These deficiencies resulted in her exacerbated psychotic symptoms and recurrent suicidal ideations.

♦ Detainee 9 - This female detainee, diagnosed with bipolar disorder, has had multiple incarcerations at OCCC, and a history of inpatient hospitalizations as well. During her earlier admissions to OCCC (two in 2005), she had been involuntarily medicated and restrained. At the time of our tour, she had been at OCCC just under a week. She was hostile, agitated, psychotic, destructive, and was transferred back and forth from WCCC for suicide watch. This detainee was not treated or monitored adequately despite her dangerous and threatening behaviors. She was placed in restraints pursuant to a physician's order that gave discretion to security staff as to when to place the detainee in restraints. In our experts' view this represents a substantial departure from generally accepted corrections practice and standards. Generally accepted professional standards of care require that restraints be applied only under specific circumstances of risk to self or others. There was inadequate clinical justification for the use of restraint and seclusion, and inadequate monitoring while she was in restraints. This situation also represents a case of OCCC's not providing adequate discharge planning during her previous stays. She

needed an intensive level of post-release services that might have prevented her re-incarceration.

♦ Detainee 10 - This detainee was also admitted directly to suicide watch upon admittance to OCCC (a week prior to our tour). He'd had five prior admissions to the facility, including a one-week stay a few months earlier. There was no explanation or written justification in the detainee's record as to why he was immediately isolated and there had not yet been an evaluation of him at the time our expert interviewed him. It is a serious violation of professional standards to subject detainees to isolation without adequately recording the detainees progress or conducting at least daily evaluations.

In the absence of adequate non-medication therapies, OCCC relies on psychotropic medication as its primary treatment intervention. The Coleman standard requires psychotropic medication be used with "appropriate supervision." We uncovered numerous and repeated instances of psychotropic medications being used, not as a part of a treatment plan addressing a detainee's mental illness, but as chemical restraints to control a detainee's unruly behavior. For example, in one instance, a detainee with mental illness began "pounding on his door, [and] disturbing the whole module." The staff's response was to call the Health Care Unit and a nurse came to the module and gave the detainee "an injection." In another incident, a detainee was given Haldol (a powerful psychotropic medication). It was noted the detainee "appears agitated." Another detainee was given "a shot to calm him down." We came across other examples of detainees being medicated after they became "agitated." Such use of psychotropic medication constitutes chemical restraint, and is a violation of detainees' constitutional rights.

We also found evidence that psychotropic medications were being used as punishment. For example, we found the following notation in the staff's communication book:

> "Notified [Health Care Unit] of [detainee] and his total disregard for other inmates. Has order for a cocktail shot,[9] but nurse wants to be nice and give [detainee] some Tylenol. Anymore outbursts - he'll definitely get a shot."

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[9] During our investigation of OCCC, we were told that the phrase "cocktail shot" is a local euphemism for an injection of a combination of psychotropic medications intended for use as a chemical restraint.

Using psychotropic medication as punishment is unconstitutional. Bell, 441 U.S. at 535-37, 560-61.

3. OCCC fails to employ sufficient mental health staff, provide adequate supervision for its staff and operate in accordance with current policies and procedures.

Jails such as OCCC must employ a sufficient number of trained mental health professionals to ensure the presence of an adequate mental health delivery system. Casey 834 F. Supp 1548 (citing Hoptowit, 682 F.2d at 1253); Coleman, 912 F. Supp. at 1298 n.10. A significant reason for many of the failures in OCCC's mental health service delivery system is the fact that the Jail does not employ a sufficient number of adequately qualified mental health staff to meet the needs of detainees. At the time of our tour, there were two psychiatrists serving OCCC. However, one was at the facility only half-time, the other less than that, equaling less than one full-time equivalent psychiatrist serving the Jail.

According to the APA guidelines, the recommended staffing for psychiatrists in jails that serve between 75 and 100 detainees with serious mental illness who are receiving psychotropic medication is one-full time psychiatrist or the equivalent. OCCC nursing staff reported to us that 217 detainees were receiving psychotropic medications and the OCCC units housing the detainees with the most serious mental illnesses averaged a population of over 110 during the time of our tour. Thus, OCCC employs only half of the APA-recommended number of psychiatrists to serve its detainees with mental illness.

** The lack of sufficient staff appears to be one reason that detainees spend an inordinate amount of time restricted to their cells. According to OCCC's own documents, detainees often have to remain in "lockdown" because there is not sufficient mental health or correctional staff (Adult Correctional Officer - "ACO") to provide adequate supervision if the detainees were released from their cells.

HOUSE BILL TESTIMONY

** For example, we found repeated references in OCCC's own documents that the mental health units often operate on a status known as "modified lockdown" due to an ACO shortages.[10] At other times a unit would simply be in "lockdown," again due to shortage

HOUSE BILL TESTIMONY

[10] DPS Policy No. 7.08.79 - "Module Lockdown" - defines "Modified Lockdown" as the lockdown of a module that affects up to half of the module population. The policy allows Modified Lockdown to be used when "sufficient staffing is not available . . ."

of correctional staff. For example, there are notations in an OCCC communication book stating that Module 4 is in "'lockdown' at this time due to short[age] of staff." Similarly, we found references to modules having to "run slow" as a result of lack of staff. State representatives told us "run slow" refers to adjusting a module away from normal practice because of the lack of adequate staffing. Thus, the modules would not be able to provide whatever otherwise limited activities that might have been available to detainees (with mental illness). Therefore, in these instances, detainees are subjected to seclusion and/or denied treatment opportunities as a result of OCCC's lack of adequate mental health and correctional staff.

Another major reason for the deficiencies (in mental health) care at OCCC is that there are not adequate clinical leadership or organizational structures in place at OCCC. For example, at the time of our tour, there was no designated person in charge of mental health services at OCCC. All mental health staff we spoke with confirmed that the organizational structure of mental health services was confusing and inconsistent. The person who was serving as the Clinical Section Administrator did so only in an administrative capacity. On our tour, we were told that DPS had appointed an individual as Chief Psychiatrist for DPS. However, this was a recent development and it was unclear how this change would impact OCCC.

As a result of the absence of clinical leadership, a quality assurance or quality improvement program at OCCC was essentially nonexistent. Many of the issues we identified on our tour might have been addressed and remedied had OCCC had adequate clinical leadership and policies and procedures in place to identify and correct gaps in services.

Policies on Mod 13 wall 2000/1997 Not Followed Outdated

Further, OCCC's policies and procedures relevant to mental health services are either outdated or are not being followed. For example, OCCC was violating its policy governing (mental health services) (DPS Policy No. 10D.04 - "Mental Health Services") in a number of key ways. The policy requires the development of "individual treatment programs with the goal of stabilizing and achieving an optimal level of functioning" for detainees in controlled or therapeutic housing. Our review of OCCC records revealed that OCCC was not following its policy regarding treatment plans as they are virtually nonexistent at the Jail. Additionally, OCCC policies call for collaboration between the psychiatrist and psychologist in the development of mental health treatment services. This collaboration was not being done.

HOUSE BILL TESTIMONY

C. **OCCC fails to provide detainees adequate discharge services, increasing the likelihood of detainees being re-incarcerated.**

As a matter of technical assistance only, we want to raise a concern regarding the manner in which some mentally ill detainees leave OCCC. With few exceptions, discharge services, (e.g., discharge medications, linkage with community mental health providers, initiating entitlements, housing, etc.), are not provided for detainees upon discharge from OCCC.

According to the American Psychiatric Association, professional standards and practice require that inmates in need of mental health care at the time of release "be made known to appropriate mental health service providers."[11] We were told that OCCC was beginning to work with the State's Adult Mental Health Division ("AMHD") to inform AMHD when detainees with mental health issues are being released from OCCC. It is hoped this coordination will assist detainees with accessing post-release services.

As noted from the detainee examples set forth above, we reviewed several detainee records of individuals with mental illness who were incarcerated following a previous discharge, and sometimes multiple discharges, from OCCC. Adequate links to post-OCCC mental health services could serve to avoid future incarcerations and provide for increased continuity of care.

We urge the State, AMHD and OCCC to consider and continue their work to coordinate efforts to assist detainees in need of mental health services to be able to access such services upon discharge from the Jail.

III. RECOMMENDED REMEDIAL MEASURES

HOUSE BILL ESTIMONY

In order to address the constitutional deficiencies identified above and protect the constitutional rights of detainees, OCCC should implement, at a minimum, the following measures:

Constitutional Right of incarcerated ind still being violated in 2011.

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[11] American Psychiatric Association, Psychiatric Services in Jails and Prisons, 2nd Edition, Part 2, II.C at 38. Further, at least one federal court has noted the need for discharge services. In Foster v. Fulton County, 223 F. Supp.2d 1301, 1310 (N.D.Ga. 2002) the court wrote that "without adequate planning and medication upon their release from jail, mentally ill inmates are more likely to be rearrested and reincarcerated within a short period of time, usually on minor offenses such as criminal trespass or public intoxication."

1. Ensure that detainees are not placed in isolation or seclusion in a manner that would pose an undue risk to the detainee's health and safety. Accordingly, OCCC should:

a. cease the use of "therapeutic lockdown" as the practice was employed during the time of our October 2005, visit;

b. ensure that any "lockdown" procedures are not used as punishment for psychosis-related behavior or in lieu of treatment or therapy;

c. ensure that detainees placed on suicide watch are assessed adequately, monitored appropriately to ensure their health and safety, and released from suicide watch as their clinical condition indicates according to professional standards of care;

d. ensure that any use of seclusion or restraint is only used in accordance with generally accepted standards of professional practice and that any seclusion or restraint is adequately justified and documented; and

Modified or Full Lockdowns 18 hrs day

e. ensure detainees in seclusion or restraint are assessed and monitored adequately and that restraint and seclusion are not used as punishment or for convenience of staff or in lieu of adequate staff availability.

2. Ensure that detainees are assessed adequately for mental health needs and provided, where consistent with legitimate security concerns, an appropriate, confidential environment for assessment and counseling.

3. Develop and implement a mental health service program that includes an adequate range of services, and ensures that such services are monitored and revised as needed.

4. Ensure that detainees whose serious mental health needs require more intensive mental health treatment than available at OCCC are provided timely and appropriate access to either inpatient hospitalization, or a service providing a similar level of care.

5. Ensure that psychotropic medications are used only in accordance with accepted professional judgment and standards, and that medication is not used in lieu of lesser-intrusive

therapies, for the convenience of staff or as punishment, or as a substitute for adequate staff.

6. Ensure the presence of an adequate number of mental health professionals, including psychiatrists, psychologists, psychiatrist social workers, and counselors, to meet adequately the needs of detainees with serious mental illness, and to:

a. ensure the presence of adequate clinical leadership and supervision; and

b. develop and adopt policies and procedures and implement quality assurances measures to ensure that the delivery of mental health services comports with current standards of practice.

7. Ensure the presence of an adequate number of correctional staff so that mental health services are not negatively impacted by the lack of correctional staff to provide security and supervision of mentally ill detainees.

8. Finally, as a matter of technical assistance, we ask the State to consider, as appropriate and possible, providing detainees with discharge plans and services that link detainees to post-OCCC mental health services that could serve to avoid future incarcerations and provide for appropriate "continuity of care" should a detainee be re-admitted to OCCC.

During our exit conference, we were pleased that State officials recognized many of the problems discussed in this letter. In fact, on November 11, 2005, the State wrote to us and set forth measures the State intended to take to address the deficiencies at OCCC. Among other things, the State wrote it would be developing an "action plan" to address the issues we raised at the close of our tour. The letter also reported that the State would be seeking funds from the legislature to provide for additional mental health staff at OCCC. [We commend the State's commitment to begin remedial efforts at OCCC on an expedited basis.]

[In anticipation of continuing cooperation toward a shared goal of achieving compliance with constitutional requirements, we forwarded you our experts' joint report on July 11, 2006.] Although the report is the experts' work and does not necessarily reflect the official conclusions of the Department of Justice, their observations, analyses, and recommendations provide further elaboration of the issues discussed above, and offer practical assistance in addressing them.

Please note that this findings letter is a public document. It will be posted on the Civil Rights Division's website. While we will provide a copy of this letter to any individual or entity upon request, as a matter of courtesy, we will not post this letter on the Civil Rights Division's website until 10 calendar days from the date of this letter.

In the unexpected event that the parties are unable to reach a resolution regarding our concerns, we are obligated to advise you that 49 days after receipt of this letter, the Attorney General may institute a lawsuit pursuant to CRIPA to correct the noted deficiencies. 42 U.S.C. § 1997b(a)(1). We have every confidence that we will be able to reach an adequate resolution to this case. The lawyers assigned to this matter will be contacting your attorneys to discuss this matter in further detail. If you have any questions regarding this letter, please call Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-0195.

Sincerely,

/s/ Wan J. Kim
Wan J. Kim
Assistant Attorney General

cc: Honorable Mark Bennett, Esq.
Attorney General
State of Hawaii

Nolan Espinola
Warden
Oahu Community Correctional Center

Frank Lopez
Interim Director
Department of Public Safety

Ed Kubo, Esq.
United States Attorney
District of Hawaii