



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Testimony HB 2515 HD1
Relating to Crime

Governor Neil Abercrombie

HOUSE COMMITTEE ON JUDICIARY
Rep. Gil Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

February 14, 2012
2:05 pm, Room 325

Chair Keith-Agaran, Vice Chair Rhoads and committee members, thank you for hearing HB 2515 HD1 Relating to Crime. 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 8 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 of the Justice Reinvestment Initiative, and Director Jodie Maesaka-Hirata of the Department of Public Safety, who will provide more details about the proposed legislation.

Thank you again for consideration of this measure.



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Tuesday, February 14, 2012, 2:05 p.m.
State Capitol, Conference Room 325

by
Cheryl R. Marlow
Adult Client Services Branch Administrator

Bill No. and Title: House Bill No. 2515, H.D. 1, Relating to Crime

Purpose: Permits a sentence of probation for certain second-time drug offenders and a three-year probation term for individuals convicted of certain class B and C felonies. Increases the threshold property and services valuation for theft in the second degree to more than \$750.

Judiciary's Position:

The Judiciary supports Section 5 of House Bill No. 2515, H.D.1. The Governor, Chief Justice, Senate President, House Speaker, and Department of Public Safety Director established a bipartisan, inter-branch Justice Reinvestment Working Group comprising 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.

Overall, the analysis found that crime and victimization rates have declined since 1997. Subsequently, so have arrests and felony convictions for violent and property crime. For probation, despite these declines, the population under probation supervision has not declined. For probation, from 2006 to 2010, the population increased 11%, from 16,079 to 17,771.

Probation terms for Class B and C felons in Hawaii are much longer at five years than the national average of three years. These exceptionally long probation terms relative to other states results in a less effective allocation of scarce criminal justice resources.



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The risk of recidivism is most likely during the first and second year of probation, and, therefore, the public safety benefit of supervising offenders for subsequent years is much less significant. Besides offering diminishing benefits, supervising offenders for such long periods requires resources that could otherwise be spent supervising offenders who pose a higher risk or have recently been placed on probation.

In addition, we respectfully recommend amending Section 706-623, HRS, to require a probation officer, prior to early discharge of a defendant, to report to court concerning the defendant's compliance or non-compliance with terms of probation. This proposed amendment is contained in the Judiciary's package bill House Bill No. 1798. The proposed amendment to House Bill No. 2515, H.D. 1 reads as follows (on page 7, line 6): "Prior to granting early discharge, the defendant's probation officer shall be required to report to the court concerning the defendant's compliance or non-compliance with the conditions of probation and the court shall afford the prosecuting attorney an opportunity to be heard." This amendment will ensure that, in every case, a court considering early discharge will have, in addition to information provided by the defendant or the prosecutor, information on the defendant's probation performance from a court official responsible for the defendant's supervision.

Thank you for the opportunity to testify on House Bill No. 2515, H.D. 1

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February 14, 2012

TESTIMONY ON HOUSE BILL 2515, HOUSE DRAFT 1
RELATING TO CRIME

By

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

House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Tuesday, February 14, 2012; 2:05 p.m.
State Capitol, Conference Room 325

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committees:

The Department of Public Safety is in strong support of House Bill 2515, House Draft 1, Relating to Crime, the result of work by the Justice Reinvestment Working Group. Included in *A New Day in Hawaii* is Governor Neil Abercrombie's initiative to return inmates housed in contracted correctional facilities on the Mainland to Hawaii. The Governor states "The ultimate way to reduce crime is to increase the number of strong, nurturing families and improve economic and social conditions for all." By returning prisoners to Hawaii not only are the opportunities for rehabilitation and family reunification improved, dollars spent out-of-state will be reinvested in creating jobs and community service opportunities here at home.

To this end, the Governor joined with Chief Justice Mark Recktenwald, Senate President Shan Tsutsui, House Speaker Calvin Say and Public Safety Director Jodie Maesaka-Hirata in applying for assistance from the US

Department of Justice, Bureau of Justice Assistance (BJA), and the Pew Center on the States to participate in the national Justice Reinvestment Initiative (JRI).

BJA describes this initiative as follows:

Justice reinvestment is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

The application was accepted and the State was afforded the assistance of the Justice Center of the Council of State Governments in developing Hawaii's strategy. The strategic approach is in three phases:

- 1) Analyze data and develop policy options;
- 2) Adopt new policies; and,
- 3) Measure Performance.

The Justice Center analyzed hundreds of thousands of records, from arrest and court conviction data, to probation, jail, prison and parole data; and solicited input from a wide range of stakeholders, from victim advocates, judges, prosecutors, probation, and parole.

Based on the comprehensive data presented, the Working Group considered options to manage the growth of the State jail and prison population, improve the effectiveness of community corrections and law enforcement, and identify community-based strategies to improve public safety. Two measures are introduced as part of the Governor's package to enact the recommendations of the Justice Reinvestment Working Group: House Bill 2514, Relating to Public Safety, addresses the pre-trial process, parole and restitution; and, House Bill 2515, Relating to Crime, addresses the sentencing for felony drug offenders, terms of probation, and felony theft.

A number of amendments were made by the House Committee on Public Safety and Military Affairs with which we concur. The amendments respond to concerns raised by the City and County of Honolulu, Office of the Prosecuting Attorney, and victim advocates.

FELONY DRUG OFFENDERS

The Department of Public Safety (PSD) strongly supports substance abuse treatment to address behavior that not only contributes to but may be the root cause of criminal acts that harm victims and the community. It is the criminal justice system's responsibility to the community to prevent further criminal acts by providing effective treatment.

Current law allows the Courts to place first-time felony drug offenders on probation with treatment in the community, but second-time offenders are subject to mandatory incarceration regardless of the circumstances surrounding their drug offense.

On June 30, 2011, 10% (n=407) of the prison population was made up of felony drug offenders. Approximately 26%, or just over 100, of these offenders have no more than two prior felony arrests of any offense type, which includes current offenses for which they are incarcerated. More than half of incarcerated felony drug offenders score as low or medium risk of re-offending.

Research in the field of substance abuse treatment has shown that prisoners who present a low risk of reoffending are more successful when placed in community-based treatment, freeing up beds and program space for more serious offenders.

Section 2 of this measure allows, but does not require, the Courts to impose a probation sentence upon a second conviction.

TERMS OF PROBATION

The length of probation terms in Hawaii exceeds the national average. Valuable probation resources are spent on supervising offenders who have a very low risk of recidivism after the first three years of a probation term. Based

on the findings of the Justice Center, Hawaii could make better use of its limited resources by focusing services on high risk offenders.

The Hawaii sentencing code has a standard probation period of five years for both class B and C felonies, with exceptions for certain sex offenders. This standard was established through Act 9, Session Laws of Hawaii 1972, a measure that totally revised the Hawaii Penal Code. Since 1972, extensive research has shown that recidivism, defined as any new arrest for this purpose, is most likely to take place during the first three years of community supervision. In the majority of states, probation services are delegated to the counties and among the largest counties, 83% of felony probationers receive terms of three years or less. In Hawaii, 95% of felony probationers are ordered to terms of more than three years.

Research conducted by the Justice Center indicates that 60% of probationers assessed as low risk of reoffending are supervised for five years. The cohort of those placed on probation in FY 2008 was tracked for three years and found that high risk probationers have much higher recidivism rates than their low risk counterparts—34% of low risk probationers were rearrested versus 56% of high risk probationers.

By directing our attention to the high risk offender, we will achieve greater reductions in recidivism and victimization. Section 5 of this measure proposes the reduction of standard probation terms from five years to three years for class B and C convictions, except for those who were convicted of certain violent crimes, child abuse and prostitution. Should an offender sentenced to three years of probation prove to require extended supervision, the Courts can so order under certain conditions.

FELONY THEFT

Section 708-831, HRS, sets the felony theft level for "properties or services the value which exceeds \$300..." This threshold was established 25 years ago, when the law was amended by Act 314, Session Laws of Hawaii 1986, from \$200 to \$300. At the time, that amount was similar to other states'

felony threshold. Over the years, though, the national average threshold has increased in a large part due to inflation.

Section 6 increases the threshold for felony theft to \$750, which is the national average.

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.

Should all the recommendations included in this measure and House Bill 2514, HD 1, be enacted, PSD will see an average reduction in bed demand equal to 410 beds/day in the first year, resulting in a savings of up to \$6 Million in Fiscal Year 2013. This savings will be realized by reducing the number of inmates placed in Mainland contracted beds. The savings will be reinvested to support community-based programs and services, increased probation and parole staff, and victim services. Attached is a list of how these funds will be expended.

The Department of Budget and Finance is drafting a 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.

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

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
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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.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the House Committee on Judiciary**

February 14, 2012

H.B. No. 2515 HD1: RELATING TO CRIME

Chair Keith-Agaran and Members of the Committee:

We support passage of H.B. No. 2515 HD1 which contains a number of recommendations made by the Governor's Justice Reinvestment initiative. We believe that the proposals contained in this bill can greatly relieve stress upon the criminal justice system while maintaining public safety.

H.B. No. 2515 HD1 amends H.R.S. § 706-622.5 to allow probation for second time drug offenders convicted of possession or use crimes. Currently, such offenders fall under the repeat offender statute, § 706-606.5, and must receive a prison sentence. Rather than filling our prisons with these offenders, the community would be better served by requiring them to enroll in substance abuse treatment programs. The success of programs such as drug court and recently, Hawaii's Opportunity Probation with Enforcement (HOPE), illustrate that offenders can be safely released into the community with proper treatment and supervision. Hawaii must take advantage of these alternatives to incarceration to relieve overpopulation in our correctional facilities.

Second, the bill, in section 5 on page 6, amends § 706-623, to provide for three-year probation terms for class B or C felonies which are not sexual or child abuse offenses. Currently, many probationers after two or three years are "administratively banked" by the probation department which means that, due to their good conduct on probation and compliance with all court-imposed conditions, are no longer on active supervision. Many of these probationers also petition the court for early release from their terms of probation. These motions require attorneys to have them filed and spaces on court calendars to hold hearings. Thus, they are costly to the system. For most offenders, a three-year term of probation is a sufficient amount of time to determine whether he/she can become a productive member of the community and is amenable to rehabilitation. Also in section 5, the bill provides for incentive time credits for supervised probation based upon a probationer's progression in his/her treatment plan. This provision would encourage and reward probationers who are motivated in their treatment plans.

Finally, in section 6 of the bill on page 7, the threshold valuation for felony theft of property would be raised from \$300 to \$750. This change reflects the general rise in prices of consumer goods over the years. The threshold amount was last adjusted more than 20 years ago, in 1986. This change would mean a shift of all theft cases involving less than \$750 to the district court system for handling as misdemeanor cases. This is a change which is overdue. The theft of \$300 worth of items in 2012 is far less serious than it was in 1986. The processing of a case in the district court as a misdemeanor is far less costly in terms of resources than is handling of a case in the circuit court as a felony. This change would result in a more fair disposition of property crimes and reduce stress on an overburdened court system.

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. 2515 HD1 would accomplish some of the reforms suggested by this project. We support these changes and urge the passage of this measure.

Thank for the opportunity to comment on this measure.

NEIL ABERCROMBIE
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TESTIMONY ON HOUSE BILL 2515, HD1
RELATING TO CRIME

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhodes, Vice Chair

Tuesday, February, 14, 2012; 2:05 PM
State Capitol, Conference Room 325

Good afternoon Chair Keith-Agaran, Vice Chair Rhodes, and Members of the House Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of House Bill 2515, HD1. House Bill 2515, HD1 provides judges with discretion to order probation for a second felony drug conviction, reduces certain Class B and C felony probation terms to three years, and increases the threshold for Class C theft offenses from \$300 to \$750.

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 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.

Judiciary² (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 the parole board to use a validated risk assessment instrument to determine the offender's risk for reoffense and suitability for community supervision when making a parole decisions.

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."

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 2515, HD1, and in support of House Bill 2514, HD1 together with the reinvestment funding recommendations.



HB2515 HD1
RELATING TO CRIME
HOUSE COMMITTEE ON JUDICIARY

February 14, 2012

2:05 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2515 HD1. The bill 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 current with the realities of law enforcement for low level drug offenses and related crimes.

OHA urges the committee to PASS HB2515 HD1. Mahalo for the opportunity to testify on this important measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai'i

February 14, 2012

RE: H.B. 2515, H.D. 1; RELATING TO CRIME.

Chair Keith-Agaran and Vice-Chair Rhoads, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony expressing concerns regarding, and suggesting amendments to, H.B. 2515, H.D. 1.

While the Department understands the State's desire "to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies that would reduce recidivism and crime, and increase public safety," there appear to be several sections of this bill that would undercut the goal of ensuring public safety, in the interest of simply saving money or decreasing the prison populations.

In Section 5 (page 6, lines 16-18), we suggest adding the following class B or C felonies to those offenses slated for five-year probation, where probation is imposed:

- section 707-702.5, relating to negligent homicide in the first degree;
- section 707-731, relating to sexual assault in the second degree;
- section 707-732, relating to sexual assault in the third degree;
- section 707-751, relating to promoting child abuse in the second degree;
- section 707-752, relating to promoting child abuse in the third degree;
- section 707-757, relating to electronic enticement of a child in the second degree;
- section 707-782, relating to labor trafficking;
- section 709-903.6, relating to endangering the welfare of a child in the first degree;
- section 709-906, relating to abuse of family or household members;
- section 711-1106.4, relating to aggravated harassment by stalking;

- section 711-1110.9, relating to violation of privacy in the first degree;
- section 712-1203, relating to promoting prostitution in the second degree; and
- section 712-1208, promoting travel for prostitution

This is particularly important, given that many class B and C felony convictions are the result of plea agreements for crimes originally charged as class A felonies. The court would still retain discretion to impose a shorter period of probation if warranted, and all other class B or C felony convictions would be slated for three years probation.

To better protect the interests of crime victims, we also suggest that page 7, lines 4-6, be amended to prevent probation from being shortened further where a defendant has not fully paid his or her restitution, by stating:

The court, on application of a probation officer, on application of the defendant, or on its own motion may discharge the defendant at any time, provided that the defendant has fully satisfied any restitution ordered at sentencing.

While defendants should not be punished for being unable to pay restitution, neither should they be rewarded with shorter probation if they have not satisfied their restitution order, which is an important part of their sentence. The payment of restitution is integral to the rehabilitation of defendants as well as the victims of crime.

Finally, Section 6 of this bill (page 7, line 17) seeks to increase the threshold for class C felony theft from \$300 to \$750. While we understand the desire to adjust this amount for inflation, the proposed increase seems unduly high, as it more than doubles the current threshold. We would suggest a more tempered increase, to avoid tremendous strain on local small business owners, who already struggle with losses due to shoplifting. Retailers may be particularly distressed by repeat or 'professional' offenders who would undoubtedly adjust their methods to the drastic increase in this monetary threshold.

Although the Department supports the goals of increasing public safety and increasing the efficiency and effectiveness of our criminal justice system, the proposals raised by H.B. 2515, H.D. 1 require further revisions before they can purport to achieve those goals. For these reasons, the Department of the Prosecuting Attorney continues to have concerns about, and suggests amendments to, H.B. 2515, H.D. 1. Thank you for this opportunity to testify on this bill.



**TESTIMONY ON HOUSE BILL 2515
RELATING TO CRIME**

**Robert Coombs, Senior Policy Analyst
Council of State Governments Justice Center**

Tuesday, February 14, 2012; 2:05 p.m.
State Capitol, Conference Room 325

Chair Keith-Agaran, Vice Chair Rhoads, and committee members, thank you for hearing HB 2515 Relating to Crime and for the opportunity to discuss the research we at the Council of State Governments Justice Center have conducted over the last year.

In June, Governor Abercrombie, Chief Justice Recktenwald, Senate President Tsutsui, House Speaker Say and Department of Public Safety Director Maesaka-Hirata joined to launch a Justice Reinvestment Initiative (JRI). JRI is a data-driven approach to identify inefficiencies, develop cost-effective policy options, and plan for a reinvestment of savings that reduces recidivism and increases public safety.

To assist them in this inter-branch, research-based effort, they requested assistance from the Pew Center on the States and the U.S. Department of Justice Bureau of Justice Assistance. The CSG Justice Center was selected to provide intensive technical assistance to Hawaii to conduct a comprehensive analysis of the state's criminal justice system and to help state leaders develop policy options that could increase public safety at less cost.

Over the past seven months, an inter-branch JRI working group chaired by the Director of Public Safety, Judge Alm, and the Senate President has guided and informed this effort. Throughout the process, we collected and analyzed data from arrests to court dispositions to probation, prison, and parole. We would like to recognize officials and staff at the Attorney General's office, the Judiciary and probation, Hawaii Paroling Authority, and of course the Department of Public Safety for their efforts to make data available and assist in the analysis throughout this process. The Department of Public Safety (PSD) deserves particular recognition for the data collection and access that Director Maesaka-Hirata and her staff provided to this process. Along with these quantitative analyses, we convened focus groups and interviews with numerous practitioners and stakeholders from around the state, including prosecutors, victim advocates, judges, parole board members, probation officers, law enforcement officials, and others.

Overview

Overall, we found that despite a decline in crime over the past five years, the overall jail and prison population has not significantly changed. With respect to HB2515, the analysis found that

key areas of the criminal justice system are not operating as cost-effectively as they could to reduce crime and increase public safety.

1. Probation terms are longer in Hawaii than the national average. Nationally, felony offenders are typically supervised for no more than three years. In Hawaii, the statute calls for five years of probation for Class B and C offenders.
2. Individuals convicted of a second drug possession offense must be sentenced to a state prison term. Most states allow greater flexibility for judges to determine whether a second time drug possession offender should be sentenced to prison, jail, or probation depending on the circumstances of the case.
3. Hawaii's felony theft level has remained unchanged since at least 1986. Currently theft of more than \$300 constitutes a felony. Nationally, many states have recently been raising their thresholds to adjust for inflation. The national average threshold is more than \$700.

Justice Reinvestment Policy Framework

In consultation with the inter-branch working group, the CSG Justice Center developed a package of policy options to address these inefficiencies, hold offenders more accountable, and reinvest savings in more effective public safety strategies.

The policy options from the framework included in House Bill 2515 would do the following:

- Focus probation supervision resources where they can do the most to affect criminal behavior. Recidivism studies repeatedly demonstrate that the offenders who reoffend are most likely to do so within the first two or three years. This bill would limit probation terms for most Class B and C offenders to three years. If the judge determines more time is necessary for supervision due to violations, the offender could be revoked and placed on a new term of supervision.
- Provide judges with the discretion to sentence a second time drug possession offender to probation, jail, treatment, or prison.
- Raise the felony theft threshold to \$750.

Impact

Based on the analysis we conducted, we anticipate that this bill along with HB2514 would contribute to increasing public safety in three ways. First, by addressing the inefficiencies that tie up resources in ways that do not reduce crime and reinvesting in ways that do. Second, by focusing resources spent on supervision, incarceration, and treatment on those individuals who are most likely to benefit from those investments in terms of reducing their likelihood of

committing another crime. Third, by increasing accountability in Hawaii's criminal justice system by mandating a period of supervision and increasing the amount of victim restitution collected.

Unless policymakers take action, the inefficiencies identified will cost Hawaii \$150 million over the next six years alone. Adopting the policies would avert all of those costs, while requiring an estimated \$7 million to be spent annually on investments in each of the following critical areas of the criminal justice system:

- Victim Services, Notification & Restitution Collection
- Prison, Reentry and Community Based Treatment Programs
- Probation and Parole Supervision
- Research and Planning

There are a number of amendments that have been brought forth to address concerns raised or to better clarify the legislation proposed.

Section 5, Subsection (b) has been changed to read:

- (b) Five years upon conviction of a class B or C felony[;] under parts II, V or VI of chapter 707; or chapter 709; or part I of chapter 712; and three years upon conviction of any other class B or C felony;

These felony classes include: negligent homicide in the first or second degree, negligent injury in the first degree, sexual assault in the second or third degree, promoting child abuse in the second or third degree, electronic enticement of a child in the second degree, endangering the welfare of a child in the first degree, abuse of family or household member, promoting prostitution in the second degree, promoting travel for prostitution and habitual solicitation of prostitution.

Section 5, Subsection (3) has been deleted which removes earned time credit for probationers. Three years probation is an important step toward best prioritizing resources and more time is needed to work out the details of any earned time credit policies.

Thank you, Chair Keith-Agaran, Vice Chair Rhoads and members of the committee, for the opportunity to share our research and findings with you as you work to find ways of increasing public safety while containing costs.



Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 14, 2012, 2:05 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of and with Comments to H.B. 2515, HD1, Relating to Crime

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The ACLU of Hawaii generally supports HB 2515, HD1 and the other proposals submitted as part of the Justice Reinvestment Initiative. However, we respectfully suggest that the threshold for Felony Theft ought to be increased above \$750, to at least \$1,000. Other states (including, we believe, Texas) have set the threshold at or above \$1,000, and we do not believe that this higher threshold has had an impact on public safety.

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
ACLU of Hawaii

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the
**Drug Policy
Forum**
of hawaii

Dedicated to safe, responsible, humane and effective drug policies since 1993

February 14, 2012

To: Rep. Gilbert Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Y. Ohta

RE: HB 2515 HD1 Relating to Crime
Hearing: Tuesday, February 14, 2012, 2:05 p.m., Room 325

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of HB 2515 HD1 Relating to Crime which promulgates law effecting implementation of criminal justice system policies and practices that would address inefficiencies in processing pretrial defendants, improve the targeting and allocation of resources aimed at reducing recidivism, and strengthening accountability by offenders.

This measure takes a step in the right direction in improving how we address drug addiction in our criminal justice system; that addiction is a public health issue and that relapse is part of recovery. This measure includes second-time drug offenders as well as first-time drug offenders in the statute. That is a major policy step recommended by the Justice Reinvestment Initiative and supported by the data gathered by the researchers.

We urge the committee to pass this measure. Thank you for the opportunity to provide testimony.



Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Committee on Judiciary
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 14, 2012
 2:05 pm
 Conference Room 325

RE: HB2515, HD1 Relating to Crime

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

Our testimony is specific to Section 6, subsection (6) of HB2515, HD1. RMH strongly opposes increasing the threshold property and services valuation for theft in the second degree from \$300 to \$750.

The National Retail Federation estimates that the value of merchandise lost to theft is over 1% of annual sales. If we apply that same percentage to retail sales in Hawaii (\$24.3 billion in 2010), the loss is more than \$24 million.

Our Loss Prevention professionals report that there are chronic shoplifters that know the system and actually calculate the value of the merchandise they are stealing to keep under the \$300 amount to avoid prosecution and serious penalties. The retailer is never compensated and has absolutely no hope of recovery. For a small business, a loss of almost 1% of sales is huge.

More importantly, this measure is not limited to shoplifting; we must remember that it applies to individuals as well. We should ask ourselves just how many hours one must work, or for how long one must save, to afford an item worth \$300, much less \$750. If stolen, the loss to the victim is tremendous. If classified as a misdemeanor, there is little or no consequence for the thief. There is absolutely no compelling reason for this increase.

The members of the Retail Merchants of Hawaii respectfully urge you to amend HB2515, HD1 to eliminate the increase in the threshold to \$750. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

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