



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Testimony HB 2515 HD2
Relating to Crime

Governor Neil Abercrombie

HOUSE COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair

February 23, 2012
11:00 am, Room 308

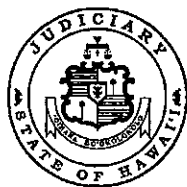
Chair Oshiro, Vice Chair Lee and committee members, thank you for hearing HB 2515 HD2 Relating to Crime. I respectfully request your support of this important measure.

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 Director Jodie Maesaka-Hirata and Deputy Director Martha Tournay of the Department of Public Safety, who will provide details about the proposed legislation.

Thank you again for consideration of this measure.



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Thursday, February 23, 2012, 11:00 a.m.
State Capitol, Conference Room 308

by

Cheryl R. Marlow
Adult Client Services Branch Administrator

Bill No. and Title: House Bill No. 2515, H.D. 2, 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. Effective January 7, 2059.

Judiciary's Position:

The Judiciary supports Section 3 of House Bill No. 2515, H.D. 2. 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.



House Bill No. 2515, H.D. 2, Relating to Crime
House Committee on Finance
February 23, 2012
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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.

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. 2 reads as follows (on page 6, line 19): "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. 2

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
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TESTIMONY ON HOUSE BILL 2515, HD2
RELATING TO CRIME

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Thursday, February 23, 2012; 11:00 AM
State Capitol, Conference Room 308

Good morning Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of House Bill 2515, HD2. House Bill 2515, HD2 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."

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.

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 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.

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."

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.

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, HD2, together with the reinvestment funding recommendations submitted by the Governor.

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THE HONORABLE MARCUS R. OSHIRO, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai`i

February 23, 2012

RE: H.B. 2515, H.D. 2; RELATING TO CRIME.

Chair Oshiro, Vice-Chair Lee and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony expressing concerns regarding, and suggesting amendments to, H.B. 2515, H.D. 2.

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," we would ask the Committee to carefully consider the likely repercussions of the bill as currently written, before making any drastic changes to Hawaii's probation laws or criminal offenses.

With regards to Section 3 (page 6, lines 7-9), we strongly recommend keeping the language of HRS §706-623(1)(b) as it currently exists. At this time, the courts do have--and utilize--the discretion to impose shorter periods of probation, when warranted. Moreover, once an offender is placed on probation, probation officers may "bank" a case if someone proves to be compliant over a period of time, and requires little or no monitoring compared to "problem clients." In addition, courts can already grant anyone early discharge from probation, at any time, upon application of a probation officer or defendant, or on its own motion.

If the Committee ultimately decides to limit the number of class B and C felonies eligible for five-year probation, we would suggest--at the very least--adding the following to those listed in H.B. 2515, H.D. 2:

- 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

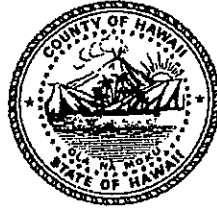
These are all very serious offenses warranting considerable supervision. And again, the courts would retain discretion to impose shorter terms of probation if warranted, probation officers can "bank" cases, and courts can grant early discharge from probation.

Finally, Section 4 of this bill (page 7, line 11) 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 unreasonably high, as it more than doubles the current threshold. We prefer that the threshold be kept at \$300 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. 2 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. 2. Thank you for this opportunity to testify on this bill.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION
TO HOUSE BILL 2515, HD2

A BILL FOR AN ACT RELATING TO CRIME

COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Thursday, February 23, 2012, 11:00 am
State Capitol, Conference Room 308

Representatives Oshiro, Lee and Members of the Committees:

The Hawaii County Office of the Prosecuting Attorney opposes House Bill 2515, HD2.

Our Office participated fully in the Justice Reinvestment Initiative Work Group Meetings. One day before the Legislature opened, the final recommendations were unveiled. Included in the recommendations were three of the proposals found in HB 2515, which permits a sentence of probation for certain second-time drug offenders, restricts a three-year probation term for individuals convicted of certain class B and C felonies, and increases the threshold property and services valuation for theft in the second degree to more than \$750. There were appropriate recommended provisions for quicker bail assessments and restitution collection that we do not oppose.

Based upon public safety concerns, the four county prosecutors were opposed to these three changes without further discussion, review of practices that were working, contradicting data on underlying premises for the consultants' recommendations other than "that's what other jurisdictions do" and assumptions and premises that were claimed. Historically, Hawaii has a unique system based upon a comprehensive approach that was visionary during the 1970s when it was created. It was based upon accurate assessments of the individual defendant's risks and needs, while balancing decision making with public safety concerns as the number one priority.

Recently, criminal justice system participants engaged in the Justice Reinvestment Initiative with this same thought to have a comprehensive review of the system with action recommendations. However, the recommendations were not provided with adequate time for more reasoned discussion. There was and continues to be an earnest willingness to continue the discussion to review other alternatives and develop modified positions based upon the working

knowledge of our state's practices. We all agree that effective and effective criminal justice system changes in law, policy and practice are welcomed, especially if there are cost savings to "reinvest" in the system improvements. However, all public servants recognize that these changes should be made only if public safety is ensured.

The proposed change in the law shortening and restricting probation terms to three years from five years for C and B felonies is not necessary to save costs. The law currently allows for shorter probationary periods and shorter probationary periods are given now. At any time at the initial sentencing or at any later time, a defendant can be discharged from probation upon a motion to the judge by the probation officer, the defendant, or upon the judge's own motion. Section 706-623, Hawaii Revised Statutes, as amended. Any cost savings can be accomplished by implementing appropriate judicial and probation practices with the current law.

By lowering the probationary term to three years at the outset will have many unforeseen negative consequences, including, in all probability most prosecutors will be unwilling to risk probation plea bargains, because it too restrictive. The data analyzed by the consultants showed there were fewer defendants who were sent to prison initially than in 2006. So, the trend is to use probation liberally.

Our theory was other collaborative initiatives such intermediate sanctions, specialty courts, Drug Courts, Mental Health Courts, HOPE Probation, and other alternatives to incarceration allowed prosecutors to agree to fewer prison sentences if long-term public safety was probable through intense supervision and evidence-based strategies.

The reality in practice is that defendants receive opportunities to deal with their problems and are not being sent to prison. First time offenders many times are allowed to have their records expunged, especially if drug offenses are involved. Even if there are technical violations such as drug use, probation will not be revoked until there are no other alternatives to change the defendant's non-compliant behaviors. The changes in the past decade in the sentencing structure liberally allows for lenient treatment of drug and first time property offenders, and drug offenders who do property crimes because of their drug habits. The citizen sees the criminal justice system weighed in favor of the defendant, not for the victim or public safety. Lowering the probationary period from five to three years will reinforce this perception and lower public confidence.

Providing defendants with second drug convictions chances for another round of regular probation may be appealing, but the reality is drug offenders who cannot shake their addiction need residential treatment, which is probably better handled, in public safety treatment dorms. This requires a status between probation and prison. Some states, such as Florida, allow for split-sentences, which allow for prison on one count and probation to follow on another count. With more thoughtful evaluations used in other states, the Justice Reinvestment Work Group could propose comprehensive changes that may provide cost savings while addressing the complex issues of protecting the public while changing the defendant's thinking and behaviors.

Increasing the theft valuation threshold for felony thefts from \$300 to \$750 again sends the **wrong message** to the most common criminal, the thief, that inflation adjustment applies to their crime business as well the hard-working, law-abiding citizen. A person making \$10 an hour loses the value of two weeks worth of work at the hands of the thief before the criminal justice system will treat the crime seriously. This increase **encourages professional shop-lifters** to raise the volume of those items stolen to double the loot. In fact, most misdemeanor thefts are not placed upon probation and probation is not required for misdemeanors.

If the theft valuation is increased, it should be increased to \$500 at most. Currently, the fair market standard to establish theft value under Section 708-801, HRS, as amended, requires the police to get an expert to establish the value, especially for used electronics. The cost of electronics has dramatically been reduced during the past five years. A new computer may be less than \$500. Additionally, to counter the public perception the State is going soft on thieves, the **Legislature should consider changing the habitual property crime** under Section 708-803, HRS, as amended, to have a misdemeanor theft enhanced to a Class C felony by eliminating the five year time frame in which the prior three separate property crimes must have occurred.

Finally, for any of the proposed changes in HB 2515, HD2, are other code sections would need revision to inter-connect any changes made to the theft felony threshold or probation changes, otherwise there would be inconsistent statutes, creating ambiguity in application.

For these reasons the Hawaii County Office of the Prosecuting Attorney opposes HB 2515, HD2. We remain open to continued discussion to propose alternative strategies to improve cost-savings to re-invest in the criminal justice system. We recommend the Justice Reinvestment Initiatives Working Group reconvene to make interim recommended strategies and practices changes before the end of this Legislative Session.

Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE JM-TA

February 23, 2012

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

SUBJECT: House Bill No. 2515, H.D. 2, Relating to Crime

I am John McEntire, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.


The Honolulu Police Department opposes House Bill No. 2515, H.D. 2, Relating to Crime.

In keeping with our commitment to reduce crime, create a safe environment, and enhance the quality of life in our community, we are strongly opposed to House Bill No. 2515, H.D.2, Relating to Crime. This bill amends section 706-623 of the Hawaii Revised Statutes to allow defendants convicted of certain class B and C felonies to be sentenced to a shorter term of three years probation. As written, defendants convicted of such felonies involving the distribution of dangerous, harmful, or detrimental drugs would be subject to the shorter terms of probation. We do not believe that persons convicted of narcotics distribution should be given the same consideration as those convicted of mere possession. These amendments do not constitute strategies that will reduce recidivism and crime and increase public safety.

The Honolulu Police Department urges you to oppose House Bill No. 2515, H.D. 2, Relating to Crime.

Thank you for the opportunity to testify.

APPROVED:


LOUIS M. KEALOHA
Chief of Police

Sincerely,


JOHN McENTIRE, Major
Narcotics/Vice Division

Serving and Protecting With Aloha

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn Lee, Vice Chair

Tuesday, January 31, 2012

11:00 a.m.

Room 308

STRONG SUPPORT FOR HB 2515 HD2- RELATING TO CRIME

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee!

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.

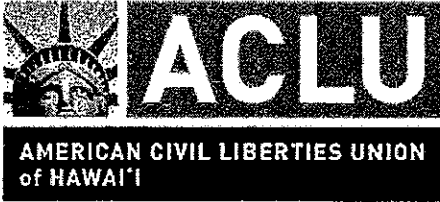
HB 2515 HD2 promulgates law effecting implementation of criminal justice system policies and practices that would address inefficiencies in processing pretrial defendants, improve the targeting and allocation of resources aimed at reducing recidivism, and strengthening accountability by offenders.

Community Alliance on Prisons is in strong support of this measure, which acknowledges that substance abuse is a public health issue and that relapse is part of the problem by proposing the inclusion second time drug offenders as well as first-time drug offenders in the statute. That is a major policy step in line with the research.

The bills also limits probation terms to 3 years (or less) for individuals convicted for class B and class C felonies that are not related to sexual or child abuse, criminal homicide, offenses against the family and against incompetents, or prostitution offenses. Hawai'i is way out of step with national practices - we have folks on probation for 5,10 and sometimes 15 years. This is too long as our data show that most folks re-offend within 18 months.

The bill also increases felony threshold for theft from \$300 to \$750. CAP did research on this and Hawai'i has one of the lowest thresholds for felony theft - a sentence of 5 years. The range is \$300 - \$3,000 across the nation. Incarcerating a person for a \$310 theft, at a cost of \$250,000 makes no rational sense, yet the prosecutor is whining over this inflationary adjustment. This is important since theft is often motivated by substance abuse and Hawai'i has one of the lowest felony thresholds in the nation; one that we have not changed since 1986.

Mahalo for hearing this important measure and for the opportunity to testify in support of HB 2515 HD2.



Committee: Committee on Finance
Hearing Date/Time: Thursday, February 23, 2012, 11:00 a.m.
Place: Conference Room 308
Re: Testimony of the ACLU of Hawaii in Support of and with Comments to H.B. 2515, HD2, Relating to Crime

Dear Chair Oshiro and Members of the Committee on Finance:

The ACLU of Hawaii generally supports HB 2515, HD2 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 this higher threshold has not 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

American Civil Liberties Union of Hawai'i
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Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
Committee on Finance
State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, February 23, 2012
 11:00 am
 Conference Room 308

RE: HB2515, HD2 Relating to Crime

Chair Oshiro, Vice Chair Lee, 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, HD2. RMH strongly opposes increasing the threshold property and services valuation for theft in the second degree to more than \$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 **\$240 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 \$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, HD2 **to delete the proposed increase and keep the value at \$300**. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Pregill'.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

TO: COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

DATE: Thursday, February 23, 2012

TIME: 11:00 a.m.

PLACE: Conference Room 308

FROM: Hawaii Food Industry Association - Lauren Zirbel, Executive Director

RE: HB 2515 Relating to Crime

Chairs & Committee Members:

HFIA would like to respectfully request an amendment to this measure.

Our testimony is specific to Section 6, subsection (6) of HB2515, HD2.

HFIA strongly opposes increasing the threshold property and services valuation for theft in the second degree to more than \$750.

We don't believe that increasing the value of theft in the second degree to over \$750 will "help strengthen the State's public safety and corrections system." We believe it will only encourage theft and make it more difficult for retailers to discourage crime

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 \$240 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 \$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 Hawaii Food Industry Association respectfully urge you to amend HB2515, HD2 to delete the proposed increase and keep the value at \$300.

Thank you for your consideration and for the opportunity to comment on this measure.



February 22, 2012

Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
Committee on Finance
State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, February 23, 2012
11:00 a.m.
Conference Room 308
State Capitol, Honolulu, Hawaii 96813

RE: HB2515, HD2 Relating to Crime

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

I am Shawn Kalima, Loss Prevention Manager for DFS Hawaii. DFS continues to be the world's most trusted and respected luxury travel retailer. As such, DFS strives to meet the ever-evolving needs of travelers to Hawaii with the most prestigious brands and high quality destination-specific merchandise.

Our testimony is specific to Section 6, subsection (6) of HB2515, HD2. DFS Hawaii strongly opposes increasing the threshold property and services valuation for theft in the second degree to more than \$750.

The high-quality and desirability of the merchandise we offer already has built-in vulnerabilities to theft, specifically shoplifting. Be it the result of current economic conditions and/or a noticeable influx of "active players" (chronics) in the Waikiki district, our Loss Prevention team is constantly challenged with protecting the assets of our company as well as the property (and safety) of our customers mostly comprised of tourists shopping at our Galleria Store. Increasing the minimum from more than \$300 to more than \$750 only reduces the consequences to potential thieves, many of whom are repeat offenders. Conversely, the element of risk to our store is elevated significantly.

I respectfully urge you amend HB2515, HD2 **to delete the proposed increase and keep the value at \$300.** Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in black ink that reads "Shawn Kalima".

Shawn Kalima
Loss Prevention Manager
DFS Hawaii
Phone: 808-837-3703



766 Pohukaina St
Honolulu, Hawaii 96813
(808) 591-2550

Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
Committee on Finance
State Capitol, Honolulu, Hawaii 96813
HEARING Thursday, February 23, 2012
11:00 am
Conference Room 308

RE: HB2515, HD2 Relating to Crime

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

My name for the record is Newell Hirata and I am the Loss Prevention Manager for the ABC Stores. I am also a constituent of Vice Chair Lee as I reside in the Milliani Mauka neighborhood.

The ABC Stores strongly opposes HB2515, HD2 which increases the minimum value of stolen property or services constituting theft in the second degree from \$300 to more than \$750.

In 2011, our stores prevented over 200 shoplifting attempts. As many loss prevention professionals have probably stated, shoplifters are well aware of the limits that define a theft as a misdemeanor or a felony. An increase in these limits will allow a shoplifter to increase their thefts by at least \$450. What does this mean to the ABC Stores? 200 shoplifting attempts @ \$450 per occurrence equals \$90,000. Again, the 200 are only accounting for unsuccessful attempts and the \$450 is the lower limit.

Many retailers are already struggling with repeat offenders, some of our shoplifters have over 85 charges on their record, do we want to make it easier for them to stay out of jail? If anything, a bill treating all shoplifting convictions in the aggregate is what should be in the works.

While we all struggle to make ends meet in this economy, our efforts should be focused on our customers. We should be focused on providing our visitors with an unforgettable memory of their time in our islands which includes their shopping experience.

Raising the definition of a felony over the current \$300 amount will allow shoplifters to increase their theft activity. This will force businesses to focus more of their attention toward theft prevention and away from servicing customers. Retailers will be forced to increase their prices in an effort to make up for the losses they have incurred due to the rise in shoplifting. Ultimately, this will hurt Hawaii's reputation as an affordable vacation spot. Since we are already battling this perception, I see bill HB2515, HD2 doing nothing more than making it even worse.

Thank you for your consideration and please amend bill HB2515, HD2 to keep the value at \$300.

Aloha and Mahalo,

A handwritten signature in black ink, appearing to read "Newell Hirata", written over a horizontal line.

Newell Hirata
Loss Prevention Manager

2/22/12

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 3:21 PM
To: FINTestimony
Cc: bobs@times-supermarket.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bob Stout
Organization: Times Supermarkets
E-mail: bobs@times-supermarket.com
Submitted on: 2/21/2012

Comments:

Raising the threshold to over \$750 only makes it worse for retailers. We've caught many offenders with over 100 convictions. This only promotes crime by increasing the value so now you'll have all the same folks in court, only their offense will be higher. Stop the nonsense!

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2012 5:18 PM
To: FINTestimony
Cc: sean.watabayashi@chanelusa.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Sean Watabayashi
Organization: Retail Merchants of Hawaii
E-mail: sean.watabayashi@chanelusa.com
Submitted on: 2/22/2012

Comments:

We are in opposition of the bill as the increase in value of theft in the 2nd degree will hurt the retail organizations, as well as individuals.

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 \$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.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 4:44 PM
To: FINTestimony
Cc: ajohnson@hinamauka.org
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM
Attachments: HB2515 HD2 Relating to Crime.doc

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Support
Testifier will be present: Yes
Submitted by: Alan Johnson
Organization: Hawaii Substance Abuse Coalition
E-mail: ajohnson@hinamauka.org
Submitted on: 2/21/2012

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 3:36 PM
To: FINTestimony
Cc: alan.y.nakamura@tsocorp.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Alan Y. Nakamura
Organization: Individual
E-mail: alan.y.nakamura@tsocorp.com
Submitted on: 2/21/2012

Comments:

TO: COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair
DATE: Thursday, February 23, 2012
TIME: 11:00 a.m.
PLACE: Conference Room 308
FROM: Hawaii Food Industry Association - Alan Y. Nakamura Vice-Chair
RE: HB 2515 Relating to Crime
Chairs & Committee Members:

HFIA would like to respectfully request an amendment to this measure.

Our testimony is specific to Section 6, subsection (6) of HB2515, HD2.

HFIA strongly opposes increasing the threshold property and services valuation for theft in the second degree to more than \$750.

If you are never the victim of theft, increasing the value of theft in the second degree to over \$750 seems to be a petty issue. For most people, the loss of \$750 worth of goods would be painful and, for some, it would be irreplaceable.

How long one must the average consumer save to afford an item worth \$750? If classified as a misdemeanor, there is little or no consequence for the thief. There is absolutely no compelling reason for this increase, other than to entice thieves to increase their thirst for stolen merchandise.

Please delete the proposed increase and keep the value at \$300.

Alan Y. Nakamura

Hawaii Food Industry Association - Vice-Chair

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 4:29 PM
To: FINTestimony
Cc: bob@waikikibeachactivities.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bob Hampton
Organization: Waikiki Beach Activities, Ltd.
E-mail: bob@waikikibeachactivities.com
Submitted on: 2/21/2012

Comments:
Aloha

Our opposition is specific to Section 6, subsection (6) of HB2515, HD2. WBA strongly opposes increasing the threshold property and services valuation for theft in the second degree to more than \$750.

We have been a victim of misdemeanor shoplifting crime this year 95% of it under \$300. We tighten our policies each time but seldom call the police. We have called HPD but they have not been able to help us other than take a report. If the misdemeanor threshold is doubled my losses to misdemeanor crime could be great enough to seriously damage my business. Raising the threshold does not make sense, why would you do that to small business?

Please leave the threshold for misdemeanor crime at \$300.

Aloha,

Bob Hampton
President

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 11:01 PM
To: FINTestimony
Cc: benforsyth1979@yahoo.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Benjamin Forsyth
Organization: Individual
E-mail: benforsyth1979@yahoo.com
Submitted on: 2/21/2012

Comments:

I have arrested dozens of shoplifters in the past couple years that have admitted to stealing less than \$300 at one time only because they know that theft 2nd is over \$300, and that it's a felony. Career shoplifters/thieves understand the local laws, and understand how to manipulate the system. It's extremely frustrating to arrest people over and over again who have had 60, or 70, or 80 prior dealings with the police. Obviously the corrections system in Hawaii can only house so many inmates, but I don't feel that should justify a reason to give these violators of the law a slap on the wrist. Criminals have no rules, but we as society should continue to enforce the laws, and not make it easier for violators of law to operate. Modifying the theft 2nd charge to over \$750.00 will contribute to more loss/shrink to local retailers, and encourage career thieves to steal more during one act of theft than they had done previously. Additionally retailers continue to raise prices of their products due to the continuous losses that they incur on a yearly basis.

FINTestimony

From: mailinglist@capitol.hawaii.gov
ent: Tuesday, February 21, 2012 8:37 PM
To: FINTestimony
Cc: mcfive0@gmail.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Michael Chong
Organization: Individual
E-mail: mcfive0@gmail.com
Submitted on: 2/21/2012

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2012 2:47 PM
To: FINTestimony
Cc: ewelsh@metcalfconstruction.com
Subject: Testimony for HB2515 on 2/23/2012 11:00:00 AM

Testimony for FIN 2/23/2012 11:00:00 AM HB2515

Conference room: 308
Testifier position: Support
Testifier will be present: No
Submitted by: Erin Welsh
Organization: Individual
E-mail: ewelsh@metcalfconstruction.com
Submitted on: 2/21/2012

Comments:

I am in strong support of this bill. We need to fix this system and this is a good start.

Benjamin Forsyth
HB 2515
oppose

I have arrested dozens of shoplifters in the past couple years that have admitted to stealing less than \$300 at one time only because they know that theft 2nd is over \$300, and that it's a felony. Career shoplifters/thieves understand the local laws, and understand how to manipulate the system. It's extremely frustrating to arrest people over and over again who have had 60, or 70, or 80 prior dealings with the police. Obviously the corrections system in Hawaii can only house so many inmates, but I don't feel that should justify a reason to give these violators of the law a slap on the wrist. Criminals have no rules, but we as society should continue to enforce the laws, and not make it easier for violators of law to operate. Modifying the theft 2nd charge to over \$750.00 will contribute to more loss/shrink to local retailers, and encourage career thieves to steal more during one act of theft than they had done previously. Additionally retailers continue to raise prices of their products due to the continuous losses that they incur on a yearly basis.