

HB 2515, HD3

RELATING TO CRIME

Description:

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. (HB2515 HD3)



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Testimony HB 2515 HD3
Relating to Public Safety

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

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

March 21, 2012
10:00 am, Room 016

Chair Espero, Chair Hee, Vice Chair Kidani, Vice Chair Shimabukuro and committee members, thank you for hearing HB 2515 HD3 Relating to Public Safety. I respectfully request your support of this important measure.

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

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

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

Thank you again for your consideration of this measure.

NEIL ABERCROMBIE
GOVERNOR



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

JODIE F. MAESAKA-HIRATA
DIRECTOR

Martha Torney
Deputy Director
Administration

Joe W. Booker, Jr.
Deputy Director
Corrections

Keith Kamita
Deputy Director
Law Enforcement

No. _____

March 20, 2012

TESTIMONY ON HOUSE BILL 2515, HOUSE DRAFT 3
RELATING TO CRIME

By

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

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

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

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

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

The Department of Public Safety is in strong support of House Bill 2515, House Draft 3, Relating to Crime, the result of work by the Justice Reinvestment Working Group which was formed pursuant to the State of Hawaii's successful application to participate in the national Justice Reinvestment Initiative (JRI). We greatly appreciate the support we have received from the Legislature and the dialogue it has generated. On several points, consensus has been reached among stakeholders as a result of these discussions which resulted in several amendments to the original bill.

We believe this Committee is familiar with this measure, as its companion has been previously heard, so we will keep our comments short and be available for questions.

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. We support giving the Courts discretion to place second-time felony drug offenders on probation. We have the utmost confidence that this discretion will be carefully applied by the Courts in cases where substance abuse relapse has occurred in the absence of other serious crimes.

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.

By directing our attention to the high risk offender, we will achieve greater reductions in recidivism and victimization. Section 3 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

Senator Will Espero, Chair
Senator Clayton Hee, Chair
March 21, 2012
Page 3

increased in a large part due to inflation. Section 4 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.

The Department of Budget and Finance forwarded the Governor's Message to reappropriate the anticipated savings in PSD 808, Non-State Facilities, to other programs and services offered by the Hawaii Paroling Authority, Crime Victims Compensation Commission, Judiciary, county prosecutor offices, and other PSD program IDs. Although this measure does not have an appropriations section, we just want to bring to your attention it works hand-in-hand with House Bill 2514, House Draft 3.

SUMMARY

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

Thank you for the opportunity to testify on this important measure.



The Judiciary, State of Hawaii

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

and

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

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

by
Cheryl R. Marlow
Adult Client Services Branch Administrator

Bill No. and Title: House Bill No. 2515, H.D. 3, 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. 3, Relating to Crime.

The Governor, Chief Justice, Senate President, House Speaker, and Department of Public Safety Director established a bipartisan, inter-branch Justice Reinvestment Working Group comprised of leading state and local officials to receive intensive technical assistance from the Council of State Governments (CSG) Justice Center. The CSG Justice Center assisted the



House Bill No. 2515, H.D. 3, Relating to Crime
Senate Committee on Public Safety, Government Operations, and Military Affairs
Senate Committee on Judiciary and Labor
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working group in analyzing data from every aspect of Hawaii's criminal justice and corrections system. The Judiciary supports the intent of the Justice Reinvestment Initiative process.

Overall, the analysis found that crime and victimization rates as well as arrests and felony convictions for violent and property crimes have declined. However, despite these declines, from 2006 to 2010, the probation 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.

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, this bill includes an amendment to Section 706-603, 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 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. 3

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

March 21, 2012

H.B. No. 2515 HD3: RELATING TO CRIME

Chairs Espero and Hee and Members of the Committees:

We support passage of H.B. No. 2515 HD3 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 HD3 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 3, amends § 706-623, to provide for three-year probation terms for certain class B or C felonies which are not sexual or 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 4 of the bill, 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 HD3 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
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 2515, HD3
RELATING TO PUBLIC SAFETY

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair

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

Good morning Chair Espero, Chair Hee, and Members of the Joint Senate Committee on Public Safety, Government Operations, and Military Affairs and Committee on Judiciary and Labor. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide testimony in support of House Bill 2515, HD3. House Bill 2515, HD3 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 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.

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.

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."

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.

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, HD3.



HB2515 HD3
RELATING TO CRIME
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS
SENATE COMMITTEE ON JUDICIARY AND LABOR

March 21, 2012

10:05 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2515 HD3, which would implement the changes suggested by the Justice Reinvestment Initiative.

OHA's 2010 report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," and the recently completed study by the Justice Reinvestment Initiative indicate that there is a clear need for smart justice solutions, such as those that are part of this bill. These changes bring the criminal justice system current with the realities of law enforcement for low-level drug offenses and related crimes.

OHA urges the committee to PASS HB2515 HD3. Mahalo for the opportunity to testify on this important measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



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

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

**Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai'i**

March 21, 2012

RE: H.B. 2515, H.D. 3; RELATING TO CRIME.

Chair Espero; Chair Hee; Vice-Chair Kidani; Vice-Chair Shimabukuro; members of the Senate Committee on Public Safety, Government Operations, and Military Affairs; and members of the Senate Committee on Judiciary and Labor; the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony expressing concerns regarding H.B. 2515, H.D. 3.

The Department is very concerned about Section 3 (page 6, lines 7-9), and strongly recommends 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 as appropriate. Moreover, once an offender is on probation, probation officers can "bank" a case if someone proves to be compliant over a period of time; this requires little or no monitoring in comparison to "problem clients." In addition, courts can already grant early discharge from probation, at any time, upon application of a probation officer or defendant, or on its own motion.

Another problem-area in this bill is Section 4 (page 7, line 11), which seeks to increase the threshold for class C felony theft from \$300 to \$750. This increase would more than double the current threshold, and significantly detract from the seriousness and deterrence-effect of this offense. \$300 already poses a huge loss to private citizens who have personal property stolen from them, and local business owners would face tremendous strain if this threshold were

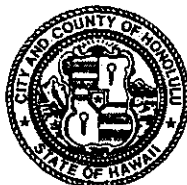
increased, as they already struggle with losses due to shoplifting. The proposed increase would leave retailers particularly vulnerable to repeat offenders, who would undoubtedly adjust their methods accordingly.

For the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu continues to have concerns about H.B. 2515, H.D. 3. Thank you for the opportunity to testify on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
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LOUIS M. KEALOHA
CHIEF

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DEPUTY CHIEFS

OUR REFERENCE JM-TA

March 21, 2012

The Honorable Will Espero, Chair
and Members
Committee on Public Safety, Government
Operations, and Military Affairs
The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Espero and Hee and Members

SUBJECT: House Bill No. 2515, H.D. 3, 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. 3, 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.3, 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. 3, Relating to Crime.

The Honorable Will Espero, Chair
and Members
The Honorable Clayton Hee, Chair
and Members
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March 21, 2012

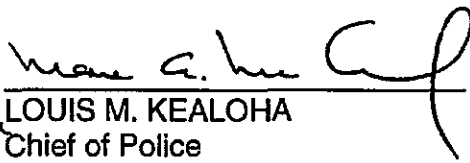
Thank you for the opportunity to testify.

Sincerely,

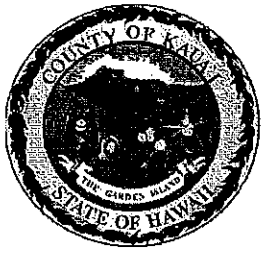


JOHN McENTIRE, Major
Narcotics/Vice Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police



OFFICE OF THE PROSECUTING ATTORNEY

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Shaylene Iseri-Carvalho
Prosecuting Attorney

Jake Delaplane
First Deputy Prosecuting Attorney

Sam Jajich
Second Deputy Prosecuting Attorney

March 19, 2012

TO: SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS AND SENATE COMMITTEE ON JUDICIARY
FR: SHAYLENE ISERI-CARVALHO, COUNTY OF KAUAI PROSECUTING
ATTORNEY
RE: H.B. 2515, H.D. 1; RELATING TO CRIME

Chair Espero, Chair Hee, and committee members, thank you for hearing this bill. The Kaua'i Office of the Prosecuting Attorney submits the following testimony in support of the testimony put forward by the City and County of Honolulu Department of the Prosecuting Attorney.

The Honolulu Prosecuting Attorney has written to you expressing concerns regarding HB 2515, HD1, Relating to Crime. We echo these concerns. Though economic efficiency and spending concerns are a top priority in the State, we recognize that this cannot be sought after to the detriment of public safety concerns. We therefore support the suggested amendments and proposals put forward by the Honolulu Department of the Prosecuting Attorney.

Specifically, we support the changes suggested regarding Section 5 wherein the Honolulu Prosecuting Attorney would add certain class B or C felonies to those offenses slated for five-year probation. Their reasoning is important where they have recognized that class B and C felony convictions are often the result of plea agreements for crimes originally charged as class A felonies. Further, we support the amendment to page 7, lines 4-6 as this change will ensure that offenders who have not paid their restitution are not rewarded for such behavior. We also agree that Section 6 of the bill increases the threshold for class C felonies at a rate which is higher than would be required by inflation. We therefore, also recommend a smaller adjustment to the threshold. Thank you for your time and we look forward to further discussion on the matter.

Mahalo,

Jake Delaplane
First Deputy Prosecuting Attorney, County Of Kauai

Deputy Prosecuting Attorneys:

Lisa R. Arin
Jared Auna
Lance Kobashigawa

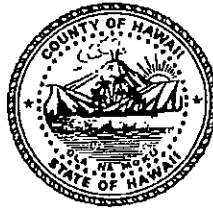
Melinda K. Mendes
Tracy Murakami
Gary Nelson

John H. Murphy
Ramsey Ross
Rebecca A. Vogt

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 2515, HD3

A BILL FOR AN ACT RELATING TO CRIME

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT
OPERATIONS, AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Michelle N. Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

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

Senators Espero, Kidani, Hee, Shimabukuro, and Members of the
Committees:

The Hawaii County Office of the Prosecuting Attorney opposes House Bill 2515, HD3.

Our Office participated fully in the Justice Reinvestment Initiative Work Group Meetings. **The processed was "flawed" by not allowing the participants to make recommended modifications based upon our state experience.** One day before the Legislature opened, the final recommendations of the mainland consultants 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. We also support the appropriations to have adequate parole and probation officers and funds for services.

Based upon public safety concerns, the four county prosecutors were opposed to these three changes without further discussion. Our Office wanted to review the practices that were working, analyze the contradicting data of the underlying premises for the consultants' recommendations, and propose recommendations that were appropriate for Hawaii. The local professionals should be shown some respect that we have opinions that would counter what the mainland consultants' statements: "that's what other jurisdictions do" and assumptions and premises that were claimed. Historically, Hawaii had 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.**

Under the current proposal, residential burglars who enter homes when occupants are in the house and defendants committing robbery in the second degree will have only three years probation. Under the federal law, burglary is considered a crime of violence, and data suggests that burglars are more likely to commit violent crimes. The amendments covering some violent offenses is a good first step, but does not use the more thoughtful approach of using the current law to reduce probation to three years on a case-by-case basis as recommended by their probation officer for property offense, including burglaries and robberies.

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's too restrictive. Without adequate community services available and in place, there must be a "phased implementation" of this proposal otherwise public safety will be jeopardized. The recent DOH and DWS reduction of community services and the negative consequences for community safety are clear examples of jeopardizing public safety without adequate community services and case supervision in place. The proposed changes are too drastic. The data analyzed by the consultants showed there were fewer defendants who were sent to prison initially by the judges than in 2006. So, the trend is to use probation liberally. The use of probation over prison has taken a long process of trust, respect and collaboration with not only public safety and judiciary, but with the agreement of the prosecutors through a consensus process.

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. Realistically, by giving defendants an inflationary benefit by raising the felony theft threshold is **reducing any priority for law enforcement to investigate property crimes**. As it is now, **Hawaii has higher than the national average of property crimes rates and these rates are rising**. Why should the legislature state that property crimes have less priority for law enforcement?

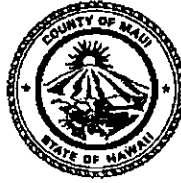
If the theft valuation is increased, it should be increased to \$500 at most. Currently, the fair market standard to establish theft value under Section 708-801, HRS, as amended, requires the police to get an expert to establish the value, especially for used electronics. The cost of electronics has 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, HD3, 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, HD3. **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. We also recommend pass appropriations for services for offenders on probation and parole, increasing the caseworkers in the judiciary and public safety needed to supervise these offenders, and most importantly, we ask the Public Safety prepare a written report of current improvements based upon the past appropriations given for re-entry staff and programs. At minimum, a phased in implementation process should be adopted to avoid chaotic implementation.**

Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
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CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

HB 2515, HD 3 - RELATING TO CRIME

March 21, 2012

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

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

The Department of the Prosecuting Attorney, County of Maui, OPPOSES this measure.

One day before the Legislature opened, the final recommendations of the mainland consultants 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, which we oppose. There were appropriate recommended provisions for quicker bail

assessments and restitution collection that we do not oppose. We also do not oppose the appropriations to have adequate parole and probation officers and funds for services. The one day time frame did not allow stakeholders to recommend amendments to the proposal.

The county prosecutors opposed the first three proposals. We wanted to review the practices that were working, analyze the contradicting data of the underlying premises for the consultants' recommendations, and propose recommendations that were appropriate for our communities. We have opinions, based on our EXPERIENCE that would counter the mainland consultants' statements that "that's what other jurisdictions do," and the assumptions that they claimed. The "that's what other jurisdictions do" attitude is troubling, given that this Legislature and the Hawaii Supreme Court have never been afraid to be in a minority of jurisdictions when considering the public good.

Historically, Hawaii has a unique system based upon a comprehensive approach that was groundbreaking in the 1970s when it was created. It was based upon accurate assessments of individual defendants' risks and needs, while balancing that with public safety concerns being the number one priority.

The county prosecutors participated in the Justice Reinvestment Initiative with these same the same ideals. However, the time frame did not provide an opportunity for more reasoned discussion. There was, and continues to be, a willingness to review other alternatives and develop modified positions based upon the hands-on knowledge and experience of stakeholders in our state. We all agree that effective and efficient system changes in law, policy and practice are welcomed, especially if there are cost savings to "reinvest" in system improvements. But, we all recognize that proposed changes should not be made at the risk of public safety.

The proposal to reduce probation terms to three years, from five years, for C and B felonies is not a necessary cost saving. The law currently allows for shorter probationary periods, which are granted, based upon an evaluation of individual defendants. At the time of the original the initial sentencing or at any subsequent time, a defendant may be discharged from probation upon a motion to the court by the probation officer, the defendant, or upon the court's own motion pursuant to HRS § 706-623. Cost savings may be accomplished by implementing appropriate judicial and probationary practices with the current law.

For example, under the current proposal, residential burglars who enter homes when occupants are at home, and defendants who commit robbery in the second degree, will receive just three years of probation. Under federal law, burglary is considered a crime of violence, and the data suggests that burglars are more likely to commit violent crimes. While the proposal is a good first step, it disregards the use of the current law to reduce probation on a case-by-case basis.

We believe that other collaborative initiatives already provide intermediate sanctions; specialty courts, Drug Courts, Mental Health Courts, HOPE Probation, and other alternatives to

incarceration allow fewer prison sentences if long-term public safety was possible through intense supervision and evidence-based strategies.

Defendants receive opportunities to deal with their problems without being sent to prison. First time offenders are often allowed to have their records expunged, especially with drug offenses. Even if there are drug use violations, a probation term will not be revoked until there are no other alternatives to change the defendant's non-compliant behavior. The current sentencing structure liberally allows for lenient treatment of drug and first time property offenders and drug offenders who commit property crimes because of their drug habits. The average citizen views the criminal justice system as weighed in favor of the defendant instead of for the victim or public safety. Lowering the probationary period from five to three years will confirm this perception and decrease public confidence in the administration of justice in our state.

While giving defendants with second drug convictions another opportunity for regular probation may be look appealing, the reality is that drug offenders who cannot beat their addiction need residential treatment. This requires a status between probation and prison. Some states allow for split-sentences, which allow for prison on one count with probation to follow on another count. With more thoughtful evaluations of programs used in other states, the Justice Reinvestment Initiative Work Group could propose comprehensive changes that provide cost savings while changing the defendant's behaviors and protecting the public.

Further, increasing the theft valuation threshold for felony thefts from \$300 to \$750 also sends the wrong message to the public, that inflation adjustment applies to the 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 a thief before the criminal justice system will treat the crime seriously. This also encourages professional thieves to more than double their take. In fact, most misdemeanor thefts are not placed upon probation at all. Currently, Hawaii is above the national average of property crime rates, and these rates are rising. Furthermore, saw an opinion piece in the Honolulu Star-Advertiser on Monday, which stated that these defendants do not need prison, but drug treatment instead. Increasing the felony threshold does not provide drug treatment because probation is not required for misdemeanors, and if imposed, is only limited to one year. This is insufficient to address the rehabilitation needs of these defendants.

Finally, all of the proposed amendments provided in this measure need to be conformed with other related HRS sections. The failure to do so will result in conflicting statutes,. This measure does not provide those amendments.

Thus, the Department of the Prosecuting Attorney, County of Maui, opposes HB 2515, HD 3, and requests that it be HELD in committee.

Thank you for the opportunity to provide this testimony.



Chaminade University
OF HONOLULU

Testimony Presented to the
Senate Committee on Public Safety and the
Senate Committee on Judiciary
Wednesday March 21, 2012 at 10:05 am

by

Chaminade University of Honolulu
Bro. Bernard J. Ploeger, SM, PhD
President

HB 2515 HD3
Relating to Public Safety

Dear Chair Espero, Chair Hee, Vice Chair Kidani and Vice Chair Shimabukuro and members of both Committees:

Thank you for the opportunity to provide testimony in **support** of HB 2515 HD3, Relating to Public Safety

I and the members of the University's Criminal Justice faculty judge that this bill is appropriately responsive to the recommendations the State Department of Public Safety received in the recent study conducted as a part of the Justice Reinvestment Initiative. We find this bill addresses many of the causes that currently contribute to our overburdened and inefficient correctional system. Given our longstanding commitment to the preparation of public safety and law enforcement officials and as the only University in the State offering a master's degree in Criminal Justice Education we wish to add our endorsement of this measure.

Thank you for allowing us to submit this testimony.

Bro Bernard J Ploeger, SM

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

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



COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Michelle Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile Shimabukuro, Vice Chair

Wednesday, March 21, 2012

10:00 a.m.

Room 016

STRONG SUPPORT FOR HB 2515 HD3 - RELATING TO CRIME (JRI)

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

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

HB 2515 HD3 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.

Community Alliance on Prisons is in strong support of this measure. Hawai'i can no longer afford to place public safety at risk by investing our resources in the wrong place. This measure takes a deep look at our criminal justice system and a wider look at what works elsewhere and suggests ways that we can enhance community safety by building in efficiencies and implementing proven best practices.

We are heartened that many things are already happening in various sectors in the system such as working to make bail more efficient, training on assessments that will help make better decisions throughout the system, and placing our resources where they will do the most good, thanks to the incredible work of our agencies across all branches of government and the analysts from the Justice Center.

This bill is first and foremost about public safety and holding individuals accountable for their actions, while recognizing that substance abuse is the root cause of much of Hawai'i's crime. It is widely recognized that substance abuse is best treated as a public health issue and this bill amends eligibility for

probation to include second time offenders for certain drug offenses and allows a one-time expungement of a drug conviction record for an individual sentenced to probation without a previous sentence to probation for a drug offense. We suggest the expungement provision also include second-time drug offenses since we know – and the research is clear – that relapse is part of the disorder.

We note the prosecutor's concerns about limiting probation and respectfully direct the committee to the testimony of the Judiciary, the branch of government responsible for probation who testified at the Finance Committee:

“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.** *(emphasis added)*

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.”

The felony threshold for theft hasn't increased from \$300 since 1986 (26 years). Increasing the threshold to \$750 for the minimum threshold value of property or services stolen that constitutes theft in the second degree (5 year sentence) is more reasonable. Should the community bear a \$250,000 price tag to incarcerate a person who probably needs substance abuse treatment and has a slim chance of receiving that while incarcerated for a theft of 301? This does not pencil out when we know there are more effective alternatives. CAP's own research found that most states' thresholds range from \$750 to \$1,500.

Therefore, Community Alliance on Prisons urges the committee to pass this well-researched bill based on our own data that was reviewed by independent analysts to enhance public safety, increase accountability for wrongdoers and expend our resources where they will move us toward the outcomes that we strive for.

Mahalo for this opportunity to testify.



HAWAII SUBSTANCE ABUSE COALITION

HB2515 RELATING TO CRIME 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.

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

HSAC Supports HB2515 HD3 With Recommendations:

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

SUMMARY

Extensive research has demonstrated that our prison populations have grown substantially over the 25 years due primarily to mandatory sentencing that removes discretionary decision making from probation/parole who could previously release “reformed” offenders as well as a growing number of inefficiencies between agencies.

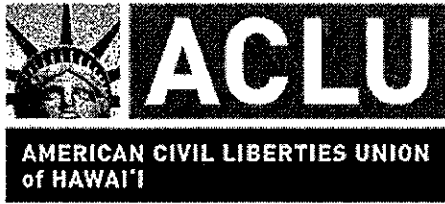
Allowing discretionary decision making based on results and removing inefficiencies will improve outcomes and reduces costs.

Also, research has shown that competent assessment protocols for each individual are more relevant for determining safety risk and respective sentencing rather than an approach that uses a mandatory rule for all.

While mandatory sentencing has helped keep violent offenders off the streets, most of the exorbitant population growth and upward spiraling costs are due to non-violent drug addicts receiving longer mandatory sentencing.

These offenders are typically not a violent safety threat to community and have a drug problem that if properly treated by professionals while under the supervision of probation/parole personnel, the vast majority of offenders are no longer committing drug related crimes.

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



Committee: Committee on Public Safety, Government Operations & Military Affairs
Committee on Judiciary and Labor
Hearing Date/Time: Wednesday, March 21, 2012, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Support of and with Comments to H.B. 2515, H.D. 3, Relating to Crime

Dear Chairs Espero and Hee and Members of the Committees:

The ACLU of Hawaii supports the elimination of excessively harsh sentencing policies that contribute to the over-incarceration of low-risk offenders. Accordingly, the ACLU of Hawaii generally supports H.B. 2515, H.D.3, but urges the adoption of the following amendments.

- Amend section 4. (1) A person commits the offense of theft in the second degree if the person commits theft: (b) Of property or services the value of which exceeds \$1,000.
 - The increased threshold is a more adequate intermediary between the thresholds for theft in the first degree (\$20,000) and theft in the third degree (\$100).

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 Hawaii'
P.O. Box 3410
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F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org



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

TO: COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND
MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Michelle N. Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Wednesday, March 21, 2012

TIME: 10:05 a.m.

PLACE: Conference Room 016

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, HD3.

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, HD3 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.

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

Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Committee on Judiciary & Labor



HEARING Wednesday, March 21, 2012
 10:00 am
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813

RE: HB2515, HD3 Relating to Crime

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

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. Through November 2011, retail generated \$25.6 billion in sales and paid over \$1 billion in GET. 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, HD3. 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 serious.

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, HD3 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.

Carol Pregill, President

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

National Association of Reformed Criminals
NARC

1765 Ala Moana Blvd. #1386

Honolulu, Hawaii, 96815

March 21, 2012

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile Shimabukuru, vice chair

Wednesday, March 21, 2012

10:05 AM

Conference Room 016

HB 2515, HD3- RELATING TO CRIME

STRONG SUPPORT

Non-violent drug offenders are at the greatest risk of recidivism due to the strong potential to relapse –especially ICE – which is still the leading drug of choice in Hawaii. These are the type of offenders who receive mandatory minimums, extended terms, etc, and usually spend as much, if not more time, then murderers and other violent offenders– on the installment plan.

I am a typical example of a non-violent repeat drug-related offender who has been in and out of various prisons throughout the world. After 15 years under the gun (the 4th and last time), I was offered a drug program, followed by 6 months in a half-way house. It's been over 6 years since my completion.

Additionally, adjusting the threshold from \$300 to \$750 is long overdue. A compromise of \$500 for a felony that nets 5 years in prison could send a message - Spend a year in custody for every \$100 bucks stolen – after 5 years/\$500 bucks later - they may be able to connect the dots.

Mahalo, Andy Botts



ABC STORES

766 Pohukaina Street
Honolulu, Hawaii 96813-5391
www.abcstores.com

Telephone: (808) 591-2550
Fax: (808) 591-2039
E-mail: mail@abcstores.com

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

Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Committee on Judiciary and Labor

HEARING Wednesday, March 21, 2012
10:00 am
Conference Room 016
State Capitol, Honolulu, Hawaii 96813

RE: HB2515, HD3 Relating to Crime

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

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 Kidani as I reside in Mililani Mauka.

My testimony is specific to Section 6, subsection (6) of HB2515, HD3. ABC Stores strongly opposes increasing the threshold property and services valuation for theft in the second degree from \$300 to more than \$750. .

In 2011, our stores prevented over 200 shoplifting attempts. Realistically, the thefts that were not prevented are easily in excess of 500-600. 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 without the fear of a more severe felony prosecution. In other words, there is no downside to stealing up to whatever the limit will be set at. Shoplifting is a huge problem for retailers and I cannot see how section 6 will help us with our shoplifting problems.

Many retailers are already struggling with repeat offenders, some of our shoplifters have over 85 charges on their record. Are we trying 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 a rise in shoplifting. Ultimately, this will hurt Hawaii's reputation as an affordable vacation destination. Since we are already battling this perception, I see Bill HB2515, HD3 - Section 6, doing nothing more than making things worse.

Thank you for your consideration and please amend bill HB2515, HD3 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



March 20, 2012

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

Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Committee on Judiciary & Labor

HEARING Wednesday, March 21, 2012
 10:00 a.m.
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813

RE: **HB2515, HD3 Relating to Crime**

Chairs Espero and Hee, Vice Chairs Kidani and Shimabukuro, 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, HD3. 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, HD3 **to delete the proposed increase and keep the value at \$300.** Thank you for your consideration and allowing me to comment on this measure.

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

Shawn Kalima
Loss Prevention Manager
DFS Hawaii

DFS Hawaii Loss Prevention Department
P.O. Box 29500
Honolulu, Hawaii 96820
Phone: 808-837-3703
Fax: 808-837-3702

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

Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Committee on Judiciary & Labor
RE: HB2515, HD3 Relating to Crime

HEARING: Wednesday, March 21, 2012 10:00 am
Conference Room 016
State Capitol, Honolulu, Hawaii 96813

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

I am the Loss Prevention Manager for Times Super Market, Big Save Stores, Shimas Market, and Fujioka Wine Times locations. Being involved with Loss Prevention for about the past 32 years I have come to understand and have seen the effect shoplifting has had on the retail industry.

I am aware that other retailers have sent in testimony about the losses that retail establishments have endured and the fact that this amount will increase significantly with the passage of this bill.

To survive in this very competitive retail industry many companies are forced to make costly investments in an effort to combat this rising problem. Many retailers like our company are installing EAS security systems, more cameras, and adding more security personnel in an effort to help control these losses.

I am opposed as is Times Super Market, to this measure of increasing the threshold of theft in the 2nd degree above the set \$300 amount. Please consider the impact this could have not only on companies but their employees and customers as well.

Thank You,



Brian Iwaishi
Loss Prevention Manager

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 12:00 PM
To: PGM Testimony
Cc: anthonymsimoneau@gmail.com
Subject: Testimony for HB2515 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2515

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

Comments:

I am in support of such bill. The State financial amounts for sentencing are grossly outdated and not in any way keeping with the "mainland" norm. The current guidelines have significant taxpayer burden, to house individuals for petty and shoplifting charges.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 16, 2012 1:39 AM
To: PGM Testimony
Cc: annfreed@hotmail.com
Subject: Testimony for HB2515 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2515

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

Comments:
I support this Justice Reinvestment Initiative.

Mahalo,
Ann S. Freed
Mililani
80-623-5676

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 16, 2012 7:00 AM
To: PGM Testimony
Cc: bobs@times-supermarket.com
Subject: Testimony for HB2515 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2515

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bob Stout
Organization: Times Supermarkets
E-mail: bobs@times-supermarket.com
Submitted on: 3/16/2012

Comments:

Shoplifting is epidemic in Hawaii because there's really no consequence. We've caught shoplifters with over 200 convictions and you want to increase their theft threshold? This is insanity, damaging to business, and denigrates the quality of life with higher retail prices.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 16, 2012 4:55 PM
To: PGM Testimony
Cc: andrew_chun@ktasuperstores.com
Subject: Testimony for HB2515 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2515

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Andrew Chun
Organization:
E-mail: andrew_chun@ktasuperstores.com
Submitted on: 3/16/2012

Comments:

In comparison to large international and national companies like Walmart, Target and Safeway, we are a small locally owned company. Every dollar we earn is important to our survival and future success. Raising the threshold for second degree theft from \$300 to \$750 will definitely have a negative effect on our business as well as many others. Chronic shoplifters already know where the threshold is and steal up until that amount. I am of the mind that the theft of \$1 is no different from stealing \$1,000. It is still theft. Please do not increase the threshold. Thank you.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 16, 2012 5:05 PM
To: PGM Testimony
Cc: kamealoha@hotmail.com
Subject: Testimony for HB2515 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2515

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Morris Kamealoha
Organization: Individual
E-mail: kamealoha@hotmail.com
Submitted on: 3/16/2012

Comments:

Aloha! I just think that it is alright crazy to increase the theft felony amount from what it is to over \$700.00. Now just imagine what you can buy with \$700.00 worth of merchandise. WOW!! you can buy a whole lot. I could buy me a flat screen T.V with that amount of money. Now just imagine someone stealing \$700.00 worth of merchandise or a flat screen T.V and only getting a slap on the hand for it. Hmmm... it is something to think about. Now!! what will be more crazy is if this theft felony information gets in to the hands of the habitual theives. I think that an increase in theft crimes will most certainly increase 20 times over then what it is now. I as a hard working, tax paying, citizen of Hawaii oppose this bill!!

Mahalo nui!

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 19, 2012 9:58 AM
To: PGM Testimony
Cc: alan.y.nakamura@tsocorp.com
Subject: Testimony for HB2515 on 3/21/2012 10:05:00 AM

Testimony for PGM/JDL 3/21/2012 10:05:00 AM HB2515

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Alan Y. Nakamura
Organization: Individual
E-mail: alan.y.nakamura@tsocorp.com
Submitted on: 3/19/2012

Comments:

TO: COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS Senator Will Espero, Chair Senator Michelle N. Kidani, Vice Chair COMMITTEE ON JUDICIARY AND LABOR Senator Clayton Hee, Chair Senator Maile S.L. Shimabukuro, Vice Chair
DATE: Wednesday, March 21, 2012
TIME: 10:05 a.m.
PLACE: Conference Room 016
FROM: Alan Y. Nakamura - concerned citizen
RE: HB 2515 Relating to Crime
Chairs & Committee Members:

This testimony is specific to Section 6, subsection (6) of HB2515, HD3.
Please oppose increasing the threshold property and services valuation for theft in the second degree to more than \$750.
Increasing the value to over \$750 will not strengthen the State's public safety and corrections system. It will only encourage theft and make it more difficult for retailers and individuals 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.
Repeat offender shoplifters that know the system keep under the \$300 amount to avoid prosecution and serious penalties. The retailer or individual is rarely compensated and has little hope of recovery. For a small business, a loss of almost 1% of sales is huge.
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. Please keep the value at \$300.
Thank you for your consideration and for the opportunity to comment on this measure.