



EXECUTIVE CHAMBERS

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NEIL ABERCROMBIE
GOVERNOR

Testimony HB 2515
Relating to Crime

Governor Neil Abercrombie

HOUSE COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

February 2, 2012
9:00 am, Room 309

Chair Aquino, Vice Chair Cullen and committee members, thank you for hearing HB 2515 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 introduce Marshall Clement, Project Director, of the Justice Reinvestment Initiative, and Director Jodie Maesaka-Hirata, of the Department of Public Safety, who will provide more details about the proposed legislation.

Thank you again for consideration of this measure.



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

**Marshall Clement, Division Director
Council of State Governments Justice Center**

Thursday, February 2, 2012; 9:00 a.m.

State Capitol, Conference Room 309

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

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

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

Over the past seven months, an inter-branch JRI working group chaired by the Director of Public Safety, Judge Alm, and the Senate President has guided and informed this effort. Throughout the process, we collected and analyzed data from arrests to court dispositions to probation, prison, and parole. We would like to recognize officials and staff at the Attorney General's office, the Judiciary and probation, Hawaii Paroling Authority, and of course the Department of Public Safety for their efforts to make data available and assist in the analysis throughout this process. The Department of Public Safety (PSD) deserves particular recognition for the data collection and access that

Director Maesaka-Hirata and her staff provided to this process. Along with these quantitative analyses, we convened focus groups and interviews with numerous practitioners and stakeholders from around the state, including prosecutors, victim advocates, judges, parole board members, probation officers, law enforcement officials, and others.

Overview

Overall, we found that despite a decline in crime over the past five years, the overall jail and prison population has not significantly changed. With respect to HB2515, the analysis found that key areas of the criminal justice system are not operating as cost-effectively as they could to reduce crime and increase public safety.

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

Justice Reinvestment Policy Framework

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

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

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

- Raise the felony theft threshold to \$750.

Impact

Based on the analysis we conducted, we anticipate that this bill along with HB2514 would contribute to increasing public safety in three ways. First, by addressing the inefficiencies that tie up resources in ways that do not reduce crime and reinvesting in ways that do. Second, by focusing resources spent on supervision, incarceration, and treatment on those individuals who are most likely to benefit from those investments in terms of reducing their likelihood of committing another crime. Third, by increasing accountability in Hawaii's criminal justice system by mandating a period of supervision and increasing the amount of victim restitution collected.

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

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

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

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. _____

February 2, 2012

TESTIMONY ON HOUSE BILL 2515
RELATING TO CRIME

By

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

House Committee on Public Safety and Military Affairs
Representative Henry J.C. Aquino, Chair
Representative Ty Cullen, Vice Chair

Thursday, February 2, 2012; 9:00 a.m.
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Cullen, and Members of the Committees:

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

To this end, the Governor joined with Chief Justice Mark Recktenwald, Senate President Shan Tsutsui, House Speaker Calvin Say and Public Safety Director Jodie Maesaka-Hirata in applying for assistance from the US Department of Justice, Bureau of Justice Assistance (BJA), and the Pew Center

on the States to participate in the national Justice Reinvestment Initiative (JRI).

BJA describes this initiative as follows:

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

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

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

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

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

FELONY DRUG OFFENDERS

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

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

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

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

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

TERMS OF PROBATION

The length of probation terms in Hawaii exceeds the national average. Valuable probation resources are spent on supervising offenders who have a very low risk of recidivism after the first three years of a probation term. Based on the findings of the Justice Center, Hawaii could make better use of its limited resources by focusing services on high risk offenders.

The Hawaii sentencing code has a standard probation period of five years for both class B and C felonies, with exceptions for certain sex offenders. This standard was established through Act 9, Session Laws of Hawaii 1972, a

measure that totally revised the Hawaii Penal Code. Since 1972, extensive research has shown that recidivism, defined as any new arrest for this purpose, is most likely to take place during the first three years of community supervision. In the majority of states, probation services are delegated to the counties and among the largest counties, 83% of felony probationers receive terms of three years or less. In Hawaii, 95% of felony probationers are ordered to terms of more than three years.

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

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

FELONY THEFT

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

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

REINVESTING FUNDS

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

Should all the recommendations included in this measure and House Bill 2514 be enacted, PSD will see an average reduction in bed demand equal to 410 beds/day in the first year, resulting in a savings of up to \$7 Million in Fiscal Year 2013. This savings will be realized by reducing the number of inmates placed in Mainland contracted beds. The savings will be reinvested to support community-based programs and services, increased probation and parole staff, and victim services. Attached is a list of how these funds will be expended.

The Department is currently working with the Department of Budget and Finance to develop recommendations as to how to appropriate the savings for the purposes identified in the attachment. By Friday, we shall provide this committee with a more detailed breakdown on how the funds will be expended.

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.

**DEPARTMENT OF PUBLIC SAFETY
 JUSTICE REINVESTMENT INITIATIVE
 HOUSE BILL 2514 AND HOUSE BILL 2515**

PSD	
Intake Service Center Pre-Trial Assessment	\$300,000
Risk Assessment and Prison Based Programming	\$500,000
Community Based Programs	\$1,700,000
Research and Planning	\$400,000
Re-Entry Office	\$300,000
	\$3,200,000
HPA	
Parole Determination – New Board Members	\$300,000
Parole Supervision – New Officers and Program	\$700,000
	\$1,000,000
JUDICIARY	
Probation Staff, Programs, and Training	\$800,000
	\$800,000
VICTIM SERVICES	
Safety Planning and Notification by PSD	\$800,000
Restitution Accountability by CVCC	\$600,000
Victim Witness Services by Prosecutor's Office	\$600,000
	\$2,000,000
TOTAL	\$7,000,000

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Plaza, Suite 600
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

MARI McCAIG
Chair

L. DEW KANESHIRO
Commissioner

THOMAS T. WATTS
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 2515
RELATING TO CRIME

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Public Safety and Military Affairs
Representative Henry J.C. Aquino, Chair
Representative Ty Cullen, Vice Chair

Thursday, February, 2, 2012; 9:00 AM
State Capitol, Conference Room 309

Good morning Chair Aquino, Vice Chair Cullen, and Members of the House Committee on Public Safety and Military Affairs. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of House Bill 2515 with an amendment to clarify that probationers must pay their restitution in full before being released on incentive time credits. House Bill 2515 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, creates incentive time credits to reduce probation if the offender meets certain criteria – not including the full payment of restitution, and increases the threshold for Class C theft offenses from \$300 to \$750.

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

House Bill 2514 and House Bill 2515, and a number of reinvestment funding recommendations, including \$2,000,000 for victim services, are a set of policy options developed by the Justice Reinvestment Working Group (JRI) with intensive technical assistance from the Council of State Governments Justice Center, in partnership with the Pew Center on the States. The purpose of the JRI Working Group is to improve and reform criminal justice and corrections practices in Hawai'i through the development of a comprehensive data-driven plan that would allow for the return of mainland prisoners to Hawai'i, and to redirect the cost savings to programs that hold offenders accountable, reduce recidivism, and ensure victim and public safety. JRI policy options and funding recommendations seek to assure that interventions, treatment programs, and intensive supervision are focused on individuals at the greatest risk to commit more crimes after release.

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

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

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

The Commission serves as a member of the JRI Working Group. Part of the Commission's role as a member of the JRI Working Group has been to engage crime victims, survivors, and victim service

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

Restitution Collection Shortfalls

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

The Commission has conducted a pilot project to collect restitution from inmates and parolees (the "Restitution Project") since 2003. Since the Restitution Project was initiated, the Commission has opened over 3,200 restitution and compensation fee cases and collected over \$1,500,000. A collateral benefit of the Restitution Project was the identification by the Commission of a number of concerns impacting the procedures for the assessment and collection of restitution. When the Commission first began the Restitution Project, correctional facilities and parole officers were unable to accurately track an inmate's restitution payments making it difficult to enforce restitution orders. The county prosecutors and victim witness advocate programs did not have standardized restitution procedures, restitution was not being requested in all eligible cases and, when restitution was ordered, victim-identifying information was not always preserved, preventing the successful assessment and collection of restitution.

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

1. Restitution payments from inmate workline wage deductions are not being forwarded to the Commission by the correctional facilities for payment to victims on a timely basis;

2. Court ordered restitution is not being deducted from inmate wages in all cases, as required by statute, because restitution accounts are not being opened by the correctional facilities for all inmates who have been ordered by the Court to pay restitution.

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

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

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

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

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

Judiciary² (in cases where restitution is ordered to repay the Commission). A second phase of JRI should include an initiative to address the issues identified by this part of the Restitution Project.

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

Continuing the Statewide Automated Victim Notification System

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

Prioritize supervision and treatment by offender risk and danger level

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

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

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

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

Share information with the victim service community

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

PROPOSED AMENDMENT

The Commission proposes that that House 2515, Section 5, be amended to require that before an offender can be released early on incentive time credits, the offender must pay their Court ordered restitution in full.

By reducing the term of probation for certain class B and C felons, and allowing for a further reduction in term through the incentive time credit, the period of time an offender has to meet their restitution obligations is severely limited. Offenders who do not pay restitution obligations in full have not met all terms of their sentence, and should, therefore, not be eligible for any reduction in their sentence.

Thank you for providing the Commission with the opportunity to testify in support of House Bill 2515, with the proposed amendment, and in support of House Bill 2514, together with the reinvestment funding recommendations.



The Judiciary, State of Hawaii

Testimony to the House Committee on Public Safety & Military Affairs

Representative Henry J.C. Aquino, Chair

Representative Ty Cullen, Vice Chair

Thursday, February 2, 2012, 9:00 a.m.

State Capitol, Conference Room 309

by

Cheryl R. Marlow

Adult Client Services Branch Administrator

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

Purpose: To promulgate 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.

Judiciary's Position:

The Judiciary supports Section 5 of House Bill No. 2515, 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 comprising leading state and local officials to receive intensive technical assistance from the Council of State Governments (CSG) Justice Center. The CSG Justice Center assisted the working group in analyzing data from every aspect of Hawaii's criminal justice and corrections system.

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

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



House Bill No. 2515, Relating to Crime
Committee on Public Safety & Military Affairs
Thursday, February 2, 2012
Page 2

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.

Finally, the public will benefit by refocusing treatment and supervision resources on higher risk criminal offenders and enhancing public safety through reductions in recidivism as measured by re-offense rates for those placed on probation. In addition to a shorter probation term, Section 5 of House Bill No. 2515 also proposes creating an earned credit incentive for persons on probation to comply with the conditions of supervision. The new language permits the court to reduce the probation term upon the recommendation of the probation officer based on specific criteria set forth in the new language. With good compliance, this could bring the probation term to under two years. While the Judiciary supports the intent of this revision, we respectfully recommend deferring action at this time to assess the impact of the reduction from five to three years. Additionally, further study is needed on the potential cost and administrative burden of such a system, and on whether a further reduction from three years is itself appropriate.

Thank you for the opportunity to testify on House Bill No. 2515.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the House Committee on Public Safety,
and Military Affairs**

February 2, 2012

H.B. No. 2515: RELATING TO CRIME

Chair Aquino and Members of the Committee:

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

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

Finally, in section 6 of the bill, 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.

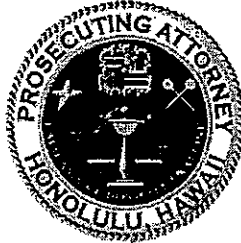
Hawaii is in need of reform to its criminal justice system. The Justice Reinvestment project conducted a data-driven analysis of our current system and formulated a number of suggestions to make the system more efficient while not sacrificing public safety. H.B. No. 2515 would accomplish some of the 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.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-6552

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE HENRY AQUINO, CHAIR
THE HONORABLE TY CULLEN, VICE CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

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

Thursday, February 2, 2012

RE: H.B. 2515; RELATING TO CRIME.

Good morning, Chair Aquino and Vice Chair Cullen, and members of the House Committee on Public Safety and Military Affairs, the Department of the Prosecuting Attorney submits the following testimony regarding S.B. 2515, which proposes various amendments to the Hawaii Revised Statutes designed to implement the proposed objectives of Hawaii's Justice Reinvestment Initiative.

While HB 2515 focuses on offenders in custody, this bill appears targeted at probationers. However the first proposal (in Sections 3 & 4) inexplicably proposes to provide a new expungement option for drug offenders. The connection here to the objectives of JRI seems tenuous unless the idea is to simply delay the effects of current sentencing provisions for repeat drug offenders. Why the answer to concerns about current sentencing options is to provide drug offenders with an additional free pass for a second drug offense conviction is unclear.

Section 5 of the bill contains a provision which would limit probation for all Class B and C offenders to three years. While there are clearly some fiscal benefits from reducing probationary terms, the wholesale reduction of probation terms, regardless of the type of offense or the criminal history of the offender seems unwarranted. This is particularly true for our many offenders who were originally charged with class A offenses, but achieve a reduction due to a plea agreement. Also the proposal, while excluding Part V or VI (Sexual Assaults and Promoting Child Abuse), limits probationary terms for all violent offenders except class A felons. This wholesale release of many proven risks to public safety from supervision defies logic. However this Section goes even further with its benefits for probationers by establishing a scheme to further reduce probationary terms by mandating incentive time credits for certain perceived positive behaviors that would automatically reduce probationary terms for many offenders. While it is clear that these proposals are going to drastically reduce the number of offenders under court supervision there is no explanation as to why the courts cannot utilize there

current powers to reduce probation terms by reducing the terms of meritorious probationers, which can and does already occur.

Reducing probation terms when warranted is certainly not something that is inherently objectionable and may well be something that we can support. However to eliminate the supervision of large numbers of probationers without any ability for the court to review the merits (or lack thereof) for individuals seems foolhardy and potentially dangerous. To illustrate the potential risks to public safety posed by these measure we note that habitual drunk drivers convicted of negligent homicide, kidnappers (class B offenders), and felony domestic violence offenders would all fall under the proposed reduced probationary categories. This brings us to our final point, the underlying tenor of all of these proposals seems to be that the courts and probation officers are not currently doing their jobs properly if there are large numbers of probationer who deserve to be released from probation, but for some unexplained reason have not. If this is indeed the problem, then maybe we should design solution to tackle that issue and not automatically release large numbers of convicted felons from supervision.

One additional factor that seems to have been overlooked entirely by these proposals is the impact on the collection of restitution for victims. Drastically reducing probationary terms means that no one is overseeing the collection and payment of restitution to victims. Given the abysmal record that we already have in restitution collection these proposals would undoubtedly only make the situation worse. To address this issue, you may want to consider that all probationers be required to complete the payment of their restitution prior to being considered for early release. Nothing could better signify their worthiness for reintegration into the community than their demonstrated willingness to make their financially whole again.

Sections 6 of SB 2515 (in contrast to other Sections of the Bill) puts forward a fairly simple proposal, raise the current threshold for felony theft from \$300 to \$750. While some increase due to inflation may seem warranted, the percentage increase proposed here seems a bit high. In addition, it is critically important to evaluate the effect of this proposal on the business community. We are certain that this proposal will raise serious concerns among retail merchants who struggle to deal with business losses associated with professional shoplifters who undoubtedly will adjust some of their methods to benefit from the proposed increased dollar limit for felony thefts.

In conclusion, the bill before you makes proposals purportedly designed to meet the stated objectives of the Justice Reinvestment Initiative. Money savings and the reduction of the rolls of probationers seem to be the primary objectives. H.B. 2515 would be more palatable if it would focus on the attainment of justice and community safety and not simply financial goals. As such, we cannot support this bill in its current form. Thank you for this opportunity to testify on this bill.

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 & MILITARY AFFAIRS

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

Thursday, February 2, 2012

9:00 a.m.

Room 309

STRONG SUPPORT FOR HB 2515 - RELATING TO CRIME

Aloha Chair Aquino, Vice Chair Cullen 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.

HB2515 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 disorder by proposing the inclusion of 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. It provides incentives - good time, if you will - for probationers. We would like to see this practice implemented across the criminal justice system as the data show that incentives, not sanctions, are what works for drug offenders. This measure also raises the felony threshold for theft from \$300 to \$750. 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 to keep up with inflation.

We wish the expungement provision was broadened and made retroactive to help those who have served sentences for drug offenses and are now doing well in the community. Having a felony or felonies on one's record is a major hindrance for many who have worked hard on their reintegration and have achieved educational success. For these folks, finding employment in their field is not only difficult, but obtaining certain licenses is nearly impossible with a felony record. Did you know that a person who has completed a Masters in Social Work and wants to pursue a Ph.D. to help others can be denied a therapist's license to practice? A person with a felony may be denied a barber's or beautician license, even if that was their job while incarcerated! These are definite barriers to reintegration that seem to be an easy fix, if only the legislature removed these obstacles. You can do it!

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



the
**Drug Policy
Forum**
of hawai'i

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

February 2, 2012

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

From: Jeanne Y. Ohta

RE: HB 2515 Relating to Crime
Hearing: Thursday, February 2, 2012, 9:00 a.m., Room 309

Position: Strong Support

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

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

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



HAWAII SUBSTANCE ABUSE COALITION

HB 2515 RELATING TO CRIME

HOUSE COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Henry J.C. Aquino, Chair; Rep. Ty Cullen, Vice Chair

Thursday, February 2, 2012, 9:00 a.m.

Conference Room 309

HSAC Strongly Supports HB 2515 with Recommendations:

Good Morning Chair Aquino, Vice Chair Cullen; 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 numerous inefficiencies between agencies.

Also, research has shown that competent assessment protocols for each individual are more relevant for determining safety risk and respective sentencing rather than a 1 rule for all approach.

RECOMMENDATIONS

Since Healthcare Reform under Medicaid may impact what credentials can get reimbursed for providing treatment assessments, we recommend adding licensed counselors to state certified counselors.

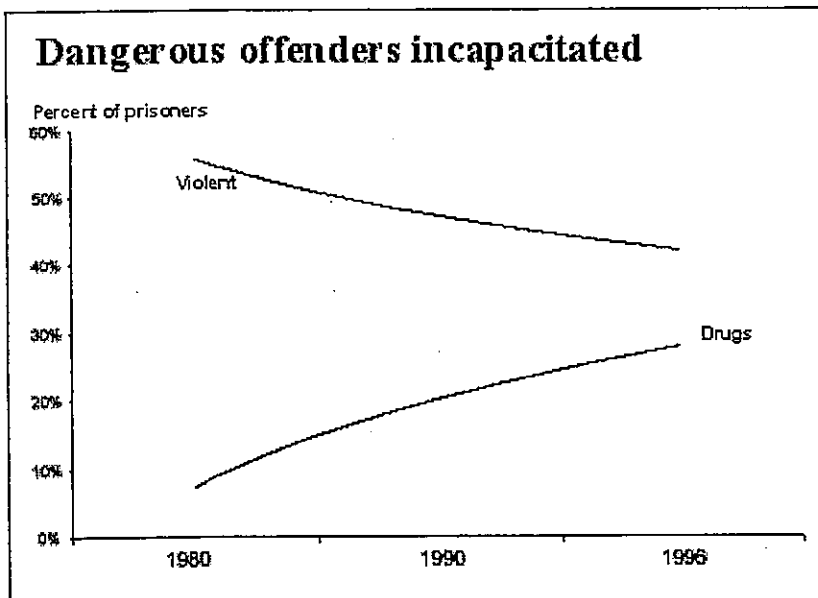
Section 2) 1) (b) The person has been assessed by a
licensed or certified substance abuse counselor
to be in need of substance abuse treatment due to
dependency or abuse under the applicable
Diagnostic and Statistical Manual and Addiction
Severity Index; and

(c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a licensed or certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program. "

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.

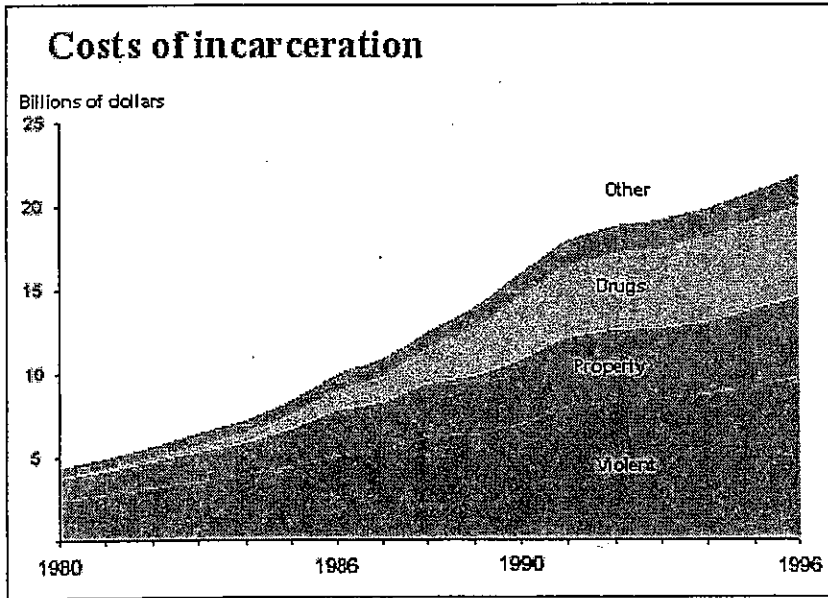
The Effects of Tougher Sentences on Drug and Property Crime



Most incarcerated drug offenders are not violent offenders:

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

In fact, when we look at all persons in prison, we find that more than half (53 percent) committed a crime that involved neither harm nor threat of harm to a victim. As the next chart shows, more than half the cost of incarceration, which has increased dramatically since 1980, is a result of keeping non-violent offenders in prison.



What has been the overall result of putting so many offenders in prison?

- ✦ The 200 percent increase in incarceration of violent offenders has been accompanied by an estimated 9 percent reduction in violent offenses.
- ✦ The substantial increase in the number of imprisoned drug offenders, however, has had little or no effect on drug dealing or use. Increasing the length of sentences for drug offenders is costing an additional \$1.5 billion a year nationwide, with no reduction in drug crimes.
- ✦ Mandatory sentencing has also led to greater racial disparity in treatment by the justice system.

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

Sources:

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

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 5:38 AM
To: PBMtestimony
Cc: maukalani78@hotmail.com
Subject: Testimony for HB2515 on 2/2/2012 9:00:00 AM

Testimony for PBM 2/2/2012 9:00:00 AM HB2515

Conference room: 309
Testifier position: Support
Testifier will be present: No
Submitted by: elaine funakoshi
Organization: Individual
E-mail: maukalani78@hotmail.com
Submitted on: 2/1/2012

Comments:

Dear Chair Aquino, Vice Chair Cullen and Members of the Committee:

SUPPORT HB2515. May I point out that raising the amount from \$300 to \$750 based on the CPI Inflationary Calculator's purchasing value of \$300 in 1986 being equivalent to \$615 in 2011 dollars. Therefore, value wise, there is no significant increase.