



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

Testimony in SUPPORT of SB 2776 SD2 HD1
Relating to Public Safety

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

March 28, 2012
3:30 PM, Room 308

Chair Oshiro, Vice Chair Lee, and committee members, thank you for hearing SB 2776 SD2 HD1 Relating to Public Safety. I respectfully request your support of this important measure.

As you know, this is one of the priorities of my administration. This initiative started as a way to look at ending 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. However, it has grown to become much larger and more significant reform. It is about transforming the system to achieve fairness and justice in an efficient manner that most importantly, continues to uphold, and in many ways, improve public safety.

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.

The analysis conducted by CSG and the Working Group found inefficiencies in our criminal justice system that if addressed could free up savings to reinvest in more effective public safety strategies.

1. **Pre-Trial Assessments (Section 3)**

- Our pre-trial process is one of the longest in the nation.
- Ultimately a judge determines whether to release an individual.
- The study found that a growing delay before the pre-trial assessment was conducted slowed things down without any benefit to public safety.
- Our process takes months on average when most other jurisdictions get the assessment done within days. For example, Maricopa County, Arizona conducts a pre-trial assessment on defendants within hours of their booking compared to the months it takes in Hawaii.
- The court hasn't had timely information to make sure their decisions about who to release are informed by good assessments.
- The result has been millions of dollars spent needlessly on a pre-trial population that has doubled in the last few years.
- To fix this, the judiciary and PSD will need to improve how they collaborate and that is already starting to happen.
- This bill holds PSD accountable for making sure the assessments are done within three days and provided to the court for its consideration.
- How quickly the courts and others decide to move forward with that information will be up to them.
- Let us be clear, however, this bill does not change how defendants will be dealt with prior to trial. It only requires that courts have information concerning the level of risk defendants pose to public safety.

2. **Parole Board (Section 5 & 6)**

- Hawaii's parole board has more authority than most other states over how long each sentenced offender stays in prison.
- Our parole board exercises this authority with fewer members than most other states.
- We need to ensure board members have adequate time to review each case and not cause unnecessary delays due to lack of time.
- To address this issue, the bill adds two additional part-time parole board members.

3. **Parole Decisions (Section 7 & 8)**

- Once a felony offender has been sentenced to prison, the parole board establishes a minimum sentence based on the type of crime and the offender's criminal history.
- Prisoners should serve their time in prison.
- Once they complete that minimum sentence, however, we need to make sure we're holding the right people for the right reasons.
- Administratively, PSD is using the latest research on what works to reduce crime to change how they conduct risk assessments and prioritize who receives programming in prison versus in the community.
- This bill makes two changes to help make sure we focus additional prison time on the most serious offenders.
- First, violating a condition of parole can land you back in prison for up to the remainder of your sentence which could be several years. On average, parolees come back for over two years.
- Many other states cap how long parolees can return to prison when they haven't been charged with a new crime. Washington State caps this at 30-60 days. Kansas at 90-180 days, North Carolina at 90 days.
- With this bill, we're taking a small step in that direction by saying that a parolee's first revocation for violating a condition (but not a new crime) can be for no more than 6 months.
- Second, we want to make sure we're not holding people who pose the least risk to public safety in prison beyond their minimum sentence – unless they have committed a misconduct or are a sex offender.
- We should focus prison space on offenders who pose the greatest likelihood of reoffending and who need more intensive treatment in prison before they can be released.

4. **Victim Restitution and Post-Prison Supervision (Section 10 & 13)**

- First, we are not doing enough to help victims collect restitution from offenders.
- Current statutes only require offenders to pay ten cents to victims for every dollar they earn behind bars.
- This is true even if they have hundreds and thousands of dollars deposited into

their individual account.

- This bill increases the amount deducted to 25 percent and expands the deduction to draw from all inmate accounts.
- To improve victim restitution collection when people exit prison, the bill calls for positions to be added to the Crime Victims Compensation Commission to help victims track how much restitution is owed and has been collected.
- Second, Hawaii often releases the prisoners most likely to reoffend back to our communities without any supervision or monitoring. This is the worst possible outcome for public safety.
- We must fix this loophole in the system that currently allows prisoners to return to the community with nobody holding them accountable.
- Most other states, adopted policies that ensure a period of supervision at the end of each sentence.
- This bill requires offenders who would otherwise be released without supervision to instead spend the last several months under intensive supervision.
- This supervision can aid law enforcement and help create safety plans for victims.

This bill is just the first step. To realize the savings from addressing these inefficiencies and reinvest in greater public safety, each part of this bill will need to be effectively implemented. If the legislature adopts this measure, Hawaii will be eligible for funding from the Bureau of Justice Assistance and continued technical assistance to aid in our implementation and tracking of these policies.

Of the savings this bill helps generate, at least \$2 million will be set aside to expand access to community-based treatment and other programs to assist individuals on supervision in making a safe and successful transition. We have also identified the additional positions that will be needed to assist in implementing these new policies. Key personnel will be needed to conduct risk assessments at key points in the criminal justice process, additional parole officers to monitor offenders more closely in the community, and additional staff to assist victims and track restitution.

Thank you again for consideration of this measure.

NEIL ABERGROMBIE
GOVERNOR



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HAWAII PAROLING AUTHORITY
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No. _____

TESTIMONY ON SENATE BILL 2776, SD2, HD1
RELATING TO PUBLIC SAFETY

BY

HAWAII PAROLING AUTHORITY
Bert Y. Matsuoka, Chairman

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

Wednesday, March 28, 2012; 3:30 p.m.
State Capitol, Conference Room 308

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

The Hawaii Paroling Authority (HPA) is in strong support of S.B. 2776, SD2, HD1. There has been much work placed into establishing the elements of this HD1. The HPA along with a number of other State, County and Community groups have met and discussed the issues of public safety, corrections, probation, parole, recidivism and other topics related to our criminal justice system. With the assistance of the Council of State Governments Justice Center, this bill was crafted.

Thank you for the opportunity to provide comments on this matter.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
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No. _____

March 28, 2012

**TESTIMONY ON SENATE BILL 2776, HOUSE DRAFT 1
RELATING TO PUBLIC SAFETY**

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

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

Wednesday, March 28, 2012; 3:30 p.m.
State Capitol, Conference Room 308

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

The Department of Public Safety (PSD) is in strong support of Senate Bill 2776, House Draft 1, Relating to Public Safety, the result of work by the Justice Reinvestment Working Group, which was formed as a result of 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.

The goals of the Justice Reinvestment Initiative are based on a data driven approach to determine what factors contribute to recidivism, how best to address those factors in our community, and how to develop and implement evidence-based best practices to help individuals break their cycle of reoffending. Our recommendations are formulated through careful analysis of a wealth of

Hawaii criminal justice data in order to protect the public through sound policy and practice.

The content of this measure was supported by this Committee through its amended companion, House Bill 2514, House Draft 3. We greatly appreciate the attention thoughtful discussion you gave this matter and respectfully request your continued support. Below is more detailed information concerning Senate Bill 2776, House Draft 1. We are available to answer any questions you may have concerning this proposal.

Pre-trial Risk Assessment

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

The Intake Service Center (ISC) will be utilizing the validated Ohio Risk Assessment Instrument: Pre-trial Assessment Tool as part of its bail study to the Courts for their consideration when determining whether to release pre-trial inmates from custody. The proposed amendments to Section 353-10, Hawaii Revised Statutes (HRS), requires the ISC complete the risk assessment within three working days, but does not influence how the courts process these cases.

Hawaii Paroling Authority

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

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

Parole of Prisoners

The members of the Hawaii Paroling Authority have worked diligently with the Administration to craft wording that would achieve the goals of the JRI without intruding on the discretion of the parole board in cases that merit further incarceration.

Such discretion is articulated under previous amendments to the following sections of the Hawaii Revised Statutes:

- Section 353-66 (e), relating to parole violators;
- Section 706-670 (1), relating to the release of low risk offenders upon achieving their minimum term of imprisonment; and
- Section 706-670 (5).

The phrase "so long as the paroling authority has approved a parole plan as set forth under section 706-670 (3) and (4)" was added to each of these sections in House Draft 1.

In concurrence with the HPA Chair, we respectfully request one amendment to clarify the goal of the proposed amendments to Section 353-66 (e). Please **delete** on page 11, lines 7-9, the sentence that reads "The six-month period of confinement shall not start until the paroling authority has revoked the parole of the prisoner."

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; 2) evidenced-based approaches, programs and services that do not jeopardize public safety yet reduce admissions to corrections and reduce the length of stay in a correctional facility; 3) expand victim services in all counties;

and, 4) reinvest savings generated from reduced corrections spending into communities.

The potential savings that may be realized through the passage of this measure by reducing the number of inmates placed in Mainland contracted beds will be reinvested to support community-based programs and services, increased probation and parole staff, and victim services. Attached is the proposed budget to support the initiative through reinvesting funds from the Department of Public Safety's Non-State Facilities Branch (PSD 808) to various other programs at the State and County levels. In the Governor's Message dated March 1, 2012, to Speaker Calvin Say and President Shan Tsutsui concerning the State Budget, Item 12 identifies the request to re-appropriate PSD 808 funds to the programs included in the attached budget proposal.

Section 15 also provides for an appropriation to support the implementation of this measure. We are prepared to respond to questions concerning the costs related to that implementation.

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 House Committees on Finance

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

Wednesday, March 28, 2012, 3:30 p.m.
State Capitol, Conference Room 308

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 2776, S.D. 2, H.D. 1, Relating to Public Safety

Purpose: Requires a pre-trial risk assessment to be conducted within three working days of commitment to a community correctional center. Increases the membership of the Hawaii Paroling Authority. Requires the use of validated risk assessments. Limits length of incarceration for first-time parole violators. Increases the percentage deducted from inmates' earnings for restitution payments. Requires release on supervised parole prior to the maximum sentence date. Adds positions in the Department of Public Safety. Appropriates funds. Effective January 7, 2059.

Judiciary's Position:

The Judiciary supports the Justice Reinvestment Initiative, and is working collaboratively with the Department of Public Safety on the initiatives identified by the Justice Reinvestment Initiative process. Specifically, the Judiciary supports Section 15, subsection (18) and (19) Senate Bill No. 2776, S.D. 2, H.D. 1, which introduces the provision of four social worker and two trainer positions for Judiciary probation drug treatment and cognitive behavioral therapy.

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



Senate Bill No. 2776, S.D. 2, H.D. 1, Relating to Public Safety
House Committee on Judiciary
March 21, 2012
Page 2

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

Thank you for the opportunity to testify on Senate Bill No. 2776, S.D. 2, H.D. 1.

NEIL ABERCROMBIE
GOVERNOR



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TESTIMONY ON SENATE BILL 2776, SD2, HD1
RELATING TO PUBLIC SAFETY

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Wednesday, March 28, 2012: 3:35 PM
State Capitol, Conference Room 308

Good afternoon Chair Oshiro, Vice Chair Lee, Members of the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide testimony in strong support of Senate Bill 2776, SD2, HD1. Senate Bill 2776, SD2, HD1 provides that pretrial risk assessments be conducted within three days of an offenders admission to a correctional center; increases the number of parole board members; requires that a validated risk assessment instrument be used by the parole board in determining the offender's risk for reoffense and suitability for community supervision; provides for the release on parole of certain low risk offenders who have completed their minimum sentence; limits the period of confinement for certain parole violators to six months; provides for a 25% garnishment of all inmate funds to pay restitution; and provides that offenders receive a period of supervision prior to the expiration of their minimum term; and provides for the reinvestment of savings in more effective victim and public safety strategies.

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

The Justice Reinvestment Initiative (JRI) legislative proposals, together with 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 with intensive technical assistance from the Council of State Governments Justice Center, in partnership with the Pew Center on the States. The purpose of the JRI Working Group is to improve and reform criminal justice and corrections practices in Hawai'i through the development of a comprehensive data-driven plan that

would allow for the return of mainland prisoners to Hawai`i, and to redirect the cost savings to programs that hold offenders accountable, reduce recidivism, and ensure victim and public safety. JRI policy options and funding recommendations seek to assure that interventions, treatment programs, and intensive supervision are focused on individuals at the greatest risk to commit more crimes after release.

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

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

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

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

Restitution Collection Shortfalls

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

The Commission has conducted a pilot project to collect restitution from inmates and parolees (the "Restitution Project") since 2003. Since the Restitution Project was initiated, the Commission has opened over 3,200 restitution and compensation fee cases and collected over \$1,500,000. A collateral benefit of the Restitution Project was the identification by the Commission of a number of concerns

impacting the procedures for the assessment and collection of restitution. When the Commission first began the Restitution Project, correctional facilities and parole officers were unable to accurately track an inmate's restitution payments making it difficult to enforce restitution orders. The county prosecutors and victim witness advocate programs did not have standardized restitution procedures, restitution was not being requested in all eligible cases and, when restitution was ordered, victim-identifying information was not always preserved, preventing the successful assessment and collection of restitution.

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

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

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

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

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

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

The JRI initiative addresses some of these longstanding issues by providing funding for a restitution accountability program that tracks and reports restitution payments from PSD, parole, and the Judiciary² (in cases where restitution is ordered to repay the Commission).

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

Continuing the Statewide Automated Victim Notification System

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

Prioritize supervision and treatment by offender risk and danger level

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

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

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

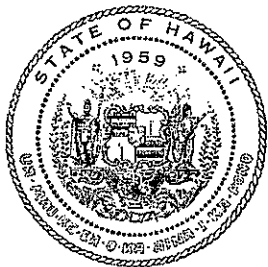
Share information with the victim service community

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

Thank you for providing the Commission with the opportunity to testify in strong support of Senate Bill 2776, SD2, HD1.

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

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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LESLIE WILKINS

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March 27, 2012

Testimony in Support, SB 2776, SD 2, HD 1

To: Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Members of the House Committee on Finance

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

Re: Testimony in Support of SB 2776, SD 2, HD 1

On behalf of the Hawaii State Commission on the Status of Women, I would like to thank the committee for this opportunity to provide testimony on this issue. I would like to express my support for SB 2776, SD 2, HD 1. The Justice Reinvestment Initiative team provided an independent inquiry into the flaws of our criminal justice system. This bill is based on the sound evidence and thorough analysis performed by the Justice Reinvestment Initiative and attempts to address the huge waste of financial resources that our State pours into a broken system, year after year. This bill would amend statutes to require a quickly conducted pre trial risk assessment, an expansion of the parole board to increase frequency and efficiency of parole board hearings, an increase in restitution to victims of crime and a required period of parole supervision prior to the maximum sentence date.

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

Finally, it is crucial that victims and survivors of crime be addressed throughout this process. This bill would appropriate funds for fifteen victim advocate positions, which would thereby allow the state to create an infrastructure for offender accountability through restitution. Restitution assists in helping victims and survivors of crime move forward, whether it be through treatment, rehabilitation or other forms of rehabilitative care. A quality criminal justice system must maintain some focus on victims and survivors and this bill would ensure that we stop wasting taxpayers money and instead, reinvest those funds into the safety and well being of our community. By focusing on how to best reintegrate the incarcerated and support their rehabilitation, this legislation would allow for safer communities, less recidivism by offenders and less waste of state funds. Please pass SB 2776, SD 2, HD 1. Thank you for your time.

Sincerely,

Catherine Betts, Esq.

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



SB2776 SD2 HD1
RELATING TO PUBLIC SAFETY
House Committee on Finance

March 28, 2012

3:30 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2776 SD2 HD1, which would implement changes related to pre-trial risk assessments and parole capacity as 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 like those included in this bill. Specifically, the changes to expedite pre-trial risk assessments and increase capacity of the parole commission will reduce needless and expensive incarceration.

OHA has two suggestions regarding the bill:

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

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

OHA urges the committee to PASS SB2776 SD2 HD1. Mahalo for the opportunity to testify on this important measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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

March 28 2012

RE: S.B. 2776, S.D. 2, H.D. 1; RELATING TO PUBLIC SAFETY.

Chair Oshiro, Vice-Chair Lee, and members of the House Committee on Finance, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony expressing concerns regarding--and suggesting amendments to--S.B. 2776, S.D. 2, H.D. 1.

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

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

Section 7 of this bill would limit a parole violator to a 6-month period of re-incarceration or the remaining portion of the prisoner's sentence, whichever is shorter, when parole is revoked. The Department is against this provision. Discretion should be left with the paroling authority to make that determination. In keeping with this rationale of not interfering with the paroling authority's discretion, the Department is also against the provisions of Section 8 and Section 13.

We agree that additional measures are needed to facilitate payment of restitution to crime victims; however, Section 10 of this bill would do very little to improve things, as the vast

majority of offenders owing restitution are not in prison, and other sections of this bill propose to release even more people from prison. To effectively facilitate restitution payments, the Department suggests incorporating language from H.B. 2394, to:

1. include unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support or judgments owed to State agencies);
2. remove a court's ability to revoke restitution once ordered as part of a defendant's sentencing (this would not affect their abilities to appeal a conviction);
3. create standards and procedures for income-withholding, similar to those used for outstanding child support payments; and
4. extend victims' access to adult probation records, to include access to payment compliance records, for purposes of enforcing restitution orders civilly.

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

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

Thank you for the opportunity to testify on S.B. 2776, S.D. 2, H.D. 1.

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

March 28, 2012

S.B. No. 2776 SD2 HD1: RELATING TO PUBLIC SAFETY

Chair Oshiro and members of the committee:

We support passage of S.B. No. 2776 SD2 HD1 which contains a number of statutory changes based upon the recommendations made by the Governor's Justice Reinvestment initiative. We believe that the proposals contained in this bill can greatly relieve stress upon the criminal justice system while maintaining public safety.

In Section 3 on pages 5 and 6, the bill would require a pretrial risk assessment for all adult offenders within three working days of admission to a correctional center. This expedited risk assessment would assure that those offenders who can be safely released pending their trial would be released in a prompt manner. Certain high-risk offenders such as those facing probation violations, revocations of bail and revocations of supervised release would be exempt from this provision assuring that high-risk law violators will remain in custody and not jeopardize public safety.

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

In section 7 on page 10, the bill would require that certain non-sex offenders who are reimprisoned for a parole violation but who have not: 1) been charged with a new felony offense; 2) absconded from the state; or 3) committed prior parole violations, be detained for no more than six months. This provision would assure that those who are rearrested for a positive drug test or technical violation of parole and who are low-risk offenders will not suffer from excessive prison terms.

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

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

Hawaii is in need of reform to its criminal justice system. The Justice Reinvestment project conducted a data-driven analysis of our current system and formulated a number of suggestions to make the system more efficient while not sacrificing public safety. S.B. No. 2776 SD2 HD1 would accomplish some of the reforms suggested by this project. We strongly support these changes and urge the passage of this measure.

Thank for the opportunity to comment on this measure.



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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association
March 28, 2012

S.B. 2776, S.D. 2, H.D. 1 – RELATING TO PUBLIC SAFETY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2776, S.D. 2, H.D. 1, which makes important statutory changes based upon a series of recommendations from the Justice Reinvestment Initiative's study of Hawaii's correctional and criminal justice systems. The suggested changes could save an estimated \$108 - \$150 million over six years without compromising public safety and reducing the number of inmates at mainland prison facilities.

The cost of housing inmates out-of-state was \$45 million for FY 2011. Easing the need to house about 1,700 prisoners on the mainland will result in more of that money remaining in Hawaii and stimulating the local economy. We believe that the savings generated by this bill can be used to increase funding for pre-trial services, probation and parole supervision, inmate assessments and diagnostic services, community-based treatment programs, additional parole officers, additional Hawaii Paroling Authority members, and parolee supervision.

More specifically, S.B. 2776, S.D. 2, H.D. 1 amends various statutory provisions by:

- 1) Requiring a pre-trial risk assessment to be conducted within three working days to reduce the number of inmates awaiting trial;
- 2) Expanding the parole board from three to five members;
- 3) Requiring the use of validated risk assessments to guide parole decisions;
- 4) Limiting the length of incarceration for first-time parole violators to six months;
- 5) Increasing victim restitution payments by inmates;

House of Representatives, Committee on Finance
Testimony by Hawaii Government Employees Association
re: S.B. 2776, S.D. 2, H.D. 1
March 28, 2012
Page 2

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

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

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

Thank you for the opportunity to testify in support of S.B. 2776, S.D. 2, H.D. 1.

Respectfully submitted,



Leiomalama E. Desha
Deputy Executive Director



THE SEX ABUSE TREATMENT CENTER

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

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Adriana Ramelli

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Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

DATE: March 28, 2012

TO: The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
Committee on Finance

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

RE: S.B. 2776, S.D. 2, H.D. 1
Relating to Public Safety

Good afternoon Chair Oshiro, Vice Chair Lee and members of the Committee on Finance. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawai'i Pacific Health.

The SATC takes no position on S.B. 2776, S.D. 2, H.D.1 other than to support provisions in Sections 14 and 15 to provide positions and funding for crime victim services to the county prosecutors' offices, to establish a victim service program in PSD, funding to continue the Statewide Automated Victim Notification System, and a restitution accountability program in the Crime Victim Compensation Commission.

Further, the SATC supports the Department of the Prosecuting Attorney's recommendation, as outlined in their testimony for this hearing, to incorporate language from H.B. 2394 into this bill which would effectively facilitate payment of restitution to crime victims

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

Thank you for the opportunity to testify.

JUSTICE★CENTER
THE COUNCIL OF STATE GOVERNMENTS

**TESTIMONY IN SUPPORT OF
SENATE BILL 2776 SD2 HD1
RELATING TO PUBLIC SAFETY**

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

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

March 28, 2012
3:30 PM, Room 308

Chair Oshiro, Vice Chair Lee, and committee members, thank you for hearing SB 2776 SD2 HD1 Relating to Public Safety 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 while saving taxpayer dollars. All of this was done using federal and private funds, meaning this cost the state nothing except the time of staff to participate.

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. 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. Analyses found that Hawaii's pre-trial process is one of the longest in the nation. The pre-trial assessment process takes much longer in Hawaii (several months on average, whereas it takes just days or a few weeks in other jurisdictions) and budget cuts have caused these already long processes to be delayed even further. The result has been millions of dollars spent needlessly on a growing pre-trial population.
2. Prisoners are required to complete programs that don't benefit public safety. Assessments are not currently being used appropriately to put the right people in the right programs, based on the research. As a result, offenders who are most likely to be successful upon release have been spending longer behind bars and those offenders most likely to benefit from programs have been unable to get the programs they need to make the public safe.
3. Hawaii often releases those people most likely to reoffend back to communities without any supervision or monitoring. Prisoners likely to commit more crime are exploiting loopholes in the system that allows them to return to the community with nobody holding them accountable.
4. Restitution for victims is not being adequately collected. Current statutes only require people to pay ten cents to victims for every dollar they earn behind bars, even if they have hundreds and thousands of dollars deposited into their individual account.

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 policy framework included in would do the following:

- Increase efficiency in the pre-trial process. The bill requires PSD to conduct a pre-trial assessment within three working days. This will require resources to conduct these assessments proactively and quickly, but is much cheaper than the

current process which the data suggests is longer than 39 of the largest counties in the nation.

- Increase efficiency in the parole decision-making process. The parole board in Hawaii has more responsibility and power over the length of time sentenced felony offenders serve than any other board in the country. Yet, they have fewer board members than most other states. With only three parole board members and two required at each hearing, there is little flexibility to ensure timely and complete hearings are held. This bill adds a fourth part-time member to the board to reduce the likelihood of unnecessary delays or incomplete hearings.
- Reduce reoffending by focusing prison-based programs on those who will benefit the most from treatment. This bill requires that a validated risk assessment be conducted on every sentenced offender to determine who is most likely to succeed and not reoffend after release and who is most likely to commit another crime. This bill requires that offenders most likely to be successful should be paroled after serving the sentence set by the parole board. Additional incapacitation beyond the minimum sentence date should be reserved for keeping those offenders more likely to reoffend behind bars until they complete treatment and have a suitable parole plan.
- Increase accountability and reduce recidivism by using swift, certain, and graduated sanctions for parolees. This bill calls for differentiating the severity of the response to violations. By limiting reincarceration for the first condition violation at six months, resources can be reinvested in additional parole officers and community-based programs to strengthen supervision while still imposing stiff sanctions on those that violate repeatedly, abscond, or are charged with a new felony.
- Ensure accountability by requiring a minimum period of supervision after prison for those offenders who have not been previously parole and would otherwise be released without any transition. This bill requires that a small percentage of an offender's maximum sentence be served on parole supervision to monitor their behavior, create a safety plan for victims, and alert law enforcement. Such an approach is commonplace in most states that adopted truth in sentencing during the last two decades. In those states, most require an even greater percentage of each offender's sentence to be served under supervision at the end.
- Improve and increase victim restitution collected from offenders while they are incarcerated. This bill would increase the percentage collected from 10 percent to 25 percent, and would collect from not just wages (which typically amount to \$20 per month) but any deposits made to the individual offender's account. This will increase restitution collected for victims dramatically. In addition, the bill allows for reinvestment in a stronger system of accountability within the Crime Victim Compensation Commission to document restitution collection rates and progress.

Impact

Based on the analysis we conducted, we anticipate that this bill 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 by gradually reducing the pre-trial jail population and the sentenced population as fewer people are delayed for release due to lack of information, first time parole violators come back to prison for shorter, swifter sanctions, and people are released in ways that most likely benefit public safety. Nearly all offenders who come into PSD's jail and prison facilities each and every year will be released at some point. This bill aims to improve how they are released, to require supervision, to avoid delaying someone's release simply because of inefficient processes and a lack of timely assessment or decision-making.

At the same time, the bill requires 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 Oshiro, Vice Chair Lee, 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.



the
**Drug Policy
Forum**
of hawaii

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

March 28, 2012

To: Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair and
Members of the Committee on Finance

From: Jeanne Y. Ohta, Executive Director

RE: SB 2776 SD2 HD1 Relating to Public Safety
Hearing: March 28, 2012, 3:30 p.m., Room 308

Position: Strong Support

The Drug Policy Forum of Hawai' writes in strong support of SB 2776 SD2 HD1 Relating to Public Safety which proposes recommendations made out of the Justice Reinvestment Initiative.

DPFH supports the efforts to make the criminal justice system more efficient and more effective. These changes are necessary because of the ever increasing prison budget. States that have embraced the suggestions of the Initiative have made significant savings, without sacrificing public safety. Strategic and smart changes can reduce costs, allowing for the reallocation of resources to where they will do the most good.

The recommendations from the Justice Reinvestment Initiative are informed by their previous experience in other jurisdictions and by data. The project has the benefit of hindsight, as previous recommendations have been tracked to see how they have worked in those jurisdictions.

A goal of this project is to enhance public safety, while improving the efficiency of the criminal justice system. The savings produced by these new policies are possible because of a comprehensive, data-driven approach to dealing with crime.

In some instances, the research has shown Hawai'i has been wasting precious resources by mandating services and programs to individuals who don't need them.

For example, community-based treatment is more effective and less costly than in-prison treatment; therefore, many low-level, non-violent persons should be in those kinds of programs rather than in prisons, which are hugely more expensive.

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



Committee: Committee on Finance
Hearing Date/Time: Wednesday, March 28, 2012, 3:30 p.m.
Place: Conference Room 308
Re: Testimony of the ACLU of Hawaii in Support of and With Comments to S.B. 2776, SD2, HD1, Relating to Public Safety

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

The ACLU supports the elimination of excessively harsh sentencing policies that contribute to the over-incarceration of low-risk offenders. Risk assessment instruments, as provided for S.B. 2776, SD2, HD1, have the potential to identify low-risk defendants or prisoners that can be released without impacting public safety, thereby saving the state the high cost of incarcerating such people. The use of these tools helps to ensure the most effective allocation of state resources, as well as the fair and objective administration of the law.

Please consider making the following amendments to S.B. 2776, SD2, HD1:

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

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

Suggested Amendment

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

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

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

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Suggested Amendment

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

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

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

Suggested Amendment

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

- (a) Is found to have committed misconduct while in prison that is equivalent to a felony crime within two years of the expiration of the minimum term of imprisonment;
- (b) Has any pending felony charges in the State;
- (c) Is incarcerated for a sexual offense under part V of chapter 707 or child abuse under part VI of chapter 707 and has not successfully completed a sex offender treatment program; or

Chair Oshiro and Members of FIN
March 28, 2012
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- (d) Is determined by the paroling authority to currently constitute a significant risk to the safety or property of other persons that can only be mitigated by additional incarceration.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple, Staff Attorney

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COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Wednesday, March 28, 2012
3:30 p.m.
Room 308

SUPPORT SB 2776 SD2, HD1 - JUSTICE REINVESTMENT

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

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

SB 2776 SD2, HD1 requires a pre-trial risk assessment to be conducted within three working days of commitment to a community correctional center; increases the membership of the Hawai'i Paroling Authority, and requires the use of validated risk assessments. It also limits length of incarceration for first-time parole violators, increases the percentage deducted from inmates' earnings account for restitution payments, and requires release on supervised parole prior to the maximum sentence date. To pay for these efficiencies, it adds positions in the Department of Public Safety as well as in other criminal justice agencies, and appropriates funds by reducing the contract with corporate prisons. Effective January 7, 2059. (SB 2776 HD1)

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

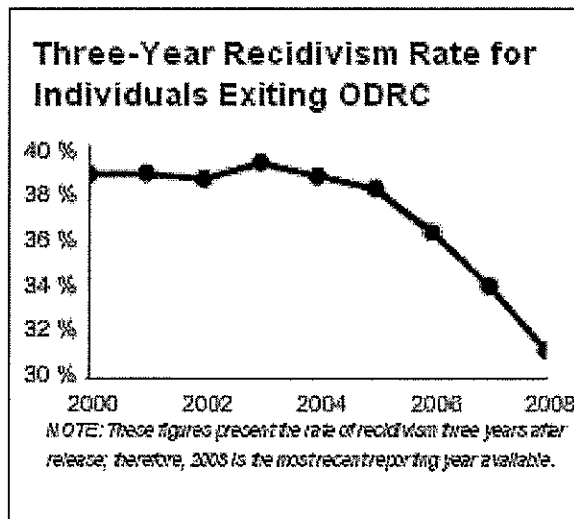
The Justice Reinvestment initiative is the first independent look at our criminal justice system as a whole. The data gathered from Hawai'i agencies by the independent analysts forced us to take a hard look at how we are doing things. This view revealed that Hawai'i is out of step with best practices and evidence-based strategies practiced in 39 of the largest US jurisdictions. The efficiencies recommended have been proven in other places, which is why the US Department of Justice has embraced Justice Reinvestment and has made it part of the Bureau of Justice Assistance.

The bottom line is that Hawai'i can no longer afford the inefficiencies in our criminal justice system. This is why all three branches of our government support the recommendations.

We have included the entire text of an article entitled *Reforming A System: An Inside Perspective on How Ohio Achieved a Record-Low Recidivism Rate* By Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction <http://www.nationalreentryresourcecenter.org/announcements/3-12-12> following this testimony.

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

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



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

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

Justice Reinvestment starts with accurate assessments and we are happy that the Department of Public Safety has taken this to heart and is training their staff. PSD's internal process to screen for low-risk individuals will assist the courts and reduce the population in our jails. Shortening the time in which competent assessments are done is in line with correctional best practices across the nation as the goal is always to move individuals through the system and not stack up people in the front or back end, clogging the system and creating massive and expensive inefficiencies.

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

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

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

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

Please base your decisions on the thoughtful, data-driven, evidence-based and proven JRI approach.

Mahalo for this opportunity to testify.

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

By Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction

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

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

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

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

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

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

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

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

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

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

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

influence of career criminals in Ohio's prison system. The law also aims to reduce overcrowding and incidents of prison violence and to better prepare inmates for a successful reentry back into the community.

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

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

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

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

Ohio's criminal justice reform efforts expanded even further when in November 2011 DRC hosted a forum examining the impact of collateral consequences on people returning from prison or jail or sentenced to a term of community supervision. The first of four such meetings, the forum brought together criminal justice professionals, lawmakers and other key stakeholders. Over the course of several months, participants have identified five strategies to effectively reduce or eliminate barriers to returning citizens finding employment: 1) Clearly identify the magnitude of collateral sanctions that currently exist in Ohio law and policy; 2) Address collateral consequences relating to license suspensions, infractions, and indigent fees; 3) Develop an order of limited relief; 4) Focus on fair hiring practices; and 5) Modify child support orders and processes for offenders subject to license suspension due to non-payment of child support. A sub-group is also considering the impact of collateral consequences for juveniles involved with the criminal justice system.

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

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



HAWAII SUBSTANCE ABUSE COALITION

SB 2776 SD2 HD1 RELATING TO PUBLIC SAFETY pre-trial risk assessment in 3 days; expand parole board; assessments guide decisions; limit incarceration; increase restitution; parole supervision prior to sentence

- HOUSE COMMITTEE ON FINANCE: Representative Marcus Oshiro, Chair; Representative Marilyn Lee, Vice Chair
- Wednesday, March 28, 2012: 3:30 p.m.
- Conference Room 308

HSAC Supports SB2776:

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.

What has been the overall result?

- ✚ Overcrowding.
- ✚ Expensive.
- ✚ No reduction in violent crime.
- ✚ Huge increase of non-violent drug addicts
- ✚ Little effect on drug dealing or use.
- ✚ Mandatory sentences for (non-violent) costs \$1.5 Billion a year nationwide,
- ✚ Mandatory sentencing has led to greater racial disparity.

What works According to Research

- ✚ Mandatory for violent only
- ✚ No mandatory for non-violent drug addicts.
- ✚ Give parole more discretion to release “reformed” offenders
- ✚ Eliminate inefficiencies.
- ✚ Reduce long sentences for non-violent drug offenders and divert to treatment.
- ✚ Determine safety risk and relate risk to sentencing
- ✚ Integrate supervision with community-based programs.

Results

In those states that made changes, the vast majority offenders who are properly treated by supervision and community professionals are no longer committing drug related crimes.

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



Chaminade University

OF HONOLULU

Testimony Presented to the
House Committee on Finance
Wednesday, March 28, 2012 at 3:30 pm

by

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

SB 2776 SD2 HD1
Relating to Public Safety

Dear Chair Oshiro, Vice Chair Lee and members of the Committee:

Thank you for the opportunity to provide testimony in **support** of SB 2776 SD2 HD1, 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



Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
www.maddhawaii.com

March 28, 2012

To: Representative Marcus R. Oshiro, Chair –House Committee on Finance; Representative Marilyn Lee, Vice Chair and members of the Committee

From: Carol McNamee - Co-chairman, Public Policy Committee - MADD Hawaii

Re: Senate Bill 2776, SD2, HD1 – Relating to Public Safety

I am Carol McNamee, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving in support of Senate Bill 2776,SD2, HD1, relating to Public Safety.

MADD is one of the largest victim organizations in the country, serving 60,000 victims of drunk and drugged driving in 2011 – one every 9 minutes. Our mission has three parts: to stop drunk driving; to support the victims of this violent crime, and to prevent underage drinking. The organization’s slogan is “the voice of the victim.” Not only does MADD provide an understanding and comforting environment for victims, the organization is a strong advocate for the rights of individual victims of highway crashes and for the general rights of the entire universe of victims of violent crime across the country.

MADD in Hawaii has been serving victims of vehicular crimes *and homicide* for over 28 years – providing grief materials, comfort and support, access to counseling, and criminal justice system advocacy. SB 2776,SD2, HD1 will provide improved services for the thousands of victims of violent crime throughout the state.

This bill incorporates major recommendations of the Justice Reinvestment Initiative. MADD is especially supportive of the JRI legislative package’s inclusion of significant funding for victim services. In fact, under this proposal, Hawai`i will become 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 (Department of Public Safety), and funding for a restitution accountability program in the Crime Victim Compensation Commission.

The JRI reinvestment in victim services promises to improve restitution collections. MADD has identified issues surrounding restitution as a major concern to our victims and a source of revictimization. This bill also ensures that, through an automated system providing information about offenders’ parole hearings and release dates, victims will receive enough advance notification to speak at the hearings if they so wish.

MADD also understands the value of, and supports the concept of, risk assessment so that higher risk individuals, which would include negligent homicide and manslaughter offenders will be assured the appropriate programs and oversight to protect the safety of the public.

MADD believes that, as an organization with a stake in an efficient and effective justice system and a mission to support victims in the very best ways possible, we owe it to all who support our organization or who use our services to strongly support SB 2776,SD2, HD1. We respectfully urge the Finance committee to pass this measure.

Thank you for this opportunity to submit testimony.

March 28, 2012

Julie McFarland
Radiation Therapist, Bachelors of Social Work, Victim Advocate

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair
Rep. Isaac W. Choy Rep. Chris Lee
Rep. Ty Cullen Rep. Dee Morikawa
Rep. Heather Giugni Rep. James Kunane Tokioka
Rep. Sharon E. Har Rep. Kyle T. Yamashita
Rep. Mark J. Hashem Rep. Barbara C. Marumoto
Rep. Linda Ichiyama Rep. Gil Riviere
Rep. Jo Jordan Rep. Gene Ward
Rep. Derek S.K.
Kawakami

NOTICE OF HEARING

DATE: Wednesday, March 28, 2012
TIME: 3:30 P.M.
PLACE: Conference Room 308

Dear Chair Oshiro, Vice Chair Lee, committee members Choy, Cullen, Giugni, Har, Hashem, Ichiyama, Jordan, Kawakami, Morikawa, Tokioka, Yamashita, Marumoto, Riviere and Ward,

I am writing in **support** of SB 2776, SD2, HD1 Relating to Public Safety **WITH** the following amendments as suggested by the Prosecuting Attorney's office.

The vast majority of offenders owing restitution are not in prison, and other sections of this bill propose to release even more people from prison without making it possible to continue to collect restitution after release. To effectively facilitate restitution payments, the Department suggests incorporating language from H.B. 2394, to:

- 1. include unpaid restitution as valid "debt," for purposes of withholding State income tax refunds (similar to outstanding child support or judgments owed to State agencies);**
- 2. remove a court's ability to revoke restitution once ordered as part of a defendant's sentencing (this would not affect their abilities to appeal a conviction);**
- 3. create standards and procedures for income-withholding, similar to those used for outstanding child support payments; and**

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

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

This bill is vital if we are to bring our local prisoners back to Hawaii while supporting an O'hana based plan of reintegrating criminals back into society. I am a local resident and part Hawaiian ancestry and understand the importance of keeping our local inmates here at home. This Bill also supports victims and restitution fulfillment of the criminals more efficiently while incarcerated.

Having been a victim of crime, I can tell you firsthand how important the inclusion of the local office of Crime Victim Compensation Commission and the recovery of restitution. Crime victims demand this support and deserve to be supported by this important legislation. As stated above, not all defendants required to pay restitution are sentenced to jail but this financial consequence must be required by the courts. The amendments suggested by the prosecuting attorney's office add supportive measures to this vital collection process that victims demand.

The other arm of this vitally necessary legislation is the Risk Assessment piece. How many of us have to be re-victimized by those arrested and not assessed before being released back to our communities. This current practice is not only unfair to those of us that live by the rules of society, but it does not send a positive message to those that chose to break the law. Some of those arrested are not career criminals nor pose a danger to society but are being kept in custody for an average of 110 days as they are unable to post bond, is in my opinion unnecessary and immoral.

I have reviewed the Ohio Risk Assessment System ([www.assessments.com/.../ORAS Final Report and Validation.pdf](http://www.assessments.com/.../ORAS_Final_Report_and_Validation.pdf)) and suggest you do so as well. This risk assessment procedure is very basic and highly insightful as to the actual risk of someone released from custody reoffending while awaiting trial.

Thank you for the opportunity to give testimony.

DA KINE BAIL BONDS

1381 Queen Emma Street
Honolulu, HI 96813
(808) 921-2245

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair

Wednesday, March 28, 2012
3:30 p.m.
Conference Room 308

SB 2776, SD2, HD1(HSCR1276-12)
Relating to Public Safety

Chair Oshiro and Members of the Finance Committee,

We are Duane and Beth Chapman of Da Kine Bail Bonds, testifying in opposition to SB 2776, SD 2, HD1, Relating to Public Safety, and in particular the third section on pre-trial release.

First and foremost, our biggest concern with this section is that it allows felons on the street after a quick, seven-question interview process, and on their own recognizance, which is not in the best interest of public safety. After our over forty years of experience dealing with criminals, we know they will say anything to get a favorable interview result.

Our interview process is much more complex, detailed and lengthy, as we put our own money and business on the line each time we choose to write a bail bond on someone. We need to have all kinds of detailed information so that we can monitor them while they are out on bond, as well as make sure they show up at their court date. Should that person fail to appear, we have the kind of information we need to retrieve them.

Per our previous testimony, there is a vast difference between a pre-trial two-party release on their own recognizance, and a bail bond sold by a bail agent - which is a third-party release, when a family member or friend has paid a premium and placed collateral or indemnity on the line to ensure the defendant shows up at their court date. So, basically, with pre-trial, there are no financial or other consequences if the defendant fails to appear at court - and, on top of that, the State will have to pay all expenses. In the case of the third-party release by a bail agent, there is no cost to the State. The State actually makes money if the defendant fails to appear and the bail agent is unable to retrieve him/her.

The Department of Public Safety (DPS) has testified that they only recommend who should be eligible for pre-trial release, and that a judge makes the final decision. However, we have

learned that their interview report is all the judge has to base his or her ruling on, and that the DPS recommendation has been regularly followed. We were also surprised to learn during DPS testimony that a large percentage of those released have been felons, and not just lower-risk misdemeanors. If these defendants on pre-trial fail to show up for their court date, there are no consequences – except, of course, a loss of public safety.

That said, we really do appreciate how hard the Department of Public Safety is working to try and alleviate a challenging situation. They are good, conscientious people doing a good job. However, in regards to pre-trial, we must disagree because we believe there is still much more discussion and study to be done before the right decisions can be made that will help to increase public safety and reduce prison overcrowding.

If the intent of this bill is to reduce overcrowding in our prisons, there are other ways to achieve this, including passing bills like SB 2158, which allows bail on weekends and holidays.

We recommend that the pre-trial section be deleted to allow for more thorough study. There are numerous studies from around the country, which we have provided to Chair Oshiro, that show time and time again how pre-trial has failed for just the reasons we have outlined, above. We are happy to provide the committee members with a copy of these studies, as well, if requested.

We urge the Legislature to take a serious look at the pre-trial issue and request a study be done on the Department of Public Safety's pre-trial activity and results, including number of releases, percentage of those who have appeared/failed to appear in court, statistics on those who have re-offended while on pre-trial release, and statistics on those who have successfully completed the program. The results of this study should be submitted to the Legislature next session.

We sincerely hope you will also oppose the pre-trial section of SB 2776, SD 2, HD1.

Mahalo for allowing us to testify!

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

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

NOTICE OF HEARING

DATE: Wednesday, March 28, 2012
TIME: 3:30 P.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

SB 2776, SD2, HD1
(HSCR1276-12)
Status

RELATING TO PUBLIC SAFETY.

PBM, JUD, FIN

Requires a pre-trial risk assessment to be conducted within three working days of commitment to a community correctional center.

Testimony in Opposition to Pretrial Section, By James Waldron Lindblad for Professional Bail Agents

Bail agents are here to warn of unintended consequences of speeding up or encouraging or promoting state sponsored pretrial release or free bail and making further use of free bail which is only a two party release promise with no consequences for missing a court date as a means to reduce jail crowding and to bring back prisoners.

As a pretrial release officer in Clark County, Washington I interviewed at least 2000 persons for pretrial release using similar data based objective assessment techniques still being promoted as effective in about only about 55% to 75% of defendant releases and where judges adhere to recommendations made by of pre-trial release staffers in about 75% of the cases. This means high failure rates and revolving doors without consequences for defendants released on their own versus bail with bail agent requiring a third party responsible person or surety. As a bail agent I have interviewed at least 25000 defendants with at least a 99.5% success rate.

Bail agents believe no person should be held in jail simply for lack of funds.

Bail agents believe scarce state resources should be reserved for the truly needy.

Reform minded bail agents have submitted two bills, SB3068 & SB2158, to improve fast release of those persons needing bail on three party consequence based bail bonds that require a third party to co-sign or place collateral for bail bond release.

Always mindful of prison population management techniques and tools bail agents offer private sector pretrial release via bail bond sales that offer almost 100% appearance rates thus allowing victims of crime their day in court and if a defendant jumps bail the bail agency pays an amount of bail money to the state.

If free bail pretrial release were to be rushed as proposed by the three day assessment as provided for in Section 3., then conditions as to which defendants should be regulated and legislated.

For instance:

(A) No person shall be released on personal recognizance if he is presently at liberty on another bond of any kind in another criminal action involving a felony or a class 1 misdemeanor;

(b) No person shall be released on personal recognizance if he has a record of conviction of a misdemeanor within two years, or a felony within five years, prior to the release hearing;

(b.5) No person who is eighteen years of age or older or is being charged as an adult pursuant to section or transferred to the district court pursuant to this section shall be released on personal recognizance if the person's criminal record indicates that he or she failed to appear on bond in any case involving a felony or class 1 misdemeanor charge in the preceding five years;

(c) No person shall be released on personal recognizance until and unless the judge ordering the release has before him reliable information concerning the accused, prepared or verified by a person designated by the court, or substantiated by sworn testimony at a hearing before the judge, from which an intelligent decision based on the criteria set forth in this section can be made. Such information shall be submitted either orally or in writing without unnecessary delay.

(d) No person shall be released on personal recognizance if, at the time of such application, the person is presently on release under surety bond for felony or class 1 misdemeanor charges unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the judge deems just under the provisions of this section.

(e) Any defendant who fails to appear while free on bond in conjunction with a misdemeanor or a felony and who is subsequently arrested shall not be eligible for a personal recognizance bond for that case in which such defendant failed to appear; except that, if the defendant can provide satisfactory evidence to the court that the failure to appear was due to circumstances or events beyond the control of the defendant, the court shall have the discretion to grant a **personal recognizance bond**;

Further, Department of Public Safety should track and report all activity including number of releases, number of successful completions of the program and number of failures and report to the legislature at which time the this section should have a sunset clause.

Every Bail agent in Hawaii with an average case load of 600 active cases saves the State of Hawaii at least \$17 million dollars per year based on \$172.00 per bed space per year per defendant. This money can be spent to carry forward and bail as a means to improve prison population management thus saving scarce state resources for the truly needy.

Prison Population Management is a, *we are us problem* and a partnership of public and private resources should be used to best manage our prison system. Bail sold by bail agents in tightly regulated and benefits all the people of Hawaii at no cost to the tax payer when pretrial release agencies in my experience cost state resources, grow annually and never achieve specific desired results.

In my experience encouraging criminals to make use of state run free bail will not have the desired consequence of reducing jail populations as already proven in Hawaii in 1996 with the Emergency Release Act., and already proven throughout the mainland where now even in Oregon Bail is being reconsidered due to huge warrant backlogs, crowded jails and huge amounts of money spent on pretrial service budgets.

Please vote no on Section 3, the Pretrial section of SB 2776.

FINTestimony

From: E. Funakoshi [maukalani78@hotmail.com]
ent: Tuesday, March 27, 2012 5:09 AM
To: FINTestimony
Subject: SB2776 SD3, HD1 Justice Reinvestment Bill

Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
Committee on Finance
March 28, 2012 (Wed)
3:30 pm
Rm 308

Dear Chair Oshiro, Vice Chair Lee, and Committee Members:

I strongly support SB2776 because it will improve the inefficiencies within our judiciary process; however, I respectfully request that you delete the change to Section 353-22-6, Victim Restitution.

Changing this section penalizes the families/ohana by taking 25% of the inmate's total deposit for the Victim Restitution fund. The 25% or (\$25 out of every \$100) is a very severe penalty for people who did not commit any crime and are depositing hard-earned money into the inmate's account. It would be fair to take 25% out of the money that the inmates earn.

May your committee please consider my humble request to pass this bill by deleting the change to Section 353-22-6.

Thank you for your consideration and opportunity to submit my testimony.

.Mahalo and Aloha,
elaine funakoshi

FINTestimony

m: mailinglist@capitol.hawaii.gov
sent: Tuesday, March 27, 2012 6:45 PM
To: FINTestimony
Cc: pamela.ferguson-brey@hawaii.gov
Subject: Testimony for SB2776 on 3/28/2012 3:30:00 PM

Testimony for FIN 3/28/2012 3:30:00 PM SB2776

Conference room: 308
Testifier position: Support
Testifier will be present: Yes
Submitted by: Pamela Ferguson-Brey
Organization: Crime Victim Compensation Commission
E-mail: pamela.ferguson-brey@hawaii.gov
Submitted on: 3/27/2012

Comments: