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TESTIMONY ON SENATE BILL 2776 and SENATE BILL 2777
RELATING TO PUBLIC SAFETY

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Public Safety, Government Operations, and Military Affairs
Senator Will Espero, Chair
and
Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair

Tuesday, January 31, 2012; 2:45 PM
State Capitol, Conference Room 224

Good afternoon Chair Espero and Chair Hee and members of the Joint Committee. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide testimony in support of Senate Bill 2776. Senate Bill 2776 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 for purposes of making parole decision; 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.

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.

Senate Bill 2776 and Senate Bill 2777, and a number of reinvestment funding recommendations, including \$2,000,000 for victim services, are a set of policy options developed by the Justice Reinvestment Working Group (JRI) with intensive technical assistance from the Council of State Governments Justice Center, in partnership with the Pew Center on the States. The purpose of the JRI Working Group is to improve and reform criminal justice and corrections practices in Hawai'i through the development of a comprehensive data-driven plan that would allow for the return of mainland prisoners to Hawai'i, and to redirect the cost savings to programs that hold offenders accountable, reduce recidivism, and ensure victim and public safety. JRI policy options and funding recommendations seek to assure that interventions, treatment programs, and intensive supervision are focused on individuals at the greatest risk to commit more crimes after release.

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

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

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

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

Restitution Collection Shortfalls

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

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

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

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

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

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

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

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.

and because non-compliance with court orders undermines public trust and confidence in the justice system.”

The JRI initiative addresses some of these longstanding issues by providing funding for a restitution accountability program that tracks and reports restitution payments from PSD, parole, and the Judiciary² (in cases where restitution is ordered to repay the Commission). A second phase of JRI should include an initiative to address the issues identified by this part of the Restitution Project.

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,

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.”

and other related personnel in PSD. These additional staff are essential in order to ensure that the pretrial risk assessments are informed by victim input and community safety concerns.

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

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

Share information with the victim service community

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

PROPOSED AMENDMENT

The Commission proposes that that Senate Bill 2777, Section 5, be amended to require that before an offender can receive any incentive time credit, that the offender must pay their Court ordered restituton in full.

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

Thank you for providing the Commission with the opportunity to testify in support of Senate Bill 2776, and in support of Senate Bill 2777, with the proposed amendment., together with the reinvestment funding recommendations.

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**THE HONORABLE CLAYTON HEE, CHAIR
THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR**

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

Tuesday, January 31, 2012

RE: S.B. 2776; RELATING TO PUBLIC SAFETY.

Good afternoon, Chairs Espero and Hee, and members of the Senate Committees on Public Safety, Government Operations, Military Affairs, and Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony regarding S.B. 2776, which proposes various amendments to the Hawaii Revised Statutes designed to implement the proposed objectives of Hawaii's Justice Reinvestment Initiative.

While some of the proposed measures in this bill appear to have some merit, taken as a whole there appears to be a single minded effort to release more individuals from custody (pre-trial and post conviction) without clearly defining how this will be done consistent with the needs of both public safety and victim safety. We will cover each section separately as we wish to convey both our careful and sincere review of their merits while acknowledging that the nature of our perspective arises out of the solemn duties owed to the public as well as individual victims by our Department.

Section 3 of the bill contains a provision which creates a three day time limit for "pretrial risk assessments" without explaining exactly how that is going to happen and what the consequences are should this deadline not be met. What is particularly disconcerting about this proposal is that it creates an expectation that the speedy processing specified in the proposed statute will occur and a potential legal claim against the State if it does not. With no appropriation or explanation as to how we get from the three months wait for pretrial felons released on supervised release to the three days proposed in the bill its difficult to understand how this proposal will work.

The other amendment sought in part I, Section 3 of the bill is a provision specifying what type of assessment tools are to be used in the risk assessment process. What is unclear is how this provision differs from the procedure currently being used. Our Department has been under the distinct impression that legitimate risk assessment tools are already being used. If this is true is there really a need to mandate this? Also it is well known that not every tool is validated for every type of inmate or detainee. Some tools, for example, have a recognized deficiency in measuring the risk assessment for domestic violence offenders, even if deemed generally effective. It's also not reassuring to think that the only way to get the Department of Public Safety to use a proper assessment tool is to mandate it. If this is the case, maybe we should be using the risk assessment on the Department and not the detainees. While we don't believe this is the case, it does illustrate that some of the proposals may lack a proper grounding in common sense. The JRI report unfortunately does not give us much guidance here as it only notes that there is a long waiting period for pretrial detainees but never provides an analysis as to why, which therefore makes us skeptical of the proposed solution.

Sections 5 through 8 of SB 2776 deal with the Hawaii Paroling Authority (HPA). Although not stated anywhere it appears that there is a belief that some of the problems currently perceived within the Parole system is that there are not enough members on the Parole Board since Sections 5 and 6 deal with increasing the Parole Board members from three to four. While we have no objection to this, there is no explanation as to why this is necessary or why it is part of the proposals in the bill.

While the previous Sections propose increasing the size of the Parole Board, the next two Sections (7 & 8) focus on reducing its discretion and authority. Again while it is clear how mandating Parole (Section 7) and limiting the length of re-incarceration (Section 8) will reduce the prison population, there is no explanation as to the rationale or wisdom in doing so. The real target here seems to be the Parole Board and reducing its discretion without any analysis as to what the potential impact (aside from reducing the prison population) that these proposals would have. Mandatory sentencing laws are often cited as an inappropriate usurpation of the inherent discretion of the courts are therefore undesirable as it restricts the ability of judges to provide sentence appropriate for each individual criminal. However this proposal would seem to take the same approach with the Parole Board, although presumably with the opposite effect, again meaning that the primary objective is to simply reduce prison population. While the savings generated from these measures are extolled, there is little mention of the risks of limiting the ability of the Parole Board to fashion parole decisions and lengths of re-imprisonment for violations to the needs of individual prisoners.

Part III promotes the laudable objective of increasing restitution payments to victims by increasing and more broadly applying the percentage of inmate accounts and wages that goes to restitution. While this is a welcome improvement, this change will have a debatable impact on improving restitution collection since these deductions will not apply to the increasing number of prisoners released into the community on parole or probation where the collection and payment of restitution to victims is notoriously poor. The benefits from this type of proposal to victims will only be realized if this type of mandate is applied to parolees and probationers who represent the majority of restitution owed.

Section 11 again is designed to limit the discretion of the Paroling Authority by mandating the release of all inmates prior to the expiration of their maximum sentence. While we can all agree that a period of supervision upon the release of inmates back into the community is desirable, a mandate could result in the premature exposure of the community to dangerous felons. There

also seems little point in forcing inmates out into the community when they refuse to be supervised regardless of what the reason may be. Forcing the Paroling Authority to release inmates who they believe are an active threat to the community hardly provides us with reassurance that these proposals are designed to increase public safety. The Paroling Authority currently has the discretion to make these challenging decision; we believe that everyone's best interest is served if they retain this discretion.

In conclusion, the bill before you makes some bold proposals, and while we are not opposed to change (if it truly benefits victims and the community), these ideas need some more work. At present the connection between many of these proposed statutory amendments and the stated objectives of JRI are somewhat tenuous. Reduction of prison population alone (regardless of the projected savings) cannot serve as the primary objective. The benefits to community safety of any proposed changes need to be clear and unambiguous, not speculative, as appears to be the case for many of these proposals in their current form. We stand ready to support measures that represent true reform, the measures in S.B. 2776 fall far too short of this objective and we must respectfully request that you not move this bill forward in its current form. Thank you for this opportunity to testify.

Council Chair
Danny A. Matco

Vice-Chair
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Council Members
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LATE

January 31, 2012

TO: Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operations, and Military Affairs
Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

FROM: Gladys C. Baisa *GCB*
Council Member

DATE: HEARING OF JANUARY 31, 2012

SUBJECT: **TESTIMONY IN SUPPORT OF SB 2776, RELATING TO PUBLIC SAFETY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to amend statutes to require a pre-trial risk assessment to be conducted within three working days; expand the parole board and require the use of validated risk assessments to guide parole decisions; limit length of incarceration for first-time parole violators; increase victim restitution payments by inmates; require a period of parole supervision prior to the maximum sentence date.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. It will require objective assessment be conducted within the first three days of commitment to a community correctional center which will decrease the major backlog in the system and resulting in 65% of parole denials for those who couldn't get into programs.
2. Intake Service Center (ISC) shall conduct risk assessments within 3 working days of admission and ISC shall assist in the conduct of presentence assessments.
3. Increases the parole board to four members and that three parole board members shall serve on a part-time basis.
4. Improves PSD's collection of restitution.
5. Supervised parole release prior to expiration of maximum term.

Mahalo for the opportunity to present testimony on this important measure.

GCB:amm



HAWAII SUBSTANCE ABUSE COALITION

LATE

SB 2776 RELATING TO PUBLIC SAFETY: require a pre-trial risk assessment to be conducted within three working; expand the parole board and require the use of validated risk assessments to guide parole decisions; limit length of incarceration for first-time parole violators; increase victim restitution payments by inmates; require a period of parole supervision prior to the maximum sentence date

SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS. Senator Will Espero, Chair; Senator Nichelle Kidani, Vice Chair

SENATE COMMITTEE ON JUDICIARY AND LABOR: Senator Clayton Hee, Chair; Senator Maile Shimabukuro, Vice Chair.

January 31, 2012 2:45 p.m.

Conference Room 224

HSAC Supports SB2776:

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

SUMMARY

Extensive research has demonstrated that our prison populations have grown substantially over the last 25 years due primarily to mandatory sentencing that removes discretionary decision making from probation/parole who could previously release “reformed” offenders as well as numerous inefficiencies between agencies. Also, research has shown that prisons have expanded to long sentences for non-violent drug offenders.

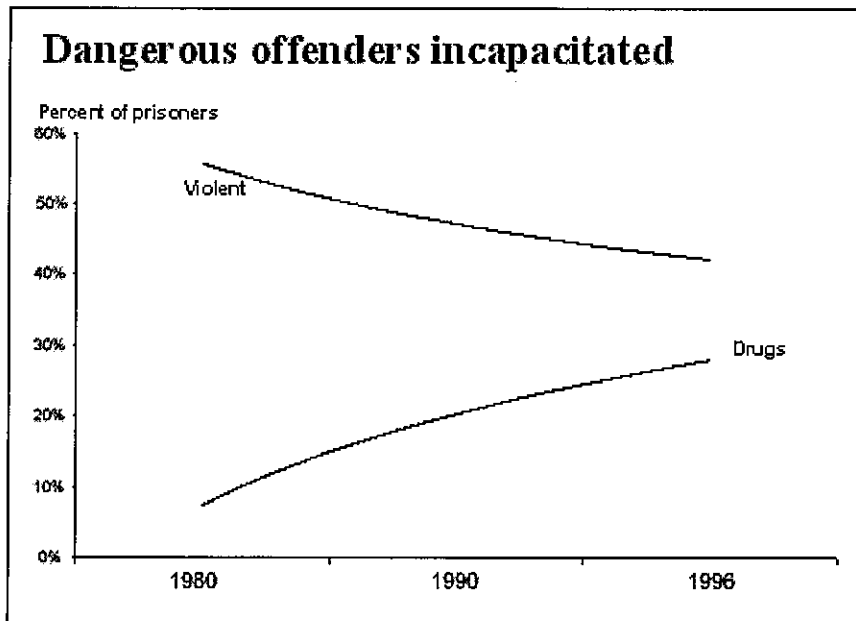
Using competent assessment protocols for each individual are more relevant for determining safety risk and respective sentencing rather than a “1 rule for all” approach. Employing best practices for use of minimum sentences when applicable makes sense and saves money.

Prisons are Full Due to Non-Violent Drug Offenders

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

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

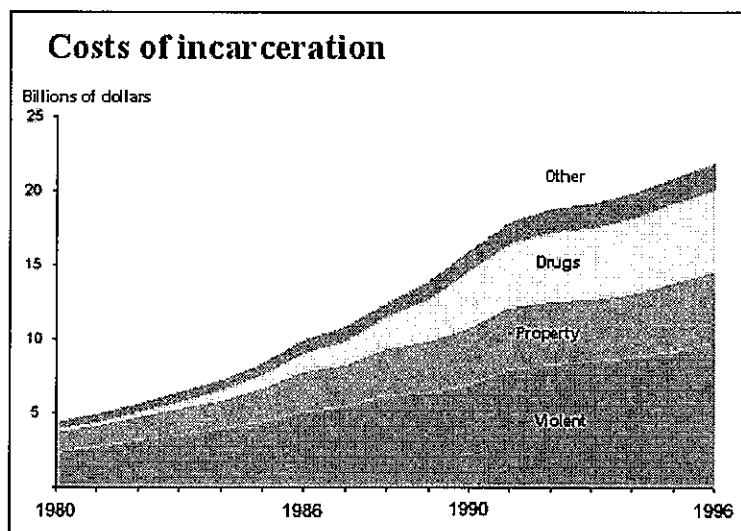
The Effects of Tougher Sentences on Drug and Property Crime



Most incarcerated drug offenders are not violent offenders:

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

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



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

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

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

Sources:

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

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 10:16 PM
To: PGM Testimony
Cc: jlm2day@yahoo.com
Subject: Testimony for SB2776 on 1/31/2012 2:45:00 PM

Testimony for PGM/JDL 1/31/2012 2:45:00 PM SB2776

Conference room: 224
Testifier position: Support
Testifier will be present: No
Submitted by: JOLENE MOLINARO
Organization: Individual
E-mail: jlm2day@yahoo.com
Submitted on: 1/30/2012

Comments:
I support SB 2776. Justice Reinvestment is VITAL to our society.