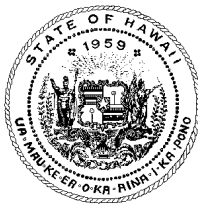


SB2777
TESTIMONY

NEIL ABERCROMBIE
GOVERNOR



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

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No. _____

February 14, 2012

TESTIMONY ON SENATE BILL 2777, SENATE DRAFT 1
RELATING TO CRIME

By

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

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

Tuesday, February 14, 2012; 9:30 a.m.
State Capitol, Conference Room 016

Chair Hee, Vice Chair Shimabukuro, and Members of the Committees:

The Department of Public Safety is in strong support of Senate Bill 2777, Senate Draft 1, Relating to Crime, the result of work by the Justice Reinvestment Working Group. Included in *A New Day in Hawaii* is Governor Neil Abercrombie's initiative to return inmates housed in contracted correctional facilities on the Mainland to Hawaii. The Governor states "The ultimate way to reduce crime is to increase the number of strong, nurturing families and improve economic and social conditions for all." By returning prisoners to Hawaii not only are the opportunities for rehabilitation and family reunification improved, dollars spent out-of-state will be reinvested in creating jobs and community service opportunities here at home.

To this end, the Governor joined with Chief Justice Mark Recktenwald, Senate President Shan Tsutsui, House Speaker Calvin Say and Public Safety Director Jodie Maesaka-Hirata in applying for assistance from the US

Department of Justice, Bureau of Justice Assistance (BJA), and the Pew Center on the States to participate in the national Justice Reinvestment Initiative (JRI).

BJA describes this initiative as follows:

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

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

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

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

Based on the comprehensive data presented, the Working Group considered options to manage the growth of the State jail and prison population, improve the effectiveness of community corrections and law enforcement, and identify community-based strategies to improve public safety. Two measures are introduced as part of the Governor's package to enact the recommendations of the Justice Reinvestment Working Group: Senate Bill 2776, relating to Public Safety, addresses the pre-trial process, parole and restitution; and, Senate Bill 2777, relating to Crime, addresses sentencing for felony drug offenders, terms of probation, and felony theft.

Senate Draft 1 includes amendments that better conform the Bill to Ramseyer format, otherwise do not make substantive changes to the measure as introduced. We request this committee give thought to a number of amendments made to companion House Bill No. 2515 by the House Committee on Public Safety and Military Affairs with which we concur. The amendments respond to concerns raised by the City and County of Honolulu, Office of the Prosecuting Attorney, and victim advocates. For your consideration, we have included in our testimony below draft language to incorporate these changes.

PREAMBLE

The preamble includes a reference to "incentive time credit" for persons on probation. At the request of Prosecutor Keith Kaneshiro and with concurrence from other members of the Justice Reinvestment Working Group, the Department is no longer recommending that probation terms be reduced based on compliance with conditions. Therefore, we request this Committee **delete lines 15 through 20 beginning with "Language is added..." as found on page 3.**

FELONY DRUG OFFENDERS

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

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

On June 30, 2011, 10% (n=407) of the prison population was made up of felony drug offenders. Approximately 26%, or just over 100, of these offenders have no more than two prior felony arrests of any offense type, which includes

current offenses for which they are incarcerated. More than half of incarcerated felony drug offenders score as low or medium risk of re-offending.

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

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

TERMS OF PROBATION

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

The Hawaii sentencing code has a standard probation period of five years for both class B and C felonies, with exceptions for certain sex offenders. This standard was established through Act 9, Session Laws of Hawaii 1972, a measure that totally revised the Hawaii Penal Code. Since 1972, extensive research has shown that recidivism, defined as any new arrest for this purpose, is most likely to take place during the first three years of community supervision. In the majority of states, probation services are delegated to the counties and among the largest counties, 83% of felony probationers receive terms of three years or less. In Hawaii, 95% of felony probationers are ordered to terms of more than three years.

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

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

Victim advocates expressed concern that the exceptions to the three-year probation term did not include additional offenses that have serious consequences on children, families and those who are incompetent. We agree with these concerns and request that **lines 17 through 20, on page 6, be deleted and replaced with:**

- (b) Five years upon conviction of a class B or class C felony[;]
under parts II, V, or VI of chapter 707, chapter 709, and part I of chapter 712 and three years upon conviction of any other class B or C felony;

Based on concerns raised by the prosecutors, the Department of the Attorney General and victim advocates, we no longer support the idea of allowing probationers to reduce their term of supervision just by abiding to the conditions of probation. The Courts currently have the authority to discharge a probationer for good cause and we believe this adequately addresses the issue. To this end, we also request **that lines 1 through 15, page 8, be deleted.**

FELONY THEFT

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

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

REINVESTING FUNDS

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

Should all the recommendations included in this measure and Senate Bill 2776 be enacted, PSD will see an average reduction in bed demand equal to 410 beds/day in the first year, resulting in a savings of up to \$6 Million in Fiscal Year 2013. This savings will be realized by reducing the number of inmates placed in Mainland contracted beds. The savings will be reinvested to support community-based programs and services, increased probation and parole staff, and victim services. Attached is a list of how these funds will be expended.

The Department of Budget and Finance is drafting a Governor's Message to reappropriate the anticipated savings in PSD 808, Non-State Facilities, to the programs identified in the attachment. This includes designating funds for the Hawaii Paroling Authority, Crime Victims Compensation Commission, Judiciary, county prosecutor offices, and other PSD program IDs.

SUMMARY

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

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



The Judiciary, State of Hawaii

Testimony to the Senate, Committee on Judiciary and Labor

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

Tuesday, February 14, 2012, 9:30 a.m.
State Capitol, Conference Room 016

by
Cheryl R. Marlow
ACSB Administrator

Bill No. and Title: Senate Bill No. 2777, S.D.1, Relating to Crime

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

Judiciary's Position:

The Judiciary supports Section 3 of Senate Bill No. 2777, S.D.1, Relating to Crime. The Governor, Chief Justice, Senate President, House Speaker, and Department of Public Safety Director established a bipartisan, inter-branch Justice Reinvestment Working Group comprising leading state and local officials to receive intensive technical assistance from the Council of State Governments (CSG) Justice Center. The CSG Justice Center assisted the working group in analyzing data from every aspect of Hawaii's criminal justice and corrections system.

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

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



Senate Bill No. 2777, S.D.1, Relating to Crime
Committee on Public Safety, Government Operations, and Military Affairs
Tuesday, February 14, 2012
Page 2

The risk of recidivism is most likely during the first and second year of probation, and, therefore, the public safety benefit of supervising offenders for subsequent years is much less significant. Besides offering diminishing benefits, supervising offenders for such long periods requires resources that could otherwise be spent supervising offenders who pose a higher risk or have recently been placed on probation.

Finally, the public will benefit by refocusing treatment and supervision resources on higher risk criminal offenders and enhancing public safety through reductions in recidivism as measured by re-offense rates for those placed on probation. In addition to a shorter probation term, Section 5 of Senate Bill No. 2777, S.D.1 also proposes creating an earned credit incentive for persons on probation to comply with the conditions of supervision. The new language permits the court to reduce the probation term upon the recommendation of the probation officer based on specific criteria set forth in the new language. With good compliance, this could bring the probation term to under two years. While the Judiciary supports the intent of this revision, we respectfully recommend deferring action at this time to assess the impact of the reduction from five to three years. Additionally, further study is needed on the potential cost and administrative burden of such a system, and on whether a further reduction from three years is itself appropriate.

Thank you for the opportunity to testify on Senate Bill No. 2777, S.D.1.

**TESTIMONY ON SENATE BILL 2777
RELATING TO CRIME**

**Robert Coombs, Senior Policy Analyst
Council of State Governments Justice Center**

Tuesday, February 14, 2012; 9:30 a.m.
State Capitol, Conference Room 016

Chair Hee, Vice Chair Shimabukuro, and committee members, thank you for hearing SB 2777 Relating to Crime and for the opportunity to discuss the research we at the Council of State Governments Justice Center have conducted over the last year.

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

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

Over the past seven months, an inter-branch JRI working group chaired by the Director of Public Safety, Judge Alm, and the Senate President has guided and informed this effort. Throughout the process, we collected and analyzed data from arrests to court dispositions to probation, prison, and parole. We would like to recognize officials and staff at the Attorney General's office, the Judiciary and probation, Hawaii Paroling Authority, and of course the Department of Public Safety for their efforts to make data available and assist in the analysis throughout this process. The Department of Public Safety (PSD) deserves particular recognition for the data collection and access that Director Maesaka-Hirata and her staff provided to this process. Along with these quantitative analyses, we convened focus groups and interviews with numerous practitioners and stakeholders from around the state, including prosecutors, victim advocates, judges, parole board members, probation officers, law enforcement officials, and others.

Overview

Overall, we found that despite a decline in crime over the past five years, the overall jail and prison population has not significantly changed. With respect to SB2777, the analysis found that

key areas of the criminal justice system are not operating as cost-effectively as they could to reduce crime and increase public safety.

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

Justice Reinvestment Policy Framework

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

The policy options from the framework included in Senate Bill 2777 would do the following:

- Focus probation supervision resources where they can do the most to affect criminal behavior. Recidivism studies repeatedly demonstrate that the offenders who reoffend are most likely to do so within the first two or three years. This bill would limit probation terms for most Class B and C offenders to three years. If the judge determines more time is necessary for supervision due to violations, the offender could be revoked and placed on a new term of supervision.
- Provide judges with the discretion to sentence a second time drug possession offender to probation, jail, treatment, or prison.
- Raise the felony theft threshold to \$750.

Impact

Based on the analysis we conducted, we anticipate that this bill along with SB2776 would contribute to increasing public safety in three ways. First, by addressing the inefficiencies that tie up resources in ways that do not reduce crime and reinvesting in ways that do. Second, by focusing resources spent on supervision, incarceration, and treatment on those individuals who are most likely to benefit from those investments in terms of reducing their likelihood of

committing another crime. Third, by increasing accountability in Hawaii's criminal justice system by mandating a period of supervision and increasing the amount of victim restitution collected.

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

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

There are a number of amendments that have been proposed to HB 2515 and while the corresponding amendments were not made to SB 2777 yet, it makes sense to include them in order to address concerns raised or to better clarify the legislation proposed.

Section 5, Subsection (b) should be changed to read:

(b) Five years upon conviction of a class B or C felony[;] under parts II, V or VI of chapter 707; or chapter 709; or part I of chapter 712; and three years upon conviction of any other class B or C felony;

These felony classes include: negligent homicide in the first or second degree, negligent injury in the first degree, sexual assault in the second or third degree, promoting child abuse in the second or third degree, electronic enticement of a child in the second degree, endangering the welfare of a child in the first degree, abuse of family or household member, promoting prostitution in the second degree, promoting travel for prostitution and habitual solicitation of prostitution.

Section 5, Subsection (3) should be deleted which will remove earned time credit for probationers. Three years probation is an important step toward best prioritizing resources and more time is needed to work out the details of any earned time credit policies.

Thank you, Chair Hee, Vice Chair Shimabukuro 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.

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Labor**

February 14, 2012

S.B. No. 2777 SD1: RELATING TO CRIME

Chair Hee and Members of the Committee:

We strongly support passage of S.B. No. 2777 SD1 which contains a number of recommendations made by the Governor's Justice Reinvestment initiative. We believe that the proposals contained in this bill can greatly relieve stress upon the criminal justice system while maintaining public safety.

In Section 2 on page 4, S.B. No. 2777 SD1 amends H.R.S. § 706-622.5 to allow probation for second time drug offenders convicted of possession or use crimes. Currently, such offenders fall under the repeat offender statute, § 706-606.5, and must receive a prison sentence. Rather than filling our prisons with these offenders, the community would be better served by requiring them to enroll in substance abuse treatment programs. The success of programs such as drug court and recently, Hawaii's Opportunity Probation with Enforcement (HOPE), illustrate that offenders can be safely released into the community with proper treatment and supervision. Hawaii must take advantage of these alternatives to incarceration to relieve overpopulation in our correctional facilities.

Second, the bill, in section 3, on page 6, amends § 706-623, to provide for three-year probation terms for class B or C felonies which are not sexual or child abuse offenses. Currently, many probationers after two or three years are "administratively banked" by the probation department which means that, due to their good conduct on probation and compliance with all court-imposed conditions, are no longer on active supervision. Many of these probationers also petition the court for early release from their terms of probation. These motions require attorneys to have them filed and spaces on court calendars to hold hearings. Thus, they are costly to the system. For most offenders, a three-year term of probation is a sufficient amount of time to determine whether he/she can become a productive member of the community and is amenable to rehabilitation. Also in section 5, the bill provides for incentive time credits for supervised probation based upon a probationer's progression in his/her treatment plan. This provision would encourage and reward probationers who are motivated in their treatment plans.

On page 8, the measure establishes provisions under which probationers can receive incentive time credit for progression in his/her treatment plan and compliance with probation conditions. This change would reward probationers who perform well with time credits and the ability to discontinue court supervision earlier.

Finally, in section 4 of the bill on page 9, the threshold valuation for felony theft of property would be raised from \$300 to \$750. This change reflects the general rise in prices of consumer goods over the years. The threshold amount was last adjusted more than 20 years ago, in 1986. This change would mean a shift of all theft cases involving less than \$750 to the district court system for handling as misdemeanor cases. This is a

change which is overdue. The theft of \$300 worth of items in 2012 is far less serious than it was in 1986. The processing of a case in the district court as a misdemeanor is far less costly in terms of resources than is handling of a case in the circuit court as a felony. This change would result in a fairer disposition of property crimes and reduce stress on an overburdened court system.

Hawaii is in need of reform to its criminal justice system. The Justice Reinvestment project conducted a data-driven analysis of our current system and formulated a number of suggestions to make the system more efficient while not sacrificing public safety. S.B. No. 2777 SD1 would accomplish some of the reforms suggested by this project. We support these changes and urge the passage of this measure.

Thank for the opportunity to comment on this measure.



HAWAII SUBSTANCE ABUSE COALITION

SB 2777 SD1 RELATING TO CRIME *Eligibility for probation to include second time offenders for certain drug offenses.*

SENATE COMMITTEE ON Judiciary:

- Senator Clayton Hee, Chair; Senator Maile Shimabukuro, Vice Chair
- February 14, 2012 9:30 a.m.
- Conference Room 016

HSAC Strongly Supports SB2777 with Recommendations:

Good morning Chair Hee, Vice Chair 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

Due to upcoming changes in healthcare reform, we recommend adding “licensed” counselors because they will be the primary billing mechanism as well as required to provide oversight to state certified counselors.

RECOMMENDATIONS

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

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

~~(e)~~ (c) Except for those persons directed to substance
abuse treatment under the supervision of the drug
court, the person presents a proposal to receive
substance abuse treatment in accordance with the

treatment plan prepared by a licensed or
certified substance abuse counselor through a
substance abuse treatment program that includes
an identified source of payment for the treatment
program."

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

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: ajohnson@hinamauka.org
Subject: Testimony for SB2777 on 2/14/2012 9:30:00 AM
Date: Friday, February 10, 2012 9:57:54 PM

Testimony for JDL 2/14/2012 9:30:00 AM SB2777

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Alan Johnson
Organization: Hawaii Substance Abuse Coalition
E-mail: ajohnson@hinamauka.org
Submitted on: 2/10/2012

Comments: