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**CRIME VICTIM COMPENSATION
COMMISSION**

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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.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU **LATE TESTIMONY**

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THE HONORABLE MICHELLE KIDANI, VICE CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND
MILITARY AFFAIRS**

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

Tuesday, January 31, 2012

RE: S.B. 2777; RELATING TO CRIME.

Good afternoon, Chairs Espero and Vice Chair Kidani, and members of the Senate Committee on Public Safety, Government Operations, and Military Affairs, the Department of the Prosecuting Attorney submits the following testimony regarding S.B. 2777, which proposes various amendments to the Hawaii Revised Statutes designed to implement the proposed objectives of Hawaii's Justice Reinvestment Initiative.

While SB 2776 focuses on offenders in custody, this bill appears targeted at probationers. However the first proposal (in Sections 3 & 4) inexplicably proposes to provide a new expungement option for drug offenders. The connection here to the objectives of JRI seems tenuous unless the idea is to simply delay the effects of current sentencing provisions for repeat drug offenders. Why the answer to concerns about current sentencing options is to provide drug offenders with an additional free pass for a second drug offense conviction is unclear.

Section 5 of the bill contains a provision which would limit probation for all Class B and C offenders to three years. While there are clearly some fiscal benefits from reducing probationary terms, the wholesale reduction of probation terms, regardless of the type of offense or the criminal history of the offender seems unwarranted. This is particularly true for our many offenders who were originally charged with class A offenses, but achieve a reduction due to a plea agreement. Also the proposal, while excluding Part V or VI (Sexual Assaults and Promoting Child Abuse), limits probationary terms for all violent offenders except class A felons. This wholesale release of many proven risks to public safety from supervision defies logic. However this Section goes even further with its benefits for probationers by establishing a scheme to further reduce probationary terms by mandating incentive time credits for certain perceived positive behaviors that would automatically reduce probationary terms for many offenders. While it is clear that these proposals are going to drastically reduce the number of

offenders under court supervision there is no explanation as to why the courts cannot utilize their current powers to reduce probation terms by reducing the terms of meritorious probationers, which can and does already occur.

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

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

Section 6 of SB 2777 (in contrast to other Sections of the Bill) puts forward a fairly simple proposal, raise the current threshold for felony theft from \$300 to \$750. While some increase due to inflation may seem warranted, the percentage increase proposed here seems a bit high. In addition, it is critically important to evaluate the effect of this proposal on the business community. We are certain that this proposal will raise serious concerns among retail merchants who struggle to deal with business losses associated with professional shoplifters who undoubtedly will adjust some of their methods to benefit from the proposed increased dollar limit for felony thefts.

In conclusion, the bill before you makes proposals purportedly designed to meet the stated objectives of the Justice Reinvestment Initiative. Money savings and the reduction of the rolls of probationers seem to be the primary objectives. S.B. 2777 would be more palatable if it would focus on the attainment of justice and community safety and not simply financial goals. As such, we cannot support this bill in its current form. Thank you for this opportunity to testify on this bill.

Council Chair
Danny A. Mateo

Vice-Chair
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LATE

January 31, 2012

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

FROM: Gladys C. Baisa *GB*
Council Member

DATE: HEARING OF JANUARY 31, 2012

SUBJECT: TESTIMONY IN SUPPORT OF SB 2777, RELATING TO CRIME

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is 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.

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

I support this measure for the following reasons:

1. Allow (but not require) the court to impose a probation sentence upon second drug conviction. The current statute is only for first time drug offenders.
2. Modify probation for B & C drug offenders to no more than three years and adds incentive credit and permits court to reduce probation upon recommendation of probation officer. This is in line with best practices since re-offending generally occurs within the first three years of release.
3. Raises threshold for C felony theft from \$300 to \$750. Amount has not been amended since 1986.
4. Acknowledges substance abuse as a public health issue.
5. Courts may adjust period of probation upon recommendation of probation officer for incentive time credit.
6. Raise threshold for second degree theft to \$750.

For the foregoing reasons, I support this measure.

GCB:amm



HAWAII SUBSTANCE ABUSE COALITION

LATE

SB 2777 RELATING TO CRIME

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

January 31, 2012 3:15 p.m.
Conference Room 224

HSAC Strongly Supports SB2777 with Recommendations:

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

SUMMARY

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

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

RECOMMENDATIONS

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

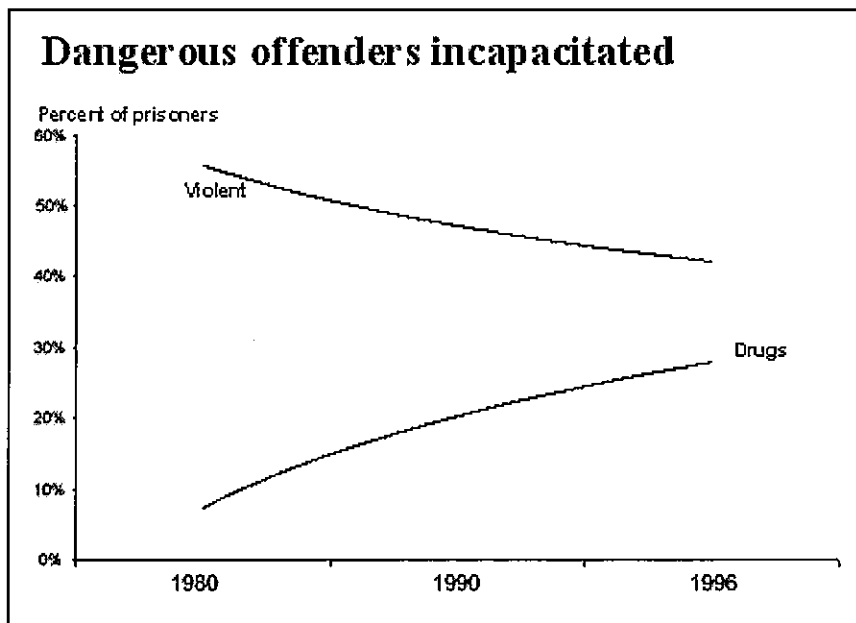
Section 2) 1) (b) The person has been assessed by a
licensed or certified substance abuse counselor
to be in need of substance abuse treatment due to
dependency or abuse under the applicable
Diagnostic and Statistical Manual and Addiction
Severity Index; and

(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."

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.

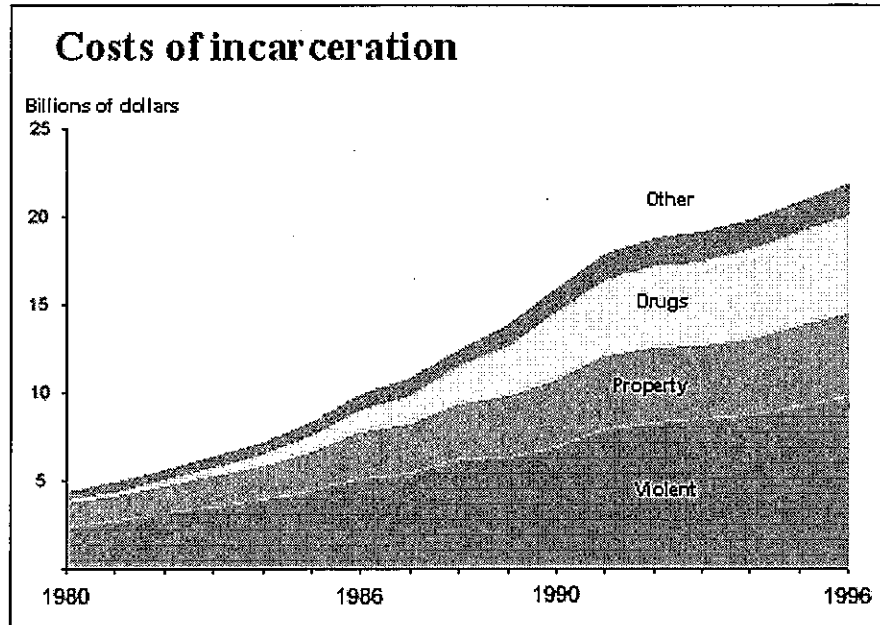
The Effects of Tougher Sentences on Drug and Property Crime



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 10:18 PM
To: PGM Testimony
Cc: ~~jmolinaro@jmolinaro.com~~
Subject: Testimony for SB2777 on 1/31/2012 3:15:00 PM

Testimony for PGM 1/31/2012 3:15:00 PM SB2777

Conference room: 224
Testifier position: Support
Testifier will be present: No
Submitted by: JOLENE MOLINARO
Organization: Individual
E-mail: ~~im2day@yahoo.com~~
Submitted on: 1/30/2012

Comments:

I support SB 2777 Improvements to current system inefficiencies are vastly important to our state and our budget long term.