



Committee: Committee on Public Safety
Hearing Date/Time: Thursday, February 7, 2013, 9:00 a.m.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawaii in Support of H.B. 1279, Relating to Public Safety

Dear Chair Aquino and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 1279, which appropriates funds for state programs related to the re-integration of offenders into the general population.

The ACLU of Hawaii has continuously advocated for systems to be put into place that help incarcerated individuals acclimate themselves to society after their release. This measure can reduce the ever-growing prison population, reduce recidivism and give offenders the tools to enable them to be productive members of society. With this incentive, many ex-offenders will be able to reintegrate, achieve self-sufficiency and become responsible and productive citizens.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

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Chair Aquino and PBS Committee Members
February 7, 2013
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The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

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HB1279
RELATING TO PUBLIC SAFETY
House Committee on Public Safety

February 7, 2013

9:00 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1279, which incentivizes partnership and investment in programs for pa‘ahao (prisoners).

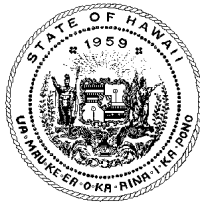
In 2010, OHA produced a comprehensive report detailing the disparate treatment of Native Hawaiians in the criminal justice system. Since then, OHA has administered the Native Hawaiian Justice Task Force (NHJTF), which was tasked by the Legislature to address this multi-faceted issue. A copy of the NHJTF 2012 legislative report and related materials are available at:
www.oha.org/nativehawaiianjusticetaskforce

This bill furthers recommendation G.3. of the NHJTF report:

In order to reduce its reliance on incarceration, the state of Hawai‘i should assist in the development of sufficient and appropriate community-based alternatives to incarceration for substance abuse, mental health treatment, and housing at all points within the criminal justice system.

There is a need for better re-entry and reintegration program for pa‘ahao and this bill will help reach that goal. Therefore, OHA urges the committee to **PASS** HB1279. Mahalo for the opportunity to testify on this important measure.

NEIL ABERCROMBIE
GOVERNOR



TED SAKAI
INTERIM DIRECTOR

Martha Torney
Deputy Director
Administration

Deputy Director
Corrections

Keith Kamita
Deputy Director
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STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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TESTIMONY ON HOUSE BILL 1279
RELATING TO
PUBLIC SAFETY
by
Ted Sakai, Interim Director
Department of Public Safety

House Committee on Public Safety
Representative Henry J.C. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, February 7, 2013; 9:00 a.m.
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Ing, and Members of the Committee:

The Department of Public Safety **supports the intent** of House Bill 1279, Relating to Public Safety, which is designed to assist the offender population in transitioning to the community in a safe, responsible manner and is receptive to entering into a partnership with the Department of Labor and Industrial Relations for the purpose of enabling them to achieve self-sufficiency and become positive contributors to their community.

The Department acknowledges the need to form public and private partnerships in addressing the high-risk needs of offenders and will continue to promote the initiatives of the Justice Reinvestment Initiative plan to better prepare incarcerated offenders for successful reentry into the community.

We support this bill so long as it does not impact the Department's established budget priorities.

Thank you for this opportunity to testify.

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COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, February 7, 2013

9:00 a.m.

Room 309

STRONG SUPPORT FOR HB 1279 - FUNDING FOR REINTEGRATION

Aloha Chair Aquino, Vice Chair Ing and Members of the Committee!

My name is Kat Brady and I am the Coordinator of 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 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i 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.

HB 1279 appropriates funds for state programs related to the re-integration of offenders into the general population.

Community Alliance on Prisons strongly supports this measure. We are members of the Reentry Commission and co-chair the Commission along with the Director of Public Safety.

As Ted Sakai said at the Hope in Hawai'i conference in August 2011:

- Do not forget that reentry is a process. It is not a program. At its best, the correctional system guides the offender through a series of experiences which we believe will help them develop the behaviors that will help them stay out of trouble after they return to the community at large. We structure these experiences through programs. Each program is part of the process. The process only works if we have the right programs in the right place.
- Reentry is not rocket science. Actually, it's harder, and the stakes are higher. Building and successfully launching a rocket requires thousands of intricate, complicated parts and steps, and tens of millions of dollars. But rocket science involves known and predictable factors. You put together a team of highly skilled, trained and motivated people. They work with the best raw material money can buy, make sure each part is made of the proper materials, built to exact specifications, and installed precisely. You wait until weather conditions are right, and push the button. If something goes wrong, you can do careful analysis and pinpoint the problem. You discover that the O-ring was defective, and you change that and try again, this time successfully.

On the other hand, when you work with reentry, you are working with unknown inputs, unknowable environmental forces, and unpredictable responses. Failure will occur even when everyone does their job. And the cost? Way more than millions of dollars – lost and wasted lives.

- In rocket science, failure is a surprise; loss of life is an aberration. With reentry, we should expect failure, but still keep on trying. You have to be patient, and you have to be realistic, and you have to keep on trying.
- You cannot do reentry effectively unless you truly appreciate the prison environment. People go to prison because they made bad choices. And prison does not teach them how to make good choices. People who go to prison do not have good habits or social skills. Prison is not a place where you can acquire these. When you work with offenders in reentry, you are working with people who need practice in making good choices, who need to learn good habits, and who need to acquire good social skills. Many can't overcome their pasts – the first, second or third times. But they all need and deserve our support, because many can and do make it, and because they are citizens of our community.
- You can't do it alone. I don't care how large and powerful your agency is, or how well-funded, or how elegant your program design. You can't do it alone. You need partners. The Department of Public Safety needs the Departments of Labor, Education, Health, Human Services, etc. etc. The State agencies need the county agencies, and the government agencies need the community agencies. To do it without complete buy in from all, including the community sector is foolish and shortsighted. And everyone needs to be included, not just the ones you think support your position.
- You don't have all the answers. No one does. Don't hesitate to look outside. See what others are doing, in Kansas, Oregon, Michigan. Watch how the California drama unfolds – when a community is under so much stress, there is bound to be innovation. There are many sources of information. Don't be afraid to seek them. You must keep your eyes and your minds and hearts open. And sometimes, learning is not about the information you gather; rather, it is about the questions you ask. As Roshi Shunryu Suzuki so famously noted, "When the student is ready, the teacher appears."

Resources for Developing Effective Reentry and Supervision Strategies¹

During the past decade, a number of leading criminal justice organizations, stakeholders and community leaders have developed comprehensive reentry and supervision strategies. There are a number of resources in the field aimed at helping policy makers and practitioners implement effective, evidence-based correctional policies and programs, including:

- Council of State Governments: *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* and the many materials from the CSG Justice Center's National Reentry Resource Center.²
- Urban Institute: *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes*³

¹ *The State of Recidivism – The Revolving Door of America's Prisons*, April 2011.

² Council of State Governments, Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (New York, NY: January 2005), <http://reentrypolicy.org/>; <http://www.nationalreentryresourcecenter.org/>.

- National Governors Association Center for Best Practices: *Improving Prisoner Reentry through Strategic Policy Innovations*⁴
- U.S. Department of Justice National Institute of Corrections and Crime & Justice Institute: *Implementing Evidence-Based Policy and Practice in Community Corrections*⁵
- Pew Center on the States, Public Safety Performance Project: *Policy Framework to Strengthen Community Corrections*⁶

Certificates of Rehabilitation⁷

THE POTENTIAL OF NEW YORK'S CERTIFICATE PROGRAM

Certificates of Rehabilitation are politically attractive forms of relief for people facing collateral consequences. The main alternatives, pardons and expungement, have gained little traction over the past fifty years. Both pardons and expungement result in a greater degree of finality than certificates, virtually erasing a person's convictions and the collateral consequences that stem from them.¹⁴⁶ Those very benefits also make them a far greater political liability for politicians to endorse.

This paper concluded:

This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit crime and return to prison ... America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life.

- President Bush, State of the Union Address, January 2004.

[T]here are people who have made mistakes ... I think that one of the great things about America is that we give people second chances ... [Y]ou reduce the recidivism rate, they pay taxes, it ends up being smart for taxpayers to do.

- President Barack Obama at a town hall meeting, January 22, 2010.

³ Amy L. Solomon, Jenny W.L. Osborne, Laura Winterfield, et al., *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (Washington, DC: The Urban Institute, 2008), http://www.urban.org/uploadedpdf/411791_public_safety_first.pdf.

⁴ National Governors Association, *Improving Prisoner Reentry Through Strategic Policy Innovations*, (Washington, DC: National Governors Association, September 2005) <http://www.nga.org/Files/pdf/0509PRISONERREENTRY.PDF>

⁵ Meghan Guevara and Enver Solomon, *Implementing Evidence-Based Policy and Practice in Community Corrections*, Second Edition, Washington, DC: National Institute of Corrections, October 2009) <http://nicic.gov/Library/024107>.

⁶ Pew Center on the States, *Policy Framework to Strengthen Community Corrections*. <http://www.pewstates.org/research/reports/policy-framework-to-strengthen-community-corrections-85899374213>

⁷ *Administering Justice: Removing Statutory Barriers to Reentry*, Joy Radice, July 2011. <http://ssrn.com/abstract=1864917>

Over the past decade, the country has shifted its thinking about tough-on-crime politics. We are at a unique moment in evaluating what happens on the backend of the criminal justice system when people are released. This prioritization of reentry initiatives makes sense on both sides of the political aisle from a normative and economic perspective.

Bar associations, politicians, advocates, and scholars have shined a spotlight on state-issued certificates because they can remove the myriad and unending civil punishments that attach to even the most minor criminal conviction. This attention recognizes that the state, which has set up these legal barriers to reentry, has a reciprocal obligation to be part of their removal. In our technologically advanced society, where criminal records can be retrieved easily on the internet, removing all memory of a criminal record is futile. As New York's experience with Certificates of Rehabilitation shows, a certificate does not wipe away the reality of the past. It merely stands for the proposition that a person with a conviction still has a future. A Certificate of Rehabilitation can be administered to ensure that the impact of collateral consequences is proportionate to the crime and to offer protection against persistent discrimination. Certificates can help us reshape the purpose of our criminal justice system toward a more forgiving reintegration ideal.

EEOC revises rules on job seekers with criminal records⁸

To pass muster, job denials based on criminal convictions must be shown to be "job-related and consistent with business necessity," according to EEOC guidelines. This means the employer must show that it considered three factors: the nature and gravity of the offense, the amount of time since the conviction and the relevance of the offense to the type of the job that's being sought.

Ex-offenders and the Labor Market⁹

"The rise in the ex-offender population overwhelmingly reflects changes in the U.S. criminal Justice system, not changes in underlying criminal activity," says Schmitt. "We incarcerate an astonishing share of non-violent offenders, particularly for drug-related offenses. We have far better ways to handle these kinds of offenses, but so far common sense has not prevailed."

Bruce Western and Katherine Beckett (1999) have rightly called the criminal justice system a U.S. labor-market institution. Our estimates suggest that ex-offenders lower overall employment rates as much as 0.8 to 0.9 percentage points; male employment rates, as much as 1.5 to 1.7 percentage points; and those of less-educated men as much as 6.1 to 6.9 percentage points. These employment losses hit ex-offenders hardest, but also impose a substantial cost on the U.S. economy in the form of lost output of goods and services. In GDP terms, we estimate that in 2008 these employment losses cost the country \$57 to \$65 billion per year.

⁸ EEOC revises rules on job seekers with criminal records by TONY PUGH, MCCLATCHY NEWSPAPERS, 04.25.12. <http://www.miamiherald.com/2012/04/25/2767832/eec-revises-rules-on-job-seekers.html>

⁹ Ex-offenders and the Labor Market, Center for Economic and Policy Research, John Schmitt and Kris Warner, November 2010. www.cepr.net/documents/publications/ex-offenders-2010-11.pdf

Public Opinion is Changing

In March 2012 Pew released Public Opinion on Sentencing and Corrections Policy in America¹⁰.

- American voters believe **too many people are in prison** and the **nation spends too much** on imprisonment.
- Voters **overwhelmingly support a variety of policy changes that shift non-violent offenders from prison to more effective, less expensive alternatives.**
- **Support for sentencing and corrections reforms** (including reduced prison terms) is strong across political parties, regions, age, gender, and racial/ethnic groups.

Poll Respondent Demographics:

- 39 percent identified as conservative
- 30 percent identified as liberal
- 32 percent identified as a Republican or leaning Republican
- 24 percent identified as Independent
- 37 percent identified as Democrat or leaning Democratic
- 17 percent identified as a violent crime victim household
- 43 percent identified as a non-violent crime victim household
- 12 percent identified as a law enforcement household

The majority of Hawai'i's incarcerated population is nonviolent offenders (63% male, 84% female) and, as the following charts show, 66% of females and 54% of males are classified as Minimum or Community, the least restrictive custody levels.

Hawai'i has got to abandon the mentality that incarcerated persons don't deserve programming. That mindset puts everyone at risk. Approximately 98% of all incarcerated persons will return to our communities. How do we want them to come home - angry and bitter or as persons who are ready to be part of our communities?

Persons with criminal records still face many barriers to employment and licensure. Hawai'i must address these barriers so that people who have worked to change their lives and behavior can move forward.

As Dr. Martin Luther King, Jr. so eloquently said:

"It really boils down to this: that all life is interrelated. We are all caught in an inescapable network of mutuality, tied into a single garment of destiny. Whatever affects one destiny, affects all indirectly."

Mahalo for this opportunity to testify.

¹⁰ http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/PEW_NationalSurveyResearchPaper_FINAL.pdf

