



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

**Written Testimony in Support of
HB 2490 Relating to Juvenile Justice**

**HOUSE JUDICIARY COMMITTEE
Rep. Karl Rhoads, Chair
Rep. Sharon Har, Vice Chair**

**February 6, 2014
2 p.m. Room 325**

Chair Rhoads, Vice-Chair Har and members of the House Judiciary Committee, thank you for scheduling a hearing on HB 2490 Relating to Juvenile Justice.

The Office of the Governor submits written testimony in **support** of HB 2490 Relating to Juvenile Justice. This legislative proposal is the result of a working group composed of representatives from the executive, legislative and judicial branches of government as well as key stakeholder groups from law enforcement, the prosecutors and public defenders offices and community service providers.

With the assistance from the PEW Charitable Trusts, the working group reviewed data and research and developed the proposed policy changes that are focused on improving and enhancing the juvenile justice system and concentrating bed space at the Hawaii Youth Correctional Facility (HYCF) for serious offenders. By keeping our youth out of the HYCF, we will be able to realize savings and reinvest those savings into treatment programs for our troubled youth and provide more sentencing options for the family court judges.

Similar to the Justice Reinvestment Initiative passed in 2011 for the adult correctional system, we are hoping to make policy changes to reform our juvenile justice system.

Thank you for this opportunity to provide testimony in strong support of HB 2490.



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

The Hon. Karl Rhoads, Chair
The Hon. Sharon E. Har, Vice Chair

Thursday, February 6, 2014
2:00 p.m.
State Capitol, Conference Room 325

By
R. Mark Browning
Deputy Chief Judge, Senior Family Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 2490, Relating to Juvenile Justice.

Purpose: To improve and enhance Hawaii's juvenile justice system.

Judiciary's Position:

The Judiciary strongly supports passage of House Bill No. 2490. The Preamble of this bill thoroughly explains the history, work, and conclusions of the Hawaii Juvenile Justice Working Group that was established in August of 2013 by Governor Neil Abercrombie, Chief Justice Mark Recktenwald, Senate President Donna Mercado Kim, and House Speaker Joseph Souki.

This testimony will not repeat the information already found in the Preamble. We respectfully note that this bill addresses recommendations listed in the Final Report of the Working Group, including:

- Recommendation 7: Clarify the Criteria Used to Release Youth from HYCF (13).
- Recommendation 8: Require the Creation of Offender Reentry Plans (13).
- Recommendation 9: Provide Clear Diversion Authority for Youth Who Do Not Need Justice System Interventions (14).
- Recommendation 10: Standardize Criteria for Informal Adjustment (14).
- Recommendation 11: Codify Current Administrative Monitoring Practices (14).



- Recommendation 12: Provide for a Risk and Needs Assessment to Assist Judges in Disposition Decisions (15).
- Recommendation 13: Use Risk and Needs Assessments to Drive Supervision (15).
- Recommendation 14: Create Case Plans to Focus Probation on Successful Outcomes (15).
- Recommendation 15: Require at Least One Home Visit for Probated Youth (16).
- Recommendation 16: Provide Annual Training for Probation Officers (16).
- Recommendation 17: Create Graduated Sanctions and Incentives for Probated Youth (16).
- Recommendation 18: Invest in Proven Practices to Reduce Reoffending (16-17).
- Recommendation 19: Establish a System of Earned Discharge for Youth to Incentivize Success (17).
- Recommendation 21: Provide a Pathway to Earlier Referrals and Access to Mental Health Services (17-18).
- Recommendation 22: Enhance Interagency Collaboration (18).
- Recommendation 23: Implement a System of Performance and Outcome Measures (18-19).
- Recommendation 24: Empower an Oversight Committee to Monitor Reforms and Report Outcome Measures (19).

The Working Group's Final Report clearly connects the dots between public safety, restricting HYCF to serious offenders, developing a continuum of services, expanding local alternatives based on evidence-based practices, and saving public monies by smart reinvestment. In particular to House Bill No. 2490, besides mandating specific best practices, care is taken to develop data that will inform future practices. Building on the data, the bill creates a system of reporting from the executive agencies and the family court. An oversight committee is created to receive, review, and act upon the generated reports and data.

The Working Group has performed a remarkable and tangible service for this state—not just for youthful offenders and their families—but for everyone. Everyone benefits when public safety can be strengthened and when children are given the tools to reach healthy and productive futures.

The Judiciary strongly supports the passage of House Bill No. 2490.

Thank you for the opportunity to submit testimony on this bill.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
707 Richards Street, Suite 525
Honolulu, Hawaii 96813

February 5, 2014

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: David Hipp, Executive Director

SUBJECT: H.B. 2490 – RELATING TO JUVENILE JUSTICE

Hearing: Thursday, February 6, 2014; 2:00 p.m.
State Capitol, Conference Room 325

PURPOSE: The purpose of H.B. 2490 is to enhance our state's juvenile justice system by concentrating secure bed space on serious juvenile offenders. Furthermore, there are several recommendations related to juvenile justice reform, including:

- Strengthening juvenile probation to ensure judges have sentencing options such as informal adjustment that keep youth safely and effectively in their communities
- Requiring a risk and needs assessment to be conducted for each minor prior to disposition
- Enhancing interagency collaboration by establishing performance measures and a statewide juvenile justice interdepartmental cluster to provide coordinated services to certain youth within family court, and
- Establishing a juvenile justice oversight advisory council.

OFFICE'S POSITION: OYS strongly supports H.B. 2490. On December 13th, a report was released to the Governor, the Legislature, and the Judiciary, which outlined several key data findings within our juvenile justice system that identified areas for improvement, and two dozen policy recommendations to increase the return on the investment Hawaii makes in its juvenile justice system.

The Working Group which issued this report was a 20-member bipartisan inter-branch group with stakeholders from every facet of juvenile justice, including the judiciary, law enforcement, prosecution, public defense, and community service providers. There were also 5 legislators, including the chairs from both the House and the Senate of the committees for public safety and human services, who served on the group.

The Working Group found that limited community-based options, particularly insufficient access to mental health and substance abuse treatment, often leaves family courts with few options short of confinement at HYCF. A growing body of research indicates that, for many youth, residential placement generally fails to produce better outcomes than evidence-based alternatives in the community, and in some cases may actually increase the risk of reoffending. While taking steps in the right direction, Hawaii has the potential to achieve even better outcomes at less cost through a new set of policies and budget priorities.

Based on its findings, the Working Group's policy recommendations include targeted juvenile justice policy reforms including:

- concentrating HYCF bed space on serious juvenile offenders by making misdemeanor youth ineligible for placement in HYCF
- reinvesting savings from diverting lower-level offenders and increase state funding to strengthen local alternatives, including critical mental health and substance abuse treatment
- ensuring judges and court staff have access to alternatives to secure placement along with the tools and sentencing options they need to help put youth back on the right track
- strengthening probation across the state, including requiring the use of a validated risk and needs assessment, case planning for each youth on probation, a system of sanctions and incentives, and the opportunity for earned discharge, and
- enhancing interagency collaboration, establishing performance measures, and implementing an oversight committee to continually improve juvenile justice practice and ensuring accountability.

The Honorable Karl Rhoads

February 5, 2014

Page 3 of 3

In conjunction with H.B. 2489, we are confident that through these bills that our state can make both significant and long overdue strides in the field of juvenile justice by enhancing services at the “front end” of our juvenile justice system and thereby accelerating reductions in the state’s use of secure confinement for lower-level juvenile offenders while reducing recidivism, protecting public safety, and improving outcomes for our troubled youth and their families.

Thank you for the opportunity to present this testimony.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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Victim/Witness Program 808-241-1898 or 800-668-5734

TESTIMONY IN SUPPORT OF
H.B. No. 2490
A BILL FOR AN ACT RELATING TO JUVENILE JUSTICE

Justin F. Kollar, Prosecuting Attorney
County of Kauai

House Committee on Judiciary

Thursday, February 6, 2014
2:00 p.m., Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Members of the House
Committee on Judiciary:

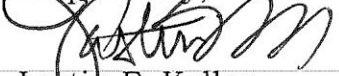
The Office of the Prosecuting Attorney, County of Kauai submits the following
testimony in support of H.B. 2490, Relating to Juvenile Justice.

The purpose of H.B. 2490 is to enhance the Juvenile Justice system by
providing the necessary resources for juvenile offenders, ensure requirements
for a risk and needs assessment to be conducted for each minor prior to
disposition, developing interagency collaboration as it relates to performance
based measures, etc.

The needs for juveniles within the Juvenile Justice system, and the
efforts made to reduce recidivism are a necessary investment the State
must make to ensure the rehabilitation of the Hawai'i's children.

For this reason, we strongly support H.B. 2490. Thank you very much for the
opportunity to provide testimony on this bill.

Respectfully,


Justin F. Kollar
Prosecuting Attorney
County of Kaua'i

February 4, 2014

To Whom It May Concern:

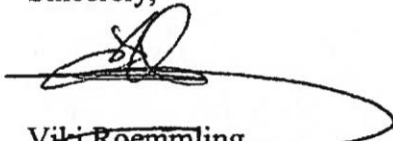
This in strong support of HB 2489 and 2490 regarding juvenile justice reform and enhanced services for our youth and their families.

As a counselor, working to prevent youth from further entering the juvenile justice system, it is apparent that expanded funding is a necessity to maintain and more importantly establish mental health and substance abuse treatment programs. Those of us who are based on the neighbor islands are in particular need of assistance where services are severely limited. As a result many of our youth are sent off-island to treatment facilities and the family therapy component becomes nearly impossible to facilitate.

The Maui Police Department Juvenile Crime Prevention Division has worked hard collaborating and coordinating services with judges, personnel from the Family Court, Office of the Prosecuting Attorney, Department of Education, Department of Health and numerous social service agencies to create and generate programs designed to keep youth safe and deter their involvement in the juvenile justice system.

Please consider the health and well-being of the families that require these essential services through your support of these very important bills. We appreciate your attention and thoughts on this matter. Again, thank you for your consideration to endorse these critical House Bills.

Sincerely,



Viki Roemmling
Supervising Juvenile Counselor
Juvenile Crime Prevention Division
Maui Police Department

William P. Kenoi
Mayor



Walter K.M. Lau
Managing Director

Randall M. Kurohara
Deputy Managing Director

County of Hawai'i Office of the Mayor

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February 6, 2014

The Honorable Karl Rhoads, Chair
and Members of the House Committee on Judiciary
Hawai'i State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawai'i 96813

RE: House Bill 2489 and 2490 RELATING TO JUVENILE JUSTICE

Aloha, Chair Rhoads and Committee Members:

Mahalo for the opportunity to offer my strong support of House Bill 2489, which appropriates funds to the Family Court Division of the Judiciary and the Office of Youth Services in the Department of Human Services to fund evidence-based programs that will reduce juvenile delinquency recidivism and House Bill 2490, which will enhance the juvenile justice system, strengthen juvenile probation, enhance interagency collaboration and establish a juvenile justice oversight advisory council.

These types of programs will support our most vulnerable and challenged youth and provide them with the direction and skills they need to develop into strong adults that make positive contributions to our society.

Aloha,

Wally Lau,
MANAGING DIRECTOR

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
HB 2490 - RELATING TO JUVENILE JUSTICE
February 6, 2014

The Honorable Karl Rhoads
Chair
The Honorable Sharon E. Har
Vice Chair
and Members of the House Committee on Judiciary

Chair Rhoads, Vice Chair Har and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 2490, Relating to Juvenile Justice. HB 2490 will enhance the juvenile justice system by concentrating secure bed space on serious juvenile offenders, strengthen juvenile probation, require risk and needs assessments, enhance interagency collaboration, and establish a juvenile justice oversight advisory council.

There is a dire need in our community to address the issues involving juvenile justice. This bill will help ensure that the juvenile offenders and properly dealt with by securing bed space for serious offenders, and by giving the family court more sentencing options with improved probation services. More importantly, this bill will allow for the establishment of performance measures to adequately assess the impact of these programs and to allow for coordinated services.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committee PASS HB 2490.

Thank you very much for the opportunity to provide testimony on this bill.

HAWAII YOUTH SERVICES NETWORK

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Web site: <http://www.hysn.org> E-mail: info@hysn.org

Daryl Selman, President
Judith F. Clark, Executive Director
Aloha House
American Civil Liberties Union of Hawaii
Bay Clinic, Inc.
Big Brothers Big Sisters of Honolulu
Big Island Substance Abuse Council
Blueprint for Change
Bobby Benson Center
Catholic Charities Hawaii
Child and Family Service
Coalition for a Drug Free Hawaii
Courage House Hawaii
Domestic Violence Action Center
EPIC, Inc.
Family Programs Hawaii
Family Support Hawaii
Hale Kipa, Inc.
Hale 'Opio Kauai, Inc.
Hawaii Behavioral Health
Hawaii Student Television
Healthy Mothers Healthy Babies Coalition
Hina Mauka Teen Care
Hui Malama Learning Center
Kaanalike
Kahi Mohala Behavioral Health
KEY (Kualoa-Heeia Ecumenical Youth)
Project
Kids Hurt Too
Kokua Kalihi Valley
Life Foundation
Marimed Foundation
Maui Youth and Family Services
Palama Settlement
P.A.R.E.N.T.S., Inc.
Parents and Children Together (PACT)
Planned Parenthood of Hawaii
REAL
Salvation Army Family Intervention Svcs.
Salvation Army Family Treatment Svcs.
Sex Abuse Treatment Center
Susannah Wesley Community Center
The Catalyst Group
The Children's Alliance of Hawaii
Waikiki Health Center
Women Helping Women
YWCA of Kauai

February 4, 2014

To: Representative Karl Rhoads, Chair
And members of the Committee on Judiciary

Testimony in Support of HB 2490 Relating to Juvenile Justice

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HB 2490 Relating to Juvenile Justice.

Youth who enter a juvenile prison are more likely to experience continued involvement in the juvenile and adult criminal justice system.

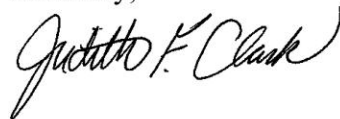
Most juvenile offenders in Hawaii are arrested for non-violent crimes. Half of all arrests are for status offenses, such as running away from home, curfew violation, or truancy from school. These young people are not a danger to the community. Their offenses are often the result of a troubled family life – domestic violence or child abuse – or due to the youth's need for mental health or substance abuse treatment services.

By increasing assessment and treatment options in the community, we can redirect these youth into safe, healthy, and productive activities and prevent future police and court involvement.

Funds that are currently used to incarcerate our youth can more productively be used to expand community-based options. We support initiatives currently under consideration by the Hawaii Legislature, such as the Safe Places for Youth Network and increased resources for substance abuse and mental health treatment for juvenile offenders.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



Hale Kipa

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Andy Levin
Neighbor Island Board Liaison

February 5, 2014

TO: Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Sharon Har, Vice Chair

RE: HB 2490 Relating to Juvenile Justice
Stance: SUPPORT

Dear Representatives Rhoads and Har,

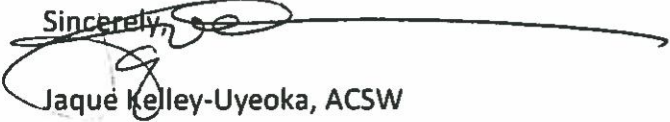
Thank you for allowing Hale Kipa to testify in support of this bill. Hale Kipa serves many youth who have been arrested and are in the juvenile justice system and, as such, was also fortunate to be a member of the Juvenile Justice Working Group that provided input and direction for a comprehensive report released in December 2013 that led to this legislation.

This group of individuals demonstrated a passion for serving youth, having youth and parents be held accountable, putting policies, procedures and funds in place that will deter youth from juvenile justice involvement and lead successful lives, keeping the community safe and saving the State monies due to less youth incarceration. Strengthening youth and family engagement, reentry practices, probationary procedures and oversight have the great potential of keeping many youth in their communities and not locked away at great expense to Hawaii. Youth at the Hawaii Youth Correctional Facility would be the youth who truly are a danger to the community and they, too, would be afforded more treatment and services.

The Juvenile Justice Working Group also validated the commitment across State agencies to streamline practices, avoid duplication, work together more collaboratively to identify what is needed for the youth and his/her family and do whatever is essential to make it happen! The commitment and identified approaches are refreshing and critically and urgently needed at this time.

It is hoped that you will pass HB 2490. Thank you for your time.

Sincerely,


Jaqué Kelley-Uyeoka, ACSW
Deputy CEO, Hale Kipa, Inc.



HB2489

Submitted on: 2/5/2014

Testimony for JUD on Feb 6, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
james crowe	Individual	Support	No

Comments: Please support HB2489 and HB2490. These bills represent excellent, correct planning by us adults for these young people whose potential productive futures are in our hands.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 5, 2014

Ellen K. Awai
3329 Kanaina Ave. #304
Honolulu, HI 96815
Cell: (808) 551-7676
Awai76@aol.com

TO: Representative Karl Rhoads, Chair of the Judiciary Committee & Members
Hearing on Thursday, February 6, 2014, 2:00 p.m. in Room #32t

SUBJECT: HB2490 Juvenile Justice Please support!

Please support HB2490 to enhance the juvenile justice system and protect our community by securing bed space for serious juvenile offenders. Judges need to have sentencing options that would keep our youth safe with effective evidence-based practices and treatments for mental health and substance abuse services. Our youth need programs in their own communities and not training to become a hardcore criminal and isolated from family. To reduce community costs later, our juvenile justice system should provide the needed support and treatments now through a collaboration of various agencies, instead of a life behind prison bars.

Youth, who are involved with the juvenile justice system, have usually faced truancy, trauma, neglect, drugs, homelessness, depression, and may have attempted suicide at an early age. In order to survive, many of our youth have been forced to drug addiction and sex trafficking on the streets. Family members may have kicked them out of their homes or had nowhere to go to help an unruly teenager. Our youth need guidance to help them adjust to adulthood from a life that they had little control of perhaps due to lower socioeconomic backgrounds or difficult family situations.

I have a master of science in Criminal Justice Administration (MSCJA) from Chaminade University with great professors in the field. I also have a certification as a Psychiatric Rehabilitation Practitioner (CPRP) with the Psychiatric Rehabilitation Association, which seeks recovery interventions for an individual. This could include mentors or role models who have gone through the same experiences and can provide hope for their future. The youth are our future, please support bill HB2490!

Mahalo and Aloha!

Ellen K. Awai, MSCJA, BBA, CPRP, HCPS
Behavioral Health Advocate

HB2490

Submitted on: 2/5/2014

Testimony for JUD on Feb 6, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Angelica Zabanal	Individual	Support	No

Comments:

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STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Judiciary

HB2490, Relating to Juvenile Justice

**Testimony of Gary L. Gill
Acting Director of Health**

February 06, 2014, 2:00 p.m., Room 325

1 **Department's Position:** We support this proposal if it included a revenue stream to carry out its
2 intent and does not replace or adversely impact priorities indicated in our Executive Budget.

3 **Fiscal Implications:** Amount of fiscal impact unknown

4 **Purpose and Justification:** The purpose of this bill is to enhance the juvenile justice system by
5 concentrating secure bed space on serious juvenile offenders, strengthen juvenile probation, require a
6 risk and needs assessment to be conducted, enhance interagency collaboration and establish performance
7 measures, establish a statewide juvenile justice departmental cluster, and establish a juvenile justice
8 oversight advisory council.

9 The department of health supports the work of, and appreciates serving on, the Hawaii Juvenile
10 Justice Working Group which helped develop this measure and others, to implement the Working
11 Group's recommendations to enhance the juvenile justice system.

12 Section 3 of the bill proposes to establish a juvenile justice interdepartmental cluster to
13 coordinate services between the judiciary and the child and adolescent mental health division of the
14 department of health for youth that are high-need and if actively involved in two or more youth-serving
15 agencies. Establishing this interdepartmental cluster is unnecessary and redundant. Through its

Promoting Lifelong Health & Wellness

1 foresight, in 1987 the Hawaii State Legislature established an interdepartmental cluster for services
2 through Hawaii Revised Statutes §321D-1. This interdepartmental cluster, called the HI SYNC (Hawaii
3 Interagency State Youth Network of Care), is currently in operation and meets regularly to coordinate
4 services for children with emotional and behavioral challenges. There is active participation by the
5 Judiciary, Office of Youth Services, Department of Education, Department of Human Services, and the
6 Developmental Disabilities Division, Early Intervention Section and Child and Adolescent Mental
7 Health Division of the Department of Health. Creating a second interdepartmental cluster to conduct
8 additional meetings would be inefficient and time-consuming.

9 Section 13 of the bill proposes that the court shall refer youth to the department of health if
10 necessary. The department supports accepting referrals for mental health evaluation and treatment, if
11 appropriate, provided additional funding for this population is provided through legislative
12 appropriation. The department has an array of mental health services, including evidence based
13 programs and services.

14 Section 13 also requests that courts conduct a risk and needs assessment prior to disposition and
15 referral to the department of health. The department recommends that any tools or instruments used to
16 evaluate the need for mental health services be clinically sound and validated for the population. The
17 department would be happy to work with the courts to identify the appropriate mental health assessment
18 tools.

19 Section 15 of the bill proposes the establishment of a temporary juvenile justice oversight
20 advisory council, and specifies that two members of the child and adolescent mental health division of
21 the department of health serve on the advisory council. The department agrees to participate on the
22 council and support its work. The department appreciates the Working Group's foresight in including
23 representatives from school based behavioral health and special education of the department of
24 education on the advisory council.

1 We thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/email: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon Har, Vice Chair

Thursday, February 6, 2014

2:00 p.m.

Room 325

SUPPORT FOR HB 2490 - JUVENILE JUSTICE

Aloha Chair Rhoads, Vice Chair Har 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 2490 enhances the juvenile justice system by concentrating secure bed space on serious juvenile offenders. It strengthens juvenile probation to ensure judges have sentencing options such as informal adjustment that keep youth safely and effectively in their communities and requires a risk and needs assessment to be conducted for each minor prior to disposition. Interagency collaboration is strengthened by establishing performance measures and a statewide juvenile justice interdepartmental cluster to provide coordinated services to certain youth within family court. The bill also establishes a juvenile justice oversight advisory council.

Community Alliance on Prisons supports this measure. Research on better ways of addressing youthful offenses clearly shows that **incarcerating juveniles is not the most effective way of helping our youth** and does not help us achieve better outcomes for our communities.

Representing Community Alliance on Prisons, I am a member of the Disproportionate Minority Contact Committee of the federally funded Juvenile Alternatives to Detention Initiative (JDAI), serve as an Advisory Board member to Films By Youth Inside (FYI), a program at HYCF that helps our youth tell their stories through production of a short film that they write, film, and serve as the cast and crew, serve on the Board of 'Opio Haku Mo'olelo (Youth writing stories; youth making meaning), and assist a girl's filmmaking program called Making Media That Matters.

Community Alliance on Prisons has been working on adult justice issues for almost two decades and when we read Dr. Marilyn Brown's dissertation called *Motherhood on the Margins* (2003) that revealed that more than 30% of the women on parole at the time of the research started in the juvenile justice system. This captured Community Alliance on Prisons' attention and we started working on juvenile issues to stem the pipeline of youth entering the adult system.

Neuroscientists, using advanced brain-scanning technology, are getting a better view of how the human brain develops than ever before. And what they've found is that in most people, **the prefrontal cortex and its links to other regions of the brain are not fully formed until age 25**—much later than anyone had realized. These areas are the seat of “executive decision making”—the parts of the brain that allow people to think through the likely consequences of an action, weigh the risks and benefits and stop themselves from acting on impulse. In other words, the stuff that makes you a mature person.¹

Brian Wilcox, a psychologist at the University of Nebraska said, *“There's been a growing recognition that most of our earlier law in how we treat adolescents and young adults was chaotic and not tied to any empirical rationale. When many of these laws were established, there really wasn't research on which they could be based.”*

It is no secret that Native Hawaiians, Samoans and Filipinos are over-represented in Hawai'i's justice system.²

The Hawai'i Juvenile Justice Working Group found that in 2012, 41% of youth were committed for nonviolent offenses. They also found that Hawaii's violent offense arrest rates are below the national average and our property offense arrest rates are above the national average.

It is no surprise that property crime is above the national average when we know that 80% of the youth in the First Circuit are in need of substance abuse treatment and there is only one residential treatment facility to serve this desperate need.

Community Alliance on Prisons is so grateful that the bill includes a **reentry** plan for youth. This has been the weak link in the juvenile system, just as it has been in the adult system. We also support **instituting intermediate sanctions** for the most common probation violations as an important step in helping our youth understand the consequences of their actions.

Including **earned discharge** from probation is an important step in restoring hope to a youth who has broken the law. It gives youth something to focus on in order to reach their fullest potential. If a young person feels that there is no way out of the system, it can lead to more offenses as he or she may feel they have been labelled.

Adopting a **parole plan with services** is vital to successful reentry so that our youth achieve the results for which we all hope.

These elements are all so important.

¹ **What is the Age of Responsibility?** By Alan Greenblatt, October 2009. <http://www.governing.com/node/4018>

² **Why So Many Hawaiian, Samoan And Filipino Youth In Justice System?** Civil Beat, By Chad Blair October 24, 2012. <http://www.civilbeat.com/articles/2012/10/24/17448-why-so-many-hawaiian-samoan-and-filipino-youth-in-justice-system/>

The findings of the Disproportionate Minority Contact in the Hawai'i Juvenile Justice System³ reported systemic problems:

- High rate of probation placement but lack of referrals to programs at early stages in juvenile justice involvement
- Many youth violate conditions or reoffend
- Negative outcomes are more likely for those arrested while on probation status
- Youth become involved in more serious problems, but at that point there is a lack of programs available (mental health, substance abuse, residential programs)
- HYCF has often become the provider of last resort
- Some youth are placed on probation after being released from HYCF without adequate transitional support, which leads to recidivism.

The Key Recommendations of this report:

- Develop a more collaborative system for support, restoration, and healing
- Fill gaps in the continuum of care that provides the adequate range of alternatives to arrest, probation, and incarceration
- Reconsider policies that draw youths deeper into the juvenile justice system
- Mobile community-wide kuleana for the keiki and `opio

This bill is a start to address these problems and recommendations and we strongly support our youth receiving the services they need to realize their highest and best potential.

We need to look at every child/youth as if they are a precious gem. They are indeed! They are our future leaders and we must do all that we can to help them be the best they can be!

Mahalo for this opportunity to testify.

³ Disproportionate Minority Contact in the Hawai'i Juvenile Justice System 2000-2010, Final Report June 2012.
<http://ag.hawaii.gov/cpja/files/2013/01/DMC-FINAL-REPORT-2012.pdf>

To: Hawaii House of Representatives Committee on Judiciary

From: Karen Worthington, JD
Karen Worthington Consulting
66 Puakea Place
Kula, Hawaii 96790
Karen@karenworthington.com
808-214-9336

Submission date: February 5, 2014
Hearing date: 2pm HST, February 6, 2014
RE: Written testimony in support of portions of HB 2490

Dear Committee members:

The introduction of HB 2490 is the result of excellent work done by many people and I commend the juvenile justice working group on its work. If passed, HB 2490 will greatly improve outcomes for youth in Hawaii.

I am writing in support of most of HB 2490 and to recommend changes to other parts.

I strongly support the requirement that a judge must make a finding of fact that a "child is a public safety risk warranting placement in the correctional facility" before a child can be eligible for placement in a Hawaii youth correctional facility. This provision will help ensure that only the children who truly pose a public safety hazard are securely confined, and children who can be safely maintained in the community will not be locked up.

I support the reporting requirements contained in the bill. Collecting and using that information is essential for continued improvement of Hawaii's child-serving systems. I also support provisions requiring probation officers who work with youth to have annual training specific to their work as a probation officer and I urge the legislature to fund this training. Without funding, the training will not occur.

I support the implementation of a statewide standardized risk and needs assessment tool. There is great variation among the islands on how a child's risk to the community is assessed, resulting in wide discrepancies in dispositions for youth involved with the juvenile justice system.

I support the reentry plans for youth committed to Hawaii youth correctional facilities. This is essential to reducing recidivism among our youth.

Regarding the requirement of graduated sanctions and incentives for youth on probation, I strongly suggest that language similar to the underlined language in the paragraph inserted below be included in the bill. I support graduated sanctions; however, a system of graduated sanctions must be designed so that youth can succeed if they want to. A high percentage of youth in the juvenile justice system have developmental delays, below-average cognitive functioning, mental health issues, and other needs that require an individualized approach to help them succeed.

"(B) The system shall include a series of presumptive sanctions for the most common types of probation violations, and shall take into account the child's risk level, ~~and~~ seriousness of the violation, and cognitive and developmental age or abilities. The system shall also identify

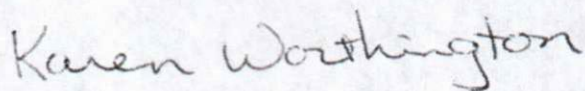
incentives that a child may receive as a reward for compliance with the rules and conditions of supervision, completion of benchmarks, or positive behavior exceeding expectations, at the discretion of the probation officer;..."

Another change I strongly suggest is a more exact definition of "evidence-based practices." If HB 2489 and HB 2490 become law, Hawaii will make a large investment to prevent youth from entering the juvenile justice system and to provide alternatives to incarceration. To make sure that investment has the greatest chance of a high rate of return in terms of successful youth outcomes, programming must be effective and appropriately designed and implemented.

The definition currently in HB 2490, "'Evidence-based practices' means supervision policies, procedures, and practices, as well as treatment and intervention programs, that research demonstrates are likely to reduce delinquency amongst children in the juvenile justice system," is so broad that it includes many programs that would not be considered "evidence-based" by leading experts such as the Office of Juvenile Justice Delinquency Prevention, the National Institute of Justice, the Bureau of Justice Statistics, the Department of Health and Human Services, the Substance Abuse and Mental Health Services Administration, the Surgeon General, and the MacArthur Foundation's Models for Change initiatives. I urge the committee to revise this definition to provide more guidance to those in Hawaii who will be distributing funds for and implementing the programs contemplated in HB 2489 and HB 2490.

I am writing to you about this issue from my perspective as a children's policy attorney with 20 years of experience in juvenile justice and child welfare system reform, a parent, and a member of the Maui multi-agency Kulike Pono No Na Keiki group that meets regularly to improve outcomes for Maui youth involved in the juvenile justice system.

Sincerely,

A handwritten signature in cursive script that reads "Karen Worthington".

Karen Worthington



**Office of the Public Defender
State of Hawaii
Timothy Ho, Chief Deputy Public Defender**



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

February 6, 2014, 2:00 p.m.

H.B. Nos. 2489 & 2490: RELATING TO JUVENILE JUSTICE

Chair Rhoads and Members of the Committee:

The Office of the Public Defender stands in full support of H.B. 2489 and H.B. 2490. As attorneys working in our juvenile justice system on a daily basis, we have seen the need for the changes proposed by H.B. 2490 and the funding requested by H.B. 2489. These bills do not propose to spend more money on our juvenile justice system, but to help in the reallocation of funds currently being used in ways that would be more productive and helpful to our children. As a member of the Juvenile Justice Working Group, we learned through a data driven approach that the state of Hawaii has made strides in the betterment of our juvenile justice system. However, we do understand that there are still many more improvements that need to be made to the system, and that these bills are the first steps toward those ends.

Thank you for the opportunity to be heard on this matter.

HB2490

Submitted on: 2/5/2014

Testimony for JUD on Feb 6, 2014 14:00PM in Conference Room 325

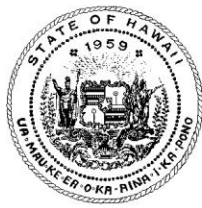
Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Tochiki	EPIC Ohana	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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MARI MCCAIG
Chair

THOMAS T. WATTS
Commissioner

ABELINA SHAW
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 2490
RELATING TO JUVENILE JUSTICE

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, February 6, 2014; 2:00 PM
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary:

Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify before you today. The Commission strongly supports with amendments the passage of House Bill 2490, Relating to Juvenile Justice. House Bill 2490 improves and enhances Hawai‘i’s juvenile justice system.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by crime victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crimes 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.

The Commission supports the goals of House Bill 2490, however, the Commission is concerned that the proposed legislation does not address the needs of the victims of the juvenile offenders. House Bill 2490 is based on the recommendations of the Hawai‘i Juvenile Justice Working

Group. The victim community was not represented on the Juvenile Justice Working Group. Prior to the issuance of the Hawai‘i Juvenile Justice Working Group’s final report, the Pew Charitable Trusts asked the Commission and members of the victim community to provide comments on issues involved in the juvenile crime justice system. None of the comments and suggestions were included into the final report or in House Bill 2490. The Hawai‘i Juvenile Justice Working Group’s Final Report made only a passing, non-substantive reference to victims (page 11) and makes only one reference to restitution (on page 13). The report recommended that the juvenile reentry plan include restitution. House Bill 2490 does not specifically require that the reentry plan address restitution.

Restitution has been established as a factor in reducing recidivism amongst juveniles. See e.g. Butts, Jeffrey A. & Snyder, Howard “Restitution and Juvenile Recidivism” Juvenile Justice Bulletin (September 1992); Zehr, Howard “Restitution Reduces Recidivism”, Crime and Justice Network Newsletter (Oct. 1990-March 1991); Ruback, R. Barry ‘Restitution in Pennsylvania: A Multimethod Investigation’ Final Grant Report Submitted to Pennsylvania Commission on Crime and Delinquency (August 2002). For this reason, the Commission recommends that House Bill 2490 be amended to 1) make restitution mandatory for juvenile offenders, 2) include restitution as an issue that must be addressed in the reentry program, and 3) reestablish a Juvenile Monetary Restitution Project (JMRP) in the Judiciary. JMRP would be an employment assistance/workforce development program that helps juvenile offenders find and maintain employment which will, in turn, improve their ability to pay restitution. JMRP would include data collection to identify barriers to restitution payments and track the impact of restitution payment and employment on recidivism.

In addition to addressing restitution, the Commission requests that this bill be amended to include the recommendations made to the PEW Charitable Trust by representatives of the statewide victim community. In addition to making restitution mandatory and creating JMRP, the victim community recommended that any juvenile justice legislation address: 1) restorative justice programming, 2) confidentiality issues, and 3) data collection regarding payment of restitution. Restorative justice programming provides a structured opportunity for juvenile offenders to apologize to their victims through the development of an “apology class” and to

understand the harm their actions have caused to their victims, and to the community, through attendance at “victim impact panels”. The United States Department of Justice created an “Impact of Crime on Victims” curriculum that was positively evaluated for effectiveness with both adult and juvenile offenders that can be adapted to Hawai‘i.

Confidentiality issues have prevented victims of juvenile offenders from obtaining justice. While the confidentiality of juvenile cases is important, it must be balanced against the needs of the victims. In the following instances, limited information should be provided to the victims:

- Compensation -- Provide victims of juvenile offenders meaningful access to crime victim compensation by providing the victim witness advocate programs within the county prosecutors’ offices with timely access to the police reports. Allow the advocates to provide case identifying information to the Commission so the Commission can pay compensation (police reports are required for payment of compensation by the Commission).
- Protective Orders/Restraining Orders - Provide victims meaningful access to protective/restraining orders by providing them with the information necessary to file a restraining order (name of offender and offender’s parents and their address).
- Victim Notification - provide notification to victims/surviving family members when juvenile offenders are released from a secure custody setting.
- Civil Suit to Recover Crime Related Expenses - Provide victims with access to information necessary to file a civil suit to recoup their crime related expenses.

The creation of a data driven approach to restitution and assessment in all juvenile offender cases is necessary to ensure an evidence based approach to improving rights for and services of victims of juvenile offenders. A significant percentage of cases involving juvenile offenders are informally adjusted. It is currently unknown whether the victims of juvenile offenders are receiving restitution in these cases. Likewise, no data on formally adjudicated juveniles is available. The documentation of data about the enforcement of the statutory rights of victims of juvenile offenders – particularly victim restitution, notification and safety – requires person-power to collect and analyze data to insure an evidence-based approach to improving rights for and services to the victims. The data elements of evaluating the success of this legislation in

Hawai'i *must* include data specific to the collection of victim restitution, victim notification, and victim safety measures ordered, maintained and/or violated.

The bill with the proposed amendments will be a victim centered approach to juvenile criminal justice and will benefit both juvenile offenders and victims.

Thank you for providing the Commission with the opportunity to testify in strong supports with amendments of House Bill 2490.



R. MARK BROWNING
SENIOR JUDGE

DEAN E. OCHIAI
CIRCUIT COURT JUDGE

FA'AUUGA TO'OTO'O
CIRCUIT COURT JUDGE

LATE TESTIMONY

DISTRICT FAMILY JUDGES

JENNIFER L. CHING
SHERRI L. IHA
LANSON K. KUPAU
CHRISTINE E. KURIYAMA
PAUL T. MURAKAMI
STEVEN M. NAKASHIMA
CATHERINE H. REMIGIO
KEVIN A. SOUZA
BODE A. UALE
MATTHEW J. VIOLA

February 12, 2014

The Honorable Karl Rhoads, Chair, House Committee on Judiciary
Hawaii State Capitol, Room 302
Hard copy to follow via hand delivery

Re: HB2490; RELATING TO JUVENILE JUSTICE

Dear Chair Rhoads:

I would like to thank you for considering our testimony on HB2490; Relating to Juvenile Justice, as well as the other related bills that arose from the Hawaii Juvenile Justice Working Group. I am writing this letter in response to a number of concerns raised by the Prosecuting Attorney Keith Kaneshiro in his written testimony in opposition to HB2490 as requested by Vice Chair Har.

On behalf of all the Family Court Judges in the State, I would like to emphasize that public safety is and has always been an absolute priority in our court process. Nothing in this bill jeopardizes our ability to ensure that the public is kept safe from violent offenders.

However, as I emphasized in my oral testimony on February 6, 2014, HB2490 will not effect any meaningful change or reduce the population of the Hawaii Youth Correctional Facility (HYCF) if the Legislature does not appropriate the funds requested in HB2489 and HB2659. Without the appropriation of funds to provide an array of services, judges and probation officers will not have the tools necessary to keep youth out of HYCF. This is in essence the thrust of the Juvenile Justice Working Group's findings.

I absolutely agree with Mr. Kaneshiro's statement in his testimony that, "[a]ny efforts to decrease the population at HYCF, without adequate support programs and services in place ahead of time, would be entirely premature and place those juvenile offenders at risk of remaining untreated through adulthood, potentially fast tracking them into the adult criminal system." (Kaneshiro testimony, p.1, paragraph 2, ln. 5). We cannot implement the

recommendations of the Juvenile Justice Working group without the tools necessary to give these children the help they need. I also agree with Mr. Kaneshiro that we need these additional services and programs as early as possible.

These are the two most important recommendations enumerated in the Juvenile Justice Working Group Final Report:

- **The Working Group recommends that services to address these mental health and social issues be increased and addressed statewide, and that the necessary funding be allocated through one of the youth-serving agencies, to meet the myriad of mental health and social needs that at-risk youth and their families struggle with on a daily basis. (Final report, p.12)**
- **Though not by DOH's (Department of Health) design, the Working Group found that the criteria for youth to access mental health services through CAMHD (Child and Adolescent Mental Health Division) to be extremely restrictive. The Working Group strongly recommends to fund or allocate the resources necessary to achieve these goals for CAMHD and ensure the agency has the fiscal and human resources necessary to adequately serve youth. (Final report, pp.12-13).**

Please see my responses to Mr. Kaneshiro's respective concerns (in bold) below.

- 1) **While the Department understands the desire to limit HYCF to those who pose the greatest risk to public safety, the Department believes it would be highly irresponsible to disregard the fact that HYCF is the only secured long-term facility of any kind - now available to juveniles in Hawaii - where various services such as substance abuse and mental health treatment are provided. (Kaneshiro testimony, p.1, paragraph 2).**

Nothing in this bill limits the use of the Hawaii Youth Correctional Facility to those who pose the "greatest risk to public safety." Public safety is the most important consideration that any Family Court judge must consider when issuing sentencing orders in a juvenile criminal matter. HYCF is a correctional facility. It is not a treatment center facility. The Juvenile Justice Working Group found that low level offenders were being sent to HYCF because there were no alternatives to provide these youth with the treatment they need. This practice only serves to harm children. The net impact of mixing low-level offenders with serious offenders serves only to increase the threat to public safety.

- 2) **Mr. Kaneshiro proposes early intervention via alternative schools via Prosecutor's package bills HB237 and SB419, carried over from the 2013 session. The bills would appropriate funding to DOE for alternative schools. (Kaneshiro testimony, p.1, paragraph 4).**

We support the concept of alternative schools. In fact, we already have alternative schools such as High Core, Palama Settlement, and Olomana. What does not exist are sufficient treatment programs for youth that struggle with mental health and substance abuse issues. Our

youth who need mental health and substance abuse treatment need *treatment*, which cannot be provided by these schools. 80% of youth who enter the juvenile justice system have substance abuse issues. 60% of youth have mental health issues. In order to get these kids to go to school and to be successful, we need an array of services to address their substance abuse and/or mental health issues. Without these services, it is our collective experience that most of these youth either don't go to school regularly or simply drop out.

- 3) **Mr. Kaneshiro proposed another idea: converting empty space at the Hale Ho'omalua Detention Facility (DH) into a secure residential mental health treatment facility. (Kaneshiro testimony, p.2, paragraph 1).**

As Senior Judge of Family Court, I oversee the operation of DH, by statute. I do not support the idea of converting modules at DH into a mental health treatment facility. DH is a prison-like environment. I invite you to visit DH. DH cells look similar to the prison cells you see on TV. It would not be in line with our values as a community to place these children who need mental health treatment in a facility that was not designed to serve as a therapeutic environment. Nor does the DH have the facilities/staff to be able to serve as a treatment center.

- 4) **It is important that the Risk Assessment Tool/Instrument (RAI) does not become the predominant factor in determining what to do with a child. (Kaneshiro testimony, p.2, paragraph 2).**

Although the RAI is a helpful tool in assessing risk, it will not be and has not been the predominant factor used by our judges in determining whether to release or hold a minor. When a child is arrested, they are brought by HPD to DH. In the intake process, DH social workers use the RAI to determine the risk to public safety that the child poses. Statute requires that, within 24 hours, the minor has a hearing before a Family Court Judge. At that hearing, the Judge looks at the file, which contains the RAI, and the recommendations of the probation officer, among other things. The prosecutor and public defender or attorney present their positions to the court. Then the Family Court Judge decides whether to hold or release the child. If the matter is a pretrial proceeding, the determinative factors regarding whether a youth is released or held are 1) public safety and/or 2) whether the individual is a flight risk. Currently, different RAIs are being used throughout the state. This bill requires all circuits to use a validated, uniform tool to assess risk.

In addition, the legislation specifically envisions the assessment as one of the many factors that the court shall consider.

“Supervision levels, frequency of contacts with probation officers and the court, and referrals to treatment and programs under section 571-31.4(c) (7) shall be established using, *among other factors*, the results of the risk and needs assessment conducted pursuant to section 571-45; . . .”

House Bill 2490, page 6, line 18. Emphasis added.

- 5) **It is unclear why court involvement is necessary in the intake process (p.22, sec.8, subsection (3)(a)). To add diversion programs to the court's responsibilities seems inapposite to the purpose of the working group - to keep children out of court. (Kaneshiro testimony, p.2, paragraph 3).**

The court probation officers already handle diversion through the informal adjustment process or other disposition. The legislation merely codifies preexisting practices/authority. Some kids are diverted by HPD or our probation officers before they come to court. Our court system has access to the child's file which contains the history of delinquency, past charges, past treatment, and any evaluations or reports that have been conducted. It is for these reasons that court involvement is necessary in the intake process.

- 6) **It is unclear to Mr. Kaneshiro how "earned discharge" would work. Are credits taken away if the offender violates the terms and conditions of their probation, or do credits get erased altogether and start all over again? (Kaneshiro testimony, p.2, paragraph 4).**

Page 11 of the bill addresses the "earned discharge" requirements. Under this section, a child shall be eligible to receive earned discharge credits to reduce the length of the probation term. "The Judiciary shall adopt policies and procedures for the awarding of earned credits for discharge from probation." (P.12, 1-2). Whether or not the number of credits can be reduced would be an issue that the board of family court judges may discuss in implementing policies and procedures under this section.

- 7) **Requiring set terms of probation would tie the hands of our family court judges. It would create more hearings and minimize the value of each judge's familiarity with the juveniles in their district. (Kaneshiro testimony, p.2, paragraph 5).**

Family Court respectfully disagrees with this point. Requiring set terms of probation does not reduce our Judges' discretion. If prosecutors see a problem, they can file a Motion for Revocation of Probation. Mr. Kaneshiro is referring to p. 33, lines 4-8 which says, "An order by the court placing a child on probation under subparagraph (A) shall include a definite term of probation stated in months or years, *subject to extension or modification by the court pursuant to 571-50.*" (Emphasis added). This provision does not tie the hands of the court because the court may shorten or extend probation at any time pursuant to HRS 571-50.

- 8) **To limit admission into HYCF to certain types of offenses would limit the family court's ability to carry out their purpose, which includes, "fostering the rehabilitation of juveniles in difficulty, rendering appropriate punishment to offenders, and reducing juvenile delinquency." (HRS 571-1). HYCF may be their only option. (Kaneshiro testimony, p.3, paragraph 1).**

Page 33, line 15 of the bill provides: "The court may vest legal custody of the child, after prior consultation with the agency or institution; (I) In a Hawaii youth correctional facility if the child has been adjudicated for a felony-level offense or a violation or revocation of probation, or

is committed to the facility from juvenile drug court or girls court on a court order.

Essentially the bill restricts a Family Court Judge from "sentencing" a juvenile for a misdemeanor adjudication (conviction). However, this provision does not "limit the Family Court's ability to carry out their purpose which includes fostering the rehabilitation of juveniles in difficulty; rendering appropriate punishment to offenders, and reducing juvenile delinquency" as asserted by Mr. Kaneshiro.

I state the above for the following reasons. First, juveniles who are adjudicated (convicted) for a misdemeanor can be ordered to be confined/detained in *DH* for a short term, not HYCF. Second, if a youth who has a misdemeanor adjudication (conviction) is arrested again for any offense, the prosecutor and/or probation officer can file a Motion to Revoke a minor's probation. A juvenile can be sent to HYCF for said probation violation if the Motion is granted.

The main point to this provision of the bill is that misdemeanor offenders are low level law violators. Studies have shown that confining youth who are not public safety risks with other youth who are truly dangerous only harms the less-dangerous youth and increases the chances that the youth will become a public safety risk. Our judges have struggled with this issue for decades. HYCF has become an overcrowded place where we have had to send kids because there is no other option. David Hipp, Director of OYS, has helped us get these kids services that may not have been available otherwise. If additional services are in place, HYCF will not be the only option. HYCF can be used for its original purpose - to confine the 60 most dangerous youth in the state.

Thank you for your consideration on this bill. Feel free to contact my office at 954-8030 if you have any further questions.

Sincerely,

R. Mark Browning

cc:

Representative Sharon Har, Vice Chair
Representative Della Au Belatti
Representative Tom Brower
Representative Richard Creagan
Representative Ken Ito
Representative Derek Kawakami
Representative Chris Lee
Representative Mark Nakashima
Representative Clift Tsuji
Representative Jessica Wooley

Representative Bob McDermott
Representative Cynthia Thielen
Chief Justice Mark Recktenwald
Rodney Maile
David Hipp
Dr. Stanton Michels

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i

February 6, 2014

RE: H.B. 2490; RELATING TO JUVENILE JUSTICE.

Chair Rhoads, Vice-Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 2490.

While the Department understands the desire to limit Hawai'i's youth correctional facility ("HYCF") to those who pose the greatest risk to public safety, the Department believes it would be **highly irresponsible** to disregard the fact that HYCF is the only secured long-term facility of any kind—now available to juveniles in Hawai'i—where various services such as substance abuse and mental health treatment are provided. Any efforts to decrease the population of HYCF, without adequate support programs and services in place ahead of time, would be entirely premature and place those juvenile offenders at greater risk of remaining untreated through adulthood, potentially fast-tracking them into the adult criminal system.

Given the severe lack of programs available to juvenile offenders in Hawai'i, HYCF is sometimes the only option for those who—though arguably of some risk to the public—are clearly a danger to themselves, and have been unable to receive the necessary treatment by any other means. The availability of services such as substance abuse and/or mental health treatment for juveniles is even worse than for adults, particularly in cases requiring long-term treatment. The Department strongly believes that additional services and programs are needed for all juvenile offenders in need of mental health and/or substance abuse services, as early as possible, to provide the best possible chance of intervention, treatment and/or recovery.

The Department has proposed ways to expand services for juvenile offenders, and even provide early-intervention before juveniles enter the justice system, by adapting some of the (few) programs and facilities that are currently available. For example, **H.B. 237, H.D. 1** (currently with the House Committee on Finance) and **S.B. 419, S.D. 1** (currently with the Senate Committee on Ways and Means) would appropriate funding to the Department of Education for two additional alternative schools, to be modeled after the highly-successful High Core program in the Central school district.

At these alternative schools, troubled youth would receive specialized services in an environment designed to meet their needs, and many would be redirected before they ever commit any offenses.

Another idea the Department has endorsed is to separate-out part of the juvenile detention facility in Kapolei, which is a secured facility that regularly has **dozens of bed spaces available**. If appropriate modifications were made and agencies arranged to provide services there, that facility could be used concurrently as a temporary detention facility—as it is used now—and as a secured residential facility for mental health and substance abuse treatment. This would also avoid (or defray) the huge expense and delays of having to build an all-new facility.

Risk-assessment & diversion

While the Department has no objections to using a validated risk assessment tool as **one of the factors** for decision-makers to consider, it is imperative that this one tool does not become a predominant factor. Given the many other factors and considerations that weigh heavily on decisions regarding diversion, detention, charging, disposition, and other matters, it would be unreasonable to give greater weight to a risk-assessment tool than to any other factor involved.

As to changes in the intake process (Page 22, Section 8, Subsection (3)(a)), it is unclear why court involvement is necessary. Based on our understanding of existing diversion programs--which divert cases from the juvenile justice system--one of the primary purposes of these programs is to avoid court involvement by diverting juveniles who do not require court intervention, speeding up the process for those juveniles, and easing caseload and calendaring issues for the courts. To add diversion programs to the court's long list of responsibilities seems inapposite to their purpose.

Probation and parole

Although the concept of "earned discharge" may seem good on its face, it is unclear exactly how this would work. Are credits taken away if the offender violates the terms and conditions of their probation, or do credits get erased altogether and start over again? Is it even possible to build a system as flexible and responsive as the oversight of an experienced judge who stays with the same juvenile for as long as they are under Family Court jurisdiction, weighing the ins and outs of that juvenile's history, circumstances, personality, and so forth?

The mere fact that an earned discharge program would require all probation be for set terms (as reflected on Page 33, Section 14, Subsection (1)(A)(ii)) is a problem unto itself, eliminating the court's ability to order "probation until further order of the court," and deteriorating the flexibility that our Family Courts were designed to employ. Requiring set terms of probation would only bring the Family Court system more in line with the adult criminal justice system, tying the hands of our Family Court judges. Mandating set terms of probation prohibits judges from immediately ending probation once a juvenile offender has met the terms and conditions of probation and shown sufficient indicia of compliance and/or rehabilitation; moreover, this requires the court to schedule a hearing for every extension of probation, if a juvenile has not complied or progressed as projected. Each additional hearing creates more court congestion, requires that the juvenile be taken out of school, and requires the parent to take time off of work; many families also have transportation challenges. Ultimately, this proposition minimizes the value of each judge's familiarity with the juveniles in their district and their experience in gauging the overall progress, attitude, and rehabilitation of these juveniles.

In terms of placement at HYCF (page 33, Section 14, subsection (1)(B)(i)), the Department reiterates that HYCF is currently the only secured long-term facility that can provide services such as

mental health and/or substance abuse treatment for juveniles. To strictly limit admission to certain types of offenses or scenarios would limit the Family Court's flexibility to carry out their purpose, which includes "foster[ing] the rehabilitation of juveniles in difficulty, render[ing] appropriate punishment to offenders, and reduc[ing] juvenile delinquency." (HRS §571-1) If detention is necessary to protect the immediate welfare of a juvenile, then HYCF may be their only option, due to the current lack of alternative resources or facilities.

With regards to specific factors that HYCF can consider for purposes of parole (page 15, Section 4, subsection (b)), the Department strongly believes this list of considerations must expressly state that this list is **not exhaustive**, to account for the many other factors involved in making such a determination. Moreover, the list should include whether the juvenile offender has completed all of their programs, as this is the only way to ensure that some of them receive the treatment and services they need.

Before any measures are taken to divert or release more juvenile offenders back into the community, they must have something more to go back to, other than the exact same environment from which they came. For this and all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, opposes H.B. 2490. Thank you for this opportunity to testify.