



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

H.C.R. NO. 172, H.R. NO. 140, REQUESTING THE STATE TO DEVELOP A PLAN TO IMPLEMENT AN EARNED-TIME PROGRAM TO ALLOW INMATES UNDER THE JURISDICTION OF THE DEPARTMENT OF PUBLIC SAFETY TO EARN CREDIT TOWARD REDUCING THEIR MINIMUM TERM OF IMPRISONMENT.

**BEFORE THE:**

HOUSE COMMITTEE ON PUBLIC SAFETY

**DATE:** Thursday, March 28, 2013

**TIME:** 11:00 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Lisa M. Itomura, Deputy Attorney General

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Chair Aquino and Members of the Committee:

The Department of the Attorney General has concerns regarding these resolutions.

These resolutions request the Hawaii Paroling Authority (HPA), with assistance from the Department of Public Safety (PSD) and the Department of the Attorney General, to “develop a plan to implement an earned-time program” to allow all inmates, no matter what their criminal history, their crimes, the crimes’ effect on victims and their families, or their actions while in custody, to earn some undefined time if they “demonstrat[e] progress toward rehabilitation” in each of several categories:

1. work, vocational, or occupational training and skills; provided that a determination of progress shall include consideration of factors such as attendance, promptness, performance, cooperation, care of materials, and safety;
2. social adjustment, including skills such as group living, housekeeping, personal hygiene, and cooperation;
3. counseling sessions and self-help groups;
4. therapeutic and other similar departmental programs; and
5. education or literacy programs.

This undefined “earned time” would then be subtracted from the inmates’ minimum terms of imprisonment set by the HPA so that they would be eligible for release on parole earlier than otherwise.

By reducing an inmate's minimum term of imprisonment without consideration of the inmate's criminal history, crime(s) committed, the crime(s)' effect on victims and their families, or the inmate's behavior while in custody, these resolutions minimize the punitive and deterrence aspects of imprisonment, which are two of the factors considered when imposing a sentence under section 706-606, Hawaii Revised Statutes (HRS), and overlooks public safety and the impact earlier release has on victims and their families.

These resolutions also duplicate the work of the HPA, which already considers an inmate's criminal history, crime(s), the crime(s)' effect on victims and their families, and their behavior while in custody when setting the inmate's minimum terms of imprisonment or when deciding whether to grant release on parole. The HPA assumes that inmates will behave appropriately and strive to participate in programming and rehabilitation while in custody, and sets the length of the minimum terms accordingly. If an inmate's behavior and rehabilitation progresses as anticipated, the HPA has the discretion to grant release on parole at the expiration of the minimum term; if the inmate behaves poorly or fails to progress in rehabilitation, the HPA has the discretion to not release the inmate on parole. If an inmate finishes his or her programming and demonstrates significant progress in rehabilitation and behavior after serving a third of his or her minimum term, the inmate can request a reduction of the minimum term and the HPA has the discretion to grant the request and grant release on parole. These resolutions intrude into the careful review and judgment the HPA uses in setting minimum terms and severely reduces its purpose and discretion.

Lastly, but most significantly, the proposed "earned-time program" imposes considerable financial and logistical burdens on PSD and the State. PSD is given the responsibility of reviewing the earned time of each inmate under its jurisdiction and granting, withholding, withdrawing, or restoring such credit under these resolutions. The United States Supreme Court has ruled that if a state institutes an earned-time program, inmates have a liberty interest in the time credits protected by the Due Process Clause of the United States Constitution. Once given, such credits cannot be taken away or withheld without a hearing. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Thus the "earned-time program" requested by these resolutions would require PSD to hire additional staff to not only record and keep track of each inmate's earned time, but also to hold hearings before withholding or withdrawing any earned

time from an inmate, with each decision subject to legal challenge in court. Inmates will also generate considerable litigation challenging PSD's records on the amount of earned time credit given and taken away.

Based on the considerable financial and logistical problems, we respectfully ask the Committee to defer these resolutions.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, March 28, 2013

11:00 a.m.

Room 309

## STRONG SUPPORT FOR HCR 172/HR 140 - EARNED TIME

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.

HCR 172/HR 140 requests the state to develop a plan to implement an earned-time program to allow inmates under the jurisdiction of the department of public safety to earn credit toward reducing their minimum term of imprisonment.

Community Alliance is in strong support of this measure. Most states have an earned time program that they use as an incentive for incarcerated individuals to work on their rehabilitation and reentry back to their communities.

This is another recommendation from the Native Hawaiian Justice Task Force Report<sup>1</sup>:

**B 11. 11. Legislation should be passed that establishes “earned time/good time” credit for inmates’ behavior, including program participation, while incarcerated.** *(Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, “For further information, see the Department’s testimony pertaining to House Bill 218 (2011).” Department of the Attorney General, “Like the previous Recommendation, additional time is needed to review this issue due to the breadth of the recommendation. Completion of this Recommendation is not expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups.”)*

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<sup>1</sup> Native Hawaiian Justice Task Force Report, December 2012, page 28

[http://www.oha.org/sites/default/files/2012NHJTF\\_REPORT\\_FINAL\\_0.pdf](http://www.oha.org/sites/default/files/2012NHJTF_REPORT_FINAL_0.pdf)

The National Council of State Legislators cited a Pew report<sup>2</sup> that concluded:

States are creating and expanding earned time programs that reduce the length of stay for certain offenders while maintaining public safety. **Among policies that states use to reserve prison beds for the most dangerous offenders, earned time also creates an incentive for motivated offenders to work, take part in rehabilitation, and otherwise prepare to be successful in the community.** Earned time is helping states reduce the corrections budget burden and allows funds saved to be invested in programs that reduce recidivism and help build safe communities.

In 2009, the Michigan State Bar Association issued a report on the Restoration of Earned Credits for Prisoners<sup>3</sup>:

**Position:**

In 1998, Michigan enacted legislation, known as “truth in sentencing”, which requires that all prisoners serve every day of their minimum sentences, thereby prohibiting any form of earned credit for good conduct, work or participation in treatment, academic or vocational programs. It is the position of the State Bar Prisons and Corrections Section that a system of earned sentence credits should be restored. This system should be given immediate effect and applied, prospectively, to all prisoners currently serving indeterminate sentences who are not already eligible for earned credits because of their conviction dates, as well as to everyone sentenced to an indeterminate term in the future. It is further the position of the Section that judges should be required to place on the record at sentencing the extent to which earned credits may affect the service of the minimum sentence.

**Summary of Findings:**

The Section’s position is based on the following findings:

1. There is **no evidence that permitting earned credits presents a risk to public safety.**
2. There are alternate means of promoting transparency in sentencing.
3. Permitting earned credits is a common correctional practice nationally and on the county level in Michigan.
4. **The opportunity to earn sentence credits provides a significant incentive to prisoners** who currently are penalized for misconduct but rarely rewarded for positive efforts.
5. Permitting earned credits does not require the release of any particular prisoner, make institutional management more difficult or interfere with the discretion of the parole board. On the contrary, it provides the Department of Corrections with a useful tool for managing institutional behavior and promoting participation in rehabilitative programs.
6. The restoration of earned credits would significantly help reduce the prison population and save taxpayers tens of millions of dollars.

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<sup>2</sup> **CUTTING CORRECTIONS COSTS** Earned Time Policies for State Prisoners, By Alison Lawrence, National Council of State Legislatures, Pew Center on the States, July 2009.  
[http://www.pewcenteronthestates.org/uploadedFiles/Earned\\_time\\_report\\_%20NCSL.pdf?n=6022](http://www.pewcenteronthestates.org/uploadedFiles/Earned_time_report_%20NCSL.pdf?n=6022)

<sup>3</sup> **Restoration of Earned Credits for Prisoners**, Michigan State Bar, Prisons and Corrections Section, March 21, 2009.  
<http://www.michbar.org/PRISONS/pdfs/RestoreEarnedCredits.pdf>

A Report of the NCSL Sentencing and Corrections Work Group<sup>4</sup> defined Good Time and Earned Time credits as: *Good-time credits* generally are granted to inmates for following prison rules and participating in required activities. *Earned-time credits* are distinguished from and can be offered in addition to good-time for certain inmates who participate in or complete educational courses, vocational training, treatment, work or other productive activities.

**4. Sentencing and corrections policies should be resource-sensitive as they affect cost, correctional populations and public safety. States should be able to effectively measure costs and benefits.**

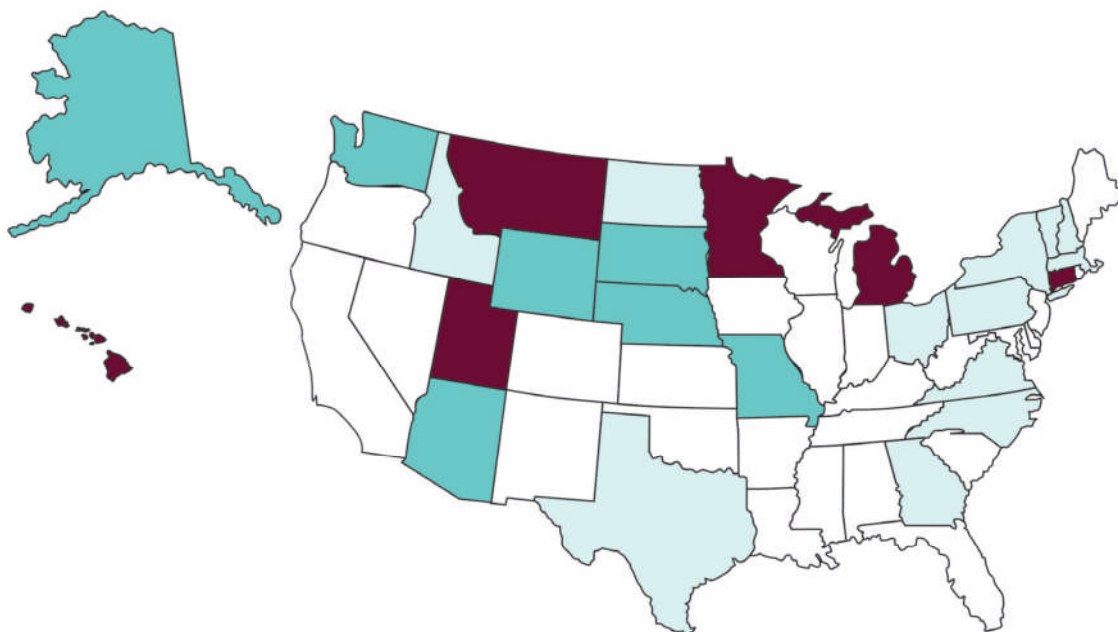
Consider how state-level policies affect state and local correctional populations, costs, and state-local fiscal partnerships.

Target resources to make the best use of incapacitation, interventions and community supervision.

Partner with and consider incentives to local jurisdictions as part of adequately funded and accountable community programs and services.

Take into account how funding reductions to prison services or to state or local supervision programs affect short-term operations and long-term program benefits.

**Sentence Credits** Sentence credit laws – commonly known as good-time and earned-time – exist in at least 44 states and provide opportunities for some inmates to accelerate their release date.



BLUE = Good-time  
LIGHT BLUE = Earned-time  
WHITE = Both good- and earned-time  
Maroon = No time

<sup>4</sup> **Principles of Effective State Sentencing and Corrections Policy** *A Report of the NCSL Sentencing and Corrections Work Group*, Prepared By Alison Lawrence and Donna Lyons, August 2011.

<http://www.ncsl.org/documents/cj/pew/wgprinciplesreport.pdf>

Good-time credits generally are granted to inmates who follow prison rules and participate in required activities. At least 32 states have good-time policies. **Earned-time credits are available in at least 37 states for certain inmates who participate in or complete educational courses, vocational training, treatment, work or other programs.** Earned-time credits are distinguished from and can be offered in addition to good-time credits.

These release incentives not only trim inmate time served and lower costs of incarceration, but also provide programs that improve offender success in the community and reduce recidivism. Even though some earned-time laws offer inmates a fairly small reduction in prison terms, those few days can add up to a significant cost savings when applied to hundreds or thousands of inmates. Mindful that any policy involving release of inmates must consider public safety, it is noteworthy that recidivism rates in states with earned-time provisions either remain unchanged or actually drop. This is attributed in large part to the benefits of prison-based programs inmates must complete to earn time off their sentences. More savings are captured when offenders who are better prepared to be in the community do not violate their supervision conditions or commit new crimes that create new crime and punishment costs.

*A case study: Kansas<sup>5</sup>:*

In 1996 Kansas had an incarcerated population of 7,455 individuals. If they continued doing the same thing, their projection for 2016 was an incarcerated population of 11, 231 – an estimated cumulative cost over 10 years of \$500 million.

*Kansas' solutions to this dilemma:*

- Grant program to local community corrections to reduce revocations by 20%
- 60-day credit for risk-reduction programs
- **Restore earned time for non-violent inmates**
- 

*Kansas' results:*

- Prison population down 3.8%
- Parole revocations down 46%
- Probation revocations down 28%
- Costs averted and counting...\$80 million

*The research is clear:* Incentives work; sanctions don't for drug offenders. The majority of Hawai'i's incarcerated population is nonviolent drug offenders.

*Let's do what works.* Prison is for those people we are afraid of, not for those we are just mad at. The data is clear; prisons should be used for violent criminals. Earned time provides incentives and hope to those who are working to change their lives.

*Hope is the power that gives us the power to step out and try.*

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<sup>5</sup> **Smarter Choices, Safer Communities**, Pew Center on the States, Richard Jerome.

<http://www.nga.org/files/live/sites/NGA/files/pdf/1109CJPAJEROME.PDF>

PSD has testified that HPA's reconsideration of minimum sentencing is the same thing as earned time. It is not. Earned time is a clear incentive for individuals to focus on their rehabilitation. Incentives work with drug offenders, sanctions don't.

We urge the committee to give hope to our incarcerated people by encouraging the Department of Public Safety to help our incarcerated citizens step out and try!

Mahalo for this opportunity to testify.





**HCR172/HR140**  
**REQUESTING THE STATE TO DEVELOP A PLAN TO IMPLEMENT AN EARNED-  
TIME PROGRAM TO ALLOW INMATES UNDER THE JURISDICTION OF THE  
DEPARTMENT OF PUBLIC SAFETY TO EARN CREDIT TOWARD REDUCING  
THEIR MINIMUM TERM OF IMPRISONMENT**  
House Committee on Public Safety

March 28, 2013

11:00 a.m.

Room 309

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR172/HR140, which is a resolution encouraging a plan to implement an earned time program for pa‘ahao. This is a call for justice agencies to take a harder look at the possibility of smarter and more efficient sentencing practices.

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](http://www.oha.org/nativehawaiianjusticetaskforce)

This resolution would further recommendation B11 of the NHJTF report— “[l]egislation should be passed that establishes ‘earned time/good time’ credit for inmates’ behavior, including program participation while incarcerated.” Earned time programs create the possibility of better directing resources to effective programs and could reduce recidivism.

Therefore, OHA urges the committee to **PASS** HCR172/HR140. Mahalo for the opportunity to testify on this important measure.

ing2-Brandon

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 9:17 PM  
**To:** pbstestimony  
**Cc:** hokuokekai50@msn.com  
**Subject:** \*Submitted testimony for HCR172 on Mar 28, 2013 11:00AM\*

**HCR172**

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Support	No

**Comments:**

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**To:** pbstestimony  
**Cc:** shaglund@hotmail.com  
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**HCR172**

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sue Haglund	Individual	Support	No

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**HCR172**

Submitted on: 3/27/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james crowe	Individual	Support	No

Comments: This would bring a common level of human respect to the person who has served time.

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**HCR172**

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Support	No

**Comments:**

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**HCR172**

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM In Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ronald Fujiyoshi	Individual	Support	No

Comments: This is a no brainer. Yes, it seems the pa`ahao at Saguaro Correctional Center in Eloy, AZ have not been able to have access to "good time credits." This is one incentive that would be helpful besides saving the State of Hawaii funds. Mahalo for allowing me to testify!

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**Cc:** miike@mikeswerdlow.com  
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**HCR172**

Submitted on: 3/27/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
michael swerdlow	Individual	Support	No

**Comments:**

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**HCR172**

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
marjorie Erway	Individual	Support	No

**Comments:**

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**HCR172**

Submitted on: 3/27/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
elaine funakoshi	Individual	Support	No

Comments: Dear Chair Aquino, Vice Chair Ing, and Committee Members: Thank you for hearing HCR 172. I strongly support this resolution because there presently is no incentive for good behavior in the prison. Please support this measure. I cut my comments short due to illness. Thank you again for being able to submit my comments. Mahalo and aloha, elaine funakoshi

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