

SB 2307

RELATING TO CORRECTIONS.

Requires a parole hearing and validated risk assessment for prisoners who have not been released upon completion of a set minimum term or received an earlier release date. Permits supervised release on parole eighteen months prior to the expiration of the maximum term for class A felonies, twelve months prior to the expiration of the maximum term for class B felonies, and six months prior to the expiration of the maximum term for class C felonies. Permits the paroling authority to deny supervised parole prior to the expiration of a maximum sentence for certain offenders.

PSM, WAM

NEIL ABERCROMBIE
GOVERNOR



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TESTIMONY ON SENATE BILL 2307
A BILL RELATING TO CORRECTIONS
Ted Sakai, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Tuesday, January 28, 2014, 3:00 p.m.
State Capitol, Conference Room 224

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Department of Public Safety **supports** Senate Bill 2307, Relating to Corrections, which gives inmates the opportunity to be released on parole, prior to the expiration of their maximum term of incarceration. The language in this bill is similar to the original legislation package under the Justice Reinvestment Initiative. Statistical information provided by the Council of State Government indicated that inmates that were released at the end of their maximum term of incarceration with no supervision, recidivated at a higher rate than that of inmates placed on parole. Furthermore, in their study that covered inmates released in Fiscal Year 2008, 53% of the inmates released on their maximum term were arrested for a misdemeanor or felony within three years. In comparison, parolees released during the same time frame recidivated at 28%. It should be noted that the intent of this bill may be in conflict with the parole board's

authority to set minimum terms under HRS 706-669. However, the amendments in this bill provide the parole board discretion in not granting supervised parole to certain offenders.

It is unfortunate that an appropriation was not considered for this bill as the Hawaii Paroling Authority would need additional resources to properly supervise these additional parolees. Many of these inmates did not receive programming during their incarceration and would require services and treatment in the community.

Thank you for this opportunity to testify.

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TESTIMONY ON SENATE BILL 2307

RELATING TO CORRECTIONS

BY

HAWAII PAROLING AUTHORITY
Bert Y. Matsuoka, Chairman

Senate Committee on Public Safety, Intergovernmental and Military Affairs

Senator Will Espero, Chair
Senator Roselyn H. Baker, Vice Chair

Tuesday, January 28, 2014; 3:00 p.m.
State Capitol, Conference Room 224

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Hawaii Paroling Authority (HPA) respects the legislature's interest in granting parole to offenders whose minimum sentences match their respective maximum sentences for class A, B, C, felony level offenses. The HPA supports the philosophy of Senate Bill 2307, but has serious concerns regarding this measure.

As written, Senate Bill 2307 conflicts with existing minimum sentencing laws and does not consider court imposed mandatory minimum sentences wherein the HPA lacks jurisdiction to take action on consecutive sentences imposed by the court. In addition, the term "validated risk assessment" cited in Section 1(5) on page 5 (lines 20 – 21) is not defined and requires clarification. It is also noted, in the same section on page 6 (lines 7 – 9) "The paroling Authority has the discretion to not grant supervised parole prior to the expiration of the maximum sentence for certain offenders," which is not defined, and as a result, may expose the State to litigation respect to "disparity in treatment" issues.

If this bill were enacted, the HPA would be required to schedule parole hearings for inmates who may be clearly not prepared for parole nor have the prerequisites for parole, which is intended to be earned and not entitled.

Thank you for the opportunity to provide testimony on Senate Bill 2307.

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THE HONORABLE WILL ESPERO, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND
MILITARY AFFAIRS
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i

January 28, 2014

RE: S.B. 2307; RELATING TO CORRECTIONS.

Chair Espero, Vice-Chair Baker and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments in opposition of Senate Bill 2307.

Senate Bill 2307 requires a parole hearing and validated risk assessment for prisoners who have not been released upon completion of a set minimum term or received an earlier release date. It also permits supervised release on parole eighteen months prior to the expiration of the maximum term for class A felonies, twelve months prior to the expiration of the maximum term for class B felonies, and six months prior to the expiration of the maximum term for class C felonies. Lastly, the paroling authority can deny supervised parole prior to the expiration of a maximum sentence for certain offenders.

Senate Bill 2307 is not necessary because under the current law, if a parole is not granted for a prisoner, the Hawaii Paroling Authority (HPA) is required to hold additional parole hearings at twelve-month intervals or less. The HPA already has discretion to release a prisoner to be on supervised parole when the prisoner has completed his set minimum term. Further, the HPA already has discretion to not grant supervised parole for prisoners. Finally, a validated risk assessment on prisoners is already required to be applied by the Department of Public Safety staff and a prisoner who is assessed as low-risk for re-offending is mandated to be granted parole upon completing the minimum sentence unless the prisoner has an extensive criminal history record, committed misconduct while in prison that is equivalent to a misdemeanor or felony crime within thirty-six months of the expiration of the minimum term of imprisonment, has any pending felony charges in the State, is incarcerated for a sexual offense under part V of chapter

707 or child abuse under part VI of chapter 707, or does not have a parole plan as set forth under section 706-670(3) and (4), as approved by, and at the discretion of, the HPA.

For the reasons stated, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of Senate Bill 2307. Thank you for the opportunity to testify on this matter.

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Rosalyn Baker, Vice Chair

Tuesday, January 28, 2014

3:00 p.m.

Room 224

SUPPORT FOR SB 2307 -PAROLE

Aloha Chair Espero, Vice Chair Baker and Members of the Committee!

Hau`oli Makahiki Hou! 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.

SB 2307 requires a parole hearing and validated risk assessment for prisoners who have not been released upon completion of a set minimum term or received an earlier release date and permits supervised release on parole eighteen months prior to the expiration of the maximum term for class A felonies, twelve months prior to the expiration of the maximum term for class B felonies, and six months prior to the expiration of the maximum term for class C felonies. It also permits the paroling authority to deny supervised parole prior to the expiration of a maximum sentence for certain offenders.

Community Alliance on Prisons supports this measure and we respectfully share our research in this area with the committee.

Recent Research:

- *PEW Charitable Trusts*: To better understand the impact of parole supervision on offender outcomes, Pew commissioned the Rutgers University School of Criminal Justice to compare the performance of parolees and max-outs. One of the first studies of its kind, the research analyzes three-year outcomes using multiple measures of recidivism and adjusts those rates based on offenders' risk levels—the critical step in making legitimate comparisons between the two groups. In November 2013, the Pew Charitable Trusts released the report, "The Impact of Parole in New Jersey"¹. This research provides new evidence that inmates released to parole supervision are less likely to reoffend than inmates who serve their full sentences.

Supervised parolees perform better than max-outs.

¹ *The Impact of Parole in New Jersey, Pew Charitable Trusts, November 2013.*

http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/PSPP_NJParole-Brief.pdf

Comparison of 2006 and 2011 Hawai'i Data on Those Released with No Supervision:

A 2011 article in the Honolulu Star Advertiser stated, "Hawaii inmates considered at high risk for committing new offenses increasingly have been released from prison without any supervision — a trend that experts say is not only out of sync with national practices, but increases the safety risk to the public."²

- In 2006, 121 individuals served their maximum sentence, 15 (12%) were high risk (for committing a new crime or parole violation)
- In 2011, 247 individuals served their maximum sentence, 101 (41%) were high risk

"The 2011 figure did not include parole violators, including 27 high-risk ones, who maxed out that year. That means the number of high-risk Hawaii inmates who completed their terms and were released without any transition actually was greater: 128."

NO SUPERVISION ON THE OUTSIDE

Over the past five years, the number of Hawaii inmates who completed their full sentences — "maxed out" — and were released from prison without any supervision jumped dramatically. The number of high-risk inmates who maxed out also increased significantly. The numbers do not include parole violators who were returned to prison and subsequently maxed out.*

FISCAL YEAR 2006		
MAXED-OUT RELEASES	HIGH-RISK MAX-OUTS	PERCENTAGE OF TOTAL MAX-OUTS
121	15	12%
FISCAL YEAR 2011		
MAXED-OUT RELEASES	HIGH-RISK MAX-OUTS	PERCENTAGE OF TOTAL MAX-OUTS
247	101	41%

* Considered high risk for committing a new crime or parole violation and returning to prison

Source: Council of State Governments Justice Center

Research on the effects of incarceration is not conclusive, but the results of many studies point to the potential psychological harm that long term incarceration can cause. These findings are critical to policy makers who must decide how best to deal with long term inmates so that when they are released, they can return to the community as productive, law abiding citizens.³

² *High-risk inmates freed at rising rate*, by Rob Perez, December 27, 2011.
<http://www.staradvertiser.com/s?action=login&f=y&id=136249078>

² Ibid

³ EFFECTS OF LONG TERM INCARCERATION, JOHN HOWARD SOCIETY OF ALBERTA, 1999.
<http://www.johnhoward.ab.ca/pub/C35.htm>

100 National and State Crime Survivors and Advocates Agree:

More than 100 leading national and state crime victim advocates and survivors have signed on to a statement of guiding principles on sentencing, corrections, and public safety. One of the seven principles speaks directly to the issue of time served in prison:

*"While it is important for offenders to receive just punishment, the quantity of time that convicted offenders serve under any form of correctional supervision must be balanced with the quality of evidence-based assessment, treatment, programming **and supervision they receive** that can change their criminal behavior and thinking and reduce the likelihood that they will commit future crimes. For many offenses and offenders, shorter prison terms are acceptable if the resulting cost savings are reinvested in evidence-based programs that reduce recidivism."⁴*

The analysis in this study shows that there are more savings that can be garnered by thoughtfully addressing sentence length and release decisions. With the right risk assessment tools and a careful evaluation of the dynamics influencing their prison populations, states can move with confidence down this new path—one that recognizes that simply putting as many people in prison for as long as possible is not the best way to spend public dollars and protect public safety.⁵

Recommendations:

The National Council of State Legislators convened a Sentencing and Corrections Work Group that included legislators from many states, including Representative Faye Hanohano from our Legislature. The report, entitled Principles of Effective State Sentencing and Corrections Policy, states

3. A continuum of sentencing and corrections options should be available, with prison space for the most serious offenders and adequate community programs for diversion and supervision of others.

- Ensure assessment of offender risk, needs and assets in order to provide appropriate placement, services and requirements.
- Strengthen placement decisions and supervision by encouraging coordinated interbranch efforts among courts, corrections departments, and state and local supervision agencies.
- Establish policies that consider an offender's risk and criminal history as the basis for sentencing options and program eligibility.
- Provide clear policies for violations of community supervision. Consider administrative remedies and court options for technical violations, and offer incentives for compliance with conditions and requirements.
- Consider time-served requirements and ensure that release mechanisms and policies are clear and complete.
- Allow incentives for prisoners who complete prescribed programming, treatment or training.
- **Provide appropriate levels of supervision and services for all offenders as they reenter the community.**⁶

⁴ TIME SERVED The High Cost and Low Returns of Longer Prison Terms, Pew Center on the States, Public Safety Performance Project, June 2012, page 41. http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Prison_Time_Served.pdf

⁵ Ibid

⁶ Principles of Effective State Sentencing and Corrections Policy, A Report of the NCSL Sentencing and Corrections Work Group, 2011, page 2. <http://www.ncsl.org/documents/cj/pew/WGprinciplesreport.pdf>

A December 2011 article in the National Council of State Legislatures magazine entitled, "Seven Sentencing Principles"⁷ reported:

Principle 3. Make available a continuum of options, including prison space and community programs.

States are increasing the options available for suitable offenders, both to get more for their money and to ensure prison space is available for the most dangerous criminals. Community supervision options—electronic monitoring, residential programs and problem-solving courts—are far less costly than putting someone in jail or prison and usually provide more supervision than traditional probation or parole. Substance abuse and mental health treatment, both residential and in the community, often can address issues that lead people to commit crimes. Increasingly, states are allowing courts and agencies to tailor supervision based on a person's treatment needs and likelihood of committing another crime.

In 2010, state leaders in North Carolina, concerned about a 10 percent increase in prisoners forecast by 2020, considered how to improve community supervision and make the best use of treatment resources. The resulting Justice Reinvestment Act passed by the General Assembly this year requires supervision for everyone released following a felony conviction.

"Approximately 15,000 people who would have walked out of prison with no accountability now will be supervised and held accountable for following the law," says Representative David Guice of North Carolina. The legislation was designed, he says, to balance the dual goals of increasing public safety and reducing spending on corrections.

The law allows rule violations—such as missing appointments or drug tests—to be addressed with sanctions such as electronic monitoring or strict curfews rather than prison time. The law also calls for focusing supervision and treatment on people with the highest risks and needs. It offers incentives for prisoners to participate in programs and supports diverting some people convicted of drug felonies to community treatment.

"If we do not deal with the underlying issues and provide treatment and supervision for offenders coming out of prison," Guice says, "we'll see them at the front door of the courthouse again."

In summary, releasing individuals from prison directly into the community after long prison terms does not protect public safety.

Community Alliance on Prisons, therefore, urges the committee to consider the research in this area and eliminate the 'maxing out' of individuals who have served long prison terms.

Supervision and support are necessary for the successful transition back to community life for formerly incarcerated individuals. The Justice Reinvestment Initiative allocated funds for increasing the number of parole officers to help with supervised reentry. This will enable those making the transition from prison life to community life have the chance to successfully reenter their communities.

⁷ NCSL, Seven Sentencing Principles: December 2011.
<http://www.ncsl.org/issues-research/justice/seven-sentencing-principles.aspx>

The Pew report on *The Impact of Parole in New Jersey* concludes: In the past several years, states around the country have embraced a variety of reforms to their parole policies. Among these are ensuring that every inmate receives a period of post-release supervision; focusing supervision resources on high-risk offenders; and concentrating prison space on violent, serious, and chronic offenders by limiting parole revocations for technical violations. ”

We thank the committee for this opportunity to testify and share our research.