



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2391, H.D. 2, S.D. 1, RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, April 1, 2016

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** WRITTEN COMMENTS ONLY. For more information, call Richard W. Stacey, Deputy Attorney General at 587-2978

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Chair Keith-Agaran and Members of the Committee:

We support this bill with amendments.

This bill enables the Department of Public Safety (PSD) to avoid overcrowding in the community correctional centers in each county by giving the director the discretion to release pre-trial or sentenced misdemeanants on recognizance. The bill is similar to Act 305, Session Laws of Hawaii 1993, which provided the director of PSD or a designee the authority to release pretrial inmates on recognizance. In 1985 the State of Hawaii entered into a consent decree with the federal government, which required PSD to keep the population of correctional centers from exceeding their capacity, including the Oahu Community Correctional Center (OCCC). Spear v. Ariyoshi, U.S. D. Ct. Haw. CV No. 84-1104. Act 305 was enacted during the pendency of the consent decree, and although originally set to expire in 1994, was extended by the Legislature via annual amendments until it expired via a sunset provision in 2000. At about that same time, the consent decree was dismissed by stipulation. This bill would revive the PSD director's ability to grant early release to certain misdemeanants at a time when overcrowded facilities are again a source of concern.

This Senate Draft 1 removes the immunity clause provided for in the original House version and House Draft 1. We recommend restoring the immunity provision back into the bill in order to facilitate, without liability, the purpose of the bill, which is to prevent jail populations from exceeding capacity, and to prevent the possibility of federal intervention.

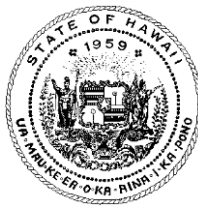
We also suggest adding wording to section 706-663, Hawaii Revised Statutes (HRS), expressly providing that the sentence imposed by the court pursuant to that section is subject to the possibility of early termination by the director of PSD in overcrowding situations at the community correctional centers.

PSD is currently making efforts to build new facilities that will presumably reduce the overcrowding problem. We recommend that this measure be given a sunset date in three to five years, but be passed to provide for at least temporary but much needed relief.

We are available to work with the Committee on any amendments the Committee determines to be appropriate.

Thank you for the opportunity to provide comments.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 2391, HOUSE DRAFT 2, SENATE DRAFT 1  
RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS

By

Nolan P. Espinda, Director

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, April 1, 2016; 9:30 a.m.  
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Department of Public Safety (PSD) **supports** the adoption of House Bill (HB) 2391, House Draft (HD) 2, Senate Draft (SD) 1 as a rational and reasonable alternative to incarceration and as a legislatively authorized and supported methodology for relieving overcrowded jail conditions across the State of Hawaii.

Misdemeanor crimes are the lowest level of criminal activity for which individuals are incarcerated. If we must relieve jail overcrowding by releasing inmates, such releases should come from this identified pool.

Thank you for the opportunity to provide this testimony.

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

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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-Eighth State Legislature**  
**Regular Session of 2016**  
**State of Hawai`i**

April 1, 2016

**RE: H.B. 2391, H.D. 2, S.D. 1; RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS.**

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 2391, H.D. 2, S.D. 1.

The purpose of H.B. 2391, H.D. 2, S.D. 1 is to reduce the community correctional centers population by releasing defendants convicted of or awaiting trial for misdemeanor or petty misdemeanor offenses. While we have always appreciated the Department of Public Safety's hard work and dedication to protecting the public, this proposal to lower the prison population by releasing defendants whom the Director deems fit—simply to relieve overcrowding—seems directly contrary to the goal of public safety.

This bill fails to take into account that charges classified as petty misdemeanors and misdemeanors covers a plethora of offenses under the Hawaii Revised Statutes. H.B. 2391, H.D. 2, S.D. 1, partly addresses our Department's prior concerns to the extent that it prohibits the release of defendants charged with abuse of family or household members (§709-906, H.R.S.) and persons who have been arrested or convicted of crimes of violence. However, H.B. 2391, H.D. 2, S.D. 1 provides no guidance for interpreting the term "crime of violence," and it is unclear whether offenses such as violating an order for protection or temporary restraining order would fall under this definition. As currently written, H.B. 2391, H.D. 2, S.D. 1, would potentially permit the release of defendants who could create a dangerous situation for victims and for the public. It is also unclear whether H.B. 2391, H.D. 2, S.D. 1, would permit the Department of Public Safety to release inmates who are in need of mental health services or substance abuse treatment.

In addition, subsection (d), of H.B. 2391, H.D. 2, S.D. 1, requires that notification be sent to prosecution no later than twenty-four hours in advance of release. While we appreciate the twenty-four hour advanced notice proposed in H.B. 2391, H.D. 2, S.D. 1, our Department does not believe that a twenty-four hour advanced notice is a sufficient amount of time in all cases to allow a victim to plan and/or implement any necessary safety measures. Although our Department understands that overcrowding is of great concern for the Department of Public Safety, public safety should always stand alone as a top priority.

For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 2391, H.D. 2, S.D. 1. Thank you for the opportunity to testify on this matter.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Senator Gil Keith-Agaran, Chair  
Senator Maile Shimabukuro, Vice Chair  
Friday, April 1, 2016  
9:30 a.m.  
Room 016

### SUPPORT FOR HB 2391 HD2 SD1 - RELEASE OF CERTAIN MISDEMEANANTS

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro 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 in Hawai'i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people 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 2391 HD2 SD1 defines circumstance under which the Director of Public Safety may release pretrial or sentenced misdemeanants at community correctional centers. Applies only to persons whose original crime occurred on or after the effective date of this measure.

Community Alliance on Prisons supports this measure and we continue to wonder why the legislatively- created Corrections Population Management Commission<sup>1</sup> (CPMC) has not been engaged in this conversation. The CPMC was created because of overcrowding, resulting in a 15-year consent decree and the threat of federal takeover. The statute states:

*The Corrections Population Management Commission (CPMC) was established through Act 343, Session Laws of Hawaii 1993. It expanded from eight to eleven members representing all three branches of state government, the county prosecuting attorney, and two community representatives. **The objective for the CPMC is to "establish maximum inmate population limits for each correctional facility and to formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility"** (Section 353F-4, Hawaii Revised Statutes). The CPMC is administratively attached to the Department of Public Safety.*

This commission is composed of agencies across the criminal justice system and while our jails have become the de facto mental health centers and shelters, there seems to be some degree of acceptance that incarceration is OK for folks struggling with mental health issues and those with

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<sup>1</sup> Corrections Population Management Commission - <http://dps.hawaii.gov/about/cpmc/>

no place to live. This should never be acceptable to a healthy society. We can do better and we must.

The department must be mandated to use the tools and resources, such as the CPMC, to discuss issues like this before dumping it on the lap of the legislature. You have given them the tools to have these statewide discussions. Please underscore the importance of the CPMC and encourage the department to use those resources to manage the population of their facilities. The department should not wait until the jails are severely over-crowded before addressing the dire situation they are in. This overcrowding is not a new problem.

## HOW MUCH DOES THIS POPULATION COST TAXPAYERS?

December 7, 2015 is the latest Weekly Population Report of the Department of Public Safety that we have and at that time there were 151 sentenced misdemeanants and 130 per-trial misdemeanants incarcerated. At \$137/day, those 281 individuals statewide cost taxpayers \$38,497 a day and \$1,154,910 a month! Even if only 50% of sentenced and pre-trial misdemeanants were released, that would save at least \$500,000 a month! Think of the services that could be offered in the community with an infusion of half a million dollars a month!

Our only concern is that the department be mindful that the individuals who are released either have a place to go or are helped with placement/housing. Increasing a diverse array of services in the communities that need them would put a major dent in many of our social problems.

Jeremy Travis, president of the John Jay College of Criminal Justice at the City University of New York said,

*“As a society we’ve become more and more punitive even though crime is at its lowest rate ever. We put people in prison for offenses that would have received a light sanction in former times.”*

Let’s think long and hard about who we actually incarcerate and to what end. Are we achieving the outcomes we want? Creating a criminal underclass, by incarcerating misdemeanants and petty misdemeanants is expensive and ineffective. Let’s use our resources wisely and use incarceration only as a last resort.

Mahalo for this opportunity to testify.

*“I am convinced that imprisonment is a way of pretending to solve the problem of crime. It does nothing for the victims of crime, but perpetuates the idea of retribution, thus maintaining the endless cycle of violence in our culture.”*

Howard Zinn

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 30, 2016 12:53 PM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB2391 on Apr 1, 2016 09:30AM\*

**HB2391**

Submitted on: 3/30/2016

Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dante K. Carpenter	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 30, 2016 10:32 AM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** Submitted testimony for HB2391 on Apr 1, 2016 09:30AM

**HB2391**

Submitted on: 3/30/2016

Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

Comments: I SUPPORT HB 2391 HD2, SD1 BECAUSE EACH INDIVIDUAL CASE/PERSON WILL BE REVIEWED ON ITS/HIS/HER OWN MERIT.

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**Sent:** Wednesday, March 30, 2016 9:09 AM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB2391 on Apr 1, 2016 09:30AM\*

**HB2391**

Submitted on: 3/30/2016

Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sandy Salmers	Individual	Support	No

Comments:

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