



HB2391 HD2

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| Measure Title: | RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS. |
| Report Title: | Release of Certain Misdemeanants |
| Description: | Defines the circumstance for the Director of Public Safety to release pretrial or sentenced misdemeanants at community correctional centers. Applies only to persons whose incarceration commences after the effective date of this measure. (HB2391 HD2) |
| Companion: | SB2920 |
| Package: | Governor |
| Current Referral: | PSM, JDL |
| Introducer(s): | SOUKI (Introduced by request of another party) |

DAVID Y. IGE
GOVERNOR



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

By
Nolan P. Espinda, Director

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Will Espero, Vice Chair

Tuesday, March 15, 2016; 1:20 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Will Espero, and Members of the Committee:

The Department of Public Safety (PSD) **supports** the adoption of House Bill (HB) 2391, House Draft (HD) 2, 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.

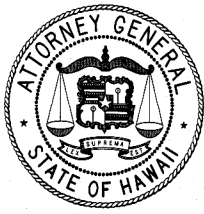
PSD recommends amending the requirement that a copy of the Director's order be filed with the court in which the charge against the inmate is "pending", i.e., limited to pre-trial inmates only. Based on the limitation of available resources, PSD recommends that the language be deleted from Page 1, Lines 12-14 and the current Sub-Section (d), on Page 3, Lines 1-3, be amended as follows:

"The director shall notify the court where the case is assigned and the prosecuting attorney of the release of any person pursuant to this section no later than the time of the actual release."

This language will require notice to both entities of the release of pre-trial misdemeanants or sentenced misdemeanants. The Department respectfully asks your Committee to support this proactive measure for addressing jail overcrowding, as PSD is now close to the point of being threatened or being named as a party to litigation based on conditions associated with overcrowded conditions in our jails.

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 testify on this measure.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Tuesday, March 15, 2016

TIME: 1:20 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Nishihara 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 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 House Draft 2 removes the immunity clause provided for in the original and earlier House versions. We recommend adding the immunity provision back to 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.

This draft also adds a requirement that a copy of the director's order be "filed with the court in which the charge against the inmate is pending" to section 353-A, subsection (a), in section 1 of the bill on page 1, lines 12-14. We agree with PSD that the requirement of filing documents in court for each inmate released will serve to add unnecessary steps to a process that is supposed to provide immediate relief to overcrowded facilities. Timely notification to the prosecutors and courts, rather than legal filings, should ensure proper notification takes place while not slowing down the process.

We recommend that section 4, page 4, lines 1-2 be amended to reflect that the law would only apply to those incarcerated persons whose original crime occurred after the effective date of the Act. This would reduce the risk of challenges to the law based on the separation of powers doctrine. 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.



HB2391 HD2
RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

March 15, 2016

1:20 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2391 HD2. This measure may save the state millions of taxpayer dollars, as well as mitigate the disproportionate impacts of the criminal justice system on Native Hawaiians, by allowing the Director of the Department of Public Safety (PSD) to release certain pretrial and sentenced misdemeanants when correctional facilities have reached their capacities.

Decades of a traditional criminal justice approach have led to the highest prison population in Hawai‘i’s history. Between 1977 and 2008, the number of people incarcerated in Hawai‘i has increased by more than 900 percent,¹ and by 1,400 percent between 1977 and the present. The Native Hawaiian community has been particularly impacted by this increase, making up 40% of our prison population today.²

Allowing the PSD Director to release certain low-level misdemeanants will afford the Director some degree of control over inhumane prison overcrowding, while potentially saving substantial state resources. OHA recognizes that the safety of the pa‘ahao and the public are of paramount importance and that the logistics of implementation of such a proposal can be complex. Therefore, on these matters, we defer to the Department of Public Safety.

Accordingly, OHA urges the Committee to **PASS** HB2391 HD2. Mahalo nui for the opportunity to testify on this measure.

¹ THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010), http://www.oha.org/sites/default/files/ir_final_web_rev.pdf.

² In contrast, Native Hawaiians only represent 24% of the general public in Hawai‘i. *Id.* at 36. OHA’s 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage noting that Native Hawaiians made up “24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population.” *Id.* at 10. Moreover, controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. *Id.* at 28-38.

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**THE HONORABLE CLARENCE NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i**

March 15, 2016

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

Chair Nishihara, Vice-Chair Espero, 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 testimony in opposition to H.B. 2391, H.D. 2.

The purpose of H.B. 2391, H.D. 2 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 meet arbitrary headcount goals—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, 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 violent offenses. However, H.B. 2391 H.D. 2 provides no definition or guidance for interpreting the term "violent offenses," and it is unclear whether offenses such as violating an order for protection or temporary restraining order or harassment by stalking (§711-1106.5), would fall under this definition. As currently written, H.B. 2391, H.D. 2, 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, would permit the

Department of Public Safety to release inmates who are in need of mental health services, substance abuse treatment and/or who are otherwise homeless and have nowhere to go upon their release.

In addition, subsection (d), of H.B. 2391, H.D. 2, requires that notification be sent to prosecution prior to the defendant's release, without specifying how far in advance such notice must be provided. While we appreciate the thought to include safeguards that allow victims to prepare for a defendant's release, victims must be afforded sufficient notice to plan and/or implement any necessary safety measures. H.B. 2391, H.D. 2, only requires the Department of Public Safety to give notice to the prosecution "not later than the time of actual release," which could technically be mere minutes before the release of a defendant. Thus, the victim would not be notified of the defendant's status until after release, leaving no time to prepare. 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. Thank you for the opportunity to testify on this matter.

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Will Espero, Vice Chair

Tuesday, March 15, 2016

1:20 p.m.

Room 229

SUPPORT for HB 2391 HD2- RELEASE OF CERTAIN MISDEMEANANTS

Aloha Chair Nishihara, Vice Chair Espero 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 defines the circumstance for the Director of Public Safety to release pretrial or sentenced misdemeanants at community correctional centers. Applies only to persons whose incarceration commences 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 Commission¹ (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

¹ 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.

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

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: leilani.maxera@gmail.com
Subject: *Submitted testimony for HB2391 on Mar 15, 2016 13:20PM*
Date: Tuesday, March 15, 2016 9:01:03 AM

HB2391

Submitted on: 3/15/2016

Testimony for PSM on Mar 15, 2016 13:20PM in Conference Room 229

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Leilani Maxera | The CHOW Project | Support | No |

Comments:

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From: mailinglist@capitol.hawaii.gov
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Date: Monday, March 14, 2016 3:45:56 PM

HB2391

Submitted on: 3/14/2016

Testimony for PSM on Mar 15, 2016 13:20PM in Conference Room 229

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| E. Ileina Funakoshi | Individual | Support | No |

Comments:

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