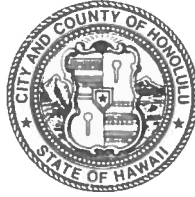


POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE DT-CG

February 11, 2016

The Honorable Gregg Takayama , Chair  
and Members  
Committee on Public Safety  
State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Takayama and Members:

Subject: House Bill 2391, Relating to the Release of Certain Misdemeanants

I am Dagan Tsuchida, Major of the Pearl City Police Station, District 3, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of House Bill 2391, Relating to the Release of Certain Misdemeanants. This bill intends to make it possible for pre-trial and sentenced misdemeanants to be released with certain conditions to prevent overcrowding of the prisons.

The HPD has concerns with this bill as it may serve to place more criminal offenders back out on the street to commit even more crimes. It would present a potential risk to public safety and property and would tax police resources and staffing to address these crimes.

The HPD requests that your committee oppose the passage of House Bill 2391.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Dagan Tsuchida", is written over the word "Sincerely,". The signature is fluid and cursive.

Dagan Tsuchida, Major  
District 3

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha", is written below the word "APPROVED:". The signature is fluid and cursive.

Louis M. Kealoha  
Chief of Police

# COMMUNITY ALLIANCE ON PRISONS

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

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



## COMMITTEE ON PUBLIC SAFETY AFFAIRS

Rep. Gregg Takayama, Chair

Rep. Kyle Yamashita, Vice Chair

Thursday, February 11, 2016

10:00 a.m.

Room 309

## SUPPORT for HB 2391 – RELEASE OF CERTAIN MISDEMEANANTS

Aloha Chair Takayama, Vice Chair Yamashita 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 defines the circumstance for the Director of Public Safety to release pre-trial and sentenced misdemeanants at community correctional centers.

Community Alliance on Prisons supports this measure and wonders why the legislatively-created Corrections Population Management Commission<sup>1</sup> is not engaged on these issues. 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 "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 became the de facto mental health centers and shelters for those who are houseless there have been no policies or even discussions on how to address these social problems.

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

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 to address the dire situation they are in.

Avoiding problems or kicking the can down the road is not policymaking. Policymaking is taking on the hard issues and speaking the truth about them. Hawai'i is not the only place experiencing these problems. Hiding people in jails and warehouses does not fix social problems...it only exacerbates them.

After serving on the Penal Code Review Committee, in my humble opinion, we need to give our Judiciary discretion in sentencing. Mandatory sentences or legislatively-prescribed sentences do not consider that every crime has its own set of circumstances and actors. The court is the body that has all the information and should make decisions on sentencing, not the legislature.

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  
**Sent:** Monday, February 08, 2016 4:36 PM  
**To:** pbstestimony  
**Cc:** lady.flach@gmail.com  
**Subject:** \*Submitted testimony for HB2391 on Feb 11, 2016 10:00AM\*

**HB2391**

Submitted on: 2/8/2016

Testimony for PBS on Feb 11, 2016 10:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri Heede	Individual	Support	No

Comments:

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**Sent:** Wednesday, February 10, 2016 2:10 PM  
**To:** pbstestimony  
**Cc:** gladys.baisa@mauicounty.us  
**Subject:** \*Submitted testimony for HB2391 on Feb 11, 2016 10:00AM\*

**HB2391**

Submitted on: 2/10/2016

Testimony for PBS on Feb 11, 2016 10:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gladys Coelho Baisa	Individual	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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DAVID Y. IGE  
GOVERNOR



NOLAN P. ESPINDA  
DIRECTOR

Cathy Ross  
Deputy Director  
Administration

Jodie F. Maesaka-Hirata  
Deputy Director  
Corrections

Shawn H. Tsuha  
Deputy Director  
Law Enforcement

**LATE**

STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

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

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

By  
Nolan P. Espinda, Director

House Committee on Public Safety  
Representative Gregg Takayama, Chair  
Representative Kyle T. Yamashita, Vice Chair

Thursday, February 11, 2016; 10:00 a.m.  
State Capitol, Conference Room 309

Chair Takayama, Vice Chair Yamashita, and Members of the Committee:

The Department of Public Safety (PSD) **supports** the adoption of Senate Bill HB 2391 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.

Under the 15-year OCCC/WCCC Consent Decree (1985-2000), there existed prior legislation authorizing the Director of the Department of Public Safety to release qualified pre-trial inmates, including accused felons, in order to keep jail populations at established capacities, under threat of per day/per inmate fines to be imposed by the court. This sunsetted law created tremendous friction amongst all law enforcement and prosecutorial entities.

We respectfully ask that this proactive measure be debated and hopefully, adopted, as our society's agreed-upon methodology for addressing jail overcrowding when it hits the critical point (current situation) or be threatened or are party to litigation based on conditions associated with overcrowded conditions in our jails.

Misdemeanor crimes are the lowest level of criminal activity that are the bases for incarcerating individuals. We propose that if we must relieve jail overcrowding by releasing inmates, those to be released should be from the lowest level of criminal activity charged.

Thank you for the opportunity to testify on this measure.

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**LATE**



**THE HONORABLE GREGG TAKAYAMA, CHAIR**  
**HOUSE COMMITTEE ON PUBLIC SAFETY**  
**Twenty-Eighth State Legislature**  
**Regular Session of 2016**  
**State of Hawai'i**

February 11, 2016

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

Chair Takayama, Vice-Chair Yamashita, members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 2391.

The purpose of H.B. 2391 is to reduce the community correctional centers by releasing pre-trial and sentenced misdemeanor or petty misdemeanor defendants. The purpose of the Department of Public Safety by its very nature is to protect the public. Attempting to lower the prison population by releasing defendants whom the director deems fit—simply to meet arbitrary headcount goals—would directly counteract the goal of public safety.

This bill attempts to take a complicated issue of overcrowding within our correctional facilities and take the most simplistic approach by releasing defendants at the discretion of the director 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. Passage of H.B. 2391 would create the unintended consequence of potentially releasing defendants charged with violent offenses including but not limited to abuse of 709-906 family household members (§709-906, H.R.S.), sex assault in the third or fourth degree (§707-732 and §707-733, H.R.S.) or assault in the third degree (§707-712, H.R.S.) The director would also have the ability to release a defendant who has violated a temporary restraining order or order of protection, which may or may not stem from domestic violence for the sole purpose of reducing the correctional facilities.

In addition, under subsection (d), H.B. 2391 seeks to create an indemnification clause that protects the state, its officers and employees from civil and criminal penalties. Our

Department would express concern over the need for an indemnification clause and clarification on what “error in judgment or discretion made in good faith and upon reasonable grounds in any action taken” this bill anticipates. Although overcrowding may be a rising concern for the Department of Public Safety, to allow such a radical approach proposed in H.B. 2391 – allowing potentially dangerous defendants to be released – to be implemented should and demands thorough guidelines and countermeasures which is clearly not displayed in the drafting of H.B. 2391.

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



**LATE**



**HB2391**  
**RELATING TO THE RELEASE OF CERTAIN MISDEMEANANTS**  
House Committee on Public Safety

February 11, 2016

10:00 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **SUPPORT** HB2391. This measure may save the state millions of taxpayer dollars and 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 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,<sup>1</sup> 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.<sup>2</sup>

Granting the PSD Director the discretion 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 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. Mahalo nui for the opportunity to testify on this measure.

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<sup>1</sup> 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](http://www.oha.org/sites/default/files/ir_final_web_rev.pdf).

<sup>2</sup> 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.