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GOVERNOR



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No. _____

TESTIMONY ON SENATE BILL 1332, SD1
RELATED TO PUBLIC SAFETY

By
Bert Y. Matsuoka, Chairman
Hawaii Paroling Authority

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

Tuesday, March 3, 2015; 9:15A.M.
State Capitol, Conference Room 016

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

The Hawaii Paroling Authority (HPA) **strongly opposes** Senate Bill 1132, SD1, which seeks to establish an additional sanction available to the Judiciary prior to parole revocation. Amongst other serious issues of concern, the description of this measure mentions the Judiciary, which does not exercise jurisdiction over the parole population.

As written, this measure conflicts with Hawaii Revised Statutes (HRS) §353-66, §706-670(7), and Hawaii Administrative Rules (HAR) §23-700-41 (Revocation of Parole). When a parolee is arrested pursuant to an HPA warrant, the Authority is required to conduct a parole violation hearing within sixty (60) days of the parolee's return to custody and/or return to Hawaii if arrested out of State. In all such cases, the parolee is given credit for time served from the date of arrest, which is credited toward the six (6) month maximum parole revocation for first-time parole violators who qualify for ACT 139.

At present, parolees who qualify for the 6-month ACT 139 parole revocation period are scheduled for a parole consideration hearing at their parole violation hearing because in order for the Authority to meet the requirements of ACT 139, parole consideration hearings must be scheduled for the fifth month following the parolees return to custody. Further reducing the period from 6 months to 3 months is neither feasible nor practical.

If enacted, the Authority would need to schedule a parolee for a parole consideration during the parolee's parole violation hearing, and the consideration hearing would need to be scheduled to take place the same month as the parole violation hearing. This is not possible, nor would it provide offenders reasonable time necessary pursuant to HRS §706-670(3) to prepare and submit a parole plan, which needs to be reviewed and approved by the Authority prior to release. In addition, the required

notification time line for the respective County Prosecutor's Office, the Attorney General, and the victim and/or the surviving family members of the victim would be severely impacted. Also, reducing the period from 6 months to 3 months would not provide the appropriate time for the revoked prisoner to complete any short-term remedial program.

It should be noted, of the 406 parole violators returned to custody during 2014, 119 were previously paroled, and therefore did not qualify for ACT 139. Of the remaining 287 parolees, 107 absconded, and 59 were charged with a new felony or misdemeanor offense in violation of HRS §707 or section 709-906, which disqualified them from ACT 139. Of the remaining 121 paroles, 52 did not provide the Authority with an acceptable or viable parole plan, which disqualified them from ACT 139. Of the remaining 69 parolees, 32 qualified for ACT 139 and were released on parole for the second time. The remaining 37 parolees qualify for ACT 139 and are pending parole violation hearings.

Further, amending requirements in order to define absconding is ill advised and could subject the State to costly litigation and place police officers and the general public at risk. At present, the HPA does not notify parolees when a warrant of arrest has been issued as doing so could lead to the parolee absconding or confrontation if the parole is subsequently stopped by law enforcement officers, who would be unaware that a warrant of arrest has been issued, but the parolee would be aware of the arrest warrant, and as a result, may act irrationally or violently toward the officer prior to the officer finding out about the active arrest warrant. It should be noted HPA warrants of arrests are issued as a last resort, not a first option. We provide all parolees with every opportunity to succeed. However, when parolees do not take advantage of the opportunities, and their behavior and/or actions place the public at risk, they leave us no option, but to return them to custody. Even after being returned to custody, the HPA has the Authority to make adjustments to the terms and conditions of parole and release of offender to continue on parole. The HPA Administrator also has the authority to hold the parolee in custody for up to sixty (60) days while we attempt to assist the parolee in addressing the alleged parole violations without revoking parole.

In addition, pursuant to HRS §353-66 "If any paroled prisoner leaves the State without permission from the paroling authority, or if the whereabouts of any paroled prisoner is not known to the paroling authority because of the neglect or failure of the prisoner to so inform it, the paroling authority may order the parole suspended pending apprehension." As written, this measure appears to allow parolees to knowingly and willfully violate the terms and conditions of their parole, which they agreed to, abide by in writing prior to release without meaningful consequences for seven (7) days, during which time, the parolee could be involved in criminal activity and continued victimization of the community. This aspect of SB 1332, SD1 particularly troubling and problematic for the State of Hawaii as it essentially authorizes convicted felons to roam free without supervision violating the terms and conditions of parole without an consequences.

For the reasons enumerated in this testimony and in the testimony of others that opposed SB 1332, SD1, the HPA recommends this measure be held.

Thank you for the opportunity to provide testimony on SB 1332, SD1.

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 2015
State of Hawai`i

March 3, 2015

RE: S.B. 1332, S.D. 1; RELATING TO PUBLIC SAFETY.

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 Senate Bill 1332, S.D. 1.

The purpose of S.B. 1332, S.D. 1, is to further limit Hawaii Paroling Authority's ("HPA") ability to reincarcerate an offender for parole violations, and redefine the term "absconded" as a parolee who fails to surrender within seven days of a bench warrant being issued for their arrest.

In 2012, the Legislature passed Act 139, which drastically limited the HPA's discretion to reincarcerate a paroled offender for violation of the terms and/or conditions of parole. Among other things, the HPA was limited to imposing a maximum of six months reincarceration (or the remaining portion of the prisoner's sentence, whichever is shorter)—regardless of the circumstances of the offender's parole violations—barring certain enumerated exceptions.

As in 2012, the Department firmly maintains that discretion should be left with the HPA, to properly determine the appropriate length of reincarceration, giving due consideration to all relevant factors and circumstances. If three months of reincarceration—or any length of time less than six months—is appropriate for a particular situation, the HPA already has the authority to make that determination. To further tie the HPA's hands would severely discount the breadth of knowledge, perspective and experience, which the HPA is intended to exercise.

In addition, the proposed definition of "absconded" diminishes the efforts currently made by parole officers, to locate and contact a parolee, before seeking a bench warrant. As it is, a warrant is only sought after considerable time has been spent trying to locate the parolee, and the parolee is truly unable to be found. S.B. 1332, S.D. 1, would discourage parole officers from taking the time to make such extended efforts, potentially leading to negative and unintended consequences.

For these reasons, the Department of the Prosecuting Attorney, City and County of Honolulu opposes the passage of S.B. 1332, S.D. 1. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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COMMENTS REGARDING
SB1332 – RELATING TO PUBLIC SAFETY

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary and Labor
March 3, 2015, 9:15 a.m., Conference Room 016

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

The County of Kaua'i, Office of the Prosecuting Attorney, submits these COMMENTS regarding SB1332 – Relating to Public Safety. This Bill establishes an additional sanction available to the Hawai'i Paroling Authority prior to full parole revocation and amends the definition of "absconding" by deeming a parolee who surrenders within seven days of the issuance of a bench warrant to not have absconded.

We respectfully observe that a bench warrant for the arrest of a parolee is generally not issued until after considerable efforts have been expended to locate and contact the parolee. A parolee who cannot be located absence of a bench warrant for the parolee's arrest has, in every logical construction, of the term, absconded.

Accordingly, we submit that this proposed change to the definition of the term "absconded" be deleted from the bill. We express no opinion as to the Bill's other provisions.

Thank you very much for the opportunity to provide COMMENTS on this Bill.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY and LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Tuesday, March 3, 2015

9:15 a.m.

Room 016

SUPPORT for SB 1332 SD1 – SANCTIONS SHORT OF PAROLE REVOCATION

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

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered always mindful that 6,000 Hawai'i individuals are living behind bars, including 1,800 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 1332 SD1 establishes an additional sanction available to the judiciary prior to full parole revocation.

Community Alliance on Prisons supports this measure. This bill is part of the Justice Reinvestment Initiative that employs evidence-based and data-driven strategies to reduce the prison population.

The 2014 Annual Statistical Report¹ of the Hawai'i Paroling Authority (July 1, 2013 – June 30, 2014) reports that HPA carried a caseload of 1,647 parolees in the 13-14 fiscal year and the data for the Parole Violation Hearings for the last three years show:

	<u>2011-2012</u>	<u>2012-2013</u>	<u>2013-2014</u>
Parole Violation Hearings	261	296	383
Parole Revoked	217	232	312

¹ 2014 Annual Statistical Report – July 1, 2013 – June 30, 2014. Hawai'i Paroling Authority.
<http://dps.hawaii.gov/wp-content/uploads/2015/02/2014-Annual-Report.pdf>

**STATISTICAL TABLE V
PAROLE REVOCATIONS
July 1, 2013 - June 30, 2014**

TOTAL NUMBER OF PAROLE REVOCATION HEARINGS	383
Total Number of Parole Not Revoked	12
Total Number of Decisions Deferred/Rescheduled	59
Total Number of Parole Revoked, Returned to Prison	312
 Basis for Revocation:	
New Felony Conviction	2
Technical Violations of Parole	310

This data from HPA's report reveals that we must focus on the technical violations since 82% of parole revocations are for technical violations.

Community Alliance on Prisons respectfully asks the committee to pass this measure.

Mahalo for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
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Subject: Submitted testimony for SB1332 on Mar 3, 2015 09:15AM
Date: Sunday, March 01, 2015 2:55:59 PM

SB1332

Submitted on: 3/1/2015

Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

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

Comments: COMMITTEE ON JUDICIARY and LABOR Chair: Sen. Gil Keith-Agaran
Vice Chair: Sen. Maile Shimabukuro Tuesday, March 3, 2015 9:15 a.m. Room 016
SUPPORT for SB 1332 SD1 – SANCTIONS SHORT OF PAROLE REVOCATION
Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee: I am writing to support SB 1332 SD1. However, if I may quote Jacob Sullum (Star Advertiser, 2/28/15, It Won't Be Easy to Reform Overly Harsh Penal System): "If the problem is excessively long prison sentences, why not shorten the terms prescribed by law instead of merely trimming some of them after the fact? Thank you for the opportunity to submit my testimony. Mahalo and Aloha, e. ileina funakoshi

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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Date: Saturday, February 28, 2015 11:46:06 AM

SB1332

Submitted on: 2/28/2015

Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
james crowe	Individual	Support	No

Comments: Making good use of recently introduced alternatives or options can help to reduce prison populations and reduce costs.

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SB1332

Submitted on: 2/28/2015

Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

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