

LATE



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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No. _____

TESTIMONY ON HOUSE BILL 2387
RELATING TO THE RELEASE OF MISDEMEANANTS

by
Nolan P. Espinda, Director
Department of Public Safety

House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018; 10:00 a.m.
State Capitol, Conference Room 312

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

The Department of Public Safety (PSD) **strongly supports** House Bill (HB) 2387, which would serve to increase the pool of minimal-risk sentenced misdemeanants who may be potential candidates for release as one means of reducing facilities' overcrowding under Hawaii Revised Statutes Sections 353-36 and 353-37. The measure is part of the Administration's Legislative package.

In its 2018 Report to the Legislature, responsive to Act 217, Session Laws of Hawai'i 2016, the Department recommended the following amendments to the subject statute:

- "1) all petty misdemeanor and misdemeanor offenses should be considered for release by the Director, not just offenses based on HRS 706-663; and
- "2) individuals arrested for a violation of an order of protection or temporary restraining order or those arrested based on title 37, shall be excluded from consideration in light of the victims' and public safety concerns. The reference to arrest excludes offenses wherein law enforcement has closed the matter without referral to

the office of the prosecutor, or the prosecutor's office has declined to charge the individual."

It should be noted that in implementing Act 217, the Department conducted extensive research and data reviews to develop policy and a misdemeanor screening tool, which was then tested in a pilot project prior to finalization. In 2017, out of a total pool of 161 misdemeanants, only 3 were released, and there were no post release offenses resulting in an arrest or commitment.

PSD believes the suggested amendments would increase the effectiveness of Sections 353-36 and 353-37, with minimal risk to public safety, and respectfully encourages the Committee's support of this measure.

Thank you for the opportunity to present this testimony.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Public Safety,

Representative Gregg Takayama, Chair

Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018 10:00 AM

State Capitol, Conference Room 229

By

The Honorable Rom A. Trader

Chair

Criminal Pretrial Task Force

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2387, Relating to the Release of Misdemeanants.

Purpose: Defines the circumstances for the Director of Public Safety or a designee of the director to release pretrial and sentenced misdemeanants at community correctional centers.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 2387 and respectfully suggests that the Committee defer consideration of criminal pretrial procedures until receiving the report of the Criminal Pretrial Task Force (HCR 134 Task Force) no later than twenty days prior to the 2019 Regular Session of the Legislature.

The HCR 134 Task Force was convened in August 2017 pursuant to 2017 House Concurrent Resolution Number 134, House Draft 1, Requesting the Judiciary to Convene a Task Force to Examine and Make Recommendations Regarding Criminal Pretrial Practices and Procedures to Maximize Public Safety, Maximize Court Appearances, and Maximize Pretrial Release of the Accused and Presumed Innocent (HCR 134). (Attachment A) The Judiciary supported HCR 134, noting that “[p]articularly in recent years, a growing number of states and localities have reconsidered criminal pretrial release practices and have undergone reforms to increase—indeed, maximize—public safety, court appearances, and pretrial release.”

Chief Justice Mark E. Recktenwald appointed the current Criminal Pretrial Task Force (HCR134 Task Force), comprised of 31 members representing County and State agencies



involved in criminal pretrial procedures. A list of Task Force members and affiliations is also attached.

As directed in HCR 134, the HCR 134 Task Force is scheduled to submit its report of findings and recommendations, including any proposed legislation, to the Legislative Reference Bureau no later than August 1, 2018, with the report to be finalized for submission to the Legislature prior to the 2019 Regular Session.

Chaired by First Circuit Judge Rom A. Trader, the Task Force has begun study and deliberations to address issues named in HCR 134: (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and (2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals.

Following presentations on national and state pretrial procedures and a public comment session, Judge Trader appointed six subcommittees, with a mix of stakeholders on each subcommittee. Subcommittees are currently conducting further study in their respective subject areas:

1. Arrest/Booking Subcommittee
2. Jail Screening and Intake Assessment Subcommittee
3. Prosecutorial Decision-Making & Discretion Subcommittee
4. Initial Appearance / Defense Counsel Subcommittee
5. Pretrial Services - Risk Assessment / Supervision Subcommittee (Pretrial Services Operations)
6. Judicial Release & Detention Decision-Making Subcommittee

The Judiciary and the HCR 134 Task Force will reserve comments on proposed changes to current pretrial procedures until after the Task Force Report is submitted in December 2018.

In the event this bill moves forward, the Judiciary respectfully requests a delayed effective date to allow the Judiciary additional time to make modifications to the Judiciary's Information Management System (JIMS) to satisfy the basic requirements of this bill which are currently not available, and to determine the funding for vendor services necessary for these changes.

Thank you for the opportunity to testify on this measure.



HCR134 Task Force Members:

Judge Rom A. Trader, Circuit Court, First Circuit, Chair
Judge Shirley Kawamura, Circuit Court, First Circuit, Recorder
William C. Bagasol, Supervising Deputy, Office of the Public Defender
Myles S. Breiner, Hawai'i Association of Criminal Defense Lawyers - Honolulu
Michael Champion, M.D., State Department of Health
Craig A. De Costa, Hawai'i Association of Criminal Defense Lawyers - Kaua'i
Chief Tivoli S. Faaumu, Maui County Police Department
Chief Paul K. Ferreira, Hawai'i County Police Department
Janice Futa, Office of the Prosecuting Attorney, City & County of Honolulu
Judge Colette Y. Garibaldi, Circuit Court, Admin. Judge, Criminal Division, First Circuit
Wendy Hudson, Hawai'i Association of Criminal Defense Lawyers - Maui
John D. Kim, Maui County Prosecuting Attorney
Justin Kollar, Prosecuting Attorney, County of Kaua'i
Milton Kotsubo, Public Member
Judge Rhonda I. L. Loo, Circuit Court, Second Circuit
Kamaile Maldonado, Office of Hawaiian Affairs
Brook Mamizuka, Intake Administrator, Adult Client Services Branch, First Circuit
Deputy Chief John McCarthy, Honolulu Police Department
Judge Greg K. Nakamura, Circuit Court / Chief Judge, Third Circuit
Senator Clarence K. Nishihara, State Senate, Public Safety Committee Chair
Representative Scott Y. Nishimoto, House of Representatives, Judiciary Comm. Chair
Shelley D. Nobriga, Intake Service Center, PSD
Lester Oshiro, Chief Court Administrator, Third Circuit
Chief Darryl D. Perry, Kaua'i County Police Dept.
Michelle M.L. Puu, Deputy Attorney General, Dept. of the Attorney General
Deputy Chief Victor Ramos, Maui County Police Department
Mitchell D. Roth, Prosecuting Attorney, County of Hawai'i
Judge Michael K. Soong, District Court, Fifth Circuit
Kari Yamashiro, Deputy Chief Court Administrator, Fifth Circuit
Marsha Yamada, Deputy Chief Court Administrator, Second Circuit
Michael S. Zola, Hawai'i Association of Criminal Defense Lawyers - Hawai'i Island

HOUSE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING CRIMINAL PRETRIAL PRACTICES AND PROCEDURES TO MAXIMIZE PUBLIC SAFETY, MAXIMIZE COURT APPEARANCES, AND MAXIMIZE PRETRIAL RELEASE OF THE ACCUSED AND PRESUMED INNOCENT.

1 WHEREAS, the United States Supreme Court declared in *United*
2 *States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our
3 society, liberty is the norm, and detention prior to or without
4 trial is the carefully limited exception"; and
5

6 WHEREAS, Article I, section 12, of the Hawaii State
7 Constitution provides, "Excessive bail shall not be required,
8 nor excessive fines imposed", and further provides, "The court
9 may dispense with bail if reasonably satisfied that the
10 defendant or witness will appear when directed, except for a
11 defendant charged with an offense punishable by life
12 imprisonment"; and
13

14 WHEREAS, section 804-9, Hawaii Revised Statutes, provides
15 that "[t]he amount of bail rests in the discretion of the
16 justice or judge or the officers named in section 804-5; but
17 should be so determined as not to suffer the wealthy to escape
18 by the payment of a pecuniary penalty, nor to render the
19 privilege useless to the poor. In all cases, the officer
20 letting to bail should consider the punishment to be inflicted
21 on conviction, and the pecuniary circumstances of the party
22 accused"; and
23

24 WHEREAS, House Concurrent Resolution No. 85 (2016)
25 requested that the Chief Justice establish a task force to study
26 effective incarceration policies; and
27

28 WHEREAS, the Chief Justice has established the task force,
29 which issued an interim report in December 2016, in which it



1 proclaimed, "Hawaii must chart a new course and transition from
2 a punitive to a rehabilitative correctional model"; and
3

4 WHEREAS, the task force has referenced a Vera Institute of
5 Justice conclusion that "just a few days in jail can increase
6 the likelihood of a sentence of incarceration and the harshness
7 of that sentence, reduce economic viability, promote future
8 criminal behavior, and worsen the health of those who enter -
9 making jail a gateway to deeper and more lasting involvement in
10 the criminal justice system at considerable costs to the people
11 involved and to society at large"; and
12

13 WHEREAS, the American Bar Association Criminal Justice
14 Section Standards for Criminal Justice: Pretrial Release
15 sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the
16 judicial officer should assign the least restrictive
17 condition(s) of release that will reasonably ensure a
18 defendant's attendance at court proceedings and protect the
19 community, victims, witnesses or any other person", and
20 financial conditions "should not be employed to respond to
21 concerns for public safety", nor should financial conditions
22 result "in the pretrial detention of the defendant solely due to
23 an inability to pay"; and
24

25 WHEREAS, the American Council of Chief Defenders Policy
26 Statement on Fair and Effective Pretrial Justice Practices
27 (June 4, 2011) explains standards that "require public defenders
28 to present judicial officers with the facts and legal criteria
29 to support release, and where release is not obtained, to pursue
30 modification of the conditions of release"; and
31

32 WHEREAS, the National District Attorneys Association's
33 National Prosecution Standards, Third Edition, with Revised
34 Commentary, provides that "[a] prosecutor should not seek a bail
35 amount or other release conditions that are greater than
36 necessary to ensure the safety of others and the community and
37 to ensure the appearance of the defendant at trial" and "[t]hese
38 provisions recognize a respect for the presumption of innocence
39 and therefore state a clear preference for release of defendants
40 pending trial"; and
41

42 WHEREAS, research suggests that pretrial services should
43 include adequate and timely pretrial assessments of the accused
44 that are focused on assessing risk of not appearing and risk to



1 public safety, and that the criminal justice system include
2 viable options of appropriate supervision for different types
3 and levels of risks; and
4

5 WHEREAS, in recent years, several other states have
6 undertaken significant reforms to their criminal pretrial
7 practices and procedures, including Alaska, Arizona, Colorado,
8 Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah;
9 and
10

11 WHEREAS, the Hawaii State Bar Association, through its
12 Judicial Administration Committee, conducted a Criminal Law
13 Forum in September 2016, during which it thoroughly discussed
14 criminal pretrial issues among a diverse group of judges,
15 prosecutors, and criminal defense attorneys, and featured
16 speakers from the Honolulu Police Department, Intake Service
17 Center of the Department of Public Safety, National Institute of
18 Corrections, United States Pretrial Services Office of the
19 District of Hawaii, and Arizona Administrative Office of the
20 Courts; and
21

22 WHEREAS, the Judicial Administration Committee recommended
23 establishment of a criminal pretrial task force to examine and
24 make recommendations regarding criminal pretrial practices and
25 procedures; and
26

27 WHEREAS, an examination of potential revisions to criminal
28 pretrial practices, procedures, and laws would improve public
29 safety while protecting state and federal constitutional
30 principles regarding the presumption of innocence, liberty, and
31 right to non-excessive bail, and lower costs throughout the
32 criminal justice system; and
33

34 WHEREAS, the task force will make recommendations regarding
35 the future of a jail facility on Oahu and best practices for
36 pretrial release, and any such recommendations should be
37 considered by or coordinated with the Criminal Pretrial Task
38 Force; now, therefore,
39

40 BE IT RESOLVED by the House of Representatives of the
41 Twenty-ninth Legislature of the State of Hawaii, Regular Session
42 of 2017, the Senate concurring, that the Judiciary is requested
43 to convene a Criminal Pretrial Task Force to:
44



- 1 (1) Examine and, as needed, recommend legislation and
2 revisions to criminal pretrial practices and
3 procedures to increase public safety while maximizing
4 pretrial release of those who do not pose a danger or
5 a flight risk; and
6
- 7 (2) Identify and define best practices metrics to measure
8 the relative effectiveness of the criminal pretrial
9 system, and establish ongoing procedures to take such
10 measurements at appropriate time intervals; and
11

12 BE IT FURTHER RESOLVED that the task force be comprised of
13 members that represent the various perspectives of public
14 officials with significant roles in the criminal pretrial system
15 and include:
16

- 17 (1) The Chief Justice or the Chief Justice's designee, who
18 shall serve as the chairperson of the task force;
19
- 20 (2) A judicial officer representative of each Circuit
21 Court;
22
- 23 (3) A member of the House of Representatives, appointed by
24 the Speaker of the House of Representatives;
25
- 26 (4) A member of the Senate, appointed by the President of
27 the Senate;
28
- 29 (5) A court administrator representative of each Circuit
30 Court;
31
- 32 (6) A representative of the Department of the Attorney
33 General;
34
- 35 (7) A representative from one of the various Intake
36 Services Center of the Department of Public Safety;
37
- 38 (8) A representative of the Prosecuting Attorney's Office
39 of each county;
40
- 41 (9) A representative of the Office of the Public Defender
42 for the State of Hawaii;
43



- 1 (10) Four representatives appointed by the Hawaii
- 2 Association of Criminal Defense Lawyers, including one
- 3 representative from each county;
- 4
- 5 (11) A representative of each county police department;
- 6
- 7 (12) A representative of the Department of Health;
- 8
- 9 (13) The Chairperson of the Board of Trustees of the Office
- 10 of Hawaiian Affairs, or the Chairperson's designee;
- 11 and
- 12
- 13 (14) A member of the public who has knowledge and expertise
- 14 with the criminal pretrial system appointed by the
- 15 Director of Public Safety; and
- 16

17 BE IT FURTHER RESOLVED that no member be made subject to
 18 chapter 84, Hawaii Revised Statutes, solely because of that
 19 member's participation as a member of the task force; and
 20

21 BE IT FURTHER RESOLVED that the Judiciary and the
 22 Department of Public Safety are requested to provide
 23 administrative support to the task force; and
 24

25 BE IT FURTHER RESOLVED that the task force, with the
 26 assistance of the Legislative Reference Bureau, is requested to
 27 submit a report of its findings and recommendations, including
 28 any proposed legislation, to the Legislature no later than
 29 twenty days prior to the convening of the Regular Session of
 30 2019; and
 31

32 BE IT FURTHER RESOLVED that, upon request of the task
 33 force, the Legislative Reference Bureau is requested to assist
 34 in the preparation of the report; provided that the task force
 35 submits a draft, including any other information and materials
 36 deemed necessary by the Bureau, to the Bureau no later than
 37 August 1, 2018, for the preparation of the report; and
 38

39 BE IT FURTHER RESOLVED that certified copies of this
 40 Concurrent Resolution be transmitted to the Chief Justice of the
 41 Hawaii Supreme Court, Attorney General, Public Defender of the
 42 State of Hawaii, Director of Health, Director of Public Safety,
 43 Chairperson of the Board of Trustees of the Office of Hawaiian
 44 Affairs, Chief of Police of each county police department,



1 Prosecuting Attorney of each county, and the Hawaii Association
2 of Criminal Defense Lawyers.

3
4
5
6



HB-2387

Submitted on: 1/30/2018 5:17:29 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Oppose	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES HB 2387, Relating to the Release of Misdemeanants. This measure will give the Director of Public Safety the ability to override the carefully contemplated orders issued by the courts. Accordingly, the Department requests that this measure be HELD.

Thank you very much for the opportunity to provide this testimony.

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

CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

February 1, 2018

RE: H.B. 2387; RELATING TO THE RELEASE OF MISDEMEANANTS.

Chair Takayama, Vice-Chair Gates, and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to H.B. 2387.

The purpose of H.B. 2387 is to expand the Department of Public Safety’s (“PSD”) ability to release defendants convicted of, or awaiting trial for, misdemeanor or petty misdemeanor offenses. It appears this bill is intended to reduce overcrowding in PSD’s facilities, and serve as an alternative to incarceration, yet it provides no alternative programs or oversight for those who are released this way.

Ultimately, the Department strongly believes that allowing the Director of PSD to summarily release individuals from custody—whom our courts have specifically ordered to remain in custody—seems directly contrary to the goal of public safety, and undermines the judgement and authority of our courts. As it is, our courts are already very liberal about releasing misdemeanants from custody pending trial, and those who are sentenced to serve additional incarceration, even after their date of sentencing (i.e. more than “credit for time served”), are sentenced that way for very good reason, based on their past criminal history and/or the nature of their specific offense.

As written, the amendments on page 2, lines 12-13, appear to preclude the Director from qualifying anyone whose only “offense that involves injury or threat of injury to another” is the present offense/arrest. To further clarify this, the Committee should consider taking the word “previously” out of page 2, line 14.

In addition, it is unclear what effect the amendments on page 1, lines 16-17, would have on implementation of this statute, as Section 706-663 is the sentencing provision for those who are convicted of an offense identified as a petty misdemeanor or misdemeanor.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 2387. Thank you for the opportunity to testify on this matter.



TO: Chair Takayama
Vice Chair Gates
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Comments in Relation to HB2387 Relating to Release of Misdemeanants

Aloha. This is a very important Bill for victims of domestic violence. The community and agents of law enforcement, and criminal justice system often underestimate the risk and the danger faced by victims of domestic violence. We are grateful that domestic violence is included as a crime of violence that prevents release of sentenced misdemeanants in response to overcrowding at correctional facilities. This testimony is to underscore the importance of the system's commitment to securing effective accountability of perpetrators of domestic violence who are focused on their victims and are likely to harm again.

For the many cases that are pled down to harassment (?) and assault in the third degree, the defendants fall outside the category of defendants who have been arrested or convicted for abuse of family or household members (as defined in 709-906). For all those abusers who are not arrested, or have a warning citation issued to them, they are not any less of a threat or a danger to their partners. We cannot overstate the imperative for law enforcement, criminal justice and public safety system to understand that amendments to statute like this, potentially impacts the safety of victims who have had to work very diligently to cooperate with an otherwise ineffective system. The lack of an arrest, or the plea bargains arrived at by the prosecutor's office place victims at continual risk of more harm, injury and terror.

There are countless women whose safety may be in jeopardy as a result of this legislation. These are not perceived or imagined threats to survivor's safety. At the Domestic Violence Action Center we see countless examples of system ineffectiveness that terrorizes and injures the agency's clients and many other victims of intimate partner violence.

This testimony is provided to your committee to respectfully consider the implications of system adjustments that cease to support victim's needs for effective system response to their complex and potentially fatal abuse.

Thank you for this opportunity to testify.

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
LEGAL HELPLINE: (808) 531-3771
TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200
WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG
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Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: House Committee on Public Safety
FROM: Carl Bergquist, Executive Director
HEARING DATE: 1 February 2018, 10 AM
RE: HB2387, RELATING TO THE RELEASE OF MISDEMEANANTS, **OPPOSE**

Dear Chair Takayama, Vice Chair Gates, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) opposes this measure to further limit the early release of misdemeanants. The bill amends, in the wrong direction, a program under the auspices of the Department of Public Safety (DPS), a program that is *not* currently operating as advertised. In other words, instead of early release to prevent overcrowding in our prisons, this authority is not being exercised much, if at all. This new category of individuals, who would be excluded from a hypothetical early release, include any one "previously" arrested for, i.e. a conviction is no longer required, Title 37 offenses such as threat of injury to another, stalking and sexual harassment in the 4th degree. This is widening the dragnet of non-early release, and perhaps needlessly denying early release to someone who will eventually be acquitted of the present offense, and was obviously also not convicted of the "previous" one.

We submit that a better course is to not only reform the bail system as proposed in [HB1996](#) & [HB2221](#), but to ensure that this early release authority is actually exercised, and that more, not less, individuals become eligible. [SB2880](#) provides an example of how to do just that. It proposes to reform a current law, [§HRS 712-1243](#) promoting dangerous drugs in the third degree, which is currently a class C felony. Instead, a new fourth degree promotion misdemeanor offense would be created. The number of individuals currently housed in pre-trial detention and charged with a violation of §712-1243, and thus currently ineligible for early release, is likely significant. In [a 3/5/2017 Star Advertiser article regarding the drug paraphernalia reform](#), it emerged that some 109 inmates were detained pre-trial with that then class C felony as the lead charge. With the enactment of Act 72 (2017), this will no longer be the case. The next step to reduce the overcrowding is to change the even more commonly charged offense, promoting a dangerous drug in the third degree, from a class C felony to a misdemeanor.

Thank you for the opportunity to testify.

HB-2387

Submitted on: 1/30/2018 3:30:35 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Cates		Oppose	No

Comments:

Property crime is the number one crime in Hawaii and effects the majority of residents and visitors. Releasing criminals due to prison overcrowding is irresponsible and puts the public in jeopardy. Ever since the felony theft threshold has been raised, the number of misdemeanants will inevitably increase. This bill will further victimize those who have already lost their peace of mind, valuables, and items of sentimental value and encourage these "misdemeanants" to continue to victimize others.

COMMUNITY ALLIANCE ON PRISONS

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

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COMMITTEE ON PUBLIC SAFETY

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Wednesday, February 1, 2018

10:00 am

Room 312

LATE

SUPPORT WITH AMENDMENT - HB 2387 - RELEASE OF MISDEMEANANTS

Aloha Chair Nishihara, Vice Chair Wakai 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 more than two decades. This testimony is respectfully offered on behalf of the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 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 Kanaka Maoli, far, far from their ancestral lands.

HB 2387 is an administration bill that defines the circumstances for the Director of Public Safety or a designee of the director to release pretrial and sentenced misdemeanants at community correctional centers. The justification for this bill is purportedly to expand the criteria for eligible individuals.

Community Alliance on Prisons cannot support the bill as it is written. We are concerned that adding the language "arrested or" to line 14 page 2 of bill does little to increase those eligible for release. We don't see how adding arrestees, who are innocent until proven guilty, helps to increase the number of individuals eligible for release.

Community Alliance on Prisons, therefore, respectfully asks for an **amendment** to this bill:

Remove "arrested or" from page 2, line 14 of HB 2387

In 2016, HB 2391 CD1, a bill to release certain misdemeanants was enacted into law as Act 217. It was criticized by advocates who saw that the law would not do much to relieve overcrowding. It was jokingly said that the bill would allow only 3 people statewide to be released.

The December 2017 report¹ filed with this legislature confirmed that critique:

Three (3) offenders were released during the review period pursuant to Act 217. Two (2) were released on Kauai and one (1) on Hawaii Island. The demographic information for the three (3) releases includes that they were sentenced misdemeanants, who were released on their own recognizance (ROR). They all scored community custody on the jail classification instrument. They did not have any medical or mental health concerns, and they had secured a residence. The number of bed days saved ranged from two (2) days to twelve (12) days

The post-release records of these 3 individuals cited in this report reveal that we are imprisoning people who pose little to no risk to the public and would probably be better served in community-based programs that directly address their challenges. Here is post-release information:

III. Any information regarding post-release offenses committed or allegedly committed by a misdemeanant.

A review of CJIS for the three (3) individuals released substantiated that they did not have any post release offenses resulting in an arrest or commitment.

IV. Any known incidents of interactions between released misdemeanants and law enforcement agencies due to alleged criminal behavior.

A review of CJIS for the three (3) individuals released substantiated that they did not have any post release offenses that resulted in an arrest or commitment.

If Hawai'i truly wants to improve the quality of justice and create a real criminal justice system,

- We must use incarceration as the LAST resort.
- We must stop criminalizing behavioral offenses and start building a robust and diverse array of community-based programs, including rebuilding our community healthcare system, that directly address the public health and social justice challenges facing some of our most vulnerable people.
- We must build a justice system that respects OUR community values, that focuses on human dignity and compassion, that believes that people can be redeemed, and that restores and rehabilitates those who have lost their way and those who may never have found it.

¹ DEPARTMENT OF PUBLIC SAFETY REPORT TO THE 2018 LEGISLATURE IN RESPONSE TO HRS 353-36 & 37 ACT 217, SESSION LAWS OF HAWAII'I 2016 RELEASE OF MISDEMEANANTS
<https://dps.hawaii.gov/wp-content/uploads/2017/12/14-Act-217-2016-Release-of-Certain-Misdemeanants.pdf>

We implore the committee to look at the plethora of research available about the counter-productivity of imprisoning low-level lawbreakers. Even a short time in jail can have lifelong impacts.

INCARCERATION'S FRONT DOOR: THE MISUSE OF JAILS IN AMERICA (2015)

<https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>

Key Takeaway: The misuse of jails in America is helping to drive mass incarceration and is part of a system that is neither economically sustainable nor beneficial to public safety, community well-being, and individual rehabilitation.

Nearly 75 percent of both pretrial detainees and sentenced offenders are in jail for nonviolent traffic, property, drug, or public order offenses. Underlying the behavior that lands people in jail, there is often a history of substance abuse, mental illness, poverty, failure in school, and homelessness.

INCARCERATION TRENDS: REDUCING THE USE OF JAILS (2015)

<https://www.vera.org/our-work/ending-mass-incarceration/reducing-the-use-of-jails>

Reducing the Use of Jails. Conversations about mass incarceration tend to focus on prison, but local jails admit 20 times more people annually. (...) Today, jails log a staggering 12 million admissions a year – mostly poor people arrested for minor offenses who can't post bail, and for whom even a few days behind bars exact a high toll. (...) There's no simple fix, so the work includes using alternatives to arrest and prosecution for minor offenses, recalibrating the use of bail, and addressing fines and fees that also trap people in jail.

THE DOWNSTREAM CONSEQUENCES OF MISDEMEANOR PRETRIAL DETENTION (2016)

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2809840

Pretrial detention has a significant impact on downstream criminal justice outcomes – both in the immediate case, and through the future criminal activity of detained defendants. Detention increases the rate of guilty pleas, and leads detained individuals to commit more crime in the future.

WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES (2015)

<http://whopaysreport.org/>

A better approach is possible. For decades, individuals, families, and communities – especially low-income people and communities of color – have faced destabilizing and detrimental impacts as a result of our nation's unfair criminal justice policies. The repercussions of these policies extend far beyond sentencing and incarceration, affecting the employment, education, housing, and health of individuals and their families for years to come. Three recommendations:

Restructuring and Reinvesting: Following the lead of states like California, all states need to restructure their policies to reduce the number of people in jails and prisons and the sentences they serve.

Removing Barriers: Upon release, formerly incarcerated individuals face significant barriers accessing critical resources like housing and employment that they need to survive and move forward.

Restoring Opportunities: Focusing energy on investing and supporting formerly incarcerated individuals, their families, and the communities from which they come can restore their opportunities for a brighter future and the ability to participate in society at large.

DETAINING THE POOR: HOW MONEY BAIL PERPETUATES AN ENDLESS CYCLE OF POVERTY AND JAIL TIME (2016)

<http://www.prisonpolicy.org/reports/incomejails.html>

People in local jails are significantly poorer than non-incarcerated people, and even poorer than people in prison, finds a new report by the nonprofit Prison Policy Initiative. The recommendations:

1. Stop locking people up for failure to pay fines and fees
2. Eliminate the use of money bail
3. Reduce the number of arrests that lead to jail bookings through increased use of citations and diversion programs
4. Increase funding of indigent criminal defense
5. Eliminate all pay-to-stay programs
6. Reduce the high costs of phone calls home from prisons and jails and stop replacing in-person jail visits with expensive video visitation.

INCARCERATION, SOCIAL CAPITAL, AND CRIME: IMPLICATIONS FOR SOCIAL DISORGANIZATION THEORY (1998)

<http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.1998.tb01255.x/abstract>

On a macro-level, relying on incarceration to reduce disorder can undermine the development of more informal means of social control, which are important to the long-term prevention of crime.

A LIFE-COURSE THEORY OF CUMULATIVE DISADVANTAGE AND THE STABILITY OF DELINQUENCY (1997)

http://scholar.harvard.edu/sampson/files/1997_act_laub.pdf

Stigma: Increased likelihood of criminal behavior, alteration of personal identity, exclusion from opportunities such as employment and education.

ENDURING STIGMA: THE LONG-TERM EFFECTS OF INCARCERATION ON HEALTH. (2007)

<http://hsb.sagepub.com/content/48/2/115.abstract>

Victims of stigmatization are cognizant of the negative attitudes against them, which may lead to detrimental effects both physically and mentally. For example, stigma of prison was linked to reduced health, noting that health problems linked to incarceration appeared only once prisoners were released.

MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES (2006)

<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=789>

More than half of all prison and jail inmates, including 56% of state prisoners, 45% of federal prisoners and 64 percent of local jail inmates, were found to have a mental health problem, according to a new study published today by the Justice Department's Bureau of Justice Statistics (BJS). The findings represent inmates' reporting symptoms rather than an official diagnosis of a mental illness. The study determined the presence of mental health problems among prison and jail inmates by asking them about a recent history or symptoms of mental disorders that occurred in the last year. Among the inmates who reported symptoms of a mental disorder:

- 54% of local jail inmates had symptoms of mania, 30% major depression and 24% psychotic disorder, such as delusions or hallucinations.
- 43% of state prisoners had symptoms of mania, 23% major depression and 15% psychotic disorder.
- 35% of federal prisoners had symptoms of mania, 16% major depression and 10% psychotic disorder.

Female inmates had higher rates of mental health problems than male inmates – in state prisons, 73% of females and 55% of males; in federal prisons, 61% of females and 44% of males; and in local jails, 75% of females and 63% of males.

THE PRICE OF JAILS: MEASURING THE TAXPAYER COST OF LOCAL INCARCERATION (2015)
<http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/The-Price-of-Jails-report.pdf>

The only way localities can safely reduce the costs incurred by jail incarceration is to limit the number of people who enter and stay in jails. This is no small task. How and why so many people cycle through jails is a result of decisions dispersed among largely autonomous system actors. This means that the power to downsize the jail is largely in the hands of stakeholders outside its walls. So only by widening the lens – looking beyond the jail to the decisions made by police, prosecutors, judges, and community corrections officials – will jurisdictions be able to significantly reduce the size of their jails, save scarce county and municipal resources, and make the necessary community reinvestments to address the health and social service needs that have for too long landed at the doorstep of the jail.

When will Hawai`i stop feeding the perpetual prisoner machine and put those millions of dollars in resources towards building communities that have enough services to meet the needs of their people? Crime is at the lowest rate since we have been collecting data.

WHAT COMMUNITIES NEED IS SUPPORT.

In Hawai`i, we are fortunate to be guided by the strength and fearlessness of the kupuna who came before us and on whose shoulders, we proudly stand. *Our* community values must prevail, not those from other places. The research and data are there. The majority of our imprisoned population are serving sentences for low-level offenses. We know what to do. Now we must stand together and do it! We are Hawai`i. We care for and about each other. We can do this.

"The feelings of one who has been imprisoned, politically or otherwise, can only be understood by a person who has passed through the ordeal."

Queen Lili`uokalani
Hawaii's Story by Hawaii's Queen
January 1898