

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN  
CHAIR

JOYCE K. MATSUMORI-HOSHIJO  
MICHAEL A. TOWN  
ANNELLE C. AMARAL  
FITUINA F. TUA  
MEMBERS

TOMMY JOHNSON  
ADMINISTRATOR

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

TESTIMONY ON HOUSE BILL 2388  
RELATING TO PAROLE

By  
Edmund "Fred" Hyun, Chairman  
Hawaii Paroling Authority

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

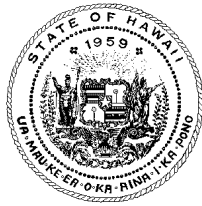
Thursday, February 1, 2018, 10:00 a.m.  
State Capitol, Conference Room 312

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

The Hawaii Paroling Authority (HPA) **strongly supports** House Bill (HB) 2388, which is an Administration Bill that seeks to clarify circumstances under which the HPA may grant early discharges. This measure also provides the HPA with discretion when considering pardons for paroled prisoners and clarifies early discharge consideration of paroled prisoners, who have served at least five years on parole supervision. Early discharge and pardon considerations are administrative actions, not in-person hearing(s) before the Authority.

Thank you for the opportunity to provide testimony on HB 2388.

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Thank you for the opportunity to provide testimony on HB 2388.

**HB-2388**

Submitted on: 1/31/2018 9:56:19 AM

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

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

Comments:

The Department of the Prosecuting Attorney, County of Maui OPPOSES this measure and asks that it be HELD. Thank you very much for the opportunity to provide this testimony.

**HB-2388**

Submitted on: 1/31/2018 3:13:06 PM

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

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Perruso		Oppose	No

Comments:

I understand that the Parole Board wants to take away the right of persons under parole to have an IN PERSON hearing for Early discharge consideration. Instead, they want to have "discretion" and to pick and choose who will get an in-person hearing. Persons on parole should have an opportunity to be considered for early discharge and present their case in person.

**LATE**



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Aloha Chair Takayama, Vice Chair Gates, and members of the Committee on Public Safety,

The Young Progressives Demanding Action – Hawai‘i **strongly oppose** HB 2388. HRS 353-70 is already a good piece of policy in terms of mandating that parolee cases be frequently reviewed. The parole board should be looking for parolees that are making genuine efforts at rehabilitation in the community (something that is far more likely to succeed than supposed rehabilitation while incarcerated) and looking for reasons to return these people to their communities full-time so that they can add productivity to society and begin to rebuild their lives in earnest. Most of the clarifying language in HB 2388 is unnecessary in our view and reads as redundant safeguards in preventing parolees who are, presumably, not making that genuine effort from being pardoned or discharged from their parole early. Of course such decisions should be at the “discretion of the authority”—it already is!

One section of added language though is very backward in policy direction: “unless the inmate is serving any portion of a court-ordered mandatory minimum sentence or the inmate or paroled prisoner owes restitution.” While restitution is an important part of the healing process, we do not feel that the discretion of the authority should be hampered through legislation. What if the parties involved in the restitution process all agree that the parolee should be let off early because of his or her genuine attempts at rehabilitation? Should this bill become law, that additional language would prevent such a discharge. Similarly, the “mandatory minimum sentence” line is an extremely problematic absolute that could severely hamper the authority's discretion to early discharge. Besides which the entire concept of mandatory minimums has been proven in dozens of studies dating back to the '90s as one of several primary causes of over-incarceration—the very problem we are all trying to address here! Pegging the authority's discretion to early discharge to mandatory minimums is like pegging our push toward 100 percent renewable energy to fracking, LNG and “clean coal”—totally asinine.

It is our recommendation, therefore, that this committee kill this bill immediately.

Mahalo,

Will Caron  
Social Justice Action Committee Chair  
Young Progressives Demanding Action – Hawai‘i

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Thursday, February 1, 2018

10:00 am

Room 312



## OPPOSE HB 2388 - HPA ADMINISTRATIVE REVIEWS

Aloha Chair Takayama, Vice Chair Gates 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 2388 clarifies circumstances under which the Hawaii Paroling Authority may grant early discharges. Provides the paroling authority with discretion when considering pardons for paroled prisoners and clarifies early discharge consideration of paroled prisoners is an administrative action, not an in-person hearing before the authority.

Community Alliance on Prisons supports the parole board considering early discharges for those individuals deemed to be reliable and trustworthy. We believe, however, that any individual whose case is being considered has the right to appear in person before the board.

Since this bill seeks to extinguish due process rights AND it codifies the fact that HPA has been violating the law for years, Community Alliance on Prisons opposes this measure.

There appears to be some misunderstanding of the word "shall" in the law. It is and has been the general understanding that "shall" means a mandate/requirement, while "may" is discretionary.

The statute on this is clear:

**§353-70 Final discharge.** Whenever, in its opinion, any paroled prisoner has given such evidence as is deemed reliable and trustworthy that the paroled prisoner will remain at liberty without violating the law and that the paroled prisoner's final release is not incompatible with the welfare of

society, the Hawaii paroling authority may grant the prisoner a written discharge from further liability under the prisoner's sentence.

**Any paroled prisoner who has been on parole for at least five years shall be brought before the paroling authority for purposes of consideration for final discharge and complete pardon.** In the event the prisoner is not granted a final discharge and full pardon, the paroled prisoner shall be brought before the paroling authority for the aforementioned purposes annually thereafter.

Any person, who, while on parole, enters the military service of the United States, may, upon the person's honorable discharge therefrom, petition the paroling authority for a final discharge, and the paroling authority may consider the honorable discharge as grounds for granting a final discharge from parole and recommending to the governor a full pardon. [L 1917, c 103, §7; RL 1925, §1566; am L 1931, c 126, §7; RL 1945, §3963; am L 1949, c 2, §1; RL 1955, §83-68; am L 1957, c 308, §4; am L 1963, c 149, §1; HRS §353-70; am L 1976, c 92, pt of §8; gen ch 1985]  
[https://www.capitol.hawaii.gov/hrscurrent/Vol07\\_Ch0346-0398/HRS0353/HRS\\_0353-0070.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0353/HRS_0353-0070.htm)

Is it fair to codify an agency's continual violation of the law?

Doesn't this violate due process rights of people on parole?

We are saddened by this action. It sends a strong and very clear message about how the law accommodates certain behavior, by certain people and agencies who ignore the law and then change the law because they were never held to account. This really seems like an assault on democracy. This is why people lose faith in government. Justice is supposed to blind. And justice starts with the truth. The law is clear: **Any paroled prisoner who has been on parole for at least five years shall be brought before the paroling authority for purposes of consideration for final discharge and complete pardon.**

Please don't let an agency that demands accountability from its clients get away with codifying illegal behavior. It sends the wrong message to their clients and to the community.

Community Alliance on Prisons respectfully asks that

- the individual be given the right to appear before the board in person, if able, or
- the individual, if unable, can have someone appear and advocate on their behalf, or
- the individual/advocate can file a written consent for an administrative review

Community Alliance on Prisons continues to be concerned about the ineffectiveness and far-reaching impacts that mandatory minimums have played in Hawai'i's "justice" system. We understand that this is not in the "wheelhouse" of the Hawai'i Paroling Authority, however, the impacts of mandatory minimums affect them, as the impacts of mass incarceration continue to ripple throughout our communities as evidenced by lines 10-12 on Page 1 of the bill that reads: "*unless the inmate is serving any portion of a court-ordered mandatory minimum sentence or the inmate or paroled prisoner owes restitution.*"



A 2016 PEW poll found that an overwhelming number of Americans, 79%, approve of eliminating all mandatory minimums for drug cases and giving judges flexibility based on the individual cases. Again, a majority of Democrats and Republicans agree on this issue. The vast majority of poll respondents – 85 percent – also support allowing people in prison to earn time off their sentences through programs intended to reduce the chances of recidivism<sup>1</sup>.

Regarding restitution, Community Alliance on Prisons supports making the victims of crime whole and restitution is an important part of that, however, it is not the only thing that victims need. While the spotlight is on restitution, the state does little to nothing to help prepare people who are exiting incarceration. The accumulation of fees and fines that burden a person who is exiting incarceration with no money and few resources can be overwhelming. Just finding housing and employment is daunting; having a huge number of financial obligations makes reentry seem impossible for those with no family or other support. This situation impacts the prospect of restitution getting paid.

There are strategies that give survivors of crime a voice. Restorative Circles are one example currently happening in O`ahu. The person who caused the harm (the incarcerated person) must be accountable and must want to make amends for the harm they caused. Amazing things happen when the walls come down and people just talk. They cry, they hug, they start to see more than the harmful behavior. Many times, it seems like the first time people have had these deeper and thoughtful conversations about the impact of their actions. It is healing for the survivors, as well as the person responsible for the harm.

When we talk about parole violators, who are they? The majority of parole violators are in for technical violations, NOT NEW CRIMES. From 2013-2017 .3% of parolees committed new crimes - 4 new crimes committed among 1,297 parole revocations in 4 years<sup>2</sup>. As of July 2017, there were 88 parole violators in Saguaro (CCA/CoreCivic) Prison.

As of December 31, 2017, the department reported<sup>3</sup> that there were 542 parole violators incarcerated statewide, almost exclusively for technical violations of their parole. Parole violators comprise 11% of the total statewide population. What an incredible waste of money when most people could be better served by community-based programs that directly address their pathways to incarceration. Why do we continue doing the same thing and expect different results? Isn't that the definition of insanity?

*You will never do anything in this world without courage.*

*It is the greatest quality of the mind next to honor.*

*Aristotle*

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<sup>1</sup> Real Clear Politics, by James Arkin, RCP Staff, February 11, 2016.

[https://www.realclearpolitics.com/articles/2016/02/11/poll\\_majority\\_supports\\_prison\\_and\\_justice\\_reforms\\_129635.html](https://www.realclearpolitics.com/articles/2016/02/11/poll_majority_supports_prison_and_justice_reforms_129635.html)

<sup>2</sup> Hawai'i Paroling Authority Annual Reports

<sup>3</sup> Department of Public Safety Population Report – December 31, 2017



COMMITTEE ON PUBLIC SAFETY  
Rep. Gregg Takayama, Chair  
Rep. Cedric Asuega Gates, Vice Chair  
Thursday, February 1, 2018  
10:00 am in Room 312

**LATE**

RE: OPPOSE – HB 2388 RELATING TO PAROLE

Hawai'i Justice Coalition is a grassroots education and advocacy coalition comprised of organizations and individuals working to reduce the number of people incarcerated in Hawai'i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services. We believe that comprehensive criminal justice reform makes fiscal sense, and builds safe and healthy communities.

When analyzing proposed criminal justice legislation, we implore policy makers to evaluate each bill from a systems thinking approach with two overarching principles in mind:

- **Criminal justice policies, NOT crime rates, are the prime drivers of changes in jail and prison population.**
- **Through comprehensive criminal justice reform, other states have proven that it is possible to substantially reduce the incarcerated population, and save money, without compromising public safety.**

With these principles in mind, let's examine some facts relating to Hawaii's criminal justice system:

- From 1977 to 2016, Hawai'i increased its incarcerated population from 398 prisoners in 1977 to 5,800 in July 2015. This is an increase of 1,357%.
- During that same period, Hawaii's incarceration rate increased from 84`% from 43 per 100,000 persons in 1977 to 405 per 100,000 persons today.
- Hawaii's jails and prisons are severely overcrowded, and have been for many years.

- In 1995, Hawai'i became to transfer incarcerated men and women to privately operated prisons on the American continent. Currently, Hawai'i has about 1,300 men out-of-state.
- Hawai'i has 1,500 people on parole and 21,100 people on probation. (Judiciary 2015 Report).

There are many entry points and exit points in the criminal justice system. Parole supervision, and early discharge are exit points at the latter part of the system. If a person is placed under parole supervision, it means that he/she has been convicted of a criminal offense/s, has completed a minimum sentence of incarceration, and that the Paroling Authority has made a determination that the individual may serve a portion of his/her sentence under supervision in the community.

HPA has submitted testimony in strong support of this bill, claiming that early discharge is an administrative action that does not require an in person hearing. However, our state statute currently mandates an in person hearing when a person has been on parole for at least five consecutive years:

**§353-70 Final discharge.** Whenever, in its opinion, any paroled prisoner has given such evidence as is deemed reliable and trustworthy that the paroled prisoner will remain at liberty without violating the law and that the paroled prisoner's final release is not incompatible with the welfare of society, the Hawaii paroling authority may grant the prisoner a written discharge from further liability under the prisoner's sentence.

**Any paroled prisoner who has been on parole for at least five years shall be brought before the paroling authority for purposes of consideration for final discharge and complete pardon.** In the event the prisoner is not granted a final discharge and full pardon, the paroled prisoner shall be brought before the paroling authority for the aforementioned purposes annually thereafter.

Before making a policy change to the current parole statute, policy makers should ask the following questions:

1. Why is HPA advocating to remove the mandatory language from the statute which triggers an in-person hearing for early discharge consideration after a person has been on parole status for five consecutive years?
2. Are these reasons supported by evidence?
3. Are these reasons supported by best-practices, or practices successfully employed in other jurisdictions that have successfully reduced their correctional population?

4. How would the removal of the current statutory requirement of an in-person hearing effectuate the larger goals of reducing the number of persons incarcerated and/or under legal supervision in Hawai'i?
5. How does the removal of this in person hearing promote transparency, accountability and a sense of integrity in HPA's process?
6. From a reintegration perspective, how would HPA meaningfully evaluate discharge after five years without an individual having an opportunity to testify, and the HPA members having an opportunity to ask questions?

At the Senate hearing on the companion bill, I heard data relating to the number of HPA hearings held annually. In effect, HPA appears to be making an efficiency argument to justify removing the in-person hearing. **HPA's 2017 Annual Statistical Report outlines the number of hearings and administrative actions taken by the HPA. A closer examination of the data reveals that over the past three fiscal years, HPA has experienced a decrease in the number of minimum term hearings, applications for reduction of minimum sentences, parole violation hearings, discharges in parole and pardon investigations.**

The **only two categories with an increase are the number of parole consideration hearings (from 2564 in 14-15 to 2821 in 16-17) and the number of actual parolees release (613 to 713).**

Finally, **HJC has concerns about the proposed change prohibiting a written discharge if the inmate or paroled prisoner owes restitution.** While we understand the importance of restitution, we also understand that some individuals may not be able to pay it in full for various reasons, including, but not limited to - inability to work due to medical and/or mental health status, being underemployed or unemployed, the difficulties associated with maintaining employment and earning a living wage as a person with an arrest and conviction record, child support responsibilities and obligations, and low wages earned inside jail and prison. While restitution can be taken into account when making early discharge considerations, it should NOT wholly disqualify a person from early discharge

Thank you for the opportunity to provide testimony on this bill. Please hold

Sincerely,

Carrie Ann Shirota, JD

Hawai'i Justice Coalition  
[www.hi.justice.org](http://www.hi.justice.org)  
[cashirota808@gmail.com](mailto:cashirota808@gmail.com)

**LATE**

**HB-2388**

Submitted on: 2/1/2018 5:21:58 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Oppose	Yes

Comments: