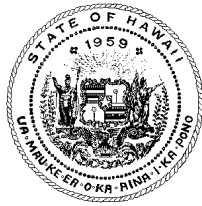


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
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CHAIR

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TOMMY JOHNSON
ADMINISTRATOR

No. _____

TESTIMONY ON SENATE BILL 2815
RELATING TO PAROLE

By
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

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

Tuesday, January 30, 2018, 1:15 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Hawaii Paroling Authority (HPA) **strongly supports** Senate Bill (SB) 2815, 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 year 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 SB 2815.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, January 30, 2018

1:15 pm

Room 229

CONCERNS - SB 2815 - PAROLE - EARLY DISCHARGE

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.

SB2815 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.

Therefore, 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 advocate on their behalf, or
- the individual/advocate can file a written consent for an administrative review instead

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 recidivism¹.

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 fewer 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 support. This situation impacts the prospect of restitution getting paid.

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 years².

As of December 31, 2017, the department reported³ 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

¹ 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

² Hawai'i Paroling Authority Annual Reports

³ Department of Public Safety Population Report – December 31, 2017



Aloha chair nishihara, vice chair wakai, and members of the Committee on Public Safety, Intergovernmental, and Military Affairs,

The Young Progressives Demanding Action – Hawai‘i **strongly oppose** SB 2815. 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 SB 2815 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

SB-2815

Submitted on: 1/29/2018 12:41:15 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

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

Comments:

We STRONGLY OPPOSE this bill, which seeks to validate the Hawaii PAROLING Authority's systemic failure to afford Parolees their right to DUE PROCESS as is clearly set forth in the current law. The existing law is CLEAR & UNAMBIGUOUS, that after 5 years the "parolee shall be brought before the HPA for the purpose of discharge or pardon consideration." I have been trying to work with the HPA to have them follow the LAW. Their Deputy Attorney General Lisa Itomura is continually giving the HPA bad information with respect to what is the law & what is not. The HPA lost a huge case against me when I challenged the revocation of my parole. They will lose this case as well.

This AUGUST BODY must UPHOLD the law that itself has created & NOT reward violators of the law to avoid responsibility for violating the law. NO ONE IS ABOVE THE LAW. We respectfully request that this committee defer or hold this bill. Mahalo.

TESTIMONY FOR THE LIBERTARIAN PARTY OF HAWAII

c/o 1658 Liholiho St #205

Honolulu, HI 96822

January 28, 2018

RE: SB 2815 to be heard Tuesday January 30, in Room 229, at 1:15 PM

To the members of the Senate Committee on Public Safety

Support intent

The Libertarian Party supports efforts to allow non-dangerous people earlier release from our prisons. We remain highly concerned why so many people like this are incarcerated to begin with. Without a meaningful discussion on statutory reform we will continue with a system that harms marginalized people, costs the tax payers far too much money, and does little to nothing to protect the general public.

The question of mandatory minimums is problematic. We do not need such rules to begin with. We hire professional people to run our prisons and qualified folks to oversee parole and probation issues. The rare cases when a person commits some dangerous crime when on parole or probation gets too much publicity. So we end up with an inappropriate over reaction. The public needs to hear more about people who successful reintegrate into the community.

Nor does the issue of making restitution seem to be a fitting concern for denial of early release. To state what should be obvious, convicted individuals need to be out in the community earning a living to make restitution. The job of the prisons should be to ensure they have skills sufficient to overcome the difficulties ex-inmates may encounter in the labor market.

Aloha



Tracy Ryan
For Harm Reduction Hawaii

Sen. Nishihara & Members of the Committee on Public Safety, Intergovernmental and Military Affairs:

SB 2815 precludes a discharge for prisoner who is serving a “court-ordered mandatory minimum sentence” and a prisoner or parolee owes restitution. It would also ostensibly enable the Hawaii Paroling Authority to administratively review whether those on parole for five years can be granted a final discharge and full pardon.

Given that most behind the walls and those under correctional supervision are not in the best position to generate personal income, the law should not summarily preclude discharge but rather provide decision makers with flexibility in discharging individuals who have otherwise complied with terms of their parole. Further, reliance upon mandatory minimum sentencing in any context is a blunt policy instrument that jettisons proportionality and fairness in determining an individual’s culpability, or determining their level of risk to the community. Hawai’i policymakers should also continually reevaluate whether its current system of criminal justice sentencing is in alignment with the practice of other jurisdictions in the nation. The current central role of the Hawaii Paroling Authority in sentencing is unusual.

Hawai’i spends a disproportionate share of its state budget on criminal justice expenditures given that crime rates have been relatively low for many years, including a record low overall rate in 2016. (Associated Press. “Report: Hawaii’s 2016 Crime Rate Lowest in at Least 40 Years.” 01 September 2017.) There are now roughly 30,000 persons in Hawai’i who are incarcerated or under correctional supervision. The relatively large number of persons who remain system involved in light of sustained low levels of crime raises a fundamental question as to whether this state’s criminal justice system is calibrated to produce this result.

Lengthy periods of parole and probation drive recidivism and inflate prison and jail populations, thereby increasing costs and frustrating the penological objectives of rehabilitation and reintegration. According to the three most recent Hawaii Paroling Authority reports, over 300 parolees each year have their parole revoked, with all but four having their parole revoked for “technical violations.”

Many states, including those dominated by conservative Republicans, have reformed their parole and probation practices. (Teresa Wiltz. “States Seek Shortened Probation and Parole for Many.” *Governing*. 27 April 2017.) South Dakota also “reclassified certain low-level, nonviolent crimes such as drug offenses and property crimes, allowing offenders convicted of those crimes

to get automatic probation, rather than a prison sentence.” The state also “enacted a law that allows people convicted of lesser crimes to be discharged from probation after a year for good behavior.”

Access to needed substance abuse treatment and mental health treatment, under correctional supervision and apart from it, is also critical in improving rehabilitation and reintegration and reducing recidivism. As a general matter, undiagnosed and untreated substance abuse and mental health disorders are a key drivers of criminal justice system involvement:

“Persons with co-occurring mental and substance use disorders (CODs) are more often the rule than the exception in justice settings [citations]. The overrepresentation of people with CODs in the criminal justice system can be explained by several factors. Much of the growth in justice populations over the past 20 years is attributable to drug law violators, who have high rates of CODs [citations]. Elevated rates of homelessness and criminogenic risk factors (e.g., criminal attitudes and peer networks, employment problems, educational deficits, and poor social supports) among persons with CODs also contribute to higher rates of arrest [citations].” (Roger H. Peters, Harry K. Wexler, and Arthur J. Lurigio. 2015. “Editorial: Co-Occurring Substance Use and Mental Disorders in the Criminal Justice System: A New Frontier of Clinical Practice and Research.” *Psychiatric Rehabilitation Journal*. Vol. 38, No. 1 at 1.)

Hawai'i did take proactive steps to assess its criminal justice policy in recent years, receiving technical assistance from Council of State Governments Justice Center in order to “develop a statewide policy framework that would reduce spending on corrections and reinvest savings in strategies that increase public safety.” However, the full implementation of those reforms was less than forthcoming. Bree Derrick, program director at CSGJC says that those states who have succeeded with justice reinvestment are “looking for solutions on an active and continuing basis.” (Rui Kaneya. “Hawaii Behind Bars: Other States Are Shrinking Prison Populations -- Why Not Hawaii?” *Honolulu Civil Beat*. 21 Nov 2016.)

At minimum, the Legislature should revisit those reforms forwarded by the Justice Reinvestment Initiative that have yet to be enacted and fully implemented. It should also eliminate those statutory provisions that operate to stymie reforms currently in place. For example, the exemption from the raised felony theft threshold for “habitual” offenders, now subject to mandatory minimum sentences, does not further the objective of enabling public safety to focus more needed resources to higher-risk offenders.

Indeed, mandatory minimum sentences exacerbate those systemic harms perpetuated by this state's peculiar criminal sentencing regime. As a general matter, mandatory minimum sentences undermine the independence and integrity of the judiciary as co-equal, co-ordinate branch of government. Mandatory minimum sentences also lack proportionality with respect to an

individual defendant's conduct and culpability in the commission of an act that may include aggravating and mitigating factors.

It is a principal responsibility of the Hawai'i Legislature to ensure that the quarter of a billion public dollars that it annually dedicates to criminal justice expenditures are utilized in a manner that is evidence-based and informed by the most effective, up-to-date penological practices. Toward this end, levels of transparency (including data collection, retention, and reporting), routine independent oversight, and continued programmatic reevaluation that are now absent are very much needed.

Effective administration of justice is essential to a polity that values equal justice under law for all persons, including those suffering from substance abuse and mental health problems and those who are the product of intergenerational cycles of trauma and socioeconomic disadvantage:

“Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger...”
(James Madison, Federalist Papers No. 51)

Sincerely,
Nikos A. Leverenz

SB-2815

Submitted on: 1/29/2018 12:44:22 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

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

Comments:

I support the bill; however, to have to pay restitution is a big hurdle for inmates to overcome.

e. ileina funakoshi