



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. No. 952, S.D. 1, RELATING TO PARDONS.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Thursday, February 28, 2019 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Laura Maeshiro, Deputy Attorney General

Chair Nishihara and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill amends section 353-72, Hawaii Revised Statutes, to require the Governor to provide public notice and abide by a fourteen-day waiting period, before granting or refusing any application for a pardon that was not previously referred to the Director of Public Safety and the Hawai'i Paroling Authority. The bill further requires the Attorney General to adopt rules to carry out the bill's purpose.

This bill violates the separation of powers doctrine by infringing on the Governor's constitutional authority over pardons. Article V, section 5, of the Hawai'i Constitution authorizes the Governor to "grant reprieves, commutations and pardons, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same." The Governor therefore has exclusive authority to issue pardons, while the Legislature may pass laws regulating the manner of applying for pardons. *See, e.g., Rich v. Chamberlain*, 62 N.W. 584, 586 (Mich. 1895) (under Michigan Constitution, pardon power cannot be limited by law, "except that of regulating the manner of applying to the executive"). Rather than regulate the manner of applying for pardons, however, the bill directly conditions the Governor's "granting or refusing" of certain pardon applications on a fourteen-day public notice waiting period. To address this separation of powers concern, we recommend deleting the amendments on page 1,

lines 9 to 13, of the bill, and limiting any amendments to the manner in which a person may apply to the Governor for a pardon.

We note that section 353-72, HRS, authorizes the Director of Public Safety and the Hawaii Paroling Authority to review pardon applications referred by the Governor. We therefore suggest that any rules be adopted by the Department of Public Safety or Hawaii Paroling Authority, rather than the Department of the Attorney General.

Thank you for the opportunity to provide these comments.

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Date: February 28, 2019

To: The Honorable Clarence Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony Providing Comments on S.B. 952 S.D. 1
Relating to Pardons

Good afternoon Chair Nishihara, Vice Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

The Sex Abuse Treatment Center (SATC) respectfully submits the following comments concerning S.B. 952 S.D. 1, with suggested amendments for the Committee's consideration:

- It is our understanding that the original purpose of S.B. 952 was to provide greater transparency with regard to the pardoning of convicted offenders, by making information about the pardons available for public dissemination through the Hawaii Criminal Justice Data Center.

SATC supports this transparency with regard to approved pardons, and requests that this Committee please amend the measure to restore provisions in the original bill requiring the public disclosure of certain information, with the amendments offered by the Department of the Attorney General in its written testimony to the Senate Committees on Technology and on Government Operations, clarifying the disclosure obligation and protecting sensitive and confidential information.

- As noted by the Department of the Prosecuting Attorney of the City and County of Honolulu in its written testimony to the Senate Committees on Technology and on Government Operations, it is our understanding that the Department of the Attorney General used to provide recommendations to the Governor on applications for pardon, and assigned investigators to contact victims to obtain their input concerning the applications. Unfortunately, the Department of the Attorney General was recently removed from the process of reviewing applications for pardon.

It is important that the victims of a crime be provided an opportunity to be heard on the issue of whether convicted offenders should receive pardons, prior to any recommendation for and granting of pardon. Victims are the persons most directly affected by crime, and they are often in the best position to inform decision makers of the impact that a crime has had on the community. In addition, inclusion in processes that affect the disposition of convicted offenders can save victims from additional trauma and help them to heal and move past the crime.

Therefore, we ask that this Committee please amend S.B. 952 S.D. 1 to include language mirroring H.R.S. § 706-604(3), which describes the right of a victim to be heard in proceedings concerning the sentencing of criminals. Allowing victims similar input in the pardoning process in this manner makes sense, as a pardon is a reconsideration of the sentencing outcome.

- With regard to pardon applications that the office of the governor declines to refer to the Department of Public Safety and the Hawaii Paroling Authority, as referenced in the change to H.R.S. § 353-72 by S.B. 952 S.D. 1 at lines 9-13, we respectfully submit that public notice of the non-referred application for pardon should include notice to the victim(s) of the crime and an opportunity for the victim(s) to be heard on the issue of whether the pardon should be granted.

The amendments suggested above are included in the enclosed Draft Language (Exhibit A).

Thank you for this opportunity to testify and provide comments on S.B. 952 S.D. 1.

Exhibit A
Suggested Amendment

SECTION 1. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§846- Pardons; public access to information. The data center shall make public all records pertaining to applications for pardons provided by the governor's office pursuant to section 353-72. The data center shall make such records public by public internet access."

SECTION 2. Section 353-72, Hawaii Revised Statutes, is amended to read as follows:

"§353-72 Pardons; reference to paroling authority. The director of public safety and the Hawaii paroling authority shall consider every application for pardon which may be referred to them by the governor and shall furnish the governor, as soon as may be after such reference, all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon[-]; provided that if an application for pardon is not referred pursuant to this section, the governor shall provide public notice and a waiting period of fourteen days shall apply to the granting or refusing of the pardon, during which time the victim shall be afforded a fair opportunity to be heard on the issue of the prisoner's disposition.

Should the governor approve an application for pardon, the governor's office shall provide information concerning the approval to the Hawaii criminal justice data center for public dissemination pursuant to 846- ; provided that the governor's office or any agency involved in the granting of the pardon

shall not be required to disclose information protected from disclosure under chapter 92F or other state or federal law."

SECTION 3. The attorney general shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to carry out the purposes of sections 1 and 2 of this Act.

Section 4. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

"§ 353-72.5 Opportunity for victim of crime to be heard with respect to pardon. For every application for pardon, the Department of Public Safety and the Hawaii Paroling Authority shall afford a fair opportunity to the victim of the prisoner's crime to be heard on the issue of the prisoner's disposition, prior to rendering any recommendation as to the granting or refusing of the pardon and before any pardon may be granted. The Department of Public Safety shall inform the victim of the application for pardon and provide the victim no less than two weeks to submit written comments concerning the pardon application and the opportunity to provide verbal comments. In the case of a homicide or where the victim is a minor or is otherwise unable to submit written or verbal comments, the victim's family shall be afforded the fair opportunity to be heard."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2050.

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SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL & MILITARY AFFAIRS
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i

February 28, 2019

RE: S.B. 952, S.D. 1; RELATING TO PARDONS.

Chair Nishihara, Vice Chair Wakai and members of the Senate Committee on Public Safety, Intergovernmental & Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, supporting the intent of S.B. 952, S.D. 1, with suggested amendments.

The purpose of this bill is to require that the Governor provide public notice of all applications for pardon that are not referred to the Department of Public Safety ("DPS") and Hawaii Paroling Authority ("HPA").

The Department supports this effort to increase transparency and accountability surrounding the criminal pardons process. Nevertheless, limiting public notice only to those cases that are not referred to DPS and HPA for additional information seems to severely limit the number of incidences in which public notice would be given. Moreover, long before the Governor ever grants a criminal pardon, the Department also believes very strongly that all victims affected by the offense being considered for pardon should be given direct notice of such, and should be allowed to submit written input for the Governor's consideration. Under current procedures, it is unclear when or how victims are ever informed of applications for pardon, particularly as the Department of the Attorney General—who used to provide recommendations to the Governor on each application, and assigned investigators to try to contact victims in this regard—was recently removed entirely from the process of reviewing applications for pardon.

Over the years, our statutory provisions have evolved so that victim involvement and input is now afforded at every step in the criminal justice process, so it makes little sense to lock victims out of one of the most important decisions to be made in this process. After the point of

conviction and sentencing, to then forgive, and in many cases release from custody, those individuals whose actions have devastated the lives of victims and their family members, without allowing victims to provide any input prior to decision-making, not only cheapens any prior efforts to include them in the criminal justice process, but also risks re-traumatizing some individuals. Thus, we respectfully ask that the bill be amended to notify victims as soon as practicable, whenever applications for pardon are submitted, and allow sufficient opportunity for victims to provide written input for the Governor's consideration.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu, supporting the intent of S.B. 952, S.D. 1, with the suggestion noted. Thank you for the opportunity to testify on this matter.