



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

ON THE FOLLOWING MEASURE:
S.B.952, RELATING TO PARDONS

BEFORE THE:
SENATE COMMITTEES ON TECHNOLOGY AND ON GOVERNMENT OPERATIONS

DATE: Tuesday, February 12, 2019 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225

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

Chairs Keohokalole and Thielen and Members of the Committees:

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

Section 1 of the bill adds a section to chapter 846, Hawaii Revised Statutes (HRS), that would require the Hawaii Criminal Justice Data Center (HCJDC) to “make public all records pertaining to applications for pardons approved by the governor” by way of public internet access.

Section 2 of the bill also amends section 353-72, HRS, to require that “[s]hould 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- .”

First, under section 846-2.5(a), HRS, HCJDC is responsible in part for the “collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies” Section 1 of the bill is therefore unclear whether the term “all records pertaining to applications for pardons approved by the governor” means those records provided by the Governor’s office under section 2 of the bill, or whether the bill requires HCJDC to collect any and all additional records from criminal justice agencies pertaining to the applications, under section 846-2.5(a), HRS. If “all records” is intended to mean those records provided by the Governor’s Office under

section 2, we recommend that page 1, lines 4-7, of the bill be amended to read as follows:

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

If the bill is intended to require HCJDC to collect additional records, we suggest including a provision requiring criminal justice agencies to provide such information to HCJDC.

Second, the requirement in section 2 of the bill for the Governor's Office to provide "information concerning the approval" is also unclear. Under current practice when the Governor approves a pardon application, the Governor's Office provides HCJDC with a copy of the pardon document and the cover letter informing the applicant that the pardon has been granted.

If the term "information concerning the approval" is intended to include all information pertaining to the application, however, the bill may require disclosure of protected, confidential and private information. This may include an applicant's information protected under the right to privacy contained in article I, section 6, of the Hawai'i Constitution. The bill may also implicate the privacy rights of individuals who may have provided information under the assumption that their identities and statements would be confidential. The bill may further require disclosure of sensitive law enforcement information, victim information, and other information that would be protected from disclosure under sections 92F-13 and 92F-14, HRS.

So that the Governor's office would not be required to disclose confidential or otherwise protected information in order to comply with the bill, we recommend that page 1, line 16, to page 2, line 3, of the bill be amended to read as follows:

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."

Thank you for the opportunity to provide these comments.

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SENATE COMMITTEE ON GOVERNMENT OPERATIONS**

**Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i**

February 12, 2019

RE: S.B. 952; RELATING TO PARDONS.

Chair Keohokalole, Chair Thielen, Vice Chair English, Vice Chair Inouye, members of the Senate Committee on Technology, and members of the Senate Committee on Government Operations, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in support of S.B. 952, with suggested amendments.

The purpose of this bill is to require that all records pertaining to approved applications for pardon be made available to the public, via public internet access.

The Department supports this effort to increase transparency and accountability surrounding the criminal pardons process. Nevertheless, 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 prompt 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 potentially risks re-traumatizing some individuals. Thus, we respectfully ask that a mechanism be created to notify victims when 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, supports the passage of S.B. 952, with the suggestion noted. Thank you for the opportunity to testify on this matter.