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No. _____

**TESTIMONY ON HOUSE BILL 1740
RELATING TO EXECUTIVE PARDONS**

By

Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 4, 2020; 2:05 p.m.
State Capitol, Conference Room 325

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Hawaii Paroling Authority (HPA) understands the intent of HB 1740, which seeks to change the current process regarding the processing of applications for gubernatorial pardon by including the County Prosecuting Attorney, the victim(s), and the Judiciary. The HPA has concerns with some of the proposed changes to the current pardon's process.

As written, Section 2, page 2 (Lines 13 through 21) of this measure is unclear as to why the Prosecutor and the Court of Conviction would be consulted and/or what "relevant information or materials" would be provided to add to the application process for pardon. It should be noted, the current pardon investigation process is very thorough and there is little, if any, relevant information that the Prosecutor and/or the Court could provide that can be considered meaningful to the process or the applicant.

Further, Section 2, page 3 (Lines 7 through 11) of this measure provides for a “reasonable amount of time to allow the Prosecutor to obtain the input of the victim.” This statement is vague and does not define what is a reasonable amount of time (i.e., 30, 60, or 90 days or longer). This vague language will most likely needlessly delay the pardon process, while at the same time, adding little or no value to the process.

It should be noted; the Prosecutor is primarily concerned with punishment for what the offender has done, not the person the former offender has become nor what the former offender has done to rehabilitate himself/herself and their current status as a positive contributing member of society.

In addition, Section 2, page 4 (lines 7 through 15) appear to circumvent the Authority vested with the Governor pursuant to Article 5, Section 5 of the State Constitution by allowing the Chairman of the HPA to waive the two-year reapplication period for the vague reason(s) of “information that was unavailable at the time of the previous application.” Any waiver to the pardon’s process should be approved by the Governor because it is the Governor that has the authority to approve or disapprove application for gubernatorial pardon. Likewise, any waiver affecting the pardon’s process should also fall under the sole jurisdiction of the Governor, and if the Governor so chooses, the Governor can decide to delegate the time frame for reapplication for pardon to whomever the Governor sees fit.

Thank you for the opportunity to provide testimony on HB 1740.

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**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i**

February 4, 2020

RE: H.B. 1740; RELATING TO EXECUTIVE PARDONS.

Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 1740. This bill is part of the Department's 2020 legislative package.

Currently, county prosecutors and crime victims in Hawaii do not receive advance notice of applications for executive pardon; they are only notified when pardons are granted. Thus, neither prosecutors nor victims are able to provide any input for the Governor's consideration, as they do for furlough, parole & numerous points prior to an offender's conviction or sentencing. Also of concern, since 2018, it is our understanding that the Department of the Attorney General ("AG's") no longer assists the Governor in investigating or assessing applications for executive pardon, nor do they provide a recommendation to the Governor on each application, as they did previously.

While a number of Hawaii's laws do address the various effects of an executive pardon, there is very little guidance or requirements regarding the process before a pardon is granted. Article V, Section 5 of the Hawaii State Constitution provides:

The governor may 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 legislature may, by general law, authorize the governor to grant pardons before conviction, to grant pardons for impeachment and to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State.

Emphasis added. HRS §353-72 does require the Department of Public Safety to assist and advise the Governor upon request, but that is essentially the extent of our statutes on the matter.¹

¹ HRS §353-72 provides: "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

By comparison, 11 other states (CA, CO, IL, ME, MO, NV, NY, NC, OH, WI, WY) have similar constitutional provisions—stating that the “manner of applying” or “application procedures” may be subject to regulation by law—and nearly all of those states have multiple laws surrounding the application procedure². **At least 8 of the 11 expressly require that notice be given to the prosecutor** (we could not find any requirements for MO, NC or NY); 5 of the 11 (CO, IL, NV, OH, WI) require notice to a relevant judge or court; and one (WI) requires direct notice to victims.³

Based on our research, the scope, magnitude, and specific language of the applicable laws—in those 8 states noted above—varies widely, with no discernable pattern or commonality, and as such, the language of H.B. 1740, Section 2, is not based on any one particular state, but loosely based upon statutory requirements from multiple states. Section 1 mirrors language from the existing HRS §353-72, and would not require the AG’s to review every application for pardon, merely every application referred by the Governor.

Upon further consideration of H.B. 1740, we would suggest that slight changes be made, by **substituting the word “requested” for “necessary,” on page 1, line 5, and page 4 line 20.**

That said, the Department is not wedded to any particular language, procedure, or timeframe for these matters, and is happy to meet with any stakeholders on this subject.⁴ We simply want a consistent and reliable means for prosecutors and victims to be able to provide meaningful input on all applications for pardon, so that the Governor can make a better-informed decision, and victims are kept up-to-date on these matters that may deeply affect them. Naturally, it is always a victim’s choice whether to participate in this process or not, but we feel very strongly that they should at least be given that option.

While the pardoning power granted to the Governor, by our State Constitution, is undoubtedly great, it should not be without limitations, and it certainly should not be carried out without hearing from all interested stakeholders. We do believe that the current Governor, past governors, and Department of Public Safety have taken this responsibility very seriously, but we also believe that more input would better assist our governors in making these very impactful decisions.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of H.B. 1740. Thank you for the opportunity to testify on this matter.

after such reference, all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon.”

² The state constitution in 12 other states (AK, AZ, IN, IA, KS, MI, MT, NM, OR, WA, WV) more broadly allows executive pardons to be subject to procedures or regulations “as provided by law,” “as prescribed by law,” or similar, and the Department did submit a bill that would call for an amendment to our State Constitution (SB 2186, HB 1746)—should the Legislature feel that that is necessary—however, that bill is not currently before this Committee.

³ Many other states also require that notice be given to the prosecutor, court and/or victims, but our analysis here focuses on states with constitutional provisions that are similarly restrictive as Hawaii’s.

⁴ From at least 2016 to 2018, our Department worked with the AG’s to try to develop a way for our Department and victims to routinely receive notice and provide input on all applications for executive pardon. However, given the AG’s change in legal interpretation and procedures, in 2018, those talks had been discontinued, but were recently resumed. We had also intended to reach out to the Governor’s office, to see if a “courtesy practice” could be established, but have not yet done so.