



LATE

The Judiciary, State of Hawai'i

Testimony to the Thirtieth State Legislature, 2020 Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Tuesday, January 28, 2020, 10:00 a.m.
Hawaii State Capitol, Conference Room 016

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2047, Relating to the Penal Code.

Purpose: Requires the judicial council to conduct a comprehensive review of the penal code and to recommend proposed changes. Requires judiciary council to appoint an advisory committee to assist in the review, and allows the council to also appoint a reporter and clerical staff as necessary. Requires the advisory committee to report to the legislature. Makes an appropriation.

Judiciary's Position:

The Judiciary takes no position on the merits of Senate Bill No. 2047 (SB 2047), and respectfully offers the following comments.

Roughly every decade since 1983, the Legislature has convened a committee on penal code review to conduct a comprehensive review of the Hawai'i penal code and recommend revisions to the Legislature. The committees have historically consisted of members from the Judiciary, the department of the attorney general, the department of public safety, the office of the public defender, the county prosecutors' offices and police departments, victim advocacy groups, interested attorneys and private citizens, and others. The penal code has been reviewed by committees convened in 1983, 1993, 2005, and most recently in 2015. Significant time and



Senate Bill No. 2047, Relating to the Penal Code
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attention was dedicated to reviewing the penal code and devising recommended ways to improve it each time committees were convened.

The latest 2015 committee on penal review convened pursuant to House Concurrent Resolution no. 155, S.D. 1. The committee met in plenary session on seven different occasions, and broke into five subcommittees that met separately on a number of occasions to provide in-depth review of subject areas. The result was a total of eighty-four proposals and recommendations submitted to the Legislature in 2016, consisting of amendments to fifty existing statutes, recommendations to adopt four new statutes, and many other suggested revisions to the penal code. We are very appreciative of the twenty-nine members, representing nearly twenty different departments, organizations, and interests, who contributed more than a thousand hours to the 2015 penal code review.

Since then, there have been several fairly comprehensive efforts and statutory revisions, the effects of which have yet to be fully realized. For example, the 2016 Legislature adopted the committee's recommendations in Act 231, including a penal code amendment that sought to "improve property crime enforcement by making more repeat offenders of crimes prohibited by this chapter subject to punishment for a class C felony when they commit another subject offense." In addition, the convening of the Pretrial Reform Task Force, whose recommendations were adopted just last legislative session as Act 179, and initiatives to address the needs of defendants with mental illness, including the efforts that have resulted from the statewide Mental Health Summit held in November 2019. The impacts of these efforts and others have yet to be fully realized.

If there are particular issues of interest to the Legislature that relate to the administration of criminal justice, such as those listed in Section 2(b) of SB2047, the Judiciary welcomes the opportunity to work together and discuss potential ways to address those areas of concern.

Should the Legislature decide that it is appropriate to convene another committee on penal review, the Judiciary is appreciative of the inclusion of funds to complete this project. Depending on the scope of the work, the composition of the committee (i.e., how many committee members are from the neighbor islands), the number of in-person meetings held, and the cost if any for a reporter and research/clerical staff, the \$25,000 appropriated may be sufficient to cover those committee expenses.

Thank you for the opportunity to testify on this measure.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, January 28, 2019

10AM - Room 016

COMMENTS ON SB 2047 - PENAL CODE REVIEW

Aloha Chair Rhoads, Vice Chair Keohokalole 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 families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** including the ten people who have died in the last 5 months, as well as the approximately 5,200 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 more than 1,200 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.

SB 2047 requires the judicial council to conduct a comprehensive review of the penal code and to recommend proposed changes. Requires judiciary council to appoint an advisory committee to assist in the review, and allows the council to also appoint a reporter and clerical staff as necessary. Requires the advisory committee to report to the legislature. Makes an appropriation.

After a more careful review of the bill, we offer comments. Although Community Alliance on Prisons supports a comprehensive review of the penal code, which should be ongoing process as research emerges and times change, we are deeply concerned that this bill might stall any reform of Hawai'i's draconian laws enacted during the "tough on crime" era.

Hawai'i's correctional system is currently in crisis as our facilities are bursting with individuals who are imprisoned for the lowest felonies, misdemeanors, violations, petty misdemeanors, and parole or probation violations.

There are many things we can do right now that are not radical - there are proven strategies in states that have reduced their incarcerated population while reducing crime at

the same time. Hawai'i is at a crossroads – are we going to continue down this punitive and very expensive road and continue to 'review' what the research makes so clear? Or will we acknowledge that we need good laws? Laws that are based on sound research and data.

That is why Community Alliance on Prisons strongly asserts that there must be action taken now to address Hawai'i's sentencing laws that are so out of whack with the rest of the world. Hawai'i must stop criminalizing some of the most vulnerable people in our community who are contending with a myriad of public health and social challenges. Our system turns people who make mistakes into criminals. This is not where we should be investing hard-earned taxpayer dollars.

The January 6, 2020 population report from the department of public safety shows 5,208 as the total population under the "care and custody" of the state; 45% of these folks are pretrial detainees *innocent until proven guilty* (1,117/21%) and parole or probation violators (1,237/24%).

The current rate that the department is using is \$198 a day. The pretrial detainee and parole/probation populations total 2,354 persons - 45% of the total statewide population. Here is how much these policies cost taxpayers:

$2,354 \times \$198/\text{day} = \$466,092/\text{day}; \$3,262,644/\text{week};$
 $\$13,050,576/\text{month}; \$156,606,912/\text{year}.$

If the Pretrial Population (1,117 persons) was released with promissory notes to show up in court (Act 277 - Unsecured Bonds):

Hawai'i could save \$221,166 a day; \$1,548,162 a week;
\$6,192,648 a month; and \$74,311,776 a year!

The cost of incarcerating the Parole and Probation Violator Populations

$1,237 \text{ persons} \times \$198/\text{day} = \$244,926/\text{day}; \$1,714,482/\text{week};$
 $\$6,857,928/\text{month}; \$82,295,136/\text{year}$

If we reduced the parole and probation violator population by 50% (618 persons)

Hawai'i could save \$122,364/day; \$856,548/week;
\$3,426,192/month; \$41,114,304/year!

Imagine the services we could provide to the most impacted communities if Hawai'i made its sentencing laws proportional to the offense, if Hawai'i stopped criminalizing struggling folks, and if Hawai'i instead lifted up our communities with the help they need. Hawai'i could really make an impact on some of our most intractable challenges.

Mahalo for the opportunity to share our concerns.

LATE

SB-2047

Submitted on: 1/27/2020 11:51:21 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Kitchens	Testifying for Stolen Stuff Hawaii	Support	No

Comments:

Dear Chair and Committee Members,

I am the founder and administrator of Stolen Stuff Hawaii (SSH) . SSH is Hawaii's largest anti-crime Facebook group with over 131,000 plus vetted Hawaii-based members and growing. Our mission is to use the power of social media to help those who have been victimized by crime by helping them to locate their stolen property, provide emotional support, as well as awareness.

I originally created this group in response to the theft of a vehicle from a family member in 2014. Established on July 27th, within a very short time, our group has proven to be extremely helpful in the recovery of stolen property as well as dealing with many other crimes while also helping in identifying the criminals responsible for it. We are pro-law enforcement and heavily moderated by our staff of volunteers.

Our reach and influence are substantial, with members located throughout the State of Hawaii in all counties and districts. The majority of our members reside on Oahu, meaning we have just under 10% of the population in our group.

Social media is extremely powerful, capable of spreading information as well as helping to identify suspects and providing law enforcement with additional eyes to deter and stop crime. Currently, there is nothing faster nor more capable than social media when it comes to providing immediate information and feedback.

I believe this is our chance to make a difference in our penal code for the betterment and protection of our community.

SB2047 - Requires the judicial council to conduct a comprehensive review of the penal code and to recommend proposed changes. Requires judiciary council to appoint an advisory committee to assist in the review, and allows the council to also appoint a reporter and clerical staff as necessary. Requires the advisory committee to report to the legislature. Makes an appropriation.

This bill provides an opportunity for a representative from our community to play a part in this review:

- (11) Private citizens interested in criminal law and civil liberties;
- (14) Representatives from advocacy groups for crime victims;

I support this bill, however I think it is extremely vital to have a representative from our online community included on this panel due to the immense reach, considerable interaction, and dialogue that is capable with social media.

Therefore I request to add the following to the list of appointees:

(16) An administrator of a Hawaii crime-advocacy social media group with over 100,000 members."

I believe it is very vital that we have someone on the panel who understands how the local community feels and represents them with close interaction and dialogue.

Therefore I support this bill with the inclusion of the above addition.

Mahalo,

Michael J Kitchens

Stolen Stuff Hawaii

SB-2047

Submitted on: 1/27/2020 2:51:10 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	Individual	Support	No

Comments:

Thank you for the opportunity to testify.

HHHR strongly supports this measure since the last review was abbreviated and done between legislative sessions. This bill would provide a longer 18 month comprehensive review which is needed to assure that Hawaii is implementing best practices and the latest evidence in addressing crime.



Tuesday, January 28, 2020

Senate Bill 2047
Testifying in Support

Aloha Chair Lee, Vice Chair San Buenaventura, and Members of the Judiciary Committee,

The Democratic Part of Hawai'i (The Party) **stands in support of SB2047**. This is a much needed 18-month comprehensive review with a broad cross-section of the diverse community represented, rather than the last quick review which was done in 2015. The Penal Code is only updated every ten years and this review is crucial in determining and identifying how Hawai'i's laws are not keeping up with research and data and areas we could make viable and necessary improvements in addressing crime.

Multiple articles in the past few months (see below) in Honolulu Civil Beat focused on how our crime in Hawai'i has been changing in recent years and without updates to our Penal Code we are missing opportunities to address some of these concerns in effective and meaningful ways. Honolulu's violent crime rate is below the National average according to FBI data, but is significantly higher in regards to property crime. Most recently more help has been available in tracking and apprehending suspects due to increased video surveillance. Without timely and thorough adjustments to our Penal Code we may be missing opportunities to take advantage of increases in technological advances.

There are countless examples of how one outdated or poorly enacted law can have devastating and lasting effects on families, an interesting and relevant one that comes to mind is the story of a woman losing her Ewa Beach home 19 years later as part of a restitution claim the victim was able to pursue after being shot by her son and his friends.

"Hawaii Revised Statute 577-3 is deceptively brief, considering its implications.

After some general discussion of parental custody, it states, "The father and mother of unmarried minor children shall jointly and severally be liable in damages for tortious acts committed by their children."

Every state has a statute assigning parents some legal responsibility for the actions of their minor children. But almost all the laws – some states have more than one for different categories – come with limits, generally several thousand dollars or less. A few go as high as \$30,000.

Only two states – Hawaii and Louisiana – allow unlimited liability for the willful damage and injuries caused by children. (Some allow uncapped liability in certain categories, such as motor vehicle accidents or for misconduct unlikely to result in high-dollar damage, such as graffiti or damage to school property.)”

This is just one small example of outdated and possibly too broadly applied laws that could be amended or reviewed based on the findings from the comprehensive review.

Mahalo for the opportunity to testify,



Josh Frost
Co-Chair, Legislation Committee
Democratic Party of Hawai'i



Zahava Zaidoff
Co-Chair, Legislation Committee
Democratic Party of Hawai'i

[civilbeat.org/2019/02/justice-served-a-highly-unusual-hawaii-law-is-costing-this-women-her-home/](https://www.civilbeat.org/2019/02/justice-served-a-highly-unusual-hawaii-law-is-costing-this-women-her-home/)

<https://www.civilbeat.org/2019/10/honolulu-property-crime-problem-tourists-make-great-victims/>

<https://www.civilbeat.org/2018/10/gun-crimes-are-rising-in-hawaii-but-still-below-historic-levels/>

ROBERT K. MERCER

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January 27, 2020

TO: Committee on Judiciary
RE: SB 2047
HEARING: January 28, 2020
TIME: 10:00 a.m.
ROOM: Conf. Rm. 016
POSITON: Support with amendments

Chair Rhoads, Vice-Chair Keohokalole, and members of the committee:

My name is Bob Mercer. I am a retired lawyer and recently served as Vice-Chair of the House Concurrent Resolution 85 Task Force on Prison Reform.

I strongly support the idea of creating community-based groups to study issues and make recommendations to the legislature, but to be successful, those groups must be relatively small, diverse, well balanced, have clearly defined objectives, and have sufficient funding to hire competent staff. In my view, SB 2047 does not meet those criteria and the time frame for delivering the final report is too long.

The following are my comments and recommendations:

1. The Advisory Committee should base its recommendations on best practices and empirical data, not on “recent criminal justice trends” which may or may not be appropriate for Hawaii. It should be noted, for example, that one of the recent trends in criminal law is towards “stand your ground laws”¹ which research suggests lead to an increased number of homicides.² Mandatory minimum sentences and three-strike laws

¹ The Oregonian, “Trend toward stand your ground laws emerges nationally, news 21 analysis finds.” Posted August 18m 2014, updated January 10, 2019. Accessed January 26, 2020.

https://www.oregonlive.com/today/2014/08/trend_toward_stand_your_ground.html

² German Lopez, “More research Finds ‘stand your ground’ laws lead to more homicides.” Vox, September 27, 2019. Accessed January 26, 2020.

<https://www.vox.com/2019/9/27/20887403/stand-your-ground-laws-homicides-crime-self-defense>

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were once part of a criminal justice trend, but they have turned out to be a disaster and caused immense harm to our country.

Instead of following trends in the U.S., the Advisory Committee should be encouraged to study the penal codes and sentencing policies of countries like Norway, Sweden, and Germany, that have low incarceration rates, low recidivism rates, and low crime rates.

2. The Advisory Committee should **not** give “special consideration” to whether enhanced sentencing should be *furhter incorporated* into the penal code. If anything, special consideration should be given to *eliminating* enhanced sentencing laws because they are unjust, irrational, and waste lives and money.

3. The Advisory Committee should be directed to review the penal code with the objective of identifying the statutes that are driving up our prison population, and recommend ways to decarcerate our state. In the past 40 years Hawaii’s population increased 53%, while the combined jail and prison population increased 670%, from just 727 total prisoners in 1978 to 5,602 prisoners in 2016.³ Our current prison population stands at 5200, and we have *over 27,000 people under some form of correctional supervision*.⁴ The primary goal of the Advisory Committee should be to reform our penal code in ways that will reduce our reliance on incarceration and reduce our prison population.

4. I do not think the Judicial Council needs until January, 2021 to appoint the Advisory Committee, and I question whether the Advisory Committee needs 18 months to complete its work. With the schedule set out in SB2047, penal code reforms will probably not go into effect until the summer of 2024 at the earliest. We cannot wait that long to change laws that are unjust and are not serving the interest of our state.

If this committee keeps the timetable set out in SB 2047, I hope you will remain open to amending specific sections of the penal code this session and in 2021, and 2022, and not defer all penal code reforms until the Advisory Committee has issued its report.

5. The Advisory Committee should be directed to review the length of sentences in Hawaii and world wide, and bring Hawaii’s laws into harmony with those of countries

³ House Concurrent Resolution 85 Task Force, Better outcomes, safer communities, final report to the 2019 legislature, (December 2019) at 1. Accessed January 26, 2020.
https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf

⁴ House Concurrent Resolution 85 Task Force at 3.

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with the best criminal justice outcomes, i.e. those with the lowest prison populations, the lowest incarceration rates, the lowest recidivism rates, and the lowest crime rates.

6. The advisory committee seems to be heavily weighted in favor of law enforcement (5 police chiefs, 5 prosecutors, the Attorney General, and the Department of Public Safety). Additionally, there is only one Native Hawaiian organization (OHA) on the Committee even though Hawaiians are overrepresented at every state of the criminal justice system⁵ and comprise 21% of the general population but nearly 40% of the prison population.⁶

Please consider adding additional Native Hawaiian organizations and reducing the number of prosecutors and police chiefs.

7. Penal code reform is a difficult, complex, and often technical undertaking. If the Advisory Committee is to make sound recommendations, their work *must be guided by experienced and knowledgeable staff and supported by solid research.*

The \$25,000 budget for the Advisory Committee totally inadequate. At the very least the Advisory Committee will need attorneys, researchers, and clerical staff, along with a large budget for consultants.

Consultants are important because organizations like the Council of State Governments, the Center for Court Innovation, the Sentencing Project, and the Brennan Center for Justice have vast experience in criminal law reform, and they could help the Advisory Committee structure and focus their work and take advantage of research that has already been done.

The State has spent millions on consultants to tell us how to build new jails and prisons to incarcerate our citizens, why not spend an equal amount on consultants to help us draft more just laws. Aren't just laws as important as incarceration?

Thank you for allowing me to testify on SB 2047.

⁵ Justice Policy Institute, Myron B. Thompson School of Social Work, and Georgetown Law, "The disparate treatment of Native Hawaiians in the criminal justice system (Honolulu: Office of Hawaiian Affairs, 2010) at 17,

⁶ House Concurrent Resolution 85 Task Force at xiii.

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LATE

SB-2047

Submitted on: 1/27/2020 4:30:15 PM
Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Comments	No

Comments:

Aloha Senator Rhoads, Senator Keohokalole, and Committee Members,

I am writing to comment on SB2047. While requiring a comprehensive review of the penal code to propose changes is commendable it and of itself, and is necessary on an on-going basis, it seems as if we already have enough information to make many necessary changes now.

Numerous studies have been conducted by people with many years of experience working in our criminal justice system. Studies such as the HCR 85 Task Force on Prison Reform make clear recommendations which have been followed up by legislation submitted for your review.

Evidence-based programs implemented successfully in other states have led to decreased recidivism, lower criminal justice expenditures, and safer communities. In comparison, many of Hawaii's antiquated and inhumane criminal justice policies and practices continue, leading to prison overcrowding, unexplained deaths of people in our correctional facilities, and a continued lack of transparency from the Department of Public Safety. Even a cursory study of successful programs in other states suggests that Hawaii is on the wrong track. Another study will not illuminate the situation any more clearly.

Where is the political will to make common sense changes that will transform our broken criminal justice system? To begin, homeless, mentally ill, and drug dependent individuals should not be warehoused in correctional facilities to the tune of \$198 a day and over \$70,000 a year per person. Diversion to programs that actually help these individuals would be much cheaper and have a higher rate of success than simply warehousing them. Pretrial detainees who cannot afford bail and parole/probation violators are more individuals who could be serviced by community-based programs.

Addressing the needs of these populations would alleviate prison overcrowding and the need to build a half a billion dollar new jail that will stand mostly empty when prison reforms go into effect. The only winners would be the developers. Please have the courage to step up and make a difference by enacting legislation that addresses the needs of the most vulnerable in our community. You will be making a major contribution

to incarcerated individuals and their families and communities as well as the public safety of all of Hawaii's people.

Mahalo for your consideration,

Diana Bethel

Honolulu

LATE

SB-2047

Submitted on: 1/27/2020 5:37:57 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie Manera	Individual	Support	No

Comments:

SB-2047

Submitted on: 1/27/2020 4:10:53 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support this bill because research shows there are more effective ways of addressing crime but Hawai'i's laws have not kept up with the research and data. The proposed 18-month comprehensive review with a broad cross-section of the community represented, rather than the 2015 quick review done between sessions, will allow for including up to date research & data.

SB-2047

Submitted on: 1/27/2020 8:48:18 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nannette Cook	Individual	Comments	No

Comments:

Aloha~

I kindly request the following be added to the list of representatives:

A Hawaii based crime-watch advocacy social media group or platform with a minimum following of 100,000 individuals and/or businesses.

Sincerely,

Nannette Cook

SB-2047

Submitted on: 1/28/2020 1:17:24 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Timothy Hoyle	Individual	Support	No

Comments:

Aloha Committee Members,

I am writing today in support of SB2047 which requires the judicial council to conduct a comprehensive review of the penal code and to recommend proposed changes. Requires judiciary council to appoint an advisory committee to assist in the review, and allows the council to also appoint a reporter and clerical staff as necessary. Requires the advisory committee to report to the legislature. Makes an appropriation.

This bill provides an opportunity for representatives from our community to play a part in this review to include: Private citizens interested in criminal law and civil liberties; as well as representatives from advocacy groups for victims of crime.

I support this bill and I think it is important to have a representative from the online Stolen Stuff Hawaii Facebook group community included on this panel due to the robust social interaction, debate and concerns of the many citizens and stakeholders.

Because of this I request you add the following to the list of appointees:

"An Administrator of the Hawaii crime-advocacy social media Facebook group Stolen Stuff Hawaii (SSH) with over 100,000 members."

Having someone on the panel who intimately understands how the local social media group community feels and who is also in touch with them daily and represents their views and wishes on the many vital Criminal Justice matters will add great clarity and legitimacy to the thought process, decisions and recommendations of the panel.

Therefore I support this bill with the inclusion of the above addition.

Thank you very much for your consideration.

Mahalo,

Timothy J Hoyle

Ewa Beach, HI

