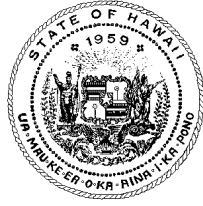


DAVID Y. IGE
GOVERNOR

LATE



MARTHA ROSS
Chair

CLIFTON Y.S. CHOY
Commissioner

SANDRA JOY EASTLACK
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON SB 2180 SD 1
RELATING TO EXECUTIVE PARDONS

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Monday, February 24, 2019; 12:15 PM
State Capitol, Conference Room 016

Good afternoon Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of Senate Bill 2180, SD1, with a Proposed SD2. The proposed SD2 ensures that the safety of crime victims and the safety of the community are in the forefront of pardon decisions. Proposed SD2 establishes a framework for an informed pardon process by providing crime victims and prosecutors with the opportunity to provide input to the Governor for consideration in assessing whether to grant a pardon.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. No State general funds have been appropriated for victim compensation since FY 2003, and the Commission is now funded solely from non-tax revenue and matching federal funds.

Thank you for providing the Commission with the opportunity to testify in support of Senate Bill 2180, SD1, with proposed amendment 2.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN
CHAIR

CLAYTON H.W. HEE
CHERYL E. INOUE
MAX N. OTANI
FITUINA F. TUA
MEMBERS

TOMMY JOHNSON
ADMINISTRATOR

LATE

TESTIMONY ON SENATE BILL 2180, SD1
RELATING TO EXECUTIVE PARDONS

No. _____

AMENDED

By

Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

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

Monday, February 24, 2020; 12:15 p.m.
State Capitol, Conference Room 016

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Paroling Authority (HPA) understands the intent of SB 2180, SD1 which seeks to change the current process regarding the processing of applications for gubernatorial pardon by including the County Prosecutor's, the victim(s), and the Judiciary. The HPA has serious concerns with many of the proposed changes to the current pardon's process as outlined in SB 2180, SD1.

The HPA has been actively working with the Office of the Prosecuting Attorney for the City and County of Honolulu and the Department of the Attorney General on this matter. The Office of the Prosecuting Attorney for the City and County of Honolulu has also been in contact with the other County Prosecutors as well. While the HPA cannot support SB 2180, SD1 as written, we do support the proposed SD 2 submitted by the Office of the Prosecuting Attorney for the City and County of Honolulu included with their testimony for this hearing. The HPA respectfully requests the Senate Committee on the Judiciary adopt the language in the proposed draft SD2.

Thank you for the opportunity to provide testimony on SB 2180, SD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawai'i

February 24, 2020

RE: S.B. 2180, S.D. 1; RELATING TO EXECUTIVE PARDONS.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 2180, with a Proposed S.D. 2. This bill is part of the Department's 2020 legislative package.

Please note, the language in the attached Proposed S.D. 2 was prepared in coordination with the Hawaii Paroling Authority and Department of the Attorney General, and we thank them for their willingness to work with us on this matter. We are also in communication with the other county prosecutors, and will continue working with everyone to ensure the most appropriate language.

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

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 the 8 states noted above—varies widely, with no discernable pattern or commonality, and as such, the language found in Section 2 of S.B. 2180, S.D. 1, Proposed S.D. 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.

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 and all past governors 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 S.B. 2180, S.D. 1, with the Proposed S.D. 2. Thank you for the opportunity to testify on this matter.

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 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.

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. Talks were discontinued after a difference in interpretation of the relevant laws, but were recently resumed and resolved.

Report Title:

Honolulu Prosecuting Attorney Package; Executive Pardon;
Criminal Procedure

Description:

Establishes a comprehensive application process for executive pardons.

A BILL FOR AN ACT

RELATING TO EXECUTIVE PARDONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 28, Hawaii Revised Statutes, is amended by
2 adding a new section to be appropriately designated and to read
3 as follows:

4 "§28 - Pardons; reference to attorney general. The
5 Attorney general shall consider and, if requested, investigate
6 every application for pardon referred by the governor to the
7 attorney general and shall furnish the governor, as soon as may
8 be after the reference, a recommendation regarding whether to
9 grant or refuse the pardon."

10 SECTION 2. Chapter 801, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§801- Pardons; application process. (a) An application
14 for pardon shall be addressed to the governor and filed with the
15 Hawaii paroling authority. Each application for pardon shall
16 contain:

17 (1) The first, middle, and last name, and all alias used
18 by the applicant;

19 (2) The applicant's date of birth;

- 1 (3) The applicant's state identification number;
- 2 (4) A brief history of the case or cases for which pardon
3 is being sought;
- 4 (5) The reason or reasons for seeking pardon; and
- 5 (6) Any other relevant information that the Hawaii
6 paroling authority may require.

7 (b) For each offense for which an applicant is seeking
8 pardon, the Hawaii paroling authority shall, within forty-five
9 (45) days of receiving the applicant's notarized application and
10 notarized character affidavits, provide the prosecuting attorney
11 of the county in which each offense occurred with the following:

- 12 (1) The first, middle, and last name, and all alias used
13 by the applicant;
- 14 (2) The applicant's date of birth;
- 15 (3) The applicant's state identification number;
- 16 (4) A list of convictions for which the applicant is
17 applying for pardon, to include the criminal number,
18 offense or offenses committed, date of arrest and
19 disposition of each offense;
- 20 (5) The reason or reasons for seeking pardon.

21 (c) Within thirty days of receiving the information
22 required by paragraph (b), the prosecuting attorney of the
23 county in which each offense occurred may submit to the Hawaii

1 paroling authority any relevant information or materials to be
2 added to the application.

3 (d) Within thirty days of receiving the information
4 required by paragraph (b), the relevant prosecuting attorney
5 shall also contact, or make reasonable efforts to contact, any
6 victim, or surviving immediate family members of the victim,
7 involved in each offense for which pardon is being sought.
8 Should any victim or surviving immediate family members choose
9 to provide additional information for consideration, the:

10 (1) Victim or surviving immediate family members shall be
11 afforded thirty days, from the date of initial contact
12 from the prosecuting attorney, to submit such
13 information; and

14 (2) Prosecuting attorney shall promptly inform the Hawaii
15 paroling authority that additional materials are
16 forthcoming from the victim.

17 (e) The governor may refer applications for pardon,
18 including any information or materials provided by the relevant
19 prosecuting attorney, victim, or surviving immediate family
20 members, to the attorney general and the Hawaii paroling
21 authority for consideration, investigation, and recommendation.

22 (f) Forty-five days after all application materials and
23 supporting documents are received by the Hawaii paroling
24 authority, the application for pardon shall be considered

1 complete and eligible for consideration or recommendation by the
2 governor, attorney general, and Hawaii paroling authority, as
3 applicable.

4 Investigation may commence any time after the applicant first
5 submits relevant documents to the Hawaii paroling authority.

6 (g) If an application for pardon is denied by the governor,
7 the Hawaii paroling authority may not accept a repeat
8 application for pardon for the same person until two years have
9 elapsed from the date of the denial. The governor, or the
10 chairman of the Hawaii paroling authority if so delegated in
11 writing by the governor, may waive the two-year requirement if
12 the applicant offers in writing new information that:

13 (1) Was unavailable to the applicant at the time of the
14 Filing of the prior application; and

15 (2) The chairman determines to be significant.

16 (h) For purposes of this section, "surviving immediate
17 family members of the victim" or "surviving immediate family
18 members" means surviving grandparents, parents, siblings,
19 spouse, reciprocal beneficiary, children, and any legal guardian
20 of a deceased victim; and "victim" means a person against whom a
21 crime has been committed by an adult.

22 (i) Nothing in this section shall be construed to limit
23 the power of the governor to grant or refuse a pardon

1 pursuant to the state constitution."

2 SECTION 3. Section 353-72, Hawaii Revised Statutes, is
3 amended to read as follows:

4 **"353-72 Pardons; reference to paroling authority.** The
5 director of public safety and the Hawaii paroling authority
6 shall consider and, if requested, investigate every application
7 for pardon that may be referred to them by the governor and
8 shall furnish the governor, as soon as may be after the
9 reference, all information possible concerning the prisoner,
10 together with a recommendation as to the granting or refusing of
11 the pardon."

12 SECTION 4. This act does not affect any proceedings or
13 applications received by the paroling authority before its
14 effective date.

15 SECTION 5: If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

21 SECTION 6. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

23 SECTION 7. This Act shall take effect upon approval.



LATE

February 24, 2020

Members of the Senate Committee on Judiciary:

Chair Sen. Karl Rhoads
Vice Chair Sen. Jarrett Keohokalole
Sen. Kurt Fevella
Sen. Mike Gabbard
Sen. Donna Mercado Kim

Re: SB2180 SD1 Relating to Executive Pardons.

Dear Chair Rhoads, Vice Chair Keohokalole and Members of the Senate Committee on Judiciary:

The Hawaii State Coalition Against Domestic Violence (HSCADV) engages communities and organizations to end domestic violence through education, advocacy, and action for social justice. HSCADV is a private, not-for-profit organization and is a statewide partnership of domestic violence programs and shelters.

On behalf of the Hawaii State Coalition Against Domestic Violence (HSCADV) and our 23 member programs statewide, I respectfully submit this testimony in support of SD2180 SD1 which establishes a comprehensive process for the consideration of executive pardons.

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 and numerous points prior to an offender's conviction or sentencing.

Victims of domestic violence or any surviving immediate family members should be given the opportunity to choose to provide additional information for consideration in a pardon, especially as it might impact their safety. The potential for re-traumatization is high when a victim is made aware of a pardon after it has been granted. Their voices are critical to this process and should be sought and acknowledged during the application phase.

Thank you for the opportunity to submit testimony on this important manner.

Sincerely,

Angelina Mercado
Executive Director, Hawaii State Coalition Against Domestic Violence