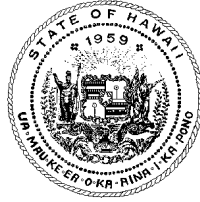


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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Honolulu, Hawaii 96813

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
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Jordan Lowe
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON HOUSE BILL 1463
RELATING TO EXECUTIVE PARDONS.**

by
Max N. Otani, Director
Department of Public Safety

House Committee on Corrections, Military, and Veterans
Representative Takashi Ohno, Chair
Representative Sonny Ganaden, Vice Chair

Wednesday, February 16, 2022; 10:00 a.m.
State Capitol, Via Videoconference

Chair Ohno, Vice Chair Ganaden, and Members of the Committee:

The Department of Public Safety (PSD) has reviewed House Bill (HB) 1463, which seeks to establish a comprehensive application process for executive pardons that would add several to the current executive pardon process.

The Department respectfully submits comments on this measure based on insights from a background and experience with the executive pardon process. At present, the executive pardon process begins upon receipt of an application for pardon and/or when an application is referred to the Hawaii Paroling Authority (HPA) or the Department. Following receipt of an application or referral of an application from the Office of the Governor, the application is reviewed for completeness and the applicant's eligibility to apply for executive pardon.

Providing the applicant otherwise qualifies, the pardon application is assigned to an investigator to gather required information, conduct research into the applicant's criminal conduct, both in the State of Hawaii and outside of the State, interview the applicant, and complete the pardon investigation.

Following completion of the investigation, the investigation along with all relevant documents, materials, etc., is forwarded to the Parole Board for review and recommendation, then to the Director of Public Safety for review for recommendation to the Governor. The PSD Director forwards the reviewed application and recommendation to the Department of the Attorney General (DAG), which conducts its own review and submits the completed application and DAG summary to the Governor. The process, as outlined above, is completed in three to four months.

As written, HB 1463 would substantially increase the processing timeline for executive pardon applications by adding in several layers, which may not be necessary. The Department defers to the HPA for more specific information regarding this measure and the effect it would have on the executive pardon process if it were enacted.

Thank you for the opportunity to present this testimony.

DAVID Y. IGE
GOVERNOR



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

EDMUND "FRED" HYUN
CHAIR

GENE DEMELLO, JR.
CLAYTON H. W. HEE
MILTON H. KOTSUBO
CAROL K. MATAYOSHI
MEMBERS

KEVIN S. REGO
ACTING ADMINISTRATOR

No. _____

**TESTIMONY ON HOUSE BILL 1463
RELATING TO EXECUTIVE PARDONS**

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

House Committee on Corrections, Military & Veterans
Rep Takashi Ohno, Chair
Rep. Sonny Ganaden, Vice Chair

Wednesday, February 16, 2022 – 10:00 a.m.
Via Videoconference

Chair Ohno, Vice Chair Ganaden, and Members of the Committee:

The Hawaii Paroling Authority (HPA) understands the intent of HB 1463, which seeks to change the current pardon's process regarding the processing of applications for gubernatorial pardon by including the County Prosecutor of each county and victim(s). The HPA has concerns with some of the proposed changes to the current pardon's process.

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 could be considered meaningful or relevant to the process or the applicant. The process (application, interview, investigation) is set to evaluate remorse, community adjustment after completion of supervision and/or incarceration period, and their current status as a positive contributing member of society, not to adjudicate the case again. Also, the proposed time frame for county prosecutors would most likely cause unnecessary delays in the pardon process which was "streamlined" in 2017.

Thank you for the opportunity to provide testimony on HB 1463.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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Telephone: 808 587-1143
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MARTHA ROSS
Chair

CLIFTON Y.S. CHOY
Commissioner

MARI McCAIG BELLINGER
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HB 1463
RELATING TO EXECUTIVE PARDONS
by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Corrections, Military, & Veterans
Representative Takashi Ohno, Chair
Representative Sonny Ganaden, Vice Chair

Wednesday, February 16, 2022; 10:00 AM
Via Videoconference

Good morning, Chair Ohno, Vice Chair Ganaden, and Members of the House Committee on Corrections, Military, & Veterans. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in support of House Bill 1463. The bill establishes a comprehensive application process for executive pardons.

The Hawai'i State Legislature established the Crime Victim Compensation Commission in 1967 as a safety net for violent crime victims. The Commission's compensation program assists victims of violent crimes with medical costs, counseling costs, lost wages, and funeral and burial expenses not covered by other sources. Many victims would not be able to receive rehabilitation services, counseling services, or bury a loved one without compensation awarded by the Commission. Today, all 50 states have a Crime Victim Compensation Program.

The Commission serves as the chair of the Statewide Automated Victim Notification System ("SAVIN") Governance Committee. The SAVIN program was created by the legislature to provide automated notification to crime victims and survivors. In this capacity, the Commission is aware of how important it is for victims to be notified about and to participate in the criminal justice process.

The current pardon process does not provide for the notification or input of prosecutors and crime victims. This bill corrects that oversight and allows 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.

Thank you for providing the Commission with the opportunity to testify in support of House Bill 1463.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE TAKASHI OHNO, CHAIR
HOUSE COMMITTEE ON CORRECTIONS, MILITARY & VETERANS
Thirty-first State Legislature
Regular Session of 2022
State of Hawai`i

February 16, 2022

RE: H.B. 1463; RELATING TO EXECUTIVE PARDONS.

Chair Ohno, Vice Chair Ganaden, and members of the House Committee on Corrections, Military & Veterans, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 1463. This bill is part of the Department's 2022 legislative package, and the language herein was prepared in coordination with the Hawaii Paroling Authority and the Department of the Attorney General; we thank them for their willingness to work with us on this matter.

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 currently do for furlough, parole, and numerous points prior to an offender's conviction or sentencing.

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 H.B. 1463, is not based on any one particular state, but loosely based upon statutory requirements from multiple states.

That said, the Department is not wedded to any particular language, procedure, or timeframe for these matters, and is happy to meet with any additional stakeholders on this subject. 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 broad, it should be carried out with the benefit of 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 H.B. 1463. 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.

Rebecca Like
Acting Prosecuting Attorney

Jennifer S. Winn
Acting First Deputy

Leon J. C. Davenport, III
Acting Second Deputy



Diana Gausepohl-White
Victim/Witness Program Director

Theresa Koki
Life's Choices Kaua'i Program
Prevention Services Coordinator

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Victim/Witness Program 808-241-1898 or 800-668-5734

February 14, 2022

RE: H.B. 1463; Relating to Executive Pardons

Chair Ohno, Vice-Chair Ganaden and members of the House Committee on Corrections, Military and Veterans, the Office of the Prosecuting Attorney of the County of Kauai ("OPA") submits the following testimony in support of H.B. 1463.

This bill establishes a comprehensive application process for executive pardons. Our Office currently does not receive advance notice of applications for executive pardon. Notification is only required when a pardon is granted. Prosecutors and crime victims should have the ability to provide input into executive pardon considerations. Victims and prosecutors have unique insight to provide for the Governor's consideration. Our Office, along with crime victims, regularly provide input when inmates are considered for furlough, parole and other considerations of changes in status. It is critical that we be able to provide our insight in executive pardons as well.

For these reasons, the Office of the Prosecuting Attorney of the County of Kauai supports the passage of H.B. 1463. Thank you for the opportunity to testify on this matter.



House Committee on Corrections, Military & Veterans
Representative Takashi Ohno, Chair
Representative Sonny Ganaden, Vice Chair

HEARING: February 16, 2022 at 10am
RE: HB1463 Relating to Executive Pardons

Hawaii Firearms Coalition provides **COMMENTS for HB1463.**

The pardon process is important to the 2nd Amendment, right to keep and bear Arms. People deserving of a pardon should have a clear understand of how to apply and receive a pardon and this bill would be a step forward in the right direction. Please ensure the process is efficient, fair, open for public review, and completed in a timely matter.

The proliferation of felony and gun control laws has resulted in the permanent loss of gun rights for many. For example, convictions for mutual consent fights (petty misdemeanor crime of violence) or theft of agriculture products over \$100 (class C felony) results in a lifetime ban on firearms possession. Although these crimes are bad, they do not warrant a lifetime ban on civil rights. Those who committed those acts and have since become a good member of society should be able to apply for and receive a pardon to continue with their lives.

People need the right to bear arms for many reasons:

1. Hunting to provide food for their families, especially with rising food prices.
2. Self-defense
3. Employment in armed professions
4. Teach firearms responsibility and accountability to their children

Please continue work to improve the pardon process.

Mahalo

Todd Yukutake
Director
Hawaii Firearms Coalition
PH. (808) 255-3066
Email: todd@hifico.org

HB-1463

Submitted on: 2/14/2022 2:54:48 PM

Testimony for CMV on 2/16/2022 10:00:00 AM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Elizabeth Kent | Individual | Support | No |

Comments:

Aloha,

Thank you for the opportunity to submit testimony in strong support of setting up a statutory process for executive pardons. I hope that in addition to the process set forth in this bill, you will consider adding language that allows for public notification of a possible pardon and an opportunity for comment. Name changes require notice to the public. It seems that something as important as granting a pardon would benefit from public input as well.

Respectfully,

Elizabeth Kent

House Committee on Corrections, Military & Veterans, Wednesday February 16, 2022

Representative Ohno, Representative Ganaden, and Committee Members, I am writing today in support of HB 1463.

Both in my own life and through the experience shared by my friends and family I have learned about the deep, lasting impacts crime and violence can have. I have been mugged twice and stalked on a few occasions. Neither happened in Hawaii, but ever since, I cannot walk on any street in any city without a degree of fear and caution. I have friends and family that have had much worse happen. Child abuse, neglect, abandonment, rape, and other crimes of violence are all personal to me because they have happened to people I love.

I am absolutely in favor of rehabilitation. Everyone can make a mistake; and I believe in the capacity to grow and change. The current laws regarding pardons take this into account. However, the laws do not have a built-in mechanism to ensure that the voice of the person who was harmed and the prosecutor who represents the community at large are also heard during the pardon process. In fact, overall, the criminal justice system operates in a way that excludes and minimizes the victim so that it is difficult for them to express how the harm that was done to them impacted their life. I know from personal experience that the impact of crime can infiltrate every aspect of life and continue indefinitely.

Because it is personal to me, I have researched how trauma and PTSD cause lasting changes to the way the brain functions. A person who suffers significant trauma, particularly repeated trauma over a lifetime, functions very differently. Trauma can take an enormous toll and completely alter brain development and day-to-day functioning. Trauma is for life. According to numerous studies, it can cause of addiction, depression, difficulty retaining jobs, lack of hope, and other issues. That is a burden victims of crime carry on a day-to-day basis because of their victimization.

I do not mean to say that people who harm other people cannot be reformed and should be subject to overly harsh punishment. I just think that pardoning a person, erasing the constraints of their culpability, requires serious consideration. That consideration should include how the crime impacted, or continues to impact, the person (or persons) that actually were harmed by the offense.

I support HB 1463.

Thank you for your consideration,

Rima Ah Toong,

Rima.ahtoong@gmail.com

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