



The Judiciary, State of Hawaii

Testimony to the Thirty-First Legislature, Regular Session of 2022

House Committee on Corrections, Military & Veterans

Representative Takashi Ohno, Chair

Representative Sonny Ganaden, Vice Chair

Wednesday, March 23, 2022 at 10:30 a.m.

Conference Room 430 & Videoconference

by

R. Mark Browning

Chief Judge of the First Circuit Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Concurrent Resolution No. 12, Urging the Judiciary to Assign One Judge for the HOPE Probation Program.

Judiciary's Position:

The Judiciary respectfully opposes House Concurrent Resolution No. 12 because it would impose a burden on the Judiciary's resources. The Judiciary needs flexibility to determine to deploy its resources

The Judiciary respectfully opposes this resolution for the following reasons:

1. The COVID-19 pandemic caused the Judiciary to re-strategize the HOPE Probation program to comply with COVID-19 protocols which included the need to limit the number of individuals in custody to prevent the spread of the virus, and to keep probationers and the community safe. During this time, probation officers addressed all violations, administered sanctions, and continued to work with probationers to effectuate prosocial change. Jail sanctions were utilized in circumstances where a probationer presented an immediate threat to the community or themselves. This strategy was in alignment with best practices and followed the guidance of the American Probation and Parole Association.



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2. Due to budget reductions, a number of vacant Judiciary positions were de-funded. Currently, the First Circuit has 104 de-funded positions. Included in these de-funded positions was a vacant Circuit Court Judge position in the First Circuit. This position has remained de-funded and vacant, and as such, has resulted in an increase in workload for the other judges and their staff. Having one judge dedicated to the HOPE Probation program is an inefficient use of Judiciary resources. It is prudent and efficient for the Judiciary to manage its resources by prioritizing the adjudicating and disposing of cases. This is being accomplished by HOPE cases being managed by the sentencing judge which allows all judges to do trials, which have a backlog due to the COVID-19 pandemic restrictions. Given the backlog of jury trials, the Judiciary's commitment must be to address that backlog and removing a judge from the trial calendar would undermine that effort. Additionally, we are not aware of research that explains that it is an important element to assign one judge to HOPE Probation will improve program outcomes.
3. The HOPE judge was assigned six support positions, that included clerical and law clerk positions. This again is a resource issue for the Judiciary as it is an inefficient use of our limited resources to expend on one judge and one program. Currently, the First Circuit has 56 funded vacancies which the Judiciary has been unable to fill despite best efforts. A number of these vacancies are court clerks who are critical to divisions remaining operational.
4. From the inception of the program, there have been periods of time when all judges oversaw HOPE cases, when several judges oversaw HOPE cases, and more recently when a handful of judges oversaw HOPE cases. HOPE has always has more than one judge overseeing HOPE cases, in both the Circuit Court calendar and the Family Court Criminal calendar.
5. Committing one judge to one specific program is not practical or efficient as it takes away resources from other important work of the Judiciary. The mission of the Judiciary, as an independent branch of government, is to administer justice in an impartial, efficient and accessible manner in accordance with the law. Judges preside over a wide variety of cases including divorces, child abuse cases, landlord-tenant disputes, traffic violations, and assaults, and make decisions that can have lifelong consequences for the people involved. The law and the system may seem complex, but at its heart is the protection of individual rights and freedoms, a precious key to a sound democracy. Democracy cannot function unless the third branch of government decides each case based solely on the particular laws and facts presented, regardless of public opinions and other outside influences.

Thank you for the opportunity to testify on House Concurrent Resolution No. 12.

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THE HONORABLE TAKASHI OHNO, CHAIR
HOUSE COMMITTEE ON CORRECTIONS, MILITARY & VETERANS
Thirty-first State Legislature
Regular Session of 2022
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March 23, 2022

RE: H.C.R. 12; URGING THE JUDICIARY TO ASSIGN ONE JUDGE FOR THE HOPE PROBATION PROGRAM.

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 support of H.C.R. 12.

If passed, H.C.R. 12 would urge the Judiciary to return the Hawaii’s Opportunity Probation with Enforcement (“HOPE”) Program to its original form, utilizing one dedicated judge to ensure consistency and continuity in all decisions and provide expedited and timely hearings for all program participants.

The HOPE Program was launched in 2004 in response to increasing numbers of felony probationers on Oahu and frequent substance abuse problems among this population. The current sanctions structure did not address violations quickly, which is critical for effective behavioral change. HOPE provided a unique approach that imposed swift, certain, consistent and proportionate consequences for non-compliance with the terms and conditions of probation for some of the Judiciary’s most challenging probationers. This was not punishment for its own sake—it was to teach accountability (adult actions have consequences) and to help pair bad behavior with a consequence. The consequences also kept the probationers sober and seeing their probation officer and attending and persevering in treatment. Since its creation, HOPE has been the focus of numerous top-quality studies, and has been adopted by jurisdictions across the nation, to the benefit of many offenders. One study, conducted by researchers from Pepperdine University and the University of California Los Angeles, found that:

In a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61

percent less likely to skip appointments with their supervisory officer and 53 percent less likely to have their probation revoked. As a result, they also served or were sentenced to, on average, 48 percent fewer days of incarceration [i.e. prison] than the control group.

Notably, the study found that jail bed days for HOPE probationers and those on regular probation were the same, while HOPE probationers were sentenced to 48% fewer days in prison. Additionally, Native Hawaiians in HOPE were 42% less likely to have their probation revoked (and be sent to prison) compared to Native Hawaiians on regular probation and women in HOPE were 50% less likely to do so.

Since its inception in 2004, the Department has worked collaboratively with the Office of the Public Defender, the Judiciary, and the Legislature to not only provide the necessary resources for this program, but to also provide qualified defendants access to HOPE so that they have the best chance to stay out of prison and turn their lives around. From experience, we know that HOPE works best with a single dedicated judge who can provide swift, certain, consistent, and fair treatment of participants. We appreciate the Legislature's commitment to HOPE and its help in assuring that it remains a viable program. The Department has also been meeting with the Judiciary to ensure that the HOPE model continues to improve outcomes of probationers. We are hopeful that these meetings will lead to a reinvigorated HOPE program that lives up to its full potential.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.C.R. 12. Thank for you the opportunity to testify on this matter.

HCR-12

Submitted on: 3/22/2022 11:56:32 PM

Testimony for CMV on 3/23/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carrie Ann Shirota	ACLU of Hawai'i	Comments	Written Testimony Only

Comments:

Dear Chair Ohno, Vice Chair Ganaden and Committee Members:

The ACLU of Hawaii has concerns about placing greater fiscal resources into the HOPE Probation Program based on a 2007 evaluation of short term outcomes, and the lack of a current cost-benefit analysis on short-term and long term outcomes compared to a control group who are provided with support services and alternatives to incarceration for technical violations of probation conditions.

Since taxpayers foot the bill when people on probation are returned to jail under HOPE or standard probation, lawmakers and the public should have access to data about HOPE Probation outcomes. Notably, HCR No. 12 makes general reference to long term positive outcomes of the HOPE Probation Program without citing a source.

Our jails and prisons have been overcrowded for years, and HOPE probation contributes to overcrowding for sanctioning people to jail for "each detected violation, such as detected drug use or missed appointments with a probation officer."

The ACLU's position is clear - drug misuse is a public health issues that requires a public health response, not incarceration.

Hawai'i has earned the dubious distinction of having the longest average term of probation in the United States at 59 months. Moreover, racial disparities exist within our probation system and rates of revocation - as highlighted by the Office of Hawaiian Affairs Report.

Prior to assigning one Judge for the HOPE Probation Program, we recommend that a cost-benefit analysis is conducted to measure outcomes of effectiveness compared to other data driven alternatives.

Thank you for the opportunity to submit comments relating to HCR No. 12.



COMMENTS ON HCR 12

TO: Chair Ohno, Vice Chair Ganaden, & Committee Members

FROM: Nikos Leverenz, Grants & Advancement Manager

DATE: March 23, 2022 (10:30 PM)

Hawai'i Health & Harm Reduction Center (HHHC) offers the following comments regarding HCR 12, which would urge the Judiciary to assign one judge for the HOPE probation program.

The continued absence of substantive probation reform—as well as sentencing reform and bail reform—creates a policy framework for perennially overcrowded jails. The Department of Public Safety relayed a critical data point to the [HCR 85 Prison Reform Task Force, which published its final report in January 2019](#): *only 26% of the combined jail and prison population is incarcerated for class A or B felony, while the remaining 74% are incarcerated for a class C felony or lower (misdemeanor, petty misdemeanor, technical offense, or violation)*. Possession of any amount of a substance classified as “dangerous drug,” including unusable traces and residue, is characterized as “promotion” and punishable by a prison term of five years and \$10,000 fine. Over-incarceration is exacerbated by [Hawai'i having the longest average term of probation in the nation](#) (59 months). The current probation regime, which includes HOPE, subjects persons from under-resourced communities to prolonged periods of criminal legal supervision.

The continued criminalization of personal drug use and possession perpetuates lasting social, medical, and legal stigma. [The enforcement of drug laws has disproportionately impacted Native Hawaiians](#). In this regard, the criminal legal system's enforcement of punitive drug laws embodies the kind of [structural racism that this Legislature declared a public health crisis in HCR 112](#). Increased access to medically supervised behavioral health treatment should be provided outside of the criminal legal context, particularly to those from under-resourced communities.

HHHC is strongly opposed to the continued criminalization of behavioral health problems and [supports the decriminalization of personal drug use and possession](#). Many of those we work with have behavioral health problems, including those related to substance use and mental health conditions. Many individuals we work with are impacted by poverty, housing instability, and other social determinants of health. Additionally, many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse. Criminalization compounds their suffering and further jeopardizes their health and well-being.