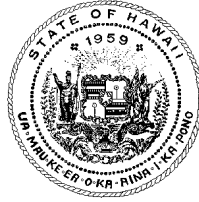


DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
1177 Alakea Street, 6th Floor  
Honolulu, Hawaii 96813

**MAX N. OTANI**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Tommy Johnson**  
Deputy Director  
Corrections

**Jordan Lowe**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 2091, SENATE, DRAFT 1, HOUSE DRAFT 1  
RELATING TO EXECUTIVE PARDONS.

by  
Max N. Otani, Director  
Department of Public Safety

House Committee Judiciary and Hawaiian Affairs  
Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair

March 30, 2022; 2:00 p.m.  
Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of Public Safety (PSD) has reviewed Senate Bill (SB) 2091, Senate Draft (SD) 1, House Draft (HD) 1, which seeks to establish a comprehensive application process for executive pardons that would add several steps to the current executive pardon process.

The Department respectfully submits comments on this measure based on insights from a background of experience with the executive pardon process. Presently, 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 PSD. 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.

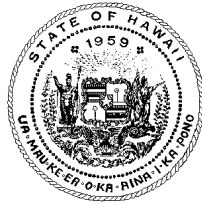
Providing the applicant otherwise qualifies, the pardon application is assigned to an investigator to gather required information, conduct research into the applicant's criminal conduct, both in the State of Hawaii and outside of the State, interview the applicant, and complete the pardon investigation.

Following completion of the investigation, the investigation report, with all relevant documents and materials, 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, SB 2091, SD 1, HD 1 would substantially increase the processing timeline for executive pardon applications by adding several more layers of oversight, which may not add value to the process. 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  
**CRIME VICTIM COMPENSATION  
COMMISSION**

1164 Bishop Street, Suite 1530  
Honolulu, Hawai'i 96813  
Telephone: 808 587-1143  
Fax: 808 587-1146

MARTHA ROSS  
Chair

CLIFTON Y.S. CHOY  
Commissioner

MARI McCAIG BELLINGER  
Commissioner

PAMELA FERGUSON-BREY  
Executive Director

TESTIMONY ON SB 2091 SD1 HD1  
RELATING TO EXECUTIVE PARDONS

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

House Committee on Judiciary & Hawaiian Affairs  
Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, March 30, 2022; 2:00 PM  
Via Videoconference

Good afternoon, Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary & Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in strong support of Senate Bill 2091, SD1, HD1. 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 strong support of Senate Bill 2091, SD1, HD1.

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 SENATE BILL 2091, SD1, HD 1  
RELATING TO EXECUTIVE PARDONS**

by  
Edmund "Fred" Hyun, Chairman  
Hawaii Paroling Authority

House Committee on Judiciary & Hawaiian Affairs  
Rep. Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair

Wednesday, March 30, 2022 – 2:00 p.m.  
Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Hawaii Paroling Authority (HPA) understands the intent of SB 2091, SD1, HD1, 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 SB 2091, SD1, HD1.

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 SENATE BILL 2091, SD1, HD 1  
RELATING TO EXECUTIVE PARDONS**

by

Kevin S. Rego, Acting Administrator  
Hawaii Paroling Authority

House Committee on Judiciary & Hawaiian Affairs  
Rep. Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair

Wednesday, March 30, 2022 – 2:00 p.m.  
Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

I am opposed to SB 2091, SD1, HD 1 as it would be an additional layer (timeline and agency) into the current pardon process already in practice. However, I am open to "providing notification" to the county prosecuting attorney upon receipt of all pardon applications so they can evaluate and include their input into the investigation process.

**SB-2091-HD-1**

Submitted on: 3/29/2022 12:18:02 PM

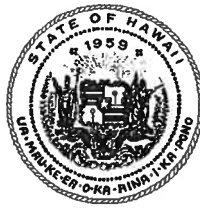
Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Hana Denning	Hawaii Paroling Authority	Oppose	Written Testimony Only

Comments:

I am opposed to SB 2091, SD 1, HD 1, as it would be an additional layer (timeline and agency) into the current pardon process already in place. However, I am open to providing notification to the county prosecuting attorney upon receipt of all pardom applications so they can evaluate and include their input into the investigation process.

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 SENATE BILL 2091, SD1, HD 1  
RELATING TO EXECUTIVE PARDONS**

by  
Corey Reincke, Acting Branch Administrator  
Hawaii Paroling Authority

House Committee on Judiciary & Hawaiian Affairs  
Rep. Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair

Wednesday, March 30, 2022 – 2:00 p.m.  
Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

I am opposed to SB 2091, SD1, HD 1. However, I am open to "providing notification" to the county prosecuting attorney upon receipt of all pardon applications so they can evaluate and include their input into the investigation process.

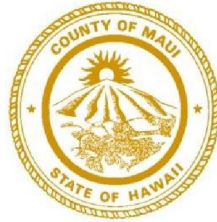
Currently, victims have the opportunity to participate in the entire parole process of the Offender: from the Minimum Hearing, parole hearing, parole violation hearing (if they are a party to the violation) and including Reduction of Minimum (ROM).



**MICHAEL P. VICTORINO**  
Mayor

**ANDREW H. MARTIN**  
Prosecuting Attorney

**MICHAEL S. KAGAMI**  
First Deputy Prosecuting Attorney



**DEPARTMENT OF THE PROSECUTING ATTORNEY**  
COUNTY OF MAUI  
150 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY  
ON  
S.B. 2091 SD1 HD1 RELATING TO  
EXECUTIVE PARDONS

March 24, 2022

The Honorable Mark M. Nakashima  
Chair  
The Honorable Scot Z. Matayoshi  
Vice Chair  
and Members of the Committee on Judiciary and Hawaiian Affairs

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments in support of S.B. 2091 SD1 HD1, Relating to Executive Pardons.

Under the current executive pardon process, neither the county prosecutors nor crime victims are provided notice that an offender has applied for an executive pardon. In contrast, both prosecutors and crime victims are notified that an offender may be released on furlough, parole or various forms of pre-trial release. This lack of notice prevents prosecutors and victims from providing timely, relevant input on an offender's application for a pardon.

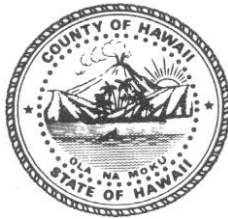
Furthermore, although the Governor's pardoning power is both broad and exercised with due regard for such a serious responsibility, the current pardon process often prevents the Governor from hearing from what should be a significant resource for determining whether a pardon should be granted: the victim of the offense. Facilitating crime victim input during the pardon process is an important step in healing the wounds that an offender's actions have caused and ensuring that justice is achieved.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the passage of S.B. 2091 SD1 HD1. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

**KELDEN B.A. WALTJEN**  
PROSECUTING ATTORNEY

**STEPHEN L. FRYE**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



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**OFFICE OF THE PROSECUTING ATTORNEY**

**TESTIMONY IN SUPPORT OF**  
**SENATE BILL 2091, SD 1, HD 1**

A BILL FOR AN ACT  
RELATING TO EXECUTIVE PARDONS

House Committee on Judiciary and Hawaiian Affairs  
Representative Mark Nakashima, Chair  
Representative Scot Matayoshi, Vice Chair

Wednesday, March 30, 2022 at 2:00 p.m.  
Via Videoconference &  
State Capitol Conference Room 325

Honorable Chair Nakashima, Vice-Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs. The County of Hawai‘i, Office of the Prosecuting Attorney submits the following testimony in support of Senate Bill 2091, SD 1, HD 1.

This Bill would allow for a more comprehensive application process for executive pardons. As it stands, Prosecutors and victims are not provided with information regarding a pardon until it is already granted. This practice prevents Prosecutors and victims from having the opportunity to provide meaningful input before a decision is made. Our Office has always supported a victim’s right to have their voices heard. Their rights to provide input when considering executive pardons should be no different than their rights to be heard during sentencing, minimum and parole hearings, and other status changes.

The County of Hawai‘i, Office of the Prosecuting Attorney remains committed to the pursuit of justice with integrity and commitment. For the foregoing reasons, the County of Hawai‘i, Office of the Prosecuting Attorney supports the passage of Senate Bill 2091, SD 1, HD 1.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM  
PROSECUTING ATTORNEY

THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE MARK M. NAKASHIMA, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**  
**Thirty-first State Legislature**  
**Regular Session of 2022**  
**State of Hawai`i**

March 30, 2022

**RE: S.B. 2091, S.D. 1, H.D. 1; RELATING TO EXECUTIVE PARDONS.**

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of S.B. 2091, S.D. 1, H.D. 1. This bill is part of the Department's 2022 legislative package, and we thank you for hearing it.

The original language of S.B. 2091 was prepared in partnership with the Hawaii Paroling Authority ("HPA") and the Department of the Attorney General, in 2020. While we understand the current administration now has concerns about codifying such procedures for the pardons process, the Department maintains that codification is crucial to ensuring that crimes victims are able to provide input—whatever weight their input is given by decision-makers—as future administrations could be less supportive and potentially eliminate victims from the process altogether.

Currently, county prosecutors and crime victims in Hawaii do not receive any advance notice of applications for executive pardon; they typically only learn of it *after* a pardon has already been granted. Thus, neither prosecutors nor victims are able to provide any input for the Governor's consideration in these matters, despite being able to do so (for the HPA) prior to parole or furlough, and (for the court) at multiple 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 are virtually no statutory requirements or guidance 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. Aside from HRS §353-72, which requires the Department of Public Safety to assist and advise the Governor upon request, there are currently no other statutes on the matter.<sup>1</sup>

By comparison, 11 other states (CA, CO, IL, ME, MO, NV, NY, NC, OH, WI, WY) have similar constitutional provisions—stating that only 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 procedure.<sup>2</sup> **At least 8 of the 11 expressly require that notice be given to the prosecutor** (we did 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.<sup>3</sup> 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 this bill is not based on any one particular state, but loosely based upon statutory requirements from multiple states. Please note, a number of amendments were made to the H.D. 1 version of this bill, at the Department’s suggestion, in response to concerns raised by the HPA during Senate hearings.

To be clear, the Department has great respect for the thorough investigations and hearings process carried out by the HPA, in all applications for pardon, and S.B. 2091, S.D. 1, H.D. 1, is not intended to—nor is there any indication that it would—delay or weaken that process in any way. Moreover, the Department is not wedded to any particular language, procedure or timeframe for the mechanisms outlined in this bill, and is always happy to meet with any stakeholders on the subject.

While the pardoning power granted to the Governor, by our State Constitution, is undoubtedly broad—and this bill would not restrict or discount that power in any way—it should be carried out with the benefit of hearing from all interested stakeholders. The Department does believe that the current Governor and all past governors have taken this responsibility very seriously, yet we also believe that additional input would better assist our Governors in making these very impactful decisions. If passed, S.B. 2091, S.D. 1, H.D. 1, would provide a consistent and reliable means for prosecutors and victims to provide meaningful input on all relevant applications for pardon. Not only would this reasonably ensure that victims are kept up-to-date on these matters that may deeply affect them—and give them a voice in the process—it would also assist our Governors in making better-informed decisions. Naturally, it is always a victim’s choice whether to participate in this process, but we strongly believe that they should at least be given that choice.

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. 2091, S.D. 1, H.D. 1. Thank you for the opportunity to testify on this matter.

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<sup>1</sup> 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.”

<sup>2</sup> 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.

<sup>3</sup> 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.



Mothers Against Drunk Driving HAWAII  
745 Fort Street, Suite 303  
Honolulu, HI 96813  
Phone (808) 532-6232  
hi.state@madd.org

March 30, 2022

To: Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair  
Members of the Committee on Judiciary & Hawaiian Affairs

From: Kurt Kendro, Chair, Public Policy Committee; Mothers Against Drunk Driving- Hawaii

Re: Senate Bill 2091, SD1, HD1- RELATING TO EXECUTIVE PARDONS

I am Kurt Kendro, Chair of Mothers Against Drunk Driving (MADD) Hawaii's Public Policy Committee and a retired Major from the Honolulu Police Department speaking on behalf of the members of the MADD Hawaii Advisory Board in STRONG SUPPORT of SB2091, SD1, HD1- Relating to Executive Pardons.

The mission of MADD is to end drunk driving, help fight drugged driving, *support the victims of these violent crimes*, and prevent underage drinking. It is difficult to admit, but the victims and survivors of impaired driver crashes are often forgotten by the media and the members of our community. MADD Hawaii does their very best to represent and support the victims and survivors of impaired driving crashes.

I can still remember the pain and anguish I felt in 1991, when my police academy classmate, Honolulu Police Officer Randy Young, was killed by a drunk driver while giving a speeding citation on the Pali Highway. He was a police academy classmate, a friend, a father, a son, an avid runner finishing several Honolulu Marathons, and a Honolulu Police Officer. We should never forget the victims, ever.

Currently, MADD Hawaii usually finds out about a pardon after it has already been granted because there is no prior notification that an application was made or being considered. The current process forgets about the victims and survivors and the impact these violent crimes have had on them. This bill will codify a process that ensures the Governor is able to hear and consider the impact a crime has had on the victims or survivors before a pardon is granted. Survivors, victims, and family members should be heard before a pardon is granted. It is the right thing to do.

MADD Hawaii is in STRONG SUPPORT of SB 2091, SD1, HD1, and urges you to pass this bill to protect the rights and voices of victims and survivors of impaired driver crashes, and all other serious crimes, before a pardon is granted.

Thank you for the opportunity to testify.

To: Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair  
Members of the Committee on Judiciary & Hawaiian Affairs

From: Theresa Paulette, MADD Hawaii, Victim Services Specialist

Date: March 30, 2022

Re: Senate Bill 2091, SD1, HD1 – Relating to Executive Pardons

I am Theresa Paulette, MADD Hawaii's Victim Services Specialist, and a bereaved mother whose 15 year old son was killed in a crash involving a 6x repeat DUI offender. I am testifying on behalf of the victims of drunk and drugged driving in strong support of SB 2091, SD1, HD1 – Relating to Executive Pardons.

I personally know the trauma and life-long grief resulting from the death of a loved one in a violent crash. I know the belief that the perpetrator will be held accountable and justice will be served. However, victims soon learn that justice is complex and often not served. It is a long and tedious process that is most often centered on the rights of the offender, with victims being forgotten, as in the case of Executive Pardons.

As a MADD Victim Advocate, I speak to many of the victims of impaired driving and support them from the beginning of their trauma and grief journey through the criminal justice process and longer, if they need. Most are intent on justice being served and follow the criminal justice process each step of the way, if they are notified.

Victims are notified for hearings, trial, sentencing, and parole hearings and they're able to attend and submit victim impact statements. The same should hold true if an application for a Pardon has been made which, if granted, would deeply impact victims and survivors and would negate the belief and feeling that justice was served.

Thank you for the opportunity to testify in strong support of SB 2091, SD1, HD1.



HAWAI'I STATE  
**COALITION AGAINST  
DOMESTIC VIOLENCE**

March 30, 2022

Members of the House Committee on Judiciary and Hawaiian Affairs:

Chair Mark M. Nakashima	Rep. Angus L.K. McKelvey
Vice Chair Scot Z. Matayoshi	Rep. Nadine K. Nakamura
Rep. Linda Ichiyama	Rep. Roy M. Takumi
Rep. Dale T. Kobayashi	Rep. Chris Todd
Rep. Matthew S. LoPresti	Rep. James Kunane Tokioka
Rep. Nicole E. Lowen	Rep. Gene Ward

Re: SB2091 SD1 HD1 Relating to Executive Pardons

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) advances the safety and healing of victims, survivors and their families. We are the collective voice of a diverse network of organizations and individuals, working to eliminate all forms of domestic violence in Hawai'i by fostering partnership, increasing awareness of domestic violence, developing the capacity of our member programs and community partners to address the needs of survivors and their families, and advocating for social justice and change.

On behalf of HSCADV and our 26 member programs statewide, we **support SB2091 SD1 HD1**. This bill would create a permanent and reliable procedure for Prosecutors and victims to receive notice when an offender applies to the Governor for an executive pardon from conviction. Currently, there is no such process. The only way many victims will find out that an application was submitted, is when it's announced that the pardon was already granted, and by then, it is too late for the victim to say anything, should they choose to do so.

Thank you for hearing this measure and the opportunity to submit testimony.

Sincerely,

Angelina Mercado, Executive Director

As the SAVIN Governance Committee Chair, I want to thank you for the opportunity to testify in strong support of Senate Bill 2091 SD1, HD1.

The Statewide Automated Victim Notification System (“SAVIN”) Governance Committee (SGC) was created by the legislature to establish guidelines and standards for planning, managing, and operating a successful SAVIN Program. The SGC prioritizes victim needs by ensuring timely and accurate information that both enhances their ability to protect themselves and ensures they can fully participate in the criminal justice process if they so choose.

SB 2091 SD1, HD1, would create a permanent and reliable procedure for Prosecutors and victims to receive notice if/when an offender applies to the Governor for an executive pardon from conviction. Currently, no process exists, and the only way many victims will find out that an application was submitted, is when it is announced that the pardon was already granted, and by then, it is too late for the victim to say anything.





Hawai'i

Committee: House Committee on Judiciary and Hawaiian Affairs
Hearing Date/Time: Wednesday, March 30, 2022, 2:00 P.M.
Place: Via videoconference
Re: Testimony of the ACLU of Hawai'i in opposition to S.B. 2091 S.D. 2 H.D. 1 Relating to Executive Pardons

Dear Chair Nakashima, Vice Chair Matayoshi and members of the Committee:

The ACLU of Hawai'i is committed to transforming Hawaii's criminal legal system and building a new vision of safety and justice. We advocate for the State to shift spending priorities away from mass criminalization and incarceration that disparately impacts Native Hawaiians, Pacific Islanders and other people of color and the poor - towards rehabilitation, education, housing, health and human services, and restorative justice in the community.

The ACLU of Hawai'i submits comments in opposition to SB2091 SD2 Relating to Executive Pardons. The proposed bill seeks to change the current pardon process to include the input of prosecutors and victims-survivors of crime. However, this procedural change in process raises fundamental questions about the appropriate role of prosecutors and victims in the pardon process.

The Governor has Broad Authority to Grant Pardons Yet Rarely Uses this Clemency Power

Currently, the Hawai'i Paroling Authority ("HPA") oversees the pardon process. People who have been convicted of felonies and have been discharged from probation, parole or maxed out on their sentences, and have demonstrated over a substantial period of time their ability to continue law-abiding behavior are eligible to file pardon applications. According to Hawaii Paroling Authority's 2020 Annual Statistical Report, the following pardon applications were processed as follows:

Table with 3 columns: 2017-2018, 2018-2019, 2019-2020. Values: 30, 24, 36

Upon receipt of an application, a parole officer will conduct an investigation and submit a report to include HPA's recommendation through the Department of Public Safety and Attorney General to the Governor. Under the Hawai'i State Constitution, the Governor has the authority to grant reprieves, commutations and pardons, after conviction, for all offenses. Although this authority is broad, historical records show that Governors in Hawai'i have infrequently granted pardons:

- Governor Neil Abercrombie granted 83 pardons during his tenure from 2011 to 2014.
• Governor Linda Lingle granted 132 pardons in her eight years in office, 55 of which were in her last year (2010).1
• Governor Ben Cayetano granted 204 pardons in his eight years in office.

1 See Derrick DePledge, Lingle's 55 pardons are most in 8 years, Star Advertiser, Dec. 4, 2010, available at http://www.staradvertiser.com/news/hawaii/news/20101204\_lingles\_55\_pardons\_are\_most\_in\_8\_years.html.

- Governor Waihee granted 115 pardons in his eight years in office.

**A Pardon is An Act of Compassion or Mercy**

**“Each one of us is more than the worst thing we’ve ever done.” -Bryan Stevenson**

Prosecutors and victims have an opportunity to make this case at **earlier stages** of the criminal legal system – charging, plea bargaining, or a trial and sentencing by the Courts. Additionally, in Hawai’i, prosecutors and victim-survivors weigh in on minimum sentence and parole release decisions by the Hawai’i Paroling Authority.

In contrast, a person’s suitability for a pardon typically comes up many years and even decades after the crime. Prosecutors are particularly not well suited to determine whether individuals they have not seen in years or decades still pose a threat to community safety.

***Pardon decisions should focus on reintegration, second chances, mercy, and ultimately, REDEMPTION - after a person has completed their sentence.*** Accordingly, deference towards prosecutors on pardon decisions is inappropriate because the only information they have is related to the crime – ***and the most important question for pardon consideration is whether the person has been rehabilitated and undergone transformation.***

The ACLU of Hawai’i acknowledges that crime leaves lasting impacts on victim-survivors, and strongly advocates for Restorative Justice approaches to addressing harm that works with everyone involved toward true justice, healing, and accountability. This process is an addition and alternative approach to incarceration and punishment and helps to promote a restorative path forward.

Sadly, Restorative Justice programs and practices are limited in Hawai’i, even though people who have survived harm and abuse who participate in restorative justice typically express higher levels of satisfaction than those whose cases are handled in the traditional criminal legal system. These processes center agency, liberation, dignity, and transformation and involve facilitated dialogue, as well as working one-on-one with victim-survivors on their healing journey, and one-on-one with those who have caused harm and are looking to heal and explore accountability for themselves.

In closing, we ask that you, as policymakers, carefully evaluate whether the proposed changes to the current process align with the purpose of the Governor’s clemency powers– acknowledging the human capacity to fundamentally change. **Please hold this measure.**

Sincerely,

*Carrie Ann Shiota*

Carrie Ann Shiota  
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ACLU of Hawai’i  
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*The mission of the ACLU of Hawai’i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai’i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai’i is a non-partisan and private nonprofit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai’i has been serving Hawai’i for over 50 years.*



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**Date:** March 30, 2022

**To:** Rep Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair

**From:** Lynn Costales Matsuoka, Associate Director  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

**RE:** Testimony in Support of SB 2091 SD1 HD1  
Relating to Executive Pardons

**Hearing:** March 30, 2022, via video conference 2:00pm

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Good Morning Chair Nakashima and Vice Chair Matayoshi and Members of the Committee on Judiciary and Hawaiian Affairs:

The Sex Abuse Treatment Center (SATC) is in support of HB 2091, Relating to Executive Pardons.

This bill would establish a comprehensive application process for executive pardons.

Currently, HRS 353-72 does not provide for any notification to survivors of crimes by offenders seeking a pardon, nor does it allow for those victims to come forward and be heard. Most victims only find out after the pardon is already granted, which is much too late for any meaningful input from the victim, which in turn may provide for an informed decision to be made by the authority.

Survivors of crimes, such as sexual assault, deserve to be heard. A pardon by its very nature is a complete exoneration from the crime that was committed. For sexual assault victims, living with the trauma of their abuse often lasts throughout their lifetime. Any sense of justice gained through a conviction is simply erased without any consideration of the impact of sexual violence, and the impact of a pardon. A sexual assault victim does not stand a chance against those odds.

SB 2091 SD1 HD1 gives the victims a voice in the matter of a pardon – their right to be considered and heard.

The SATC supports SB 2091 SD1 HD1. Thank you for your consideration.

**SB-2091-HD-1**

Submitted on: 3/24/2022 5:14:12 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Elizabeth Kent	Individual	Support	Written Testimony Only

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

**SB-2091-HD-1**

Submitted on: 3/25/2022 9:12:08 AM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
SUSANNE P CHIN	Individual	Support	Written Testimony Only

Comments:

As the surviving spouse of Dr. Eugene Chin, who was killed by drunk driver Jeremy Lee, on September 30, 2018, I request the committee support this bill. Having some input into the procedures currently available to surviving family members of such horrific crimes is a vital resource to those of us who continue to try and go on with our daily lives.

No member of this committee has had to undergo the trauma of losing a loved one by the wanton carelessness of individuals who decide to drink, drug and drive, and I ask each person to evaluate their reaction to finding out the perpetrator has been paroled or had his sentence shortened without prior notification to those who have been left behind to grieve and put their lives back together.

March 30, 2022

To : Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair  
Members of the Committee on Judiciary & Hawaiian Affairs

From: Sandra Todd, Resident of Hilo, Hawaii

Re : **Senate Bill 2091, SD1, HD1 – Relating to Executive Pardons**

My name is Sandra Todd, a lifelong resident of the Big Island of Hawaii, speaking in strong support of SB2091, SD1, HD1 – Relating to Executive Pardons.

My son, Steven Rapoza, was killed by an impaired driver with a Blood Alcohol Count nearly three times the legal limit. Although it's been 25 years since his death in that horrific head-on crash, I think of him and miss him every day.

Steven was a caring son and brother and a good friend to many. He was a loving, devoted father who worked two jobs to support his family. His daughters, Tasha and Tori were toddlers when he was taken from them. Both recently got married, but their father was not there to walk them down the aisle. Nor will he ever experience the thrill of holding his grandchildren.

It's disturbing to know that the current pardon process does not notify victims and survivors when an application for a pardon is being considered. Impaired driving crashes and other serious crimes have caused many deaths and life-changing injuries. Victims and survivors of these crimes should have the right to notification. I strongly urge you to pass SB2091, SD1, HDI.

Thank you for the opportunity to testify.

Sandra Todd  
22 Pakalana Place  
Hilo, Hawaii 96720  
Phone: (808)935-2863

**SB-2091-HD-1**

Submitted on: 3/29/2022 8:19:53 AM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Karlotta Carvalho	Individual	Support	Written Testimony Only

Comments:



RE: S.B. 2091; Relating to Executive Pardons

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on the Judiciary

Aloha, My name is Karlotta Carvalho and I am the mother of the deceased Waika Wila Carvalho. Waika was killed at the hands of a drunk driver in 2009 at the young age of 23. Needless to say this loss has had a monumental impact on our family. Throughout the judicial process, it is the systems that were in place that afforded our ohana feelings of value, safety and protection. The VINE system provided my family a sense of constant reassurance and connectedness in the judicial process. In our experience, the State of Hawaii has done its part to serve and protect victims of crime very well. However, we do strongly believe that more can be done which is why we are in support of SB2091 SD1 HD1. Crime Victims are an integral part of the equation and should always be considered. Being a valued part of the process is vital to healing and eventual closure for families, in our experience. It is my hope that the same feelings of value, protection and peace that we as a Carvalho Ohana felt with the State of Hawaii systems that carried us through the judicial process for now 12 years, be extended in the passage of SB2091 SD1 HD1 to ALL the people, and OHANA of Hawaii.

I echo these valued sentiments below:

This bill establishes a comprehensive application process for executive pardons. Victims currently do not receive advance notice of applications for executive pardon. Notifications are 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 valuable and necessary insight to provide for the Governor's consideration. Crime victims, regularly provide input when inmates are considered for furlough, parole and other considerations of changes in status. I believe it is vital that crime victims be able to provide insight in executive pardons as well.

It is for these reasons, I support the passage of S.B. 2091.

With Aloha,

Karlotta Carvalho



**SB-2091-HD-1**

Submitted on: 3/29/2022 1:59:25 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Peter Koulogeorge	Individual	Oppose	Remotely Via Zoom

Comments:

Please vote no on SB2091

**LATE**

**SB-2091-HD-1**

Submitted on: 3/30/2022 1:29:43 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Melissa-Iris Lau	Individual	Support	Written Testimony Only

Comments:

To all reading this and in possession of the ability to make change that matters to those like myself whose world has been traumatically and unexpectedly turned upside down as a result of the behavior of an individual who CHOSE to make reckless, poor decisions, please take my testimony as well as the others very seriously.

I am the widow of Dr. Travis Lau, who was one of 3 killed by a drunk driver on January 28, 2019. In these past 3 years, I cannot help but feel like there has been so much support for my husband's killer, and little support for my family and I.

Please remember that we as victims did not ask for any of this to happen to us, nor did we put ourselves in a position to deserve such a fate. However, this person actually made the choices he did even though he knew they were wrong. Criminals like him should not be able to be pardoned without the victims at least having a say. Specifically, for Alins Sumang whose history shows that he is not rehabilitable and he especially should never be pardoned.

Those who have the ability to make these kinds of decisions need to be able to listen to what the victims have to say. It is only us who can truly explain the impact that the criminal has made on our life. To not give us this right to have a say and be notified, is just an extra insult to our injury. It only exacerbates the extreme mental and emotional toll on us.