

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

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**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirty-first State Legislature**  
**Regular Session of 2022**  
**State of Hawai`i**

February 18, 2022

**RE: S.B. 2091; RELATING TO EXECUTIVE PARDONS.**

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, 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. 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.<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 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 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.<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 S.B. 2091, 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 S.B. 2091. 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.

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  
RELATING TO EXECUTIVE PARDONS**

by  
Edmund "Fred" Hyun, Chairman  
Hawaii Paroling Authority

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

Friday, February 18, 2022 – 9:30 a.m.  
Via Videoconference

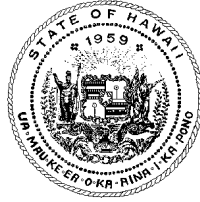
Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

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

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  
RELATING TO EXECUTIVE PARDONS.**

by

**Max N. Otani, Director**  
**Department of Public Safety**

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

**Tuesday, February 18, 2022; 9:30 a.m.**  
**State Capitol, Via Video Conference**

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

The Department of Public Safety (PSD) has reviewed Senate Bill (SB) 2091, 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. 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 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 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.

**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

**OFFICE OF THE PROSECUTING ATTORNEY**

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

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February 14, 2022

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

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on the Judiciary, the Office of the Prosecuting Attorney of the County of Kauai ("OPA") submits the following testimony in support of S.B. 2091.

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 S.B. 2091. Thank you for the opportunity to testify on this matter.



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

HEARING: February 18, 2022 at 9:30am  
RE: SB2091 Relating to Executive Pardons

Hawaii Firearms Coalition provides **COMMENTS for SB2091.**

The pardon process is important to the 2<sup>nd</sup> 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. 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  
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**SB-2091**

Submitted on: 2/14/2022 2:56:04 PM

Testimony for JDC on 2/18/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
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



Senate Committee on the Judiciary, Friday February 18, 2022

Committee Chair Rhoads, Vice Chair Keohokalole, and Committee Members, I am writing today in support of SB 2091, Relating to Executive Pardons.

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.

Thank you for your consideration,

Rima Ah Toong,

[Rima.ahtoong@gmail.com](mailto:Rima.ahtoong@gmail.com)

**LATE**



**Hawai'i**

Committee: Senate Committee on Judiciary  
Hearing Date/Time: Friday, February 18, 2022 at 9:30 a.m.  
Place: Via videoconference  
Re: *Testimony of the ACLU of Hawai'i with comments regarding  
**SB2091 Relating to Executive Pardons***

Dear Chair Rhoads, Vice Chair Keohokalole and Committee Members:

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 relating to SB2091 Relating to Executive Pardons. The proposed bill seeks to change the current pardon process to include the input of prosecutors and crime victims. However, this procedural change in process raises fundamental questions about the appropriate role of prosecutors and victims and survivors in the pardon process.

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

Currently, the Hawai'i Paroling Authority 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:

2017-2018	2018-2019	2019-2020
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).<sup>1</sup>
- Governor Ben Cayetano granted 204 pardons in his eight years in office.

<sup>1</sup> 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](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 their 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 victims 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 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 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 policy makers to carefully evaluate whether the proposed changes to the current process align with a Governor’s grant of clemency – acknowledging the human capacity to fundamentally change.

Sincerely,

*Carrie Ann Shirota*

Carrie Ann Shirota

Policy Director

ACLU of Hawai‘i

[cshirota@acluhawaii.org](mailto:cshirota@acluhawaii.org)

*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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