



The Judiciary, State of Hawaii

**Testimony to the Thirty-Second State Legislature
2023 Regular Session**

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, February 02, 2023 at 10:00 a.m.
State
Conference Room 016 & VIDEOCONFERENCE

by

Dwight Sakai
Deputy Chief Court Administrator, First Circuit

Marsha Yamada
Dputy Chief Court Administrator, Second Circuit

Dean Hiraki
Deputy Chief Court Administrator, Third Circuit

Renette Garma
Deputy Chief Court Administrator, Fifth Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 903, Relating to Restorative Justice.

Purpose: Requires the Judiciary or supporting agencies to establish and support a program for restorative justice in each county and inform various criminal justice representatives of the existence of the program. Appropriates funds for the establishment of one program and one position in each county.



Judiciary's Position:

The Judiciary respectfully supports the intent of this bill to bring the victim and defendant together in a safe environment that allows the victim to express him/herself and provide the offender an opportunity to learn the impact his/her actions has had on the victim/community. However, the Judiciary has identified several concerns with this bill that can be addressed by a task force or working group.

It appears that participation in a restorative justice program is victim-centered and the victim needs to have the ability to initiate this request. The Judiciary does not have access to victims or their information pre-adjudication.

Additionally, much of the focus appears to be on pre-adjudication. If both the defendant and victim agree to participate in restorative justice and it is successful, then the court may dismiss the charges. The judiciary does not have jurisdiction in the cases until adjudication and as such the judiciary may not be the appropriate entity to implement a restorative justice program.

Moreover, there is a need to conduct an assessment and accounting of the current programs that are providing this service in our communities statewide. For example, the Office of the Prosecuting Attorney in the Third Circuit (Island of Hawai'i) is already administering a restorative justice program. It may be that this program is duplicative of services that are already in place.

The Judiciary is willing to convene a task force, pursuant to this measure, which would include a core group of community partners (Judiciary, prosecutor, defense attorney, attorney general, public safety, etc.) to serve as a working group tasked to research and identify existing restorative justice models; identify goals and objectives specific to Hawai'i's needs; research resources available on each island; develop policies and procedures; develop findings and recommendations for potential pilot programs and/or services, including the procurement of services, reporting requirements to track outcomes and evaluate programmatic issues and strengths; and the attendant costs and personnel required to implement a sustainable restorative justice program

Thank you for the opportunity to testify on Senate Bill No. 903.



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: Senate Bill 903, Relating to Restorative Justice
Hearing: Thursday, February 2, 2023; 10:00 a.m.
State Capitol, Room 016

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

The Hawaii Correctional System Oversight Commission (HCSOC, the Commission) **supports the intent** of Senate Bill 903, Relating to Restorative Justice. The Bill would require the establishment of a restorative justice program in each county, ultimately leading to the transformation of people who have been victimized, offenders, and the community while also reducing repeat offenses, diverting individuals from the criminal justice system, increasing crime victims' healing and wellbeing, reducing the backlog of court cases, and providing victims and offenders with greater satisfaction than what traditional criminal justice often allows.

Restorative Justice is a major focus of the Judiciary per Chief Justice Mark E. Recktenwald's address to the Legislature and is already being utilized in family, district, and circuit court by progressive judges. When victims are offered the opportunity to have a safe and facilitated dialogue with the person who harmed them, they feel empowered and invested in the process. Additionally, people who offend can express remorse and apologize for their actions, benefiting themselves as well as their victims.

One of the Commission's duties is to establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility. Given that restorative justice has a high-rate of success with reducing repeat-offenses, the Commission supports this measure as recidivism rates would be expected to decrease and positively impact the current overcrowding in the correctional facilities.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender, State of
Hawai‘i to the Senate Committee on Judiciary**

February 2, 2023

S.B. No. 903: RELATING TO RESTORATIVE JUSTICE

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee:

The Office of the Public Defender strongly supports S.B. No. 903.

We strongly support any effort to foster and encourage restorative justice. Restorative justice programs benefit not only victims, but they also benefit the defendants, their families, and the community. These programs have proved to be a powerful force in many other jurisdictions across the United States in providing healthy dialog, communication, and opportunities for perpetrators of crime to understand the true impact of their actions. Restorative justice programs provide opportunities for all parties to express and share emotions and dialog in a safe and healthy space. These conversations can be deeply emotional and enlightening to the parties who choose to participate. All participation in restorative justice is voluntary and facilitated by trained professionals who help guide all parties through the process. Adding restorative justice to our criminal justice system will help healing and understanding between the parties who participate.

Thank you for the opportunity to comment on this measure.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL NO. 903

A BILL FOR AN ACT RELATING TO RESTORATIVE JUSTICE

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, February 2, 2023 at 10:00 a.m.
Via Videoconference
State Capitol Conference Room 016
415 South Beretania Street

Honorable Chair Rhoads, Vice-Chair Gabbard and Members of the Committee on Judiciary. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of Senate Bill No. 903.

This bill was drafted with the intent to establish a restorative justice program within each county, provide the necessary funding for fiscal years 2023-2024 and 2024-2025, and financially support the staffing of one full-time equivalent position within each county.

The County of Hawai'i, Office of the Prosecuting Attorney is one of the few prosecutors offices in the nation that houses its own Restorative Justice Program. Since the inception of our Restorative Justice Program in 2015, we have helped hundreds of people find justice, healing, and peace, and even recovered nearly \$30,000.00 in restitution. Restorative justice is applicable for both juvenile and adult cases and can be initiated at different stages including pre-charge diversion, deferred prosecution, post-charge diversion, and post-conviction.

Although we appreciate the intent of Senate Bill No. 903 the County of Hawai'i, Office of the Prosecuting Attorney believes that the restorative justice program is more appropriately situated within the Department of the Attorney General to oversee and then distribute funding to each county prosecutor's office. Each county prosecutor's office would then be provided with the discretion to establish a restorative justice program that is designed to assist their community's needs through the collaboration and partnership of their county's available resource providers, law enforcement, the Judiciary, the Department of Public Safety, defense counsel, and other community stakeholders.

The County of Hawai'i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. For the foregoing reasons, the County of

Hawai'i, Office of the Prosecuting Attorney supports Senate Bill No. 903. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THOMAS J. BRADY
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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

February 2, 2023

RE: S.B. 903; RELATING TO RESTORATIVE JUSTICE.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony regarding S.B. 903, in **support with suggested amendments**.

The purpose of S.B. 903 is to establish a restorative justice program in each county, and provide two year funding for the program, including a full-time position for each county to assist in running the program. Because the restorative justice process is intended to be victim-driven and victim-centered, the Department would strongly suggest that the program be administratively overseen by the Department of the Attorney General, but housed and implemented by the respective Victim Witness Assistance unit within each county prosecutor’s office, as it is currently done (quite successfully) in Hawaii County.

Restorative justice is a powerful, meaningful and beneficial process for both victims and offenders when it is truly victim-centered, which means the entire process is primarily for the benefit of the victim. The Department greatly appreciates the intent to implement restorative justice statewide, similar to the program that is currently run by Hawaii’s County Office of the Prosecuting Attorney, Victim Witness Assistance unit (since 2015). Based on our understanding, that program was built upon the core principles that restorative justice is victim-centered, victim-initiated, and victim-led. Thus, the victim is the first person contacted, to see if they are interested in participation. If or when the victim wishes to proceed, the program may involve Victim Impact Classes for the offender and/or other components that explore how victims are personally impacted.

The Department is concerned that the language on **page 4, line 17-19** (re: possible outcomes for a case) gives the wrong impression to any would-be participants, and we **respectfully ask that that language be deleted**. Even without that language, county prosecutors already have broad

discretion to decline or amend criminal charges at any time, particularly if done with a defendant's agreement. Specifying these two possible outcomes in statute—out of the infinite realm of possibilities that are actually available to participants—would not only deviate from the primary purpose of restorative justice, but would also put undue pressure on victims to acquiesce, and minimize the sincerity and altruistic nature of a defendant's participation.

In addition, we note that each county prosecutor's office already contains a legislatively created division known as the Victim Witness Assistance Program ("VWA"), which is comprised of professional advocates who are specially trained to work effectively and compassionately with victims of crime. In the course of their everyday work, victim witness advocates are not only familiar with the various service providers and other resources available to victims (within their respective counties), they also have an intimate understanding of the criminal justice process and the various stages of a criminal case. Moreover, they have direct access to deputy prosecutors, who can then act immediately to change the course of a case (or potential case), based on the progress and/or outcome of any restorative justice efforts.

To ensure that the proposed restorative justice programs are truly victim-driven and victim-centered—without having to add an entire new division to the Judiciary's plate—the Department would strongly suggest that the proposed restorative justice program be **overseen by the Department of the Attorney General**, which could then distribute funding to the respective county VWA programs for implementation. All of the county VWA offices are already in close contact with the Attorney General's state crime prevention and justice assistance division, with each other, and (most likely) with the actual victims who would be potential candidates for the restorative justice process. This approach would provide enough autonomy for each county to tailor a program that addresses their unique county's needs, while staying true to a victim-centered philosophy and process.

Based on the foregoing, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** S.B. 903 **with suggested amendments**. Thank you for the opportunity to testify on this matter.

Rebecca V. Like
Prosecuting Attorney



Keola Siu
First Deputy
Prosecuting Attorney

OFFICE OF THE PROSECUTING ATTORNEY

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

February 1, 2023

RE: S.B. 903; RELATING TO RESTORATIVE JUSTICE

Chair Rhoads, Vice Chair Gabbard and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony in support of S.B. 903.

Our Office supports the intent of the bill. As Prosecutors, we are often limited by the options we have in case dispositions. This bill would allow more creative and meaningful resolutions for certain factual scenarios. On Kaua'i, we are often one degree of separation, or one relationship removed, from being connected to every other resident. Restoring and repairing relationships is critical in our closeknit community.

The Office of the Attorney General would be best suited to administer this program to each of the individual county prosecutor offices. Each Office has unique caseloads and populations which should be considered in determining what type of program would be most successful in their jurisdiction. Also, the Office of the Attorney General provides financial stability greater than any "financially stable nonprofit" as proposed by the bill.

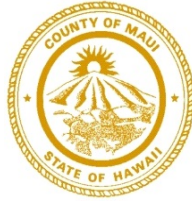
Further, allowing each Office to administer the program through their existing Victim Witness divisions guarantees that the program be victim-centered. The victim needs to feel empowered and supported throughout the entire process. It is important that a victim feel safe to discuss their case with someone with whom they have rapport. Forcing them to repeat their traumas to someone new diminishes the effectiveness of any restorative model.

We believe in the power of restorative justice. Evidence indicates it reduces recidivism and empowers victims. For this reason, the Office of the Prosecuting Attorney for the County of Kaua'i respectfully submits the above comments supporting the passage of S.B. 903. Thank you for the opportunity to testify on this matter.

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Acting Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
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TESTIMONY
ON
S.B. 903 RELATING TO
RESTORATIVE JUSTICE

TO: Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: February 1, 2023

SUBJECT: **SUPPORT OF SB 903, RESTORATIVE JUSTICE**

Thank you for the opportunity to testify in **SUPPORT** of the intent behind SB 903 and provide suggested amendments. We support the intent of this measure and provide the following comments:

1. This measure allows us greater flexibility in pursuing case outcomes that not only resolve pending criminal cases, but also address the long-term effects of crime on the community. This aligns with our department's mission to pursue justice with integrity, fairness, and compassion, as well as our goal to implement modern, innovative programs that help keep our community safe.
2. We are encouraged by the positive results of the County of Hawai'i, Office of the Prosecuting Attorney's restorative justice program and other pilot projects. Given the limited resources and infrastructure available on the neighbor islands to provide support services and alternative justice programs, a program with a record of positive results is welcome.
3. We support the proposed restorative justice program's focus on a victim-centered approach. This model plays a significant role in ensuring that victims can regain the agency and autonomy that is often taken away by an offender.
4. We suggest that each program be administered by the Department of the Attorney

General in conjunction with the Victim Witness Assistance Program in each of the county prosecuting attorney's offices. While the Judiciary and supporting agencies may seem like a logical choice to administer a restorative justice program, allowing the Department of the Attorney General to administer the program via the Victim Witness Assistance Program in each county allows each circuit to structure their programs according to the unique needs of their community. It also provides a consistent point of contact for each victim-participant, as opposed to requiring a victim to interact with multiple agencies on top of the law enforcement, prosecution and services providers they may already be speaking with.

5. We also suggest that the language on page 4, lines 17-19 (regarding possible case dispositions upon completion of the program) be deleted. We are concerned that this language: 1) is unnecessary given the broad discretion a prosecutor has in pursuing the goal and manner of prosecution, 2) may give victims the impression that dismissal or decline of prosecution are the only possible outcomes of the program and they need to enter the program accordingly, and 3) may encourage offenders to enter the program with less-than-sincere intentions.

For these reasons, the Department of the Prosecuting Attorney, County of Maui supports the intent of SB 903 and requests that it be passed with amendments. 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.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, February 2, 2023

10:00 AM

SUPPORT FOR SB 903 - RESTORATIVE JUSTICE

Aloha Chair Rhoads, Vice Chair Gabbard and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 4,058 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 965 of Hawai`i’s imprisoned people are serving their sentences abroad - thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to offer our support of SB 903 that requires the Judiciary or supporting agencies to establish a program for Restorative Justice, which is sometimes called Transformative Justice. This process has been working in Hawai`i prisons since 2005. It is currently offered at WCCC, however, Act 8 (2007) promoted these practices in all Hawai`i facilities. CAP has found that the process works best when it is community-driven with a community facilitator.

WHAT IS RESTORATIVE JUSTICE??

¹ Department of Public Safety, Weekly Population Report, January 23, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-23_George-King.pdf

² Justice Research and Statistics Association, Research on Restorative Justice Practices, Bailey Maryfield, M.S., Roger Przybylski, M.S., and Mark Myrent, M.A., December 2020.

<https://www.jrsa.org/pubs/factsheets/jrsa-research-brief-restorative-justice.pdf>

Restorative justice practices in the criminal and juvenile justice systems are based on the premise that crime is a violation of people and of interpersonal relationships and therefore it is important to remedy the harm caused by a criminal act (Przybylski, 2008; Latimer et al., 2001). "To be fully accountable, offenders need to acknowledge their behavior was harmful to others and take action to repair that harm to the fullest extent possible" (Przybylski, 2008, p. 72).

Restorative justice approaches provide a mechanism for doing so through processes such as:

- Victim-offender mediation
- Victim-offender dialogue
- Restorative justice conferencing
 - Reparative boards
 - Victim impact panels
 - Peacemaking circles
 - Apology banks

Summary

Restorative justice practices take many different forms in the criminal and juvenile justice systems. They help to address the desire to do more than simply punish offenders for crimes committed and to do more to address the needs of the victim. These practices have a primary focus on the victim but have been shown to have positive results for offenders as well.

Synthesis research on restorative justice practices has focused on two primary sets of outcomes: recidivism for offenders and outcomes for victims such as satisfaction and restoration. Results are promising for both, regardless of whether the program targets juvenile or adult offenders, or low-level or serious (even violent) crimes.

Restorative Justice counters the revenge mode and, instead, promotes understanding among the impacted persons and the wrongdoer. Crime is a very ego-centric thing and many times the person committing the wrong doesn't even realize the harm they are causing. Promoting understanding is one of the best outcomes of this process that has been used by indigenous communities across the world.

This practice is important for the transition from a punitive correctional system to one that is rehabilitative and therapeutic and was mentioned by Governor Green in his State of the State address.

We urge the committee to pass this measure to get Hawai'i on the road to real rehabilitation! This will benefit everyone!



HAWAII SUBSTANCE ABUSE COALITION

SB903 Restorative Justice
COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Thursday, Feb 2, 2023: 10:00

Hawaii Substance Abuse Coalition Supports SB903:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

HSAC supports the Hawaii version of Restorative Justice that is a group process with offenders, victims, family and friends and is now evidenced-based practices:

- It has been growing in its use as part of offender reentry processes.
- The group processes is self-directed, goal-oriented, and an active learning experience for participants.
- It promotes positive motivation to repair harm and to take responsibility for their futures.
- Besides decreasing recidivism, Restorative Justice provides healing for people harmed.

This engaging process is important because it involves the public to help with recidivism and reentry back into their communities.

We appreciate the opportunity to provide testimony and are available for further questions.

SB-903

Submitted on: 1/30/2023 10:27:07 PM

Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support the intent of this bill to create restorative justice programming and would like to see it advanced to further the discussion around criminal justice transformation, something that is needed in our communities.

Mahalo

SB-903

Submitted on: 1/31/2023 9:03:59 AM

Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Nanea Lo	Individual	Support	Written Testimony Only

Comments:

Hello,

My name is Nanea Lo. I'm born and raised in the Hawaiian Kingdom a Kanaka Maoli.

I'm writing in STRONG SUPPORT of SB903.

This is a important crime-reducing measure. The victim-centered approach advanced by this bill has been proven to reduce repeat offenses, empowering victims of crime and giving them a greater sense of satisfaction that justice has been served.

Those who have suffered from crime deserve to feel seen and heard.

me ke aloha 'āina,

Nanea Lo

SB-903

Submitted on: 1/30/2023 4:20:52 PM

Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

More Wast of Tax payer MONEYS!!!!!!

SB-903

Submitted on: 2/1/2023 2:06:26 PM

Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ingrid Peterson	Individual	Support	Written Testimony Only

Comments:

Aloha, Committee Members!

I strongly support this bill for Restorative Justice programs in every one of our counties because (in my Rep. Natalia Hussey Burdick's words):

"The victim-centered approach advanced by this bill has been proven to reduce repeat offenses, empowering victims of crime and giving them a greater sense of satisfaction that justice has been served.

Those who have suffered from crime deserve to feel seen and heard."

I myself have seen the effectiveness of the restorative justice approach used in the public high school in Southern California where I worked for 15 years. (Now I am retired and back in my childhood home here bought by parents in 1963.) I've read about the effectiveness of restorative justice in the legal justice system, and I would dearly like to see this approach fully utilized to positive effect here in Hawaii Nei.

Mahalo,

Ingrid Peterson

SB-903

Submitted on: 2/1/2023 8:23:51 PM

Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
pahnelopi mckenzie	Individual	Support	Written Testimony Only

Comments:

I am in strong support of SB903