



The Judiciary, State of Hawai'i

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

House Committee on Judiciary and Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, March 14, 2023, 2:00 p.m.
Conference Room 325 & Via Videoconference

WRITTEN TESTIMONY ONLY

By:

Michelle D. Acosta
Deputy Chief Court Administrator
District Court of the First Circuit

Bill No. and Title: Senate Bill No. 911, SD1, Relating to Jurors.

Purpose: Clarifies that a prospective juror is disqualified to serve as a juror if they have been convicted of a felony and have not been finally discharged, in addition to not being pardoned. Takes effect 1/1/2024. (SD1)

Judiciary's Position:

The Judiciary takes no position regarding the intent of the measure, and appreciates the Senate Committee on Judiciary defining the term "finally discharged." The definition in Senate Draft 1 provides sufficient clarity to implement the measure.

In the alternative, the following definition also provides sufficient clarity to implement the measure and would expand the reach of the measure to additional individuals, if that is the Legislature's desire:

(c) For purposes of this section, "finally discharged" means the person has received or is eligible for a certificate of discharge pursuant to section 831-5.

The Judiciary respectfully requests that this measure take effect on January 1, 2024 to allow the courts to update the jury questionnaire.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Judiciary & Hawaiian Affairs**

March 14, 2023

S.B. No. 911, S.D.1: RELATING TO JURORS

Chair Tarnas, Vice Chair Takayama, and Members of the Committees:

The Office of the Public Defender strongly supports S.B. No. 991, S.D.1, which would allow persons who have been convicted of a felony in a state or federal court and have been pardoned or finally discharged, to serve as jurors.

Currently, an estimated 4,900 residents of Hawai‘i have been convicted of felonies and have served their sentences. Despite having served their sentence, HRS § 612-4 disqualifies these residents from serving on jury duty even though they have the right to vote.

Jury exclusion laws hinder jury diversity

The criminal justice system disproportionately affects people of color – in particular, Native Hawaiians and Pacific Islanders, so when Hawai‘i bars people with criminal convictions from jury service, Hawai‘i disproportionately excludes and disenfranchises individuals from these groups. Consequently, this prevents the jury pool from reflecting a fair cross section of the community.

Jury diversity supports the constitutional guarantee of a fair trial and ensures that juries represent the community. Research shows that diverse juries actually do a better job. One study found that diverse groups “deliberated longer and considered a wider range of information than did homogeneous groups.”¹ Being part of a diverse group seems to make people better jurors. For example, when white participants were members of racially mixed juries, they “raised more case facts, made fewer factual errors, and were more amenable to discussion of race-related

¹ Samuel R. Sommers, “On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations,” Journal of Personality and Social Psychology, 2006, Vol. 90, No. 4, 597–612, available at <https://www.apa.org/pubs/journals/releases/psp-904597.pdf#page=10>

issues.”² A study published in the University of Chicago Legal Forum found that people on racially mixed juries “are more likely to respect different racial perspectives and to confront their own prejudice and stereotypes when such beliefs are recognized and addressed during deliberations.”³

Bias of Felon-Jurors

Opponents to allowing felons to serve on juries often argue that felons will be biased, as they would sympathize with criminal defendants and hold resentment toward the prosecution. However, that argument appears to have no scientific basis. In fact, at least one study has shown that the opposite is true.⁴ Persons who have been convicted of crimes tend to be more attentive to the facts, and more deliberative in making decisions, and vote to convict as often as those without a prior conviction. Additionally, there is an argument that those who have been convicted in the criminal justice system can bring their experience to help other jurors understand the process, ensuring that cases are carefully considered by jurors and according to a correct understanding of the case.

Furthermore, the argument is not applicable to civil cases. The assumed bias against convicting a person plays no role in a lawsuit between a plaintiff and defendant, as the juror’s role in those cases is usually to decide disputes that are not related to any criminal matter.

Currently, a person sentenced for a felony and who is finally discharged may vote in elections, become a candidate to hold public office, yet they cannot serve on a jury. This is simply wrong. It is in the best interest of Hawai‘i’s democratic system for the State to work toward affirming the rights of all individuals to be allowed fair and equitable participation in the State’s judicial system.

Thank you for the opportunity to comment on this measure.

² Id.

³ Deborah Ramirez, “Affirmative Jury Selection: A Proposal to Advance Both the Deliberative Ideal and Jury Diversity,” University of Chicago Legal Forum, Vol. 1998, Issue 1, available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1250&=&context=uclf#page=5>

⁴ Jacob Rosenberg, “Jury Duty Is the Next Big Step for Felons’ Rights” Mother Jones, May 21, 2019, available at: <https://www.motherjones.com/politics/2019/05/jury-duty-is-the-next-big-step-for-felons-rights/>

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Tuesday, March 14, 2023

Room 325 & VIDEOCONFERENCE

2:00 PM

STRONG SUPPORT - SB 911 SD1 - JURORS

Aloha Chair Tarnas, Vice Chair Takayama 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 3,981 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 917 - 24.4% of the male imprisoned population² - 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 appreciate this opportunity to testify in strong support of SB 911 SD1 amending the legislative findings to specify that 19 states and the District of Columbia allow individuals who have completed their incarceration for a felony are, after a passage of time, eligible to serve on a jury; noting that 4 states do not have any automatic exclusion of the right to serve on a jury; and adding a definition if “finally discharged.” Effective 1.1.24.

A vibrant democracy demands a diverse panel of jurors to fulfill the promise of a “jury of peers” to carefully weigh the evidence of a case. People with lived experience are an asset to a diverse jury pool and their experience and participation can help juries reach fair, thoughtful, and reasonable decisions.

¹ Department of Public Safety, End of Month Population Report, February 28, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-EOM-2023-23-28_George-King.pdf

² Why are 24.4% of Hawai`i’s male prison population sent thousands of miles from home when the following prisons in Hawai`i have room here: Halawa is at 75%; Halawa Special Needs Facility is at 60%; Kulani is at 44%; Waiawa is at 53% of operational capacity.

men—were excluded from juries because of criminal convictions. In [New York State](#), approximately 33% of Black men are excluded from the jury pool because of the state's felony disqualification law. Nationwide, approximately [one-third of Black men](#) have a felony conviction; thus, in most places, many Black jurors (and many Black male jurors in particular) are barred by exclusion statutes long before any prosecutor can strike them in the courtroom.

Participation on a jury is a great way for people to acknowledge and exercise their civic responsibility. Service on a jury educates the public, builds good citizens, and engages people in their own communities.

We include the listing of how states exclude people with criminal charges and/or convictions from jury service for your information.

State	Which crimes trigger jury pool exclusion?	Upon conviction, how long does jury pool exclusion last?	Statutes and notes
Alabama	Some felonies	Forever	See Ala. Code § 12-16-60 , and the Secretary of State's list of crimes involving moral turpitude. In addition, all felonies are a basis for challenge , even those not triggering exclusion from the pool.
Alaska	All felonies	Until sentence completed (incl. probation and parole).	See Alaska Stat. §§ 09.20.020, 12.55.185 .
Arizona	All felonies	Forever, upon second felony.	See Ariz. Rev. Stat. §§ 13-904, 13-907 .
Arkansas	All felonies	Forever	See Ark. Code Ann. § 16-31-102 .
California	All felonies	Until sentence completed (incl. probation and parole). However, convictions requiring sex offender registration result in permanent disqualification.	See Cal. Const. art. VII, § 8 ; Cal. Civ. Proc. § 203 .
Colorado	None	N/A	There is no automatic exclusion once incarceration ends. However, in the courtroom, the parties may consider the fact of a felony conviction in "determining whether to keep a person on the jury." See Colo. Rev. Stat. § 13-71-105 .
Connecticut	All felonies	Limited period (while accused, while incarcerated, or 7 years post-conviction).	See Conn. Gen. Stat. § 51-217 . In addition, a juror who engages in a second prohibited conversation while on jury, can be banned for life. See Conn. Gen. Stat. § 51-245 .
Delaware	All felonies	Forever	See Del. Code Ann. tit. 10, § 4509 .
D.C.	All felonies and all misdemeanors	For 1 year after the completion of incarceration, probation, supervised release, or parole, following conviction of a felony. People are also excluded while accused of either a felony or a misdemeanor.	See D.C. Code. § 11-1906 .
Florida	All felonies and all misdemeanors	Forever upon conviction of a felony. People are also excluded while accused of either a felony or misdemeanor.	See Fla. Stat. § 40.013 .
Georgia	All felonies	Forever	See Ga. Code Ann. § 15-12-40 .
Hawaii	All felonies	Forever	See Haw. Rev. Stat. § 612-4 .

State	Which crimes trigger jury pool exclusion?	Upon conviction, how long does jury pool exclusion last?	Statutes and notes
Idaho	All felonies	Until end of sentence (incl. probation and parole), if a term of incarceration is served.	See Idaho Code §§ 2-209, 18-310 .
Illinois	None	N/A	There is no automatic exclusion once incarceration ends. However, in the courtroom, a prior felony conviction can be a basis for a challenge .
Indiana	All felonies	Until released from custody	See Ind. Code Ann. §§ 33-28-5-18; 3-7-13-4 .
Iowa	None	N/A	There is no automatic exclusion once incarceration ends. However, in the courtroom, a prior felony conviction can be a basis for a challenge. See Iowa R. Civ. P. 1.915, 2.18 .
Kansas	All felonies	For 10 years after conviction or upon completion of sentence (incl. probation and parole), whichever is longer.	See Kan. Stat. §§ 43-158, 21-6613 .
Kentucky	All felonies	Forever upon conviction, and while accused of a felony.	See Ky. Rev. Stat. § 29A.080 .
Louisiana	All felonies	Forever upon conviction, and while accused of a felony.	See La. Code Crim. Proc. art. 401 .
Maine	No felonies	N/A	While Maine does not technically bar those incarcerated from serving on juries, it appears that the common practice is to excuse them.
Maryland	All felonies and all misdemeanors	Forever upon conviction of a felony. People are also excluded upon conviction of some misdemeanors, and while accused of either a felony or any misdemeanor punishable by more than 1 year of imprisonment.	See Md. Code Ann., Cts. & Jud. Proc. § 8-103 .
Massachusetts	All felonies	Limited period (while accused, while incarcerated, or 7 years post-conviction)	See Mass. Gen. Laws ch. 234A, § 4 .
Michigan	All felonies	Forever	See Mich. Comp. Laws § 600.1307a .
Minnesota	All felonies	Until sentence completed (incl. probation and parole)	See Minn. Const. art. VII, § 1; Minn. Stat. § 609.165 . See also this court guidance .
Mississippi	All felonies	Forever	See Miss. Code Ann. §§ 13-5-1, 1-3-19 .
Missouri	All felonies	Forever	See Mo. Rev. Stat. §§ 494.425; 561.026 .
Montana	All felonies	Until sentence completed (incl. probation and parole)	See Mont. Code Ann. §§ 3-15-303; 46-18-801 .
Nebraska	All felonies	Forever	See Neb. Rev. Stat. §§ 29-112, 29-112.01, 25-1650 .
Nevada	All felonies	Excluded from civil juries until sentence completed. Excluded from criminal juries for 6 years after sentence completed.	See Nev. Rev. Stat. §§ 176A.850, 213.155 .
New Hampshire	All felonies	Forever	See N.H. Rev. Stat. § 500-A:7-a .
New Jersey	All felonies and some misdemeanors	Forever	See N.J. Rev. Stat. § 2B:20-1 .
New Mexico	All felonies	Until sentence completed (incl. probation and parole)	See N.M. Stat. Ann. § 38-5-1 .
New York	All felonies	Forever	See N.Y. Jud. Law § 510 .

State	Which crimes trigger jury pool exclusion?	Upon conviction, how long does jury pool exclusion last?	Statutes and notes
North Carolina	All felonies	Until sentence completed (incl. probation and parole)	See N.C. Gen. Stat. §§ 9-3, 13-1 .
North Dakota	All felonies	While incarcerated	See N.D. Cent. Code §§ 12.1-33-01, 12.1-33-03, 27-09.1-08 .
Ohio	All felonies	Until sentence completed (incl. probation and parole)	See Ohio Rev. Code §§ 2313.17, 2945.25, 2961.01, 2967.16 .
Oklahoma	All felonies	Forever	See Okla. Stat. tit. 38, § 28, tit. 22, § 658 .
Oregon	All felonies and some misdemeanors	Excluded while incarcerated, and for 15 years following a felony conviction. Excluded from criminal juries for 5 years following certain misdemeanor convictions.	See Or. Const. art. I, S 45 ; Or. Rev. Stat. §§ 137.281, 10.030 .
Pennsylvania	All felonies and some misdemeanors	Forever	See 42 Pa. Cons. Stat. § 4502 .
Rhode Island	All felonies	Until sentence completed (incl. probation and parole)	See R.I. Gen. Laws § 9-9-1.1 .
South Carolina	All felonies and some misdemeanors	Forever	See S.C. Code Ann. § 14-7-810 .
South Dakota	All felonies	Until sentence completed (incl. probation and parole).	See S.D. Codified Laws §§ 16-13-10, 23A-27-35 .
Tennessee	All felonies	Forever	See Tenn. Code Ann. §§ 22-1-102, 40-29-101 .
Texas	All felonies and misdemeanor theft	Forever upon conviction of any felony or of misdemeanor theft. People are also excluded while charged with any felony or with misdemeanor theft.	See Tex. Gov't Code § 62.102 .
Utah	All felonies	Forever	See Utah Code Ann. § 78B-1-105 .
Vermont	All felonies	Forever, if a term of incarceration is served.	See Vt. Stat. Ann. tit. 12, § 64 ; tit. 4, § 962 .
Virginia	All felonies	Forever	See Va. Code Ann. § 8.01-338 .
Washington	All felonies	Until sentence completed (incl. probation, parole, and any financial obligations)	See Wash. Rev. Code §§ 2.36.070, 9.94A.637 .
Wisconsin	All felonies	Until sentence completed (incl. probation and parole)	See Wis. Stat. §§ 756.02, 304.078 .
Wyoming	All felonies	Forever	See Wyo. Stat. Ann. §§ 6-10-106, 1-11-102 .
Federal	All felonies and some misdemeanors	Forever upon conviction of a felony or a misdemeanor punishable by more than one year of imprisonment. People are also excluded while such charges are pending.	See 28 U.S.C. § 1865 .

Let's build good neighbors and good citizens by including people who have been through the system on our juries who truly reflect our communities.

Community Alliance on Prisons respectfully asks the committee to pass this bill and utilize the lived experience of people who have been through the system.

Mahalo nui!

