

HCR 146, HD2

REQUESTING THE DEPARTMENT OF PUBLIC SAFETY TO FORM A WORKING GROUP TO EXAMINE SMARTER SENTENCING TO IMPROVE THE QUALITY AND RELIABILITY OF STATE CRIMINAL SENTENCING PRACTICES.

PSM, JDL

DAVID Y. IGE
GOVERNOR



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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 146, HOUSE DRAFT 2
REQUESTING THE DEPARTMENT OF PUBLIC SAFETY
TO FORM A WORKING GROUP TO EXAMINE SMARTER SENTENCING
TO IMPROVE THE QUALITY AND RELIABILITY OF STATE
CRIMINAL SENTENCING PRACTICES

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Monday, April 20, 2015, 1:15 PM
State Capitol, Conference Room 312

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Department of Public Safety (PSD) would like to offer **comments** on House Concurrent Resolution (HCR) 146, House Draft (HD) 2. The PSD appreciates the intent of this resolution and the Legislature's efforts to reduce prison overcrowding, however, we believe that rather than the Hawaii Paroling Authority, the Judiciary would be the more appropriate convening entity for this working group.

We would suggest that HCR 146, HD2 be amended to incorporate the language contained in SCR 128, SD2.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 146, HD2
REQUESTING THE DEPARTMENT OF PUBLIC SAFETY TO FORM A WORKING
GROUP TO EXAMINE SMARTER SENTENCING TO IMPROVE THE QUALITY AND
RELIABILITY OF STATE CRIMINAL SENTENCING PRACTICES

By
Bert Y. Matsuoka, Chairman
Hawaii Paroling Authority

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Roselyn H. Baker, Vice Chair

Monday, April 20, 2015; 1:15 PM.
State Capitol, Conference Room 312

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Hawaii Paroling Authority (HPA) **strongly** opposes the adoption of House Concurrent Resolution (HCR) 146, House Draft (HD) 2 as it is currently written.

The HPA does not participate in the determination of guilt or innocence or the initial sentencing process following adjudication, which is the sole responsibility of the Judiciary. Also, the HPA is not involved with, nor maintains records pertaining to sentencing determinations made by the court or alternatives to incarceration exercised by the court.

As such, the Judiciary would be the appropriate entity to convene a working group to examine the concept of smarter sentencing to improve the quality and reliability of the State's criminal justice sentencing policies and practices. The HPA recommends the language contained in Senate Concurrent Resolution (SCR) 128, SD 2 with respect to the Judiciary taking the lead be adopted for this measure.

The HPA would be a willing member participant in this endeavor. However, as stated above, we strongly contend that the assignment as the convening authority would more appropriately be the Judiciary.

Thank you for the opportunity to provide testimony on HCR 146, HD2.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 146 H.D. 2
REQUESTING THE DEPARTMENT OF PUBLIC SAFETY TO
FORM A WORKING GROUP TO EXAMINE SMARTER SENTENCING TO IMPROVE THE
QUALITY AND RELIABILITY OF STATE CRIMINAL SENTENCING PRACTICES

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Monday, April 20, 2015; 1:15 PM
State Capitol, Conference Room 312

Chair Espero, Vice Chair Baker, and Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs:

Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify before you today. The Commission strongly supports this resolution which creates a working group which includes representatives from the Sex Abuse Treatment Center, the Hawai`i State Coalition of Against Domestic Violence, and MADD to examine smarter sentencing.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available.

This resolution seeks to review the use of smarter sentencing over the last ten years and to make recommendations that would improve the quality and reliability of smarter sentencing in Hawai'i. Evidence based sentencing must take into consideration that not all sentencing tools have been verified for perpetrators of all types of crimes. Special considerations must be taken into account when sentencing perpetrators of sexual assaults, domestic violence, and driving under the influence. The advocacy groups for the victims of these crimes have the specialized knowledge necessary to adequately address sentencing of the perpetrators of these crimes. The Sex Abuse Treatment Center, MADD, and a domestic violence advocacy group such as the Hawai'i State Coalition Against Domestic Violence are a vital part of the workgroup.

Thank you for providing the Commission with the opportunity to testify in strong support of House Concurrent Resolution 146 H.D. 2.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Chair: Sen. Will Espero

Vice Chair: Sen. Rosalyn Baker

Monday, April 20, 2015

1:15 p.m.

Room 312

SUPPORT for HCR 146 HD2- SMARTER SENTENCING WORKING GROUP

Aloha Chair Espero, Vice Chair Baker 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 for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HCR 146 HD2 requests the department of public safety to form a working group to examine smarter sentencing to improve the quality and reliability of state criminal sentencing practices.

Community Alliance on Prisons supports this resolution. The principle of proportionality in sentencing is simple: the punishment should be in proportion to the severity of the crime. This principle underlies the creation of categories of felonies (Classes A, B, C, D, etc.) and the assignment of different sentencing options to each category.

THE DATA

In July 2014, the Vera Institute of Justice's Center on Sentencing and Corrections issued a review of state sentencing and corrections trends¹. The introduction to the report states:

From the early 1970s to the beginning of the 21st century, crime control policy in the United States was dominated by an increasing reliance on incarceration. The growth in punitive sanctioning policies—mandatory penalties, truth-in-sentencing laws, and

¹ *Recalibrating Justice: A Review of 2013 State Sentencing and Correction Trends*, Vera Institute of Justice, Ram Subramanian, Rebecka Moreno, Sharyn Broomhead, July 2014.
<http://www.vera.org/sites/default/files/resources/downloads/state-sentencing-and-corrections-trends-2013-v2.pdf>

habitual offender statutes like “three strikes” laws – resulted in many more people going to prison for longer periods of time, dramatically accelerating the U.S. incarceration rate and the cost of corrections. By January 1, 2013, the number of persons confined to state prisons surpassed 1.3 million—an increase of nearly 700 percent from 1972—and total state correctional expenditures topped \$53.3 billion in fiscal year 2012.

In 2013, 35 states passed at least 85 bills to change some aspect of how their criminal justice systems address sentencing and corrections. In reviewing this legislative activity, the Vera Institute of Justice found that policy changes have focused mainly on the following five areas: reducing prison populations and costs; expanding or strengthening community-based corrections; implementing risk and needs assessments; supporting offender reentry into the community; and making better informed criminal justice policy through data-driven research and analysis.

THE RESEARCH

The logic behind supporting harsher sentences is simple: locking up people for longer periods of time should enhance public safety. From this view, putting people in prison for years or even decades should prevent offenders from re-offending by incapacitating them and/or deterring would-be-offenders from committing crimes. However, **contrary to deterrence ideology and “get tough” rhetoric, the bulk of research on the deterrent effects of harsher sentences fails to support these assertions.**²

A series of studies have examined the public safety effects of imposing longer periods of imprisonment.³

Ideally, from a deterrence perspective, the more severe the imposed sentence, the less likely offenders should be to re-offend. A 1999 study tested this assumption in a meta-analysis reviewing 50 studies dating back to 1958 involving a total of 336,052 offenders with various offenses and criminal histories. **Controlling for risk factors such as criminal history and substance abuse, the authors assessed the relationship between length of time in prison and recidivism, and found that longer prison sentences were associated with a three percent increase in recidivism.** Offenders who spent an average of 30 months in prison had a recidivism rate of 29%, compared to a 26% rate among prisoners serving an average sentence of 12.9 months. The authors also assessed the impact of serving a prison sentence versus receiving

² *“Sentence Severity and Crime: Accepting the Null Hypotheses,”* Anthony Doob and Cheryl Webster, *Crime and Justice*, 30:143-195, 2003.

³ *“A Meta-Analysis of Adult Offender Recidivism: What Works!”*, Paul Gendreau, T. Little, and Claire Goggin, *Criminology*, 34(3):575-607, 1996; . *“Policy Evaluation and Recidivism,”* Martin A. Levin, *Law and Society Review*, 6(1):17-46, 1971; *“Recidivism: The Effect of Incarceration and Length of Time Served,”* Lin Song and Roxanne Lieb, Olympia, WA: Washington State Institute of Public Policy, 1993.

a community-based sanction. Similarly, being incarcerated versus remaining in the community was associated with a seven percent increase in recidivism.⁴

Researchers also find an increased likelihood that lower-risk offenders will be more negatively affected by incarceration. Among low-risk offenders, those who spent less time in prison were 4% less likely to recidivate than low-risk offenders who served longer sentences. **Thus, when prison sentences are relatively short, offenders are more likely to maintain their ties to family, employers, and their community, all of which promote successful reentry into society.** Conversely, when prisoners serve longer sentences they are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities, all of which promote recidivism.⁵

The Sentencing Project⁶ documented that three states – **New York, New Jersey, and California – have led the nation in recent years by reducing their prison populations by about 25%.**

New York and New Jersey achieved a 26% reduction from 1999 to 2012, and California experienced a 23% decline from 2006 to 2012.

While some proponents of continued high rates of incarceration warn of the prospect of a “crime wave” if populations are reduced, we found no evidence for such an outcome in these states. During this time frame, a period in which crime rates were declining nationally, these three states generally achieved greater reductions in violent and property crimes than national averages.

Our findings suggest that it is possible to achieve substantial prison population reductions – much greater than the very modest 4% reduction that state prisons have achieved since their 2009 peak – without adverse effects on public safety.

We also note that even a reduction of 25% in the level of incarceration would still leave the United States with a rate that is more than five times that of most industrialized nations.

To achieve reductions of this scale or greater will require both building on current initiatives in more expansive ways and taking on areas of the corrections system that have received little attention to date.

Below is a selection of changes in policy and practice that hold the potential for substantial reductions in imprisonment.

⁴ ***“The Effects of Prison Sentences on Recidivism,”*** Paul Gendreau, Claire Goggin, and Francis T. Cullen Ottawa, Ontario, Canada: Public Works and Government Services Canada, 1999

⁵ ***“Recidivism: The Effect of Incarceration and Length of Time Served,”*** Lin Song and Roxanne Lieb, Olympia, WA: Washington State Institute of Public Policy, 1993

⁶ ***Can We Reduce The Prison Population By 25%?***, The Sentencing Project, Marc Mauer and Nazgol Ghandnoosh, August 5, 2014. <http://www.thecrimereport.org/viewpoints/2014-08-can-we-reduce-the-prison-population-by-25>

- Expand diversion programs and their admissions criteria
- Reduce sentence lengths for drug offenders
- Establish an upper limit on all prison terms
- Reduce parole and probation supervision of low-risk individuals
- Reclassify certain felony offenses as misdemeanors

Several states (Colorado, Georgia, Idaho, Maryland, Mississippi, Montana, Nevada, South Dakota, and Texas) empowered sentencing commissions, created oversight councils, or convened working groups. These bodies were tasked with reviewing sentencing and corrections policies; recommending changes based on evidence, best practices, and impact analyses; and overseeing implementation of criminal justice reform. Through the use of data and research findings, these groups have helped states adopt more consistent and fair sentencing and corrections policies and better allocate criminal justice resources. Some are also charged with ongoing oversight and evaluation of enacted policies to ensure that desired results are achieved and recommend adjustments if they are not. Some of the reform laws passed in 2013 were products of such working groups.⁷

In light of the bipartisan movement in Congress, the Right on Crime initiative with Newt Gingrich and Grover Norquist, and the Koch Brothers funding criminal justice reform, this is the time for Hawai'i to step up and join the other jurisdictions that are realizing less crime, less recidivism, and safer and healthier communities.

We can enhance public safety and reduce the cost of corrections by using data-driven and evidence-based strategies (many that Hawai'i had in place, but abandoned).

Mahalo for scheduling this important resolution. We urge the committee to pass this measure.

Mahalo for this opportunity to testify.

⁷ **Recalibrating Justice** For example, in participating in the **federally-funded Justice Reinvestment Initiative**, four states in 2013 convened a task force or working group to analyze drivers of their prison population and formulate policy solutions to address those drivers. Those states (and their resulting legislation) are: Kansas (HB 2170), Oregon (HB 3194), South Dakota (SB70), and West Virginia (SB 371).

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HCR146

Submitted on: 4/14/2015

Testimony for PSM on Apr 20, 2015 13:15PM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	No

Comments:

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HCR146

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Testimony for PSM on Apr 20, 2015 13:15PM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

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HCR146

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Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments: PSM COMMITTEE Dear Chair Espero, Vice Chair Baker, and Committee Members: Mahalo for HCR 146. To nip the bud in the beginning will greatly improve/correct many of the problems existing in the overcrowding, cost of incarceration, etc. I would like it to go further by asking that all mandatory sentencing be removed. Each offender is different and needs to be considered individually for the offense he/she committed by a judge. In school, the whole class does not get punished for one individual's misbehavior. We are not clones. Thank you for the opportunity to submit my comments, and for your consideration. Mahalo and Aloha, e. ileina funakoshi

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HCR146

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Testimony for PSM on Apr 20, 2015 13:15PM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
james crowe	Individual	Support	No

Comments: Smart sentencing is a savings for Public Safety and is a more contemporary approach to justice.

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HCR146

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Submitted By	Organization	Testifier Position	Present at Hearing
Lezlie Kiaha	Individual	Support	No

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