



LATE TESTIMONY

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.C.R. NO. 137, REQUESTING THE ATTORNEY GENERAL TO ASSESS
THE IMPACT OF DIVERTING DRUG POSSESSION OFFENDERS FROM THE
CRIMINAL JUSTICE SYSTEM TO DRUG TREATMENT PROGRAMS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 31, 2011 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General ("the Department")
opposes this resolution.

The resolution requests that the Department, with the
assistance of a broad range of public and private stakeholders,
"assess the impact of diverting drug possession offenders from
the criminal justice system to drug treatment programs" on the
criminal justice system, drug treatment program resources, and
public safety.

The Department opposes this resolution because of the
following:

1. The study it requests is extremely broad, not well
defined, and will likely require the commitment of
significant funds and resources;
2. The study focuses on the diversion of drug offenders
out of the criminal justice system. It is the
criminal justice system, however, that is the most
effective way to reach the offenders, and provide
sufficient motivation for them to be successful in
drug treatment; and

3. Hawaii already has many successful diversion or alternative programs established under existing laws, operating within the criminal justice system.

**The Scope of the Proposed Study is
Extremely Broad and Not Well Defined**

It is not clear whether the goal is to assess the numerous diversion programs already established under current law, or the assessment of some new unspecified diversion program. If it is the latter, then it will be incredibly difficult to assess the impact of something that does not exist and is undefined. It would raise many practical questions:

- Who will be diverted?
- At what stage of the criminal justice system will the diversion take place?
- Under what conditions will the offenders be diverted?
- Who will have oversight of the diversion program?
- How will it work?
- How does the program function in relation to the criminal justice system?
- What will happen when the offender successfully completes drug treatment?
- What will happen if the offender does not?

These are just some of the issues that need to be resolved before anyone can even attempt to assess the impacts of the diversion program.

The resolution requests an assessment of the "impact" of diverting drug offenders from the criminal justice system upon:

- (1) The criminal justice system;

- (2) Drug treatment program resources; and
- (3) Public safety.

"Impact" is an extremely broad term. It could refer to the impact on such areas as fiscal management, personnel, equipment and other resources, administrative policies, and system procedures and protocols. The breadth of the "impact" study is greatly magnified when one considers that the study includes an assessment of the "impact" of diversion on the "criminal justice system." The "criminal justice system" includes, but is not limited to: all law enforcement agencies, all prosecutorial agencies, the defense attorneys, the courts, probation, parole, prisons, and all the related social service and treatment programs. The resolution appears to request a study of the "impact" of diversion on each of these branches of government, departments, agencies, units, facilities, and programs.

**DRUG OFFENDERS SHOULD NOT BE
DIVERTED OUT OF THE CRIMINAL JUSTICE SYSTEM**

The criminal justice system gets drug offenders to recognize that they have a drug problem, recognize the need to address the problem, and provide the offenders with strong motivation to try to overcome the problem through drug treatment.

The Judiciary's Drug Court and HOPE probation programs are great examples of how the criminal justice system is needed to help drug offenders overcome their drug addiction. Offenders who are placed in these programs, but fail to comply with court requirements, face immediate sanctions from the court that provide necessary motivation and guidance as the offenders work to address their problems.

If drug offenders were not faced with any criminal sanctions within the criminal justice system, but instead were sent to participate in drug treatment, they may not even recognize that they have a drug problem or take drug treatment seriously.

Hawaii has many Diversion or Alternative Programs within the Criminal Justice System

Hawaii already has many diversion or alternative programs for drug offenders that are established and in operation under existing law. The programs take into consideration public safety concerns and the offender's need for strong motivation and guidance provided by the criminal justice system to succeed in drug treatment.

1. The Judiciary has implemented alternative programs pursuant to section 706-605.1, Hawaii Revised Statutes, to place, control, supervise, and treat selected defendants in lieu of a sentence of incarceration, such as Drug Court or HOPE probation. Offenders can enter Drug Court upon the filing of charges and, if they successfully complete Drug Court, will have their cases dismissed, with no criminal conviction.
2. A first-time, non-violent drug possession offender (even a repeat offender with a prior felony offense for crime that did not involve drugs) may be sentenced to probation and drug treatment, pursuant to 706-622.5, Hawaii Revised Statutes. An offender who has successfully completed probation and drug treatment will be entitled to an expungement of his conviction

for the drug offense. The expungement will clear the conviction from the person's record.

3. A person without any prior drug convictions, could request a conditional discharge for a drug offense, pursuant to section 712-1255, Hawaii Revised Statutes. The court would not enter a judgment of guilt. It would defer proceedings, and place the offender on probation with conditions such as drug treatment. Upon successful completion of the conditions of probation, the court will discharge the offender and dismiss the proceedings against the offender. There would be no conviction on the offender's record.
4. The deferred acceptance of plea pursuant to section 853-1, Hawaii Revised Statutes, is very similar to a conditional discharge. A person previously granted a conditional discharge could still be eligible for a deferred acceptance of plea. Also, a person previously granted a deferred acceptance of plea could still be eligible for a conditional discharge.

Conclusion

The Department respectfully requests that this measure be held.