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GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

LATE TESTIMONY

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No. _____

March 15, 2012

**TESTIMONY ON SENATE BILL 2776, SENATE DRAFT 2
RELATING TO PUBLIC SAFETY**

By

Jodie F. Maesaka-Hirata, Director
Department of Public Safety

House Committee on Public Safety and Military Affairs
Representative Henry J.C. Aquino, Chair
Representative Ty Cullen, Vice Chair

Thursday, March 15, 2012; 9:00 a.m.
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Cullen, and Members of the Committee:

The Department of Public Safety (PSD) is in strong support of Senate Bill 2776, Senate Draft 2, Relating to Public Safety, the result of work by the Justice Reinvestment Working Group, which was formed as a result of the State of Hawaii's successful application to participate in the national Justice Reinvestment Initiative (JRI). We greatly appreciate the support we have received from the Legislature and the dialogue it has generated. On several points, consensus has been reached among stakeholders as a result of these discussions which resulted in several amendments to the original bill.

The companion to SB 2776 is House Bill 2514, which has also been amended. The Department prefers HB 2514, House Draft 3, as the vehicle to move this measure forward as its content reflects last minute conversations held and agreements made that did not make it into Senate Draft 2.

Pre-trial Risk Assessment

The Department and members of the Legislature have met with representatives of bail bonds companies to clarify language pertaining to validated pre-trial risk assessment instruments. A risk assessment instrument is an actuarial tool designed to predict an offender's risk of failure to appear and recidivating. To be validated, research is conducted to ensure the tool is, in fact, accurately measuring that risk.

The Intake Service Center (ISC) will be utilizing the validated Ohio Risk Assessment Instrument: Pre-trial Assessment Tool as part of its bail study to the Courts for their consideration when determining whether to release pre-trial inmates from custody. The proposed amendments to Section 353-10, Hawaii Revised Statutes (HRS), requires the ISC complete the risk assessment within three working days, but does not influence how the courts process these cases. To ensure it is well understood that the proposal relates to internal ISC deadlines, we request that subsection (3) be amended, in part, to read as follows:

- (3) Conduct internal pretrial risk assessments on adult offenders within three working days of admission to a community correctional center which shall then be provided to the court for its consideration;...

Hawaii Paroling Authority

The Department cannot stress enough the importance of increasing the number of members of the Hawaii Paroling Authority. Act 92, Session Laws of Hawaii 1976, reconstituted the former uncompensated Board of Paroles and Pardons as a professional board entitled the Hawaii Paroling Authority with a full-time paid chair and two part-time paid members. Since that time, there has been no increase in the number of members while the work load has increased by eight fold. Adding two part-time members will allow flexibility in scheduling hearings and reviewing cases. Chapter 23-700, Hawaii Administrative Rules,

would be amended upon passage of this bill to define how to incorporate the additional part-time members.

Parole of Prisoners

The members of the Hawaii Paroling Authority have worked diligently with the Administration to craft wording that would achieve the goals of the JRI without intruding on the discretion of the parole board in cases that merit further incarceration. To that end, we support the changes to SD 2 as described below.

Under Section 353-66 (e) (1), HRS, please amend to read as follows:

- (1) Been charged with a new felony offense or with a new misdemeanor offense under chapter 707 or section 709-906;

Under Section 353-66 (e) (4), HRS, please insert the following after the words "whichever is shorter,":

so long as the paroling authority has approved a parole plan as set forth under section 706-670 (3) and (4).

Under Section 706-670 (1), HRS, please delete the words "scientifically proven" as risk assessment instruments are validated.

Under the same subsection, please amend the sentence following the sentence that ends in the words "assessment tool at least every three years" to read as follows:

Except for good cause shown to the paroling authority, a person...

Under Section 706-670 (1) (d), HRS, please amend to read as follows:

- (d) The paroling authority has not approved a parole plan as set forth under section 706-607(3) and (4).

Under Section 706-670 (5), HRS, please amend the second sentence to read as follows:

~~Notwithstanding a court ordered minimum,~~

REINVESTING FUNDS

The Justice Reinvestment Initiative is premised on managing the growth of correctional populations through: 1) valid risk assessments to determine which

offenders are better served in community-based programs as opposed to incarceration; evidenced-based approaches, programs and services that do not jeopardize public safety yet reduce admissions to corrections and reduce the length of stay in a correctional facility; 3) expand victim services in all counties; and, 4) reinvest savings generated from reduced corrections spending into communities.

The potential savings that may be realized by reducing the number of inmates placed in Mainland contracted beds through the passage of this measure will be reinvested to support community-based programs and services, increased probation and parole staff, and victim services.

The Department of Budget and Finance forwarded the Governor's Message to reappropriate the anticipated savings in PSD 808, Non-State Facilities, to the programs identified in the attachment. This includes designating funds for the Hawaii Paroling Authority, Crime Victims Compensation Commission, Judiciary, county prosecutor offices, and other PSD program IDs.

Given the anticipated acceptance of the Governor's Message, we are not recommending funding amounts be inserted into Section 14.

SUMMARY

The Department of Public Safety urges this committee to support the proposals included in this measure as a means to optimize the effectiveness of the Hawaii criminal justice system by realigning our guiding principles and reinvesting in programs and services to promote public safety and reduce recidivism. We owe this to our community. We owe this to victims of crime.

Thank you for the opportunity to testify on this important measure and considering the proposed amendments to House Draft 2.

LATE TESTIMONY

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Henry J.C. Aquino, Chair
Rep. Ty Cullen, Vice Chair

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

DATE: Thursday, March 15, 2012
TIME: 9:00 AM
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

SB 2776, SD2
(SSCR2656)
Status

RELATING TO PUBLIC SAFETY.

PBM, JUD, FIN

Requires a pre-trial risk assessment to be conducted within three working days. Expands the membership on the Hawaii paroling authority. Requires the use of validated risk assessments to guide parole decisions. Limits length of re-incarceration for first-time parole violators. Increases victim restitution payments by inmates. Requires release on supervised parole prior to the maximum sentence date. Makes appropriations. (SD2)

Testimony Against: Part 3, Pre-Trial. Presented by James Waldron Lindblad, President, Professional Bail Agents and Former Pre-trial Release Officer.

Prison population management requires a public private partnership, a hybrid model to attack prison populations that gives judicial officers the best possible results. Cooperation with private sector bail agents would be much better than a stand-alone SB2776 SD2, pretrial only model.

- 1) Bail agents favor the use of a responsible third party to ensure compliance with pretrial release. SB2776, SD2 promotes only trusting a defendant on pretrial release after asking a few questions without a guarantor, and releasing defendants on their own promise, by themselves without, any responsible friend or family member willing to sign on the dotted line. The pretrial model promoted in SB2776, SD2 will certainly ensure a high failure rate among those released and this is proven out in my personal experience. I have interviewed over 2000 defendants for pretrial release and over 20,000 persons for bail.
- 2) When I was a pretrial release office in Clark County Washington we were allowed a 10% failure rate which we always exceeded. This compares to a bail agent's failure rate of less and ½ of 1%. The math proves out the bail agent and surety bail bond insurer cannot survive with failure rates greater than 1%.
- 3) Why pay state workers to release persons from jail for free? Who will retrieve those persons not attending court or failing to meet conditions of release?

4) The average bail agent has a 600 count annual average number of releases in their agency. This means that a bail agency saves tax payers at least \$17 million per year per bail bond agency, based on \$170.00 daily cost. Bail agents save tax payers money. Pretrial workers cost tax payers money.

I suggest using incentives to encourage bail bond release. The Small Business Administration did this by using loan guarantees to small business. If I had a \$300K buffer I could bail out many more defendants. The state could also allow better access to persons wanting bail bonds as presently direct access to bail agents is limited. The state could make laws as suggested by SB 2158 allowing for 24/7 bail release and SB 3068 promulgating rules to address bail forfeiture and remission. These rules will make bail bonds more available to boarder line clients or those defendants needing bail bond credit and save tax payer dollars while reducing the pretrial inmate population.

4a) Non-violent drug offenders that cannot make nominal bail amounts have very high failure to appear rates as demonstrated throughout the mainland and even in Hawaii where in 1996 the legislature granted George Sumner, at that time head of Department of Public safety the authority to emergency release pretrial detainees. The authority granted under the legislation at that time required statistics to be kept on success and failures. The failures were over 50%. This means half the defendants let out on emergency pretrial release during this time failed to comply with conditions of release.

5) The failure to comply with emergency release conditions by persons on pretrial release, which is a release without third party guarantee in Hawaii during the late 1990 period, demonstrates that backup resources must be in place to uphold public safety as testified by previously by the Office of the Prosecutor.

6) Speeding up to three day assessment by hiring six new staffers as called for in SB2776 SD2 will not speed up the pretrial process and will in fact hurt because unless a thorough, complete and verified assessment can be made the judicial officer or judge making the release decision will be less likely to make an informed decision thus placing public safety as risk. Non-violent drug defendants commit more crimes and they remain in jail in part because they have burned every family and friend bridge and proven themselves unreliable to friends and relatives. How will a seven question form promoted by the mainland lobbying group assist? When I interviewed defendants for pretrial release many defendants quickly learned our system of questions to gain quick release only to offend or fail to appear again and again. Many persons who would otherwise pay bail simply wait around for free release.

7*) Spending scarce state resources to assist those people in jail allowing for a speedy revolving door will not eliminate jail overcrowding or help bring prisoners back from the mainland. I believe speeding up free pretrial release without third party control as contemplated in SB 2776 SD 2 will compromise public safety and will not have the desired result of bringing mainland prisoners back to Hawaii.

Please take out the section 3 on pretrial release. Read further on this subject on my blog.

Bail Bond Myths and Prison Population Management - Required reading for all criminal justice advocates who want to argue the issues of bail reform and how to achieve specific results, written by James Waldron Lindblad.

LATE TESTIMONY

DA KINE BAIL BONDS

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HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS
Rep. Henry J.C. Aquino, Chair

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Karl Rhoads, Chair

Thursday, March 15, 2012
9:00 a.m.
Conference Room 309

SB 2776, SD 2, Relating to Public Safety

Chair Aquino, Chair Rhoads, and Members of the Public Safety & Military Affairs
and Labor & Public Employment Committees,

We are Duane and Beth Chapman of Da Kine Bail Bonds, testifying in opposition of SB 2776,
SD 2, Relating to Public Safety, and in particular the first section on pre-trial release.

We have had a combined forty-plus years of experience in the bail bonds industry, and have
captured over 6,000 fugitives.

While this version of the bill clarifies some areas of pre-trial, we ask you to consider the
following issues.

First, there is a vast difference between a pre-trial two-party release on their own recognizance,
where the court trusts another person's assessment of the defendant, and a bail bond sold by a
bail agent - which is a third-party release, when a family member has paid a premium and placed
collateral or indemnity on the line to ensure the defendant shows up at their court date.

In the case of a pre-trial two-party interview, when the defendant is released, there are no
consequences to anyone if the defendant fails to show up for their court date. Whereas, in a
third-party release that involves a bail agent, there is a financial penalty if the defendant does not
show up at court.

The second issue involves cost to the State. In the pre-trial two-party interview format, it will
cost the State money to pay the interviewers' wages, not to mention the pension costs, and, if the
defendant does not show up for court, the costs to retrieve them.

Under the third-party release bail bond format, there is no cost to the State if the person does not show up in court; In fact, the State makes money. The bail bondsman is responsible to make sure the defendant shows up in court, and must forfeit bail if the defendant fails to appear. Bail bondsmen pay all costs to retrieve the defendant if he/she fails to appear in court.

If the intent of SB 2776, SD 2 is to reduce the overcrowding of our prisons, there are other alternatives to achieve this that will prove more efficient, and save taxpayers money, including allowing bail agents the same access to defendants as pre-trial interviewers, and passing bills like SB 2158, which allows bail on weekends and holidays, which is currently not the case.

We are also very concerned that allowing felons on the street after a quick interview process, and on their own recognizance, is not in the best interest of the safety of the general public.

We recommend that the pre-trial section be deleted during this session in order to allow for a more thorough study of pre-trial. We have numerous studies from other states, which we have distributed to the Chairs, that show time and time again how pre-trial has failed, and how there is a higher percentage of felons who fail to appear in court with pre-trial, versus the bail bonds system. When money and collateral are on the line, and bail bonds companies monitor their clients, the percentage of those who fail to appear in court are much lower, and apprehending those who fail to appear are also much higher, as these studies have proven.

In addition, in 1996, the State of Hawaii started an emergency release program trial, where inmates were released on their own recognizance if they had their bails set at \$11,000 or below. There was a 55% failure to appear at court rate, and the program was terminated due to its failure. Pre-trial will bring the same results because its basis is the same as the emergency release program.

We understand that our jails are over crowded, and that the State wishes to bring inmates home who are serving on the mainland. As we mentioned earlier, there are other ways that are safer and more accountable to alleviate overcrowding.

We sincerely hope you will also oppose and delete the first section of SB 2776, SD 2, for the reasons we have outlined, above.

Mahalo for allowing us to testify!



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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LATE TESTIMONY

MARI McCAIG
Chair

L. DEW KANESHIRO
Commissioner

THOMAS T. WATTS
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON SENATE BILL 2776, SD2
RELATING TO PUBLIC SAFETY

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Public Safety and Military Affairs
Representative Henry J.C. Aquino, Chair
Representative Ty Cullen, Vice Chair

Thursday, March 15, 2012: 9:00 AM
State Capitol, Conference Room 309

Good morning Chair Aquino, Vice Chair Cullen, and Members of the House Committee on Public Safety and Military Affairs. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide testimony regarding Senate Bill 2776, SD2. **The Commission supports deleting the existing provisions in Senate Bill 2776 SD2 and substituting the provisions contained in House Bill 2514 HD3.** While Senate Bill 2776 SD2 incorporates a number of Justice Reinvestment Initiative ("JRI") proposals, the bill does not provide for the reinvestment of savings in effective crime victim and public safety services, and includes a restitution provision that weakens the original JRI restitution proposal ensuring the prompt payment of restitution to crime victims.

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 from the Commission.

The Commission serves as a member of the JRI Working Group. The purpose of the JRI Working Group is to develop policy options to improve and reform criminal justice and corrections practices in Hawai'i through the development of a comprehensive data-driven plan, and to redirect the cost savings to programs that hold offenders accountable, reduce recidivism, and ensure crime victim, and the public's, safety. JRI policy options and funding recommendations seek to assure that interventions, treatment programs, and intensive supervision are focused on individuals at the greatest risk to commit more crimes after release. The JRI Working Group received comprehensive technical assistance from the Council of State Governments Justice Center, in partnership with the Pew Center on the States.

SENATE BILL 2776 SD2 DOES NOT INCLUDE FUNDING FOR VICTIM SERVICES

Reinvestment in victim services is an essential element of a successful JRI program. The victim services funding provisions in House Bill 2514 HD3 will ensure that crime victim needs, community safety, and offender accountability are in the forefront of JRI implementation, and will work hand-in-hand with other JRI initiatives to increase public safety.

The original JRI policy options, and House Bill 2514 HD3, include significant funding for a crime victim services component. Under this bill, Hawai'i will become the only state where JRI funds are reinvested in crime victim services. House Bill 2514 HD3 includes positions and funding for new victim assistance staff in the several county prosecutors' offices, funding to continue the Statewide Automated Victim Notification Program (the "SAVIN Program"), funding to establish a Victim Services Unit in PSD, and funding for a restitution accountability program in the Commission.

The reinvestment in crime victim services under the provisions of House Bill 4514 HD3 will improve restitution collections and ensure that crime victims receive advance notification through an automated system informing them of an offender's parole hearing and release dates. This advance notification will enable crime victims to exercise their right to be heard at the parole hearing. A crime victim services unit will also be created in PSD to staff the crime victim notification program, which will assist in addressing restitution shortfalls in PSD, coordinate with community crime victim service providers and crime victims to develop safety plans, and protect crime victims from intimidation by incarcerated offenders. Victim advocates will also be enabled to monitor and collect data on decisions made by the courts, probation, corrections, and parole.

**SENATE BILL 2776 SD2 WEAKENS PROVISIONS GUARANTEEING PROMPT
RESTITUTION PAYMENTS TO VICTIMS.**

Senate Bill 2776 SD2 eliminates the House Bill 2514 HD3 provision requiring the timely payment of restitution to a crime victim. Senate Bill 2776 SD2 provides that restitution is deducted from the prisoner's account and paid to the crime victim only after the amount in a prisoner's account reaches \$25, or annually, whichever is sooner (if the prisoner's account never reaches \$25, no restitution is ever deducted). House Bill 2514 HD3 provides that restitution is deducted monthly from the prisoner's account and is paid to the crime victim once the amount of deducted restitution reaches \$25, or annually, whichever is sooner. Senate Bill 2776 SD2 weakens the House Bill 2514 HD3 proposal that ensures prompt payment of restitution to crime victims.

Part of the Commission's role as a member of the JRI Working Group has been to engage crime victims, survivors, and victim service providers and advocates in identifying key issues and concerns specific to the JRI initiative. A victim/survivor/advocate roundtable briefing and discussion was conducted in September, 2011 by Anne Seymour, a consultant with the Pew Center and the Council of State Governments, and Robert Coombs from the Justice Reinvestment Team. Restitution collection shortfalls were among the key priorities identified by the roundtable. Failure of the criminal justice system to collect and pay restitution leaves many crime victims without the ability to recover from the financial impacts they suffered as the result of the crime.

Funding for victim services in House Bill 2514 HD3, address some of the longstanding issues relating to restitution collection by providing funding for a restitution accountability program that tracks and reports restitution payments from PSD, parole, and the Judiciary¹ (in cases where restitution is ordered to repay the Commission). In addition, the funding for victim advocates in House Bill 2514 HD3, ensures that crime victims are aware of their right to receive restitution and that restitution becomes a top priority in the criminal justice system.

Finally, House Bill 2514 HD3, works to ensure that inmates make prompt and meaningful restitution to crime victims by:

1. increasing the amount of restitution payable by inmates from 10% of inmate wages, to 25% of all funds deposited into an inmate's account;

¹ Restitution ordered pursuant to Section 706-646(2), Hawai'i Revised Statutes, which provides, in part, that "the court shall order restitution to be paid to the crime victim compensation commission in the event that the victim has been given an award for compensation under chapter 351."

2. requiring that the correctional facilities deduct restitution on a monthly basis; and
3. requiring that restitution is paid to crime victims when the amount of restitution collected is \$25, or more, or no less than once a year.

Thank you for providing the Commission with the opportunity to provide testimony regarding Senate Bill 2776, SD2. **The Commission urges the Committee to amend Senate Bill 2776 SD2 by deleting the existing provisions in Senate Bill 2776 HD2 and substituting the provisions contained in House Bill 2514 HD3.**



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LATE TESTIMONY

The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Public Safety & Military Affairs

Testimony by
Hawaii Government Employees Association
March 15, 2012

S.B. 2776, S.D. 2 - RELATING TO PUBLIC SAFETY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2776, S.D. 2, which makes important statutory changes based upon a series of recommendations from the Justice Reinvestment Initiative's study of Hawaii's correctional and criminal justice systems. The changes suggested could save an estimated \$108 - \$150 million over six years without compromising public safety and reducing the number of inmates at mainland prison facilities.

The cost of housing inmates out-of-state was \$45 million for FY 2011. Easing the need to house about 1,700 prisoners on the mainland will result in more of that money remaining in Hawaii and stimulating the local economy. We believe that the savings generated by this bill can be used to increase funding for pre-trial services, probation and parole supervision, inmate assessments and diagnostic services, community-based treatment programs, additional parole officers, additional Hawaii Paroling Authority members, and parolee supervision.

More specifically, S.B. 2776, S.D. 2 amends various statutory provisions by:

- 1) Requiring a pre-trial risk assessment to be conducted within three working days to reduce the number of inmates awaiting trial;
- 2) Expanding the parole board from three to five members and including an unspecified appropriation for this purpose;
- 3) Requiring the use of validated risk assessments to guide parole decisions;
- 4) Limiting the length of incarceration for first-time parole violators to six months;
- 5) Increasing victim restitution payments by inmates;

6) Requiring a period of parole supervision prior to the maximum sentence date;

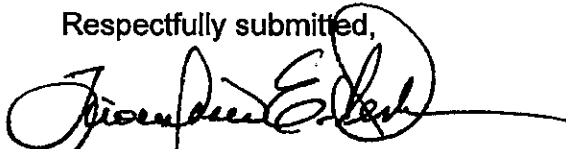
7) Making an unspecified appropriation to hire additional parole officers to supervise parolees and reentry intake services personnel to perform pretrial risk assessments; and

8) Requiring the Department of Public Safety to submit reports to the Legislature starting in 2013 through 2017 to monitor the progress of implementing this bill, including the number of inmates who were paroled, the estimated savings in bed space of inmates paroled and the number of Hawaii inmates brought back from the Mainland as a result of this legislation.

Requiring supervision for all felons after they leave prison is based on the research-backed theory that such support or monitoring reduces the likelihood of recidivism.

Thank you for the opportunity to testify in support of S.B. 2776, S.D. 2.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leiomalama E. Desha", with a large circular flourish at the end.

Leiomalama E. Desha
Deputy Executive Director