



*The Judiciary, State of Hawai'i*

**Testimony to the Senate Committee on Judiciary and Labor**

Senator Gilbert S. C. Keith-Agaran, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair

Friday, April 17, 2015, 1:25 PM  
State Capitol, Conference Room 224

By

Rodney A. Maile  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Resolution No. and Title:** House Concurrent Resolution No. 155 Requesting the Judicial Council to Appoint a Committee to Review and Recommend Revisions to the Hawai'i Penal Code.

**Judiciary's Position:**

The Judiciary takes no position on the merits of this resolution and respectfully offers the following comments. The Judiciary believes that an appropriation based on the scope of the review ultimately to be done will be necessary to cover the costs incurred, most importantly to fund travel of specifically named representatives of neighbor island counties.

Roughly every decade since 1983, the legislature has convened a committee, consisting of members from the judiciary, the department of the attorney general, the department of public safety, the Hawaii paroling authority, the office of the public defender, the county prosecutors' offices and police departments, victim advocacy groups, and interested attorneys and private citizens, to conduct a comprehensive review of the Hawaii penal code. The last of these committees was created in 2005 by Act 125, including a \$75,000 appropriation to cover the costs of the review. A portion of the 2005 appropriation was lapsed after the study was completed. Depending on the scope of work, the Judiciary estimates that approximately \$25,000 should cover the costs of the working group, including interisland travel for the neighbor island representatives (i.e., airfare, car rental, parking), printing, and other working group expenses.



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Senate Committee on Judiciary and Labor  
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This session, while there is no bill calling for a comprehensive review of the penal code, there are several concurrent resolutions, each providing for a limited review concerning specified sentencing provisions within the code. The measure before you, HCR No. 155 calls for a penal code study committee to be convened by the Judicial Council.

Other concurrent resolutions call for studies on related, but not identical, subjects, such as SCR No. 18 (enhanced and extended sentencing study to be convened by judiciary) and HCR No. 146 and SCR No. 128 (smarter sentencing studies to be convened, respectively, under Hawaii Paroling Authority and the judiciary). Given the broad, state-wide membership of the working groups proposed by HCR No. 155 and others, it may be prudent, in terms of cost and efficiency, to have one group do the work described in all resolutions that the legislature deems necessary this year.

We point out that it has been about ten years since the last comprehensive penal code review and, if the legislature is contemplating another such review in the near future, the substance of the sentencing issues can expressly be made a part of it. This may be the most efficient and cost effective approach to conduct a review; however, we recognize it is the legislature's discretion to determine the scope of the study.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

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Executive Director

TESTIMONY ON HOUSE CONCURRENT RESOLUTION 155  
REQUESTING THE JUDICIAL COUNCIL TO  
APPOINT A COMMITTEE TO REVIEW AND  
RECOMMEND REVISIONS TO THE HAWAII PENAL CODE

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, April 17, 2015; 1:25 PM  
State Capitol, Conference Room 224

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Senate Committee on  
Judiciary and Labor:

Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify before you today. The Commission strongly supports this resolution with amendment to add the Commission, the Sex Abuse Treatment Center, MADD, and a domestic violence advocacy group such as the Hawai`i State Coalition Against Domestic Violence to the workgroup. Because the Commission runs the Restitution Recovery Project and is a co-chair of the Justice Reinvestment Initiative Restitution Workgroup and this resolution seeks amendments that would affect restitution, the Commission is uniquely qualified to be a member of the committee. Because special considerations must be taken into account when sentencing perpetrators of sexual assault, domestic violence, and driving under the influence and no single victim advocacy group can adequately represent the interests of all victims of crime; the working group should also include, at a minimum, a representative from the Sex Abuse Treatment Center, a domestic violence advocacy group such as the Hawai`i State Coalition of Against Domestic Violence, and MADD.

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. In 2003, the Commission in collaboration with the Department of Public Safety,

created the Restitution Recovery Project to collect restitution payments from inmates and parolees, and to disburse those funds to their crime victims, or to the Commission in cases where the Commission previously provided a compensation award to the crime victim. In 2011, the Commission was appointed co-chair of the Justice Reinvestment Initiative Restitution Workgroup. Through this workgroup and its work on the Restitution Recovery Project, the Commission has garnered much data and information about restitution orders and the problems involved in restitution collection.

The resolution seeks to create a committee that would make recommendations for revisions of the Hawaii Penal Code that could materially affect restitution orders and collection of restitution payments. The Commission is uniquely qualified to provide information regarding restitution and to address restitution issues. The Commission respectfully asks to be made a part of the committee.

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 should be made a part of the committee.

Thank you for providing the Commission with the opportunity to testify in strong support of House Concurrent Resolution 155 with amendment to add the Commission, the Sex Abuse Treatment Center, MADD, and a domestic violence advocacy group such as the Hawai'i State Coalition Against Domestic Violence to the workgroup.



**HCR155**  
**REQUESTING THE JUDICIAL COUNCIL TO APPOINT A COMMITTEE TO REVIEW**  
**AND RECOMMEND REVISIONS TO THE HAWAI'I PENAL CODE**

Senate Committee on Judiciary and Labor

April 17, 2015

1:25 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR155, which requests the convening of a committee to comprehensively review and recommend an update to the Hawai'i Penal Code for the first time since 1986.

Criminal justice issues, including fair and proportional sentencing policies, are of significant concern to the Native Hawaiian community. In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system. This report found that between 1977 and 2010, the number of people incarcerated in Hawai'i increased dramatically by more than 900%,<sup>1</sup> and that this surge most greatly impacted Native Hawaiians. Although they account for just 24 percent of the general population, Native Hawaiians comprise 27 percent of all arrests, 33 percent of those held in pretrial detention, 29 percent of those sentenced to probation, 36 percent of those admitted to prison, and 39 percent of the adult incarcerated population.<sup>2</sup> In addition, Native Hawaiians are also more likely to be sentenced to a longer probation term, to receive a longer prison sentence, and to be sent to an out-of-state facility than other racial or ethnic groups.<sup>3</sup>

OHA believes that revisiting the penal code, as proposed by this measure, may be an essential step towards achieving a fairer and more appropriate criminal justice system.

To better reflect the administrative structure of the OHA, OHA respectfully requests amending the language on page 2, line 28, to read as follows:

(14) The administrator of the office of Hawaiian affairs,  
or the administrator's designee;

Accordingly, OHA urges the Committee to **PASS** HCR155. Mahalo nui loa for the opportunity to testify.

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<sup>1</sup> THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010), [http://www.oha.org/sites/default/files/ir\\_final\\_web\\_rev.pdf](http://www.oha.org/sites/default/files/ir_final_web_rev.pdf).

<sup>2</sup> *Id.* at 28-31.

<sup>3</sup> *Id.* at 31-34.

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LEGISLATIVE REFERENCE BUREAU  
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Written Testimony

## **HCR155**

### **REQUESTING THE JUDICIAL COUNCIL TO APPOINT A COMMITTEE TO REVIEW AND RECOMMEND REVISIONS TO THE HAWAII PENAL CODE**

Testimony by the Legislative Reference Bureau  
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the Senate Committee on Judiciary and Labor

Friday, April 17, 2015, 1:25 p.m.  
Conference Room 224

Chair Keith-Agaran and Members of the Committee:

Thank you for the opportunity to provide comments on H.C.R. No. 155, Requesting the Judicial Council to Appoint a Committee to Review the Hawaii Penal Code and Recommend to the Legislature Revisions to the Hawaii Penal Code.

The purpose of this measure is to request that the Judicial Council appoint a committee to review and make recommendations to update the Hawaii Penal Code to help ensure that sentences are fair and proportionate to the crime committed, with particular attention paid to Hawaii Penal Code sections that base culpability on dollar amounts.

The measure also authorizes the Judicial Council to request the Legislative Reference Bureau to assist the committee with research and reporting assistance, as needed, and to use the faculty and students of the University of Hawaii William S. Richardson School of Law in performing its work.

While the Legislative Reference Bureau takes no position on this measure, we submit the following comments for your consideration.

We note that the Bureau is statutorily directed to use its resources and services to assist the Legislature and its members, unless otherwise directed by the Legislature. Thus, if the Legislature feels that this is an appropriate use of the Bureau's resources, then the Bureau believes it would be able to provide research and drafting services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many

other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, committees, or working groups that may be requested or required under other legislative measures.

However, as the measure is currently drafted, it is unclear if the measure is requesting the Bureau to take on the responsibility of providing administrative support staffing for the Penal Code review committee and of the actual writing of the committee's report to the Legislature, as opposed to merely drafting proposed legislation. The Bureau lacks the resources to provide administrative support to task forces, working groups, or outside committees of this nature. Since the Judicial Council is established within the Judiciary, we would request that the measure be amended to specifically direct the Judiciary to provide such administrative support. Further, if the intent of the measure is that the Bureau assist in preparing the Committee's report to the Legislature, we request that this intent be clarified.

Thank you again for the opportunity to provide written comments.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY AND LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Friday, April 17, 2015

1:25 p.m.

Room 016

## SUPPORT for HCR 155 - JUDICIAL COUNCIL TO REVIEW PENAL CODE

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro 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.

Community Alliance on Prisons supports HCR 155 and thanks the Chair for hearing this resolution. Crime is at the lowest rate since 1975. If the state is truly committed to enhancing public safety, to preventing crime and social disruption, the Justice Reinvestment Initiative would have been implemented.

It was hugely embarrassing to admit to other representatives from states that were also awarded Justice Reinvestment Initiative grants and heads of powerful think-tanks and foundations at a meeting on Capitol Hill last June that Hawai`i had not one extra community-based treatment slot despite the \$1million put aside for community programming in 2012. Other state representatives were touting their accomplishments, proving that when implemented, Justice Reinvestment did indeed reduce their imprisoned populations while decreasing crime and recidivism.

A featured editorial in the Toledo Blade<sup>1</sup> reported:

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<sup>1</sup> *Time served - Prison sentencing policies should be driven by concerns for public safety, not rage and revenge*, Featured Editorial, Toledo Blade, March 20, 2015. <https://www.toledoblade.com/Featured-Editorial-Home/2015/03/20/Time-served-1.html>

***“Corrections officials nationwide have urged Americans in recent years to distinguish between people they’re afraid of and people they’re mad at.***

*Nearly every director of a state prison system has used this mantra. It means that criminal justice and sentencing policies, and the finite resources that support them, should be driven by rational principles such as public safety — not irrational emotions such as rage and revenge. That sound idea should dramatically change the sentencing policies that state lawmakers and Congress enact.*

*Such policies — not crime — have fueled, over the past four decades, a massive increase in the nation’s prison population, which has quadrupled since the 1970s to more than 2 million people.”*

Where is Hawai`i in this discussion?

Todd R. Clear, dean of Rutgers University–Newark School of Criminal Justice, is one of the country’s leading criminologists. A former president of the American Society of Criminology, he is widely known for his advocacy of evidence-based programs. In his newest book, *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*, Clear notes that the U.S. stands out among Western democracies for the “relentless punitive spirit” of its three-decades long mass incarceration policies.

Clear traces the roots of American prison policy to racism and the idea of going after the “enemy,” discusses the devastating impact such policies have had on urban neighborhoods across the country, and suggests what might replace them.

In a wide-ranging conversation with Joe Domanick, the West Coast Bureau Chief of The Crime Report, Clear spoke about his work:

***The Crime Report: In The Punishment Imperative, you and your co-writer, Natasha Frost, say “...nowhere else in the democratic world, and at no other time in Western history, has there been the kind of relentless punitive sprit as has been ascendant in the United States...” On what do you base that statement?***

**Todd Clear:** The democratic world has good recorded measurements of incarceration rates, and if you look at them you see that this has been a particular U.S. phenomenon over the past 40 years. It was a relentless pursuit across the country that didn’t happen anywhere else, and was unprecedented in [modern, democratic] history. And in the Punishment Imperative we look at the reasons why.

***TCR: Up until this phenomenon started to occur, was the U.S. incarceration rate and its sentencing policies in line with the rest of the Western democracies?***

**CLEAR:** Yes. In the early ‘70s we were essentially like the other western democracies in the way we punished people who were convicted of crime. What changed was our policies on this issue, which have become extreme by any measure.

(...)

***TCR: Talk about framing this punishment movement as “wars” on drugs and crime?***

**CLEAR:** Calling them wars meant that all the metaphors were about defeating enemies, and I think that was a very significant aspect of what was taking place. Because once you decided that you’re fighting an enemy, they no rights, they’re heathens who we have to protect ourselves from.

**TCR: You write that the punishment movement was only partly built around crime rates.**

**CLEAR:** Yes. In early years the incarceration rate grew mostly because of crime growth. In the middle years it grew mostly because of [changes in the law] restricting the use of probation. People who previously would have been given a sentence of probation were instead getting a prison sentence. The restrictions of the use of probation (exerted) a much stronger influence on prison population growth than any increase in crime. Then the drug war also really drove prison-population growth, particularly in black communities.

**The point is that you can't produce a [corrections] system as large as ours by focusing just on violent crime. It would never produce [the size of] this prison population. You would have to have policies on drugs, on property crime across the board to produce this prison population.**

(...)

**TCR: You say that the era of mass incarceration is now ending, and cite drops of two percent in 2009 and 2010 in the number of Americans in jails and prisons, and one percent in the number on probation and parole. Why are such small numbers significant?**

**CLEAR:** Because they [indicate] a pattern. I recognize that this is very early data and we could be wrong. But something else that convinces me is that the public conversation is no longer about getting tough on this or that. You don't see politicians proposing new expansions of their prison systems. Mayors aren't running on get-tough policies.

Other claims are now being made on federal dollars. The argument that was previously being made was sort of a political-cultural argument. And you don't hear that anymore.

**TCR: If it's over, what's emerging in its stead?**

**CLEAR:** **Justice Reinvestment is one thing.** Another is the great California prison experiment [Realignment] that is making local governments pay the cost of their correctional policies. Before, the cost of the prison system was being provided by the state. Local judges were producing great growth in the prison system without [local governments] having to pay for the consequences. Now the locals are being forced make economic and not just political decisions.<sup>2</sup>

Sentencing reform is a trend that is moving across the nation as states are realizing that current policies are absolutely unsustainable. There are evidence-based strategies that will produce the outcomes that we all desire: safe, healthy and just communities.

This Judicial Council is tasked to recommend updates to the Hawai'i Penal Code and assess the proportionality of punishment to offense. It includes representatives from all three branches of government, police, economists, social workers, citizens interested in justice, private attorneys, OHA, and victim and prisoner advocates. Establishing working groups comprised of a broad representation of government and the citizenry is something that other states have done in order to tap into the best thinking and strategies for creating safe, healthy and just communities.

Community Alliance on Prisons sincerely hopes that the committee sees the value of this Judicial Council and passes this terrific resolution.

Mahalo nui for this opportunity to share our research, thoughts, and passion for justice!

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<sup>1</sup> **Making Punishment Fit the Crime**, By Joe Domanick, March 3, 2014

<http://www.thecrimereport.org/news/inside-criminal-justice/2014-03-making-punishment-fit-the-crime>

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**HCR155**

Submitted on: 4/14/2015

Testimony for JDL on Apr 17, 2015 13:25PM in Conference Room 224

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

Comments:

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## **HCR155**

Submitted on: 4/14/2015

Testimony for JDL on Apr 17, 2015 13:25PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

### Comments:

JDL COMMITTEE MEMBERS: I am writing in strong support of HCR 155. Thank you very much for scheduling a hearing on this very important resolution. I also thank you and the committee for their consideration of supporting HCR 155. It has been many decades since the Penal Code was reviewed, and with more current information and the change in the varied cultures, the review is long overdue. Thank you for the opportunity to submit my testimony. Aloha, e. ileina funakoshi

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**HCR155**

Submitted on: 4/15/2015

Testimony for JDL on Apr 17, 2015 13:25PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james crowe	Individual	Support	No

Comments: Reviewing sentences is good for potential inmates, good for financial savings for Public Safety

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**HCR155**

Submitted on: 4/14/2015

Testimony for JDL on Apr 17, 2015 13:25PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Support	No

Comments:

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