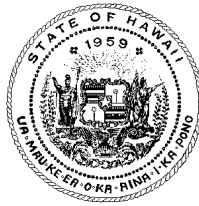


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TESTIMONY ON SENATE CONCURRENT RESOLUTION 128, SENATE
SENATE DRAFT 1, REQUESTING THE DEPARTMENT OF PUBLIC SAFETY
TO FORM A WORKING GROUP TO EXAMINE SMATER SENTENCING
TO IMPROVE THE QUALITY AND RELIABILITY OF STATE
CRIMINAL SENTENCING PRACTICES

Nolan P. Espinda, Director
Department of Public Safety

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

Monday, April 6, 2015, 9:29 AM
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of Public Safety (PSD) **opposes** the adoption of Senate Concurrent Resolution (SCR) 128, Senate Draft (SD) 1. In previously submitted written testimony, the PSD commented that we would not be able to fulfill the requirements of this resolution.

We reassert that point while reiterating the reality that we do not participate in the adjudication and sentencing phases of the judicial proceedings (aside from housing those detained by the courts). Additionally and as such, the PSD does not maintain records for individual defendants pertaining to sentencing alternatives available to the courts.

The Department of Public Safety would be a willing member participant in any such endeavor, however, we strongly contend that the assignment as the convening authority for the proposed working group would more appropriately be designated to those who oversee and control the sentencing process.

Thank you for the opportunity to provide this testimony.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

DATE: April 6, 2015

Advisory Board

TO: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

President
Mimi Beams

Vice President
Peter Van Zile

Joanne H. Arizumi

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

Mark J. Bennett

Andre Bisquera

RE: Testimony in Support of S.C.R. 128, S.D. 1
Requesting the Department of Public Safety to Form a Working Group

Marilyn Carlsmith

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center (the SATC), a program of Kapi'olani Medical Center for Women & Children, in support of Senate Concurrent Resolution 128, Senate Draft 1 (S.C.R. 128, S.D. 1).

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Gidget Ruscetta

Joshua A. Wisch

S.C.R. 128, S.D. 1 requests that the Department of Public Safety form a working group to examine and make a report of smarter sentencing methods to improve the quality and reliability of sentencing practices, with specific reference to cases over the last ten years in which smarter sentencing principles were applied to the negotiation and recommendation of a sentence; cases during the same period to which the principles could have been applied; and possibilities to design, implement and streamline a sentencing process applying the principles.

The smarter sentencing principles referenced in S.C.R. 128, S.D. 1 are part of a general movement towards implementing evidence-based decision making policies and processes throughout the criminal justice system. The goals of such policies and processes are to apply science and research to: (1) undo and prevent damage to communities caused by crime and its after effects; (2) reduce the creation and growth of "crime culture"; (3) prevent contagion of criminality from one generation to the next; (4) mitigate the high costs of incarceration; and (5) reduce distrust in the justice system by assuring responsiveness to community, victim, and offender needs.

The SATC supports implementing evidence-based methods to improve the sentencing process with respect to these purposes, emphasizing the importance of applying necessary and appropriate sanctions that deter would-be criminals from committing offenses; restrain offenders to limit their opportunities to commit further crime; prevent perpetrators from repeating their offenses or committing worse crimes in the future; and help victims and communities to recover from crimes.

We also strongly support S.C.R. 128, S.D. 1, as it specifically provides that victim advocates and service providers be represented in these important considerations of

the application of smarter sentencing principles on a statewide level. Such organizations, and the victims of crime that they serve, are key decision makers and stakeholders in the criminal justice system, and it is crucial that they participate in the research, planning, and implementation of evidence-based decision making.

By helping to ensure that criminal sanctions in the State of Hawai`i effectively address all of the harmful impacts of crime on our island communities, your support for the formation of a working group to guide use of smarter sentencing principles in our justice system represents a strong, positive step towards healing those affected by crime and preventing future offenses.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Gil Keith-Agaran, Chair

Sen. Maile Shimabukuro, Vice Chair

Monday, April 6, 2015

9:29 a.m.

Room 016

SUPPORT INTENT of SCR 128 - EXAMINING SMARTER SENTENCING

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 6,000 Hawai'i individuals under the care and custody of the department of public safety, always mindful that 1,500 of those imprisoned 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.

SCR 128 SD1 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 the intent of this resolution; however, we suggest that the appropriate convener of any working group regarding sentencing would have to be the Judiciary. The department of public safety should certainly be a member but their role is the care and custody of those sentenced by the court. The department has no discretion in the sentencing arena and generally does not weigh in on sentencing bills.

We further suggest that instead of looking back over the last 10 years, the working group review sentencing laws to ensure that they are fair and proportionate to the circumstances of the crime and make recommendations.

There is a House Concurrent Resolution that was heard by the Judiciary Committee on March 24th (HCR 146 HD1) that establishes a broad-based group of stakeholders to review certain sentencing statutes.

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 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

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>

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.

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 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.

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>

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.

- 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 great savings while enjoying 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. This is what Justice Reinvestment is all about: using data and analysis rather than hype and hysteria.

Hawai'i's crime rate is the lowest in decades. An article by George Will⁸ stated:

Overcriminalization has become a national plague. And when more and more behaviors are criminalized, there are more and more occasions for police, who embody the state's monopoly on legitimate violence, and who fully participate in humanity's flaws, to make mistakes.

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).

⁸ **The Plague of Overcriminalization**. by GEORGE WILL , December 10, 2014 8:00 PM
<http://www.nationalreview.com/article/394392/plague-overcriminalization-george-will>

Harvey Silverglate, a civil-liberties attorney, titled his 2009 book Three Felonies a Day to indicate how easily we can fall afoul of America's metastasizing body of criminal laws. Professor Douglas Husak of Rutgers University says that approximately 70 percent of American adults have, usually unwittingly, committed a crime for which they could be imprisoned.

(...)

Citing Husak, Professor Stephen L. Carter of the Yale Law School, like a hammer driving a nail head flush to a board, forcefully underscores the moral of this story:

Society needs laws; therefore it needs law enforcement. But "overcriminalization matters" because "making an offense criminal also means that the police will go armed to enforce it." The job of the police "is to carry out the legislative will." But today's political system takes "bizarre delight in creating new crimes" for enforcement. And "every act of enforcement includes the possibility of violence."

Carter continues (in speaking about the Eric Garner case in NYC):

It's unlikely that the New York Legislature, in creating the crime of selling untaxed cigarettes, imagined that anyone would die for violating it. But a wise legislator would give the matter some thought before creating a crime. Officials who fail to take into account the obvious fact that the laws they're so eager to pass will be enforced at the point of a gun cannot fairly be described as public servants.

The Koch Brothers are speaking out on overcriminaliation. An article⁹ co-authored by Charles Koch in January of this year opens with this paragraph:

As Americans, we like to believe the rule of law in our country is respected and fairly applied, and that only those who commit crimes of fraud or violence are punished and imprisoned. But the reality is often different. It is surprisingly easy for otherwise law-abiding citizens to run afoul of the overwhelming number of federal and state criminal laws. This proliferation is sometimes referred to as "overcriminalization," which affects us all but most profoundly harms our disadvantaged citizens.

And ends with this paragraph:

Reversing overcriminalization and mass incarceration will improve societal well-being in many respects, most notably by decreasing poverty. Today, approximately 50 million people (about 14 percent of the population) are at or below the U.S. poverty rate. Fixing our criminal system could reduce the overall poverty rate as much as 30 percent, dramatically improving the quality of life throughout society—especially for the disadvantaged.

Examining sentencing laws is not being soft on crime; it is being SMART ON CRIME.

Mahalo for this opportunity to testify.

⁹ ***The Overcriminalization of America*** - How to reduce poverty and improve race relations by rethinking our justice system. By CHARLES G. KOCH and MARK V. HOLDEN, January 07, 2015.

<http://www.politico.com/magazine/story/2015/01/overcriminalization-of-america-113991.html#.VRR7QvnF-Sr>