



STATE OF HAWAII  
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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 2186  
A BILL FOR AN ACT RELATING TO PROPOSING AMENDMENTS TO ARTICLE V OF  
THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHROIZE LEGISLATION  
REGARDING THE PROCESS BY WHICH CRIMINAL REPRIEVES,  
COMMUTATIONS, AND PARDONS ARE SUBMITTED TO AND CONSIDERED BY  
THE GOVERNOR

BY  
HAWAII PAROLING AUTHORITY  
Edmund "Fred" Hyun, Chairman

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 4, 2020; 10:01 a.m.  
State Capitol, Conference Room 016

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Paroling Authority (HPA) opposes Senate Bill 2186, which seeks to change the process by which executive reprieves, commutations, and pardons are submitted to and considered by the Governor. As written, this measure appears to curtail the powers and authority vested with the Governor pursuant to Article V, Section 5 of the State of Hawaii's Constitution in favor of legislative approval of the process.

This bill does not cite any benefits to the measure or flaws in the current process that would require an amendment to the constitution.

Thank you for the opportunity to provide testimony on Senate Bill 2186.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE KARL RHOADS, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY**  
**Thirtieth State Legislature**  
**Regular Session of 2020**  
**State of Hawai'i**

February 4, 2020

**RE: S.B. 2186; PROPOSING AMENDMENTS TO ARTICLE V OF THE CONSTITUTION OF THE STATE OF HAWAII TO AUTHORIZE LEGISLATION REGARDING THE PROCESS BY WHICH CRIMINAL REPRIEVES, COMMUTATIONS, AND PARDONS ARE SUBMITTED TO AND CONSIDERED BY THE GOVERNOR.**

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of S.B. 2186. This bill is part of the Department's 2020 legislative package.

Currently, county prosecutors and crime victims in Hawaii do not receive advance notice of applications for executive pardon or commutation; they are only notified when pardons and commutations are granted. Thus, neither prosecutors nor victims are able to provide input for the Governor's consideration, as they do for furlough, parole & numerous points prior to an offender's conviction or sentencing. Also of concern, since 2018, it is our understanding that the Department of the Attorney General ("AG's") no longer assists the Governor in investigating or assessing applications for executive pardon, nor do they provide a recommendation to the Governor on each application, as they did previously.<sup>1</sup>

Notably, Hawaii's State Constitution provides the Governor with near-absolute pardoning power, post-conviction, as stated in Article V, Section 5:

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<sup>1</sup> From at least 2016 to 2018, our Department worked with the AG's to try to develop a way for our Department and victims to routinely receive notice of, and provide input on, all applications for executive pardon. However, given the AG's change in legal interpretation and procedures, in 2018, those talks were discontinued; further discussion was resumed recently. We had also intended to reach out to the Governor's office, to see if a "courtesy practice" could be established, but have not yet done so.

The governor may grant reprieves, commutations and pardons, after conviction, for all offenses, **subject to regulation by law as to the manner of applying for the same**. The legislature may, by general law, authorize the governor to grant pardons before conviction, to grant pardons for impeachment and to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State.

Emphasis added. To the Department's knowledge, the only existing statute regarding "the manner of applying for" pardons is HRS §353-72, which requires the Department of Public Safety to assist and advise the Governor upon request.<sup>2</sup>

By comparison, eleven other states (CA, CO, IL, ME, MO, NV, NY, NC, OH, WI, WY) have similar constitutional provisions—stating that the "manner of applying" or "application procedures" may be subject to regulation by law—and nearly all of those states have multiple laws surrounding the application procedure. At least 8 of the 11 expressly require that notice be given to the prosecutor (we could not find any requirements for MO, NO, NC or NY); 5 of the 11 (CO, IL, NV, OH, WI) require notice to a relevant judge or court; and one (WI) requires direct notice to victims.<sup>3</sup>

**Twelve states (AK, AZ, AR, IN, IA, KS, MI, MT, NM, OR, WA, WV)** have constitutional provisions that allow their governor's pardoning power to more generally be **"subject to procedures and regulations provided (or prescribed) by law."** The language of S.B. 2186 would bring Hawaii's constitution in-line with those states, for this particular matter.

As stated initially, the Department's primary concern is that prosecutors and victims be afforded a consistent and reliable means to provide meaningful input on all applications for pardon, so that the Governor can make a better-informed decision, and victims are kept up-to-date on these matters that may deeply affect them. Naturally, it is always a victim's choice whether to participate in this process or not, but we feel very strongly that they should at least be given that option. Should the Committee feel that a constitutional amendment is needed, in order for this to happen—or should the Committee feel that additional statutory provisions may be appropriate, beyond the application process—we strongly urge you to pass S.B. 2186.

While the pardoning power granted to the Governor, by our State Constitution, is undoubtedly great, it should not be without limitations, and it certainly should not be carried out without hearing from all interested stakeholders. We do believe that the current Governor, past governors, and Department of Public Safety have taken this responsibility very seriously, but we also believe that more input would better assist our governors in making these very impactful decisions.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strongly supports** the passage of S.B. 2186. Thank you for the opportunity to testify on this matter.

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<sup>2</sup> HRS §353-72 provides: "The director of public safety and the Hawaii paroling authority shall consider every application for pardon which may be referred to them by the governor and shall furnish the governor, as soon as may be after such reference, all information possible concerning the prisoner, together with a recommendation as to the granting or refusing of the pardon."

<sup>3</sup> Many other states also require that notice be given to the prosecutor, court and/or victims, but our analysis here focuses on states with constitutional provisions that are similarly restrictive as Hawaii's.