



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, January 28, 2020, 10:00 a.m.

State Capitol, Conference Room 016

By

WRITTEN TESTIMONY ONLY

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 737, Relating to Restorative Justice.

Purpose: The bill requires the Judiciary to establish a 5-year pilot program for restorative justice. It also requires the judiciary to inform various criminal attorneys of the existence of the pilot program. Appropriates funds.

Judiciary's Position:

The Judiciary respectfully supports the intent of this bill to bring the victim and defendant together in a safe environment that allows the victim to express him/herself and provide the offender an opportunity to learn the impact his/her actions has had on the victim/community. However, the Judiciary has identified several concerns with this bill that can be addressed by a task force or working group.

The bill proposes that the defendant will have the “right” to request to participate in a restorative justice program with the court and victim(s) consent. Considering defendants’ constitutional right to a speedy trial, these “rights” may conflict. Upon successful completion of the restorative justice process, the bill provides that the court may dismiss the charges with approval from the court and the victim. This may place a victim in a difficult situation as a defendant’s case dismissal may rest with the victim agreeing to participate and get the charge(s) dismissed. This may cause additional harm to the victim.



Senate Bill No. 737, Relating to Restorative Justice
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Pursuant to this bill, a defendant who has been charged with a class A or B felony or that is a violent crime shall not be eligible to participate in the pilot program. Thus, defendants charged with a Class C felony, misdemeanor, or petty misdemeanors that are not violent crimes pursuant to HRS §351-32 may be eligible. This means that defendants charged with Terroristic Threatening I & II, as well as Violation of an Order for Protection/Temporary Restraining Order will be eligible to participate. Although these charges are not classified violent crimes according to HRS §351-32, the victims may feel afraid of repercussions regardless of their choice to participate in restorative justice or not.

Perhaps clarifying that the presiding judge could determine whether a restorative justice approach is appropriate in a given case would be helpful.

Also, the bill requires the court to inform each eligible defendant of the right to request restorative justice during or prior to a pretrial conference. It appears that participation in a restorative justice program is pre-adjudication and if the defendant participates in restorative justice and the victim and prosecuting attorney agree, the court may dismiss the charges. The judiciary does not have jurisdiction in the cases until adjudication and as such the judiciary may not be the appropriate entity to implement a restorative justice program.

The Judiciary is willing to convene a task force, pursuant to this measure, and offers the Judiciary's Center for Alternative Dispute Resolution's assistance in facilitating the task force. The task force would include a core group of community partners (Judiciary, prosecutor, defense attorney, attorney general, public safety, etc.) to serve as a working group tasked to research and identify existing restorative justice models; identify goals and objectives specific to Hawai'i's needs; research resources available on each island; develop policies and procedures; develop findings and recommendations for potential pilot programs and/or services, including the procurement of services, reporting requirements to track outcomes and evaluate programmatic issues and strengths; and the attendant costs and personnel required to implement a sustainable restorative justice program.

Thank you for the opportunity to comment on this measure.

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**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE JARRETT KEOHOKALOLE, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii**

January 28, 2020

RE: S.B. 737, RELATING TO RESTORATIVE JUSTICE

HEARING: Tuesday, January 28, 2020, 10:00 A.M., Conference Room 016

Good morning Chair Rhoads, Vice Chair Keohokalole and members of the Judiciary Committee, the Department of Prosecuting Attorney provides the following testimony **in opposition to S.B. 737**, which proposes to establish a five year pilot “Restorative Justice” program within the Judiciary.

The proposed pilot program runs afoul of established Restorative Justice principles from the very start by characterizing the program as “Restorative Justice”. True Restorative Justice is victim centered, driven by victims, and primarily for the benefit of crime victims. The proposal outlined in S.B. 737 is offender centered, initiated by offenders, and primarily for the benefit of offenders. Furthermore the proposal contemplates dismissal of criminal charges against participating defendants thus depriving victims of any ability to enforce restitution and relieving the offender’s obligation to pay the Crime Victim Compensation fee. In addition, while the bill attempts to eliminate the program’s application to “violent crime” by referencing HRS Section 351-32 it is still applicable to many crimes that are not only violent in nature but involve, by their very nature, victim intimidation. Offenses such as terroristic threatening, harassment by stalking, and violations of temporary restraining orders and protective orders would still be considered eligible under this bill.

If you truly want to create a program which is restorative for victims then fund a program within the Judiciary devoted to improving the enforcement of the collection of restitution for victims. If your desire is to create a rehabilitative program for offenders, then by all means do so, but please do not misappropriate the term Restorative Justice as that is not what this program is. For all of the above reasons we urge your opposition to S.B. 737. Thank you for your time and consideration.



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the Senate Committee on Judiciary

January 26, 2020

S.B. No. 737: RELATING TO RESTORATIVE JUSTICE

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

The Office of the Public Defender strongly supports S.B. No. 737.

We strongly support any effort to foster and encourage restorative justice. We believe that restorative justice programs benefit not only victims, but they benefit the defendants, their families, and the community. These programs have proved to be a powerful force in providing healthy dialog, communication, and opportunities for perpetrators of crime to understand the true impact of their actions. Restorative justice programs provide opportunities to all parties to express and share emotions and dialog in a safe and healthy space.

Mahalo and thank you for the opportunity to comment on this measure.

SB-737

Submitted on: 1/25/2020 9:47:17 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Litman	Individual	Support	No

Comments:

With revisions, I support this bill fully. It is crucial that victims get more support and that offenders have a greater opportunity to repair harm done.

SB-737

Submitted on: 1/25/2020 10:02:32 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne Bow	Individual	Support	No

Comments:

Aloha,

I wholeheartedly support the spirit of this Bill. I believe that restorative justice is incredibly helpful in repairing damage to victims as well as assisting criminals to move past their behavior and reintegrate into the society that I want to see. Thank you!

SB-737

Submitted on: 1/25/2020 10:02:16 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James Tolley	Individual	Support	No

Comments:

SB-737

Submitted on: 1/25/2020 10:07:33 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Chapon	Individual	Support	No

Comments:

SB-737

Submitted on: 1/25/2020 11:23:28 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Mentzel	Individual	Support	No

Comments:

SB-737

Submitted on: 1/25/2020 11:44:32 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kalon Prensky	Individual	Support	No

Comments:

I SUPPORT the restorative justice process. Everyone should have the opportunity to this process because it works better than what is currently available.

SB-737

Submitted on: 1/25/2020 12:01:56 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
LaJon Weaver	Individual	Support	No

Comments:

This is a program so needed in Hawaii. Please support this bill for the benefit of all of us. It supports the youth as well as adults, especially those who seem to get themselves into trouble. It also supports the justice system that is already in place. This is one of the most important bills I have seen in a long time. I believe it will help our residents regain faith in humanity, in their families, in their communities, and in themselves.

SB-737

Submitted on: 1/25/2020 12:11:09 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sulara James	Individual	Support	No

Comments:

I support this bill with the amendments as submitted by Representative Wildberger's office because Restorative Justice should be available to all Hawaii residents.

Mahalo & Aloha, Sulara James

SB-737

Submitted on: 1/25/2020 1:22:47 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kenneth Moore	Testifying for Dialogue Coaching .Love	Support	No

Comments:

SB-737

Submitted on: 1/25/2020 2:01:17 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Heisel	Individual	Support	No

Comments:

Restorative justice is a win win for perpetrator and victim. It is much more effective than our present penal system. Much better for our community.

SB-737

Submitted on: 1/25/2020 3:19:37 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louise Lambert	Individual	Support	No

Comments:

We need restorative justice options - please support!

SB-737

Submitted on: 1/25/2020 4:09:35 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
CarolAnn Barrows	Individual	Support	No

Comments:

Aloha ~

Given the clear evidence that Restorative Justice programs are beneficial to both victims and offenders, I am completely supportive of the State of Hawai'i implementing Restorative Justice into the criminal justice system.

Mahalo,

~ CarolAnn Barrows

SB-737

Submitted on: 1/25/2020 5:20:21 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Newbold	Individual	Support	No

Comments:

I strongly support, and encourage each of our senators and representatives to support, restorative justice within our legal system.

SB-737

Submitted on: 1/26/2020 6:13:22 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
akoganslm	Individual	Support	No

Comments:

SB-737

Submitted on: 1/26/2020 12:21:16 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jason Schwartz	Individual	Support	No

Comments:

I am in support of initiating this restorative justice pilot program. Thank you. Aloha,
Jason Schwartz

SB-737

Submitted on: 1/26/2020 10:34:09 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
J Riverstone	Individual	Support	No

Comments:

SB-737

Submitted on: 1/26/2020 11:11:54 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Mariechild	Individual	Support	No

Comments:

I am hoping that you will support this bill and appropriate funds for restorative justice.

SB-737

Submitted on: 1/27/2020 6:22:13 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
TamRa Wich'Ma	Testifying for New Mexico Network for Nonviolent	Support	No

Comments:

I am fully in support of implementing this legislation.

SB-737

Submitted on: 1/27/2020 7:24:44 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Doug Nelson	Individual	Support	No

Comments:

I believe this is an important initiative that can dramatically help both victims and perpetrators. Please support the establishment of this pilot project.

SB-737

Submitted on: 1/27/2020 7:29:17 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Fell	Individual	Support	No

Comments:

I have personally witnessed the magic of restorative justice in the juvenile systems as a former Director of a Treatment Center for adolescents going back over 20 years ago. Skilled practitioners of RJ help to generate balance and right relationships in communities that is based on the values of the ancestors of our great state. Please support this legislative action.

SB-737

Submitted on: 1/27/2020 8:45:59 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Matt Lannis	Individual	Support	No

Comments:

I am in overwhelming support SB737. I want Hawaii Justice to offer restorative measures and not just punitive ones. Restorative Justice is in harmony with Hawaiian values and Aloha.

SB-737

Submitted on: 1/27/2020 2:14:15 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

Aloha Senator Rhoads, Senator Keoaloha, and Committee Members,

I am submitting this testimony in strong support of SB737 Relating to Restorative Justice. The practice of restorative justice circles is a powerful process leading to greater awareness on the part of the offender of the harm caused and to reconciliation with family and community. The practice has been shown to reduce recidivism by strengthening family and community support which is essential for the individual after release.

SB737 requires the Judiciary to establish a 5-year pilot program for Restorative Justice, to inform criminal attorneys about the program, and to appropriate the funds necessary to conduct the program.

To be truly effective, Restorative Justice programs must be governed and conducted by experienced practitioners who are based in the community rather than by an impersonal government agency.

Mahalo for your consideration,

Diana Bethel

Honolulu

SB-737

Submitted on: 1/27/2020 2:53:16 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	Individual	Support	No

Comments:

Thank you for the opportunity to testify.

HHHRC supports this bill because of the evidence of effectiveness of restorative justice programs on the continent.

Respectfully, HHHRC recommends that the state consider contracting with community-based providers for this effort.

Thank you.

LATE

SB-737

Submitted on: 1/27/2020 4:17:09 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I support this bill because restorative justice has been shown to reduce recidivism in HI and other states/countries where it is implemented. Restorative justice is especially vital in today's world because it promotes understanding and healing. Since Restorative Justice is a community practice, I ask that the state contract with community practitioners already successfully working with this effective and beautiful process.

LATE

SB-737

Submitted on: 1/27/2020 8:18:30 PM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tim Hansen	Individual	Oppose	No

Comments:

Although I am a strong supporter of the work of offender reentry services, I cannot support this bill because it is an inaccurate reflection of what restorative justice is all about. The work of the reentry circles pilot program at Waiawa and the Women's Correctional Facility is great and needs to be honored and supported. However, it also needs to be recognized as offender reentry support work and should be supported by the Department of Public Safety through the Offender Reentry Services Unit. There is no justification as to why the Judiciary would fund such services. Calling this work restorative justice is simple wrong.

For a clearer understanding of restorative justices and it's victim centered practices, one should take a look at the revised language in H.B. 634. Although it would be wonderful to have a companion bill in the Senate to compliment H.B. 634, I simple cannot support this S.B. because it is so far removed from the philosophy, purpose and work of restorative justice.

Perhaps there is a way to remove the references to restorative justice in this bill and more accurately describe it as Offender Reentry Services. That is a bill that is more accurate and worthy of support. These types of services should also be open to ALL interested inmates and not limited to specific offense classifications. Also as a reentry service, there should be no reference to pretrial conference or even the need for court approval, and certainly no reference to charges being dismissed. That language is misplaced in this bill. Like with most offender services, successful completion of such a program could reflect favorably at an inmate's scheduled Parole Hearing. Notification of such services would be the responsibility of Public Safety staff, such as case workers or other program staff.

As a former State of Hawaii Reentry Commissioner I would be more than happy to assist with revisions that would make this bill accurate and therefore stronger and worthy of support.

Mahalo, Timothy C. Hansen, LCSW



LATE

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Date: January 28, 2020

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

From: Cindy Shimomi-Saito, Executive Director
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Opposition to S.B. 737
Relating to Restorative Justice

Hearing: Tuesday, January 28, 2020, 10:00 a.m., Conference Room 016

Good morning Chair Rhoads, Vice Chair Keohokalole and Members of the Senate Judiciary Committee:

The Sex Abuse Treatment Center (SATC) respectfully opposes S.B. 737.

Restorative justice is a victim-centered movement to reform criminal justice procedures, with a goal of repairing and healing harm caused by crime. The program that would be created by S.B. 737 does not reflect a victim-centered approach. It begins with the request of a perpetrator rather than of a victim, and allows the perpetrator, not the victim, to identify who to invite for support. It provides the perpetrator with a voice, while there is no mention of support for the victim in this process.

Further, S.B. 737 centers the pilot program on benefit to the perpetrator by offering, in return for their participation, an opportunity to have charged offenses dismissed. Although it is stated that a perpetrator charged with a class A or B felony or a violent crime as defined by H.R.S. Section 351-32 is not eligible, the program would be available to perpetrators of many other crimes violent in nature such as harassment by stalking and terroristic threatening, which often result in great harm to the victim.

The opportunity for dismissal of offenses also calls into question the sincerity with which the perpetrator would engage in the process and risks participation that is merely performative in exchange for a reward. It also places a heavy, unfair pressure on victims to participate, especially where a perpetrator

commits a crime against a family member or someone of their same community. In addition, such dismissal of offenses deprives victims of any ability to enforce restitution and relieves the perpetrator's obligation to pay the Crime Victim Compensation fee.

Lastly, the program would allow for the use of "any type of restorative justice group process." This is concerning, as not all restorative justice group processes are the same, and variations in the practices employed and the manner in which they are carried out can have different outcomes. It is also not apparent how, if at all, crime victims and other stakeholders would be engaged to ensure that the adopted practices do not have unintended non-reparative or harmful consequences.

For all of these reasons, we ask that the Committee oppose S.B. 737. Thank you for the opportunity to provide testimony.

LATE

SB-737

Submitted on: 1/28/2020 8:59:37 AM

Testimony for JDC on 1/28/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra Hanson	Individual	Support	No

Comments:

Aloha,

I currently work at a middle school that receives Title I funding. We have started to integrate trauma informed practices including restorative justice practices into our discipline system to support our students in developing the skills needed to enhance good decision making and healthy choices. The more I learn, the more I recognize that our current justice system is often a system of punishment that does not provide offenders with opportunity to learn the skills needed for them to make changes that can benefit not only themselves but society in general.

On a personal note, I have a daughter who made some poor choices that endangered herself and her children when she chose to get into her car after drinking. She voluntarily placed her self in drug court, worked with CPS to go through parent training courses and performed community service hours prior to going to trial. She made changes in her lifestyle and quit drinking.

None of this mattered once she went to court. She was sentenced to six months of incarceration. The judge initially allowed for work release but upon learning that she worked evenings, she was informed that work release was not an option as her work hours needed to be "9 to 5" which was not an option for her. She was then given a 15 days in, 15 days out to "work around her job schedule" and allow her to maintain residence in her home which was subsidized through section 8 housing assistance. This has extended her incarceration period over a one year period. She lost her housing assistance because she was found guilty of a crime and moved into our garage. We have been overseeing the care of her five children (she has full custody) with support from their father, but the impacts of the separation have created trauma for the children, especially the two younger children who now have separation anxiety.

She has been able to keep her job and works on her days out, but this has also caused a hardship for her employer. She herself has been experiencing trauma from the incarceration and experiences depression and anxiety that makes it difficult for her to maintain a postive attitude needed to care for herself and her children. What she needs is continued support via mandated AA meetings but this was not a part of her "punishment". She also needs continued classes to help her in maintaining positive

change and work on parenting and inter-personal communication skills, but these were also not mandated.

In seeing how "justice" has impacted her, her children, the childrens' father, myself, my husband and other family members, I recognize a need for a system that can be restorative rather than strictly punitive. With the overcrowding of prisons here on Maui, I also see a need to either build more prisons, or minimize the number of incarcerations. Restorative justice is a process than can do this and still address the need for restitution.

Thank you for your consideration in this legislative matter

Sandra Kealohilani Hanson