

## The Judiciary, State of Hawai'i

#### Testimony to the Thirty-Second State Legislature, 2023 Regular Session

**Committee on Judiciary** Senator Karl Rhoads, Chair Senator Mike Gabbard, Vice Chair

February 16, 2023, 9:30 a.m. Conference Room 016 & Via Videoconference

#### WRITTEN TESTIMONY ONLY

By:

Michelle D. Acosta Deputy Chief Court Administrator District Court of the First Circuit

Bill No. and Title: Senate Bill No. 911, Relating to Jurors.

**Purpose:** Clarifies that a prospective juror is disqualified to serve as a juror if they have been convicted of a felony and have not been finally discharged, in addition to not being pardoned.

### **Judiciary's Position:**

The Judiciary takes no position regarding the intent of the measure and provides comments on aspects of the measure that may cause operational issues for the courts.

The Judiciary is concerned that the term "finally discharged" is vague and may cause issues when the jury pool staff are reviewing the jury questionnaire and determining whether to certify a juror. The Judiciary would respectfully request precise language be used so that the jury questionnaire may be changed to accurately reflect the intention of this measure.

The Judiciary respectively requests that this measure take effect on January 1, 2024 to allow the courts to update the jury questionnaire.

Thank you for the opportunity to testify on this measure.

# STATE OF HAWAI'I OFFICE OF THE PUBLIC DEFENDER

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

February 16, 2023

## S.B. No. 911: RELATING TO JURORS

Chair Rhoads, Vice Chair Gabbard, and Members of the Committees:

The Office of the Public Defender strongly supports S.B. No. 991, which would allow persons who have been convicted of a felony in a state or federal court and have been pardoned or finally discharged, to serve as jurors.

Currently, an estimated 4,900 residents of Hawai'i have been convicted of felonies and have served their sentences. Despite having served their sentence, HRS § 612-4 disqualifies these residents from serving on jury duty even though they have the right to vote.

### Jury exclusion laws hinder jury diversity

The criminal justice system disproportionately affects people of color – in particular, Native Hawaiians and Pacific Islanders, so when Hawai'i bars people with criminal convictions from jury service, Hawai'i disproportionately excludes and disenfranchises individuals from these groups. Consequently, this prevents the jury pool from reflecting a fair cross section of the community.

Jury diversity supports the constitutional guarantee of a fair trial and ensures that juries represent the community. Research shows that diverse juries actually do a better job. One study found that diverse groups "deliberated longer and considered a wider range of information than did homogeneous groups."<sup>1</sup> Being part of a diverse group seems to make people better jurors. For example, when white participants were members of racially mixed juries, they "raised more case facts, made fewer factual errors, and were more amenable to discussion of race-related

<sup>&</sup>lt;sup>1</sup> Samuel R. Sommers, "On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations," <u>Journal of Personality and Social Psychology</u>, 2006, Vol. 90, No. 4, 597–612, available at <u>https://www.apa.org/pubs/journals/releases/psp-904597.pdf#page=10</u>

issues."<sup>2</sup> A study published in the University of Chicago Legal Forum found that people on racially mixed juries "are more likely to respect different racial perspectives and to confront their own prejudice and stereotypes when such beliefs are recognized and addressed during deliberations."<sup>3</sup>

## **Bias of Felon-Jurors**

Opponents to allowing felons to serve on juries often argue that felons will be biased, as they would sympathize with criminal defendants and hold resentment toward the prosecution. However, that argument appears to have no scientific basis. In fact, at least one study has shown that the opposite is true.<sup>4</sup> Persons who have been convicted of crimes tend to be more attentive to the facts, and more deliberative in making decisions, and vote to convict as often as those without a prior conviction. Additionally, there is an argument that those who have been convicted in the criminal justice system can bring their experience to help other jurors understand the process, ensuring that cases are carefully considered by jurors and according to a correct understanding of the case.

Furthermore, the argument is not applicable to civil cases. The assumed bias against convicting a person plays no role in a lawsuit between a plaintiff and defendant, as the juror's role in those cases is usually to decide disputes that are not related to any criminal matter.

Currently, a person sentenced for a felony and who is finally discharged may vote in elections, become a candidate to hold public office, yet they cannot serve on a jury. This is simply wrong. It is in the best interest of Hawai'i's democratic system for the State to work toward affirming the rights of all individuals to be allowed fair and equitable participation in the State's judicial system.

Thank you for the opportunity to comment on this measure.

<sup>&</sup>lt;sup>2</sup> <u>Id.</u>

<sup>&</sup>lt;sup>3</sup> Deborah Ramirez, "Affirmative Jury Selection: A Proposal to Advance Both the Deliberative Ideal and Jury Diversity," <u>University of Chicago Legal Forum</u>, Vol. 1998, Issue 1, available at <u>https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1250&=&context=uclf#page=5</u>

<sup>&</sup>lt;sup>4</sup> Jacob Rosenberg, "Jury Duty Is the Next Big Step for Felons' Rights" <u>Mother Jones</u>, May 21, 2019, available at: <u>https://www.motherjones.com/politics/2019/05/jury-duty-is-the-next-big-step-for-felons-rights/</u>

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair Senator Mike Gabbard, Vice Chair Thursday, February 16, 2023 Room 016 9:30 AM

#### **STRONG SUPPORT FOR SB 911 - JURORS**

Aloha Chair Rhoads, Vice Chair Gabbard 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 in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 4,043 Hawai`i individuals living behind bars<sup>1</sup> and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 918 of Hawai`i's imprisoned people 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.

Community Alliance on Prisons appreciates this opportunity to testify in strong support for allowing people with felonies who have been pardoned or discharged to serve as jurors.

A vibrant democracy demands a diverse panel of jurors to fulfill the promise of a "jury of peers" to carefully weigh the evidence of a case. People with lived experience are an asset to a diverse jury pool and their experience and participation can help juries reach fair and reasonable decisions.

#### THE RESEARCH

The Prison Policy Institute released a report in 2021<sup>2</sup> that opened with this paragraph: In courthouses throughout the country, defendants are routinely denied the promise of a "jury of their peers," thanks to a lack of racial diversity in jury boxes. One major reason for this lack of diversity is the constellation of laws prohibiting people convicted (or sometimes simply accused) of crimes from serving on juries. These laws **bar more than twenty million people from jury service**, reduce jury diversity by

<sup>&</sup>lt;sup>1</sup> Department of Public Safety, Weekly Population Report, February 6, 2023. <u>https://dps.hawaii.gov/wp-content/uploads/2023/02/Pop-Reports-Weekly-2023-02-06\_George-King.pdf</u>

<sup>&</sup>lt;sup>2</sup> Rigging the Jury: How each state reduces jury diversity by excluding people with criminal records, by Ginger Jackson-Gleich, February 18, 2021. <u>https://www.prisonpolicy.org/reports/juryexclusion.html</u>

disproportionately excluding Black and Latinx people, and actually cause juries to deliberate less effectively. Such exclusionary practices exist in every state and often ban people from jury service forever.

# Every state has some form of jury exclusion



State laws barring people with criminal convictions—or pending charges—from serving on juries vary greatly by two key factors; the types of convictions (or charges) that trigger exclusion and how long the exclusion lasts.

state laws that bar people with criminal convictions (or pending criminal charges) from serving on juries are complex. In Arizona, for example, exclusion becomes permanent upon conviction of a second felony; in Nevada, the duration of exclusion is different for civil and criminal jury service; and in Iowa, automatic exclusion ends when incarceration ends, but attorneys may ask judges to dismiss potential jurors because of prior felony convictions (no matter how old the conviction). For more detail, see our <u>appendix table</u>.

The

Jury exclusion statutes contribute to a lack of jury diversity across the country. A <u>2011</u> <u>study</u><sup>3</sup> found that in one county in Georgia, 34% of Black adults—and 63% of Black men were excluded from juries because of criminal convictions. In <u>New York State</u>, approximately 33% of Black men are excluded from the jury pool because of the state's felony disqualification law. Nationwide, approximately <u>one-third of Black men</u> have a felony conviction; thus, in most places, many Black jurors (and many Black male jurors in particular) are barred by exclusion statutes long before any prosecutor can strike them in the courtroom.

Participation on a jury is a great way for people to acknowledge and exercise their civic responsibility. Service on a jury educates the public, builds good citizens, and engages people in their own communities.

We include the listing of how states exclude people with criminal charges and/or convictions from jury service for your information...

<sup>&</sup>lt;sup>3</sup> RACIAL IMAPCT OF FELON JURY EXCLUSION IN GEORGIA. https://www.ncsc.org/ data/assets/pdf file/0029/15878/jury-of-ones-peers.pdf#page=13

State	Which crimes trigger jury pool exclusion?	Upon conviction, how long does jury pool exclusion last?	Statutes and notes
Alabama	Some felonies	Forever	See <u>Ala. Code § 12-16-60</u> , and the Secretary of State's <u>list</u> of crimes involving moral turpitude. In addition, all felonies are a basis for <u>challenge</u> , even those not triggering exclusion from the pool.
Alaska	All felonies	Until sentence completed (incl. probation and parole).	See <u>Alaska Stat. §§ 09.20.020</u> , <u>12.55.185</u> .
Arizona	All felonies	Forever, upon second felony.	See <u>Ariz. Rev. Stat. §§ 13-904</u> , <u>13-907</u> .
Arkansas	All felonies	Forever	See <u>Ark. Code Ann. § 16-31-102</u> .
California	All felonies	Until sentence completed (incl. probation and parole). However, convictions requiring sex offender registration result in permanent disqualification.	See <u>Cal. Const. art. VII, § 8</u> ; <u>Cal. Civ. Proc.</u> <u>§ 203</u> .
Colorado	None	N/A	There is no automatic exclusion once incarceration ends. However, in the courtroom, the parties <u>may consider</u> the fact of a felony conviction in "determining whether to keep a person on the jury." See <u>Colo. Rev. Stat. § 13-71-105</u> .
Connecticut	All felonies	Limited period (while accused, while incarcerated, or 7 years post-conviction).	See <u>Conn. Gen. Stat. § 51-217</u> . In addition, a juror who engages in a second prohibited conversation while on jury, can be banned for life. See <u>Conn. Gen. Stat. §</u> <u>51-245</u> .
Delaware	All felonies	Forever	See <u>Del. Code Ann. tit. 10, § 4509</u> .
D.C.	All felonies and all misdemeanors	For 1 year after the completion of incarceration, probation, supervised release, or parole, following conviction of a felony. People are also excluded while accused of either a felony or a misdemeanor.	See <u>D.C. Code. § 11-1906</u> .
Florida	All felonies and all misdemeanors	Forever upon conviction of a felony. People are also excluded while accused of either a felony or misdemeanor.	See <u>Fla. Stat. § 40.013</u> .
Georgia	All felonies	Forever	See Ga. Code Ann. § 15-12-40.
Hawaii	All felonies	Forever	<mark>See <u>Haw. Rev. Stat. ६ 612-4</u>.</mark>
Idaho	All felonies	Until end of sentence (incl. probation and parole), if a term of incarceration is served.	See Idaho Code §§ 2-209, 18-310.
Illinois	None	N/A	There is no automatic exclusion once incarceration ends. However, in the courtroom, a prior felony conviction can be a <u>basis for a challenge</u> .
Indiana	All felonies	Until released from custody	See <u>Ind. Code Ann. ६६ 33-28-5-18;</u> <u>3-7-</u> <u>13-4</u> .
Iowa	None	N/A	There is no automatic exclusion once incarceration ends. However, in the courtroom, a prior felony conviction can be a basis for a challenge. See <u>Iowa R. Civ. P.</u> <u>1.915</u> , <u>2.18</u> .
Kansas	All felonies	For 10 years after conviction or upon completion of sentence (incl. probation and parole), whichever is longer.	See <u>Kan. Stat. §§ 43-158</u> , <u>21-6613</u> .
Kentucky	All felonies	Forever upon conviction, and while accused of a felony.	See <u>Ky. Rev. Stat. § 29A.080</u> .

State	Which crimes trigger jury pool exclusion?	Upon conviction, how long does jury pool exclusion last?	Statutes and notes
Louisiana	All felonies	Forever upon conviction, and while accused of a felony.	See La. Code Crim. Proc. art. 401.
Maine	No felonies	N/A	While Maine does not technically bar those incarcerated from serving on juries, it appears that the <u>common practice</u> is to excuse them.
Maryland	All felonies and all misdemeanors	Forever upon conviction of a felony. People are also excluded upon conviction of some misdemeanors, and while accused of either a felony or any misdemeanor punishable by more than 1 year of imprisonment.	See <u>Md. Code Ann., Cts. &amp; Jud. Proc. § 8-</u> <u>103</u> .
Massachusetts	All felonies	Limited period (while accused, while incarcerated, or 7 years post-conviction)	See <u>Mass. Gen. Laws ch. 234A, § 4</u> .
Michigan	All felonies	Forever	See Mich. Comp. Laws § 600.1307a.
Minnesota	All felonies	Until sentence completed (incl. probation and parole)	See Minn. Const. art. VII, § 1; Minn. Stat. § 609.165. See also this court quidance.
Mississippi	All felonies	Forever	See Miss. Code Ann. <u>§§ 13-5-1</u> , <u>1-3-19</u> .
Missouri	All felonies	Forever	See Mo. Rev. Stat. §§ 494.425; 561.026.
Montana	All felonies	Until sentence completed (incl. probation and parole)	See Mont. Code Ann. §§ 3-15-303; 46-18- 801.
Nebraska	All felonies	Forever	See <u>Neb. Rev. Stat. §§ 29-112</u> , <u>29-</u> <u>112.01</u> , <u>25-1650</u> .
Nevada	All felonies	Excluded from civil juries until sentence completed. Excluded from criminal juries for 6 years after sentence completed.	See <u>Nev. Rev. Stat. §§ 176A.850</u> , <u>213.155</u> .
New Hampshire	All felonies	Forever	See <u>N.H. Rev. Stat. § 500-A:7-a</u> .
New Jersey	All felonies and some misdemeanors	Forever	See <u>N.J. Rev. Stat. § 2B:20-1</u> .
New Mexico	All felonies	Until sentence completed (incl. probation and parole)	See <u>N.M. Stat. Ann. § 38-5-1</u> .
New York	All felonies	Forever	See <u>N.Y. Jud. Law § 510</u> .
North Carolina	All felonies	Until sentence completed (incl. probation and parole)	See <u>N.C. Gen. Stat. §§ 9-3</u> , <u>13-1</u> .
North Dakota	All felonies	While incarcerated	See <u>N.D. Cent. Code §§ 12.1-33-01</u> , <u>12.1-</u> <u>33-03</u> , <u>27-09.1-08</u> .
Ohio	All felonies	Until sentence completed (incl. probation and parole)	See <u>Ohio Rev. Code §§</u> 2313.17, 2945.25, 2961.01, 2967.16.
Oklahoma	All felonies	Forever	See <u>Okla. Stat. tit. 38, § 28</u> , <u>tit. 22, § 658</u> .
Oregon	All felonies and some misdemeanors	Excluded while incarcerated, and for 15 years following a felony conviction. Excluded from criminal juries for 5 years following certain misdemeanor convictions.	See <u>Or. Const. art. I, S 45;</u> <u>Or. Rev. Stat.</u> <u>§§ 137.281</u> , <u>10.030</u> .
Pennsylvania	All felonies and some misdemeanors	Forever	See <u>42 Pa. Cons. Stat. ξ 4502</u> .
Rhode Island	All felonies	Until sentence completed (incl. probation and parole)	See <u>R.I. Gen. Laws ξ 9-9-1.1</u> .
South	All felonies and some misdemeanors	Forever	See <u>S.C. Code Ann. § 14-7-810</u> .

State	Which crimes trigger jury pool exclusion?	Upon conviction, how long does jury pool exclusion last?	Statutes and notes
South Dakota	All felonies	Until sentence completed (incl. probation and parole).	See <u>S.D. Codified Laws §§ 16-13-10</u> , <u>23A-</u> <u>27-35</u> .
Tennessee	All felonies	Forever	See <u>Tenn. Code Ann. §§ 22-1-102</u> , <u>40-29-</u> <u>101</u> .
Texas	All felonies and misdemeanor theft	Forever upon conviction of any felony or of misdemeanor theft. People are also excluded while charged with any felony or with misdemeanor theft.	See <u>Tex. Gov't Code ξ 62.102</u> .
Utah	All felonies	Forever	See Utah Code Ann. § 78B-1-105.
Vermont	All felonies	Forever, if a term of incarceration is served.	See <u>Vt. Stat. Ann. tit. 12, § 64; tit. 4, §</u> <u>962</u> .
Virginia	All felonies	Forever	See <u>Va. Code Ann. § 8.01-338</u> .
Washington	All felonies	Until sentence completed (incl. probation, parole, and any financial obligations)	See <u>Wash. Rev. Code §§</u> <u>2.36.070</u> , <u>9.94A.637</u> .
West Virginia	All felonies	Forever	See <u>W. Va. Code § 52-1-8;</u> <u>W. Va. Const.</u> art. IV, § 1.
Wisconsin	All felonies	Until sentence completed (incl. probation and parole)	See <u>Wis. Stat. §§ 756.02</u> , <u>304.078</u> .
Wyoming	All felonies	Forever	See <u>Wyo. Stat. Ann. ξξ 6-10-106</u> , <u>1-11-</u> <u>102</u> .
Federal	All felonies and some misdemeanors	Forever upon conviction of a felony or a misdemeanor punishable by more than one year of imprisonment. People are also excluded while such charges are pending.	See <u>28 U.S.C. § 1865</u> .

Community Alliance on Prisons respectfully asks the committee to pass this bill and utilize the lived experience of people who have been through the system.



Dedicated to safe, responsible, humane and effective drug policies since 1993

#### **TESTIMONY IN SUPPORT OF SB 911**

TO: Chair Rhoads, Vice Chair Gabbard, and Judiciary Committee Members

FROM: Nikos Leverenz DPFH Board President

DATE: February 14, 2022 (1:00 PM)

Drug Policy Forum of Hawai'i (DPFH) <u>strongly supports</u> SB 911, which narrows the category of those convicted of felonies from jury service.

The categorical exclusion of these persons, including those convicted of a Class C felony for personal possession of non-cannabis drugs (<u>misnamed "promotion" under current statute</u>), is among those "collateral consequences" that <u>punish system-involved persons for years, often</u> for life, after their cases have been discharged.

<u>Drug law enforcement and other functions of the state's criminal legal system</u> <u>disproportionately impact Native Hawaiians</u>, those from under resourced communities, and other residents significantly impacted by social determinants of health. This includes a bloated probation system that has the <u>longest average term in the nation</u>, as noted by a 2020 report from the Pew Charitable Trusts.

DPFH also re-affirms the posture of the American Public Health Association (APHA), which observes that a criminal legal approach to substance use is "ineffective and leads to other public health problems." APHA further calls for "ending the criminalization of drugs and drug consumers, prioritizing proven treatment and harm reduction strategies, and expanding (and removing barriers to) treatment and harm reduction services." (APHA Policy Statement, "Defining and Implementing a Public Health Response to Drug Use and Misuse.")

Thank you for the opportunity to testify in support of this measure.





## **TESTIMONY IN SUPPORT OF SB 911**

TO:	Chair Rhoads, Vice Chair Gabbard, & Judiciary Committee Members
FROM:	Nikos Leverenz Grants & Advancement Manager
DATE:	February 16, 2022 (9:30 AM)

Hawai'i Health & Harm Reduction Center (HHHRC) <u>strongly supports</u> SB 911, which limits the exclusion from jury service of those convicted of felonies.

A significant number of our clients and participants—including persons living with HIV, syringe exchange participants, those receiving care services in our clinic and mobile medical unit, and those who are unhoused—have been convicted for personal possession of drugs, which is currently classified as a Class C felony with a prison term of up to five years.

A felony conviction can significantly impair their ability to find housing and employment for years, and sometimes through the course of their life. Exclusion from jury service is but one "collateral consequence" that needlessly frustrates participation in civic life.

HHHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions, and have been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.

#### <u>SB-911</u> Submitted on: 2/13/2023 5:59:57 PM Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	<b>Testifier</b> Position	Testify
Nancy Davlantes	Individual	Support	Written Testimony Only

Comments:

# I fully support reintroducing newly freed formerly incarcerated persons to the jury system as a step to reintroducing them to a life outside of prison.

## <u>SB-911</u> Submitted on: 2/14/2023 5:39:59 AM Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	<b>Testifier Position</b>	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

Submitting in support of SB911.

#### <u>SB-911</u> Submitted on: 2/14/2023 7:38:48 AM Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	<b>Testifier Position</b>	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE: For obvious reasons. The amount of qualified jurors in the State of Hawaii is not as dire as promoted in this bill.

#### <u>SB-911</u> Submitted on: 2/14/2023 6:59:47 PM Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	<b>Testifier Position</b>	Testify
Jerry Ilo	Individual	Oppose	Written Testimony Only

Comments:

Strongly oppose this bill. This does nothing to help law abiding citizens.

#### Marcella Alohalani Boido, M. A. <u>Hawai'i State Judiciary Certified Spanish Court Interpreter (Tier 4)</u> Moili'ili. Honolulu. Hawai'i 96826

To: Sen. Karl Rhoads, Chair; Sen. Mike Gabbard, Vice Chair Members, Senate Committee on Judiciary
Re: SB 911; Juror; Qualifications; Felon; Conviction; Fully Discharged; Pardoned Hearing: 2/16/23, 9:30 a.m., Room 016

### SB 911, Support with an amendment

Thank you for hearing this bill.

SB 911 seeks to open the jury pool to a more diverse and representative group of residents. This could remedy some long-standing injustices. I agree with this intent, but have a suggestion to make.

I have read the testimony submitted by the Community Alliance on Prisons, and am in substantial agreement with it. In accord with SB 911, I think that all <u>pardoned</u> felons should be eligible for our Hawaii jury pools.

I have known convicted felons who were fully discharged that I think would make excellent jurors.

However, recent experiences with having a professional burglar living nearby has forced me to personally confront the unfortunate reality that some people are career criminals. (His many felony burglary convictions go back about three decades. I don't want to write more about this person, because it is possible that potential jurors in his pending cases could read this, recognize him, and be influenced by what I write.)

Research on the percentage of fully discharged felons who are recidivists, and the average amount of time between discharge and their next arrest, should be carried out and then taken into account.

Not having this research to hand, I suggest that felons who have been fully discharged should become eligible for our jury pools only after having remained arrest and conviction free for a minimum of three (3) years, but no more than five (5) years.

With this more cautious approach, I support SB 911.

Thank you for your consideration.

#### <u>SB-911</u> Submitted on: 2/16/2023 3:38:00 AM Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	<b>Testifier Position</b>	Testify
Sandra A. Simms	Individual	Support	Written Testimony Only

Comments:

This is an important and necessary measure to address a serious inequity in our access to justice for all, especially as it has a pertains to underrepresented minorities who are more likely to have criminal records that will in later life impair their ability to full participate as citizens.