

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy Sanbuenaventura, Vice Chair

Tuesday, March 24, 2015

3:00 p.m.

Room 325

## SUPPORT for HCR 146 - Working Group to Examine Smarter Sentencing

Aloha Chair Rhoads, Vice Chair Sanbuenaventura and Members of the Committee!

My name is Kat Brady and I am a Community Justice Advocate. I am also 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 and the thousands of people on probation and parole. We are always mindful that more than 1,600 of Hawai'i individuals 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 supports HCR 146. 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 trends<sup>1</sup>. 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.

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<sup>1</sup> *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>

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.**<sup>2</sup>

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A series of studies have examined the public safety effects of imposing longer periods of imprisonment.<sup>3</sup>

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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 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.<sup>4</sup>

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<sup>2</sup> **“Sentence Severity and Crime: Accepting the Null Hypotheses,”** Anthony Doob and Cheryl Webster, *Crime and Justice*, 30:143-195, 2003.

<sup>3</sup> **“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.

<sup>4</sup> **“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

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.<sup>5</sup>

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The Sentencing Project<sup>6</sup> 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.

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

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<sup>5</sup> **“Recidivism: The Effect of Incarceration and Length of Time Served,”** Lin Song and Roxanne Lieb, Olympia, WA: Washington State Institute of Public Policy, 1993

<sup>6</sup> **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>

- Reclassify certain felony offenses as misdemeanors

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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.<sup>7</sup>

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 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 (many that Hawai'i had in place, but abandoned).

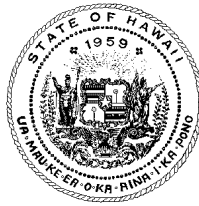
Mahalo for the introduction of this resolution. We urge the committee to pass this important measure.

Mahalo for this opportunity to testify.

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<sup>7</sup> **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).

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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 146 /  
HOUSE RESOLUTION 87  
REQUESTING 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

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Judiciary  
Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, March 24, 2015, 2:00 PM  
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Department of Public Safety (PSD) would like to offer comments on House Concurrent Resolution (HCR) 146 / House Resolution 87. While the PSD appreciates the intent of this resolution and the Legislature's efforts to reduce prison overcrowding, we do not believe we would be able to fulfill the requirements of this resolution.

The PSD is not involved in the sentencing part of the judicial process but serves as the repository for all defendants sentenced to incarceration by the courts. Because the PSD does not participate in the adjudication and sentencing phases of judicial proceedings, it does not maintain records pertaining to the sentencing alternatives available to a defendant.

We thank you for your interest in this matter and for allowing us to testify.