



Committee: Committee on Finance  
Hearing Date/Time: Tuesday, April 7, 2015, 2:30 p.m.  
Place: Conference Room 308  
Re: Testimony of the ACLU of Hawaii **in Support** of S.B. 213, S.D. 2, H.D. 2, Relating to the Hawaii Penal Code

Dear Chair Luke and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes **in support** of S.B. 213, S.D. 2, H.D. 2, relating to the Hawaii Penal Code, which seeks to inform currently incarcerated individuals of potential recalculation of their sentences.

S.B. 213, S.D. 2, H.D. 2 would require the Department of Public Safety to inform inmates of the possibility of sentence recalculation as a result of retroactive changes made to HRS § 706-668.5. This bill will allow release of those inmates who do not pose a threat to public safety – saving the State significant amounts of money while freeing up bed space to further the goal of bringing inmates back to Hawaii from the problematic for-profit mainland prison.

As the Legislature is aware, many of Hawaii’s prisons are overcrowded. The Legislature should take proactive steps to manage its prison population; S.B. 213, S.D. 2, H.D. 2, is one way to start working toward that goal.

Thank you for this opportunity to testify.

Sincerely,

Lois K. Perrin  
Of Counsel  
ACLU of Hawaii

*The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.*

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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Scott Nishimoto, Vice Chair

Tuesday, April 7, 2015

2:30 p.m.

Room 308

## SUPPORT for SB 213 SD2, HD2 - SENTENCING

Aloha Chair Luke, Vice Chair Nishimoto 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.

SB 213 SD2, HD2 fixes the very expensive situation created by the Department of Public Safety when they started recalculating the sentences of all Hawai'i's imprisoned population. This was duplicative since the each facility calculates the sentences of the individuals they hold to determine the release date. Without checking the court records and doing the appropriate due diligence, the Department of Public Safety assumed that all sentences were to be served consecutively, not concurrently as has been the practice in Hawai'i for decades and sent letters to incarcerated individuals advising them that their sentences were recalculated and that they would be serving many more years than they were led to believe.

In 2008, Act 193 was signed on June 18, 2008 and made all sentences served after June 18, 2015 concurrent unless the court specified that the sentences were to be served consecutively.

SB 213 HD2 would make all sentences served before June 18, 2008 concurrent unless the court specified that the sentences were to be served consecutively.

The Department of Public Safety reported that there were 862 incarcerated persons fitting these criteria. This bill requires the Department of Public Safety to send written notice to defendants with multiple terms of imprisonment imposed prior to June 18, 2008, within six months of the effective date of this measure. It requires the written notice to include notice of the defendant's right to have the court review the defendant's sentence makes it effective upon approval.

The Public Defender testified that he checked their files and every over-detention case they filed because of PSD's recalculation the state lost every one.

**THE STATE LOST AND THE TAXPAYERS LOST.  
Courts have been assessing a fine of \$1,000/day for over-detention.**

This bill codifies what has been the practice for decades in Hawai'i. We urge the committee's passage of this measure.

Mahalo for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov  
Sent: Friday, April 03, 2015 9:45 PM  
To: FINTestimony  
Cc: blawaiianlvr@icloud.com  
Subject: Submitted testimony for SB213 on Apr 7, 2015 14:30PM

**SB213**

Submitted on: 4/3/2015

Testimony for FIN on Apr 7, 2015 14:30PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We STRONGLY SUPPORT this bill, as it holds the State of Hawaii accountable for miscalculating a convicted persons prison sentence.

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HAND DELIVERED TO ROOM 306 OF THE STATE CAPITOL

April 6, 2015

Representative Sylvia Luke  
Chair, Committee on Finance  
Hawaii House of Representatives  
State Capitol, Room 306  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Senate Bill No. 213 (SD2, HD2),  
"Relating To The Hawaii Penal Code"

Dear Chair Luke and Committee Members:

I am a private practice attorney based in Honolulu and concentrating in criminal defense law. I have been a member of the Hawaii bar since 1968. Additionally, I have served as a Lecturer in Law at the William S. Richardson School of Law since 2005, co-teaching (as a founding member) the Hawaii Innocence Project courses, along with William Harrison, Esq., Susan Arnett, Esq., and Professor Virginia Hench.

This letter constitutes my written testimony (also submitted on behalf of the Hawaii Innocence Project) in strong support of the intent of the original version of Senate Bill No. 213, which should be passed consistent with the amendments I have urged below. The current Senate Bill No. 213 (SD2, HD2), which in my view should be improved by revising it, is scheduled to be heard by the House Committee on Finance in conference room 308 at 2:30 p.m. on Tuesday, April 7, 2015.

This written testimony incorporates by reference the written testimony that I submitted to the Senate Committee on Judiciary and Labor (and the House Committee on Public Safety) on February 10, 2015, and the written testimony that I submitted to the House Committee on Judiciary on March 23, 2015, in support of the original version of Senate Bill No. 213, plus the written testimonies that were previously

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submitted by the State Office of the Public Defender, the American Civil Liberties Union of Hawaii, the Hawaii Association of Criminal Defense Lawyers, the Community Alliance on Prisons, and Hoomana Pono, LLC.

The original version of Senate Bill No. 213 was introduced by (inter alia) Senator Gilbert Keith-Agaran, Chair of the Senate Committee on Judiciary and Labor; Senator Maile Shimabukuro, Vice Chair of that committee; Senator Les Ihara, Jr., a member of that committee; and Senator Will Espero, Chair of the Senate Committee on Public Safety. It addressed the fundamentally unfair disparity in treatment between offenders with terms of incarceration imposed before June 18, 2008, and those without such terms of incarceration, by amending the language of H.R.S. § 706-668.5(1) to read in pertinent part: "If multiple terms of imprisonment are imposed on a defendant, whether at the same time or at different times, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment that was imposed prior to June 18, 2008, the terms shall run concurrently unless the court has ordered or the statute mandates that the terms run consecutively." [Underlining added.] That key statutory amendment has been deleted from the current Senate Bill No. 213 (SD2, HD2), but in my professional opinion it should be restored. As the testimony of the State Office of the Public Defender submitted for the hearing of March 24, 2015, before the House Committee on Judiciary emphasizes: "The original version of this measure would have amended § 706-668.5, H.R.S., by making the applicability of this section retroactive to sentences imposed prior to June 18, 2008. The Office of the Public Defender supports the intent of S.B. 213, HD1, however, we ask that the original language making the application of this section retroactive be restored." [Underlining added.]

Ensuring the most efficient and effective mechanism for release of the affected prisoners whose sentences were meant to run concurrently should be of particular interest to the House Committee on Finance. More timely release of such prisoners will save money for the State of Hawaii, both by reducing the costs of imprisonment and by reducing the amount of criminal and civil litigation pursued by inmates in regard

Representative Sylvia Luke

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to their sentences. As the testimony of the State Office of the Public Defender submitted for the hearing of March 24, 2015, before the House Committee on Judiciary stresses: "Wrongful imprisonment is wrongful imprisonment. The longer it takes to discover an illegal sentence, the higher the price tag for wrongful incarceration."

In written testimony submitted for a February 12, 2015, hearing on the original version of Senate Bill No. 213, the Hawaii Department of the Attorney General claimed: "This bill, which would effectively make Act 193 apply retroactively, is unconstitutional as it violates the doctrine of separation of powers." In my view, that claim is inaccurate. The original bill stated that "the terms shall run concurrently unless the court has ordered or the statute mandates that the terms run consecutively." [Underlining added.] Thus, the original version of the bill did not unconstitutionally encroach upon the sentencing authority of the judicial branch of government. Significantly, the written testimony submitted by the State Office of the Public Defender for the same hearing emphasized: "In order to rectify the situation, our office would have to file a Motion to Correct Sentence and/or a Rule 40, HRPP petition. Either motion was time consuming and depending on the court's schedule, could take several months to complete. Reviewing the court's minutes and ordering transcripts of the sentencing hearing allowed us to prove, in every single instance, that the court intended the sentences to be served concurrently. There was not one single case where a judgment did not specify concurrent or consecutive terms that the minutes and transcripts proved that the court intended to impose consecutive terms." [Underlining added.]

Next, I will address the important notice requirement. Senate Bill No. 213 (SD2, HD2) adds an individual notice requirement to H.R.S. § 706-668.5: "For terms of imprisonment imposed prior to June 18, 2008, the department of public safety shall send written notice to the defendant within six months of the effective date of Act [final number of the Act to be inserted], Session Laws of Hawaii 2015. The written notice shall include but not be limited to: (a) Notice that the department of public safety may recalculate the multiple terms of imprisonment imposed on the defendant; and (b) Notice of the defendant's right to have the court review the

Representative Sylvia Luke  
April 6, 2015  
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defendant's sentence."

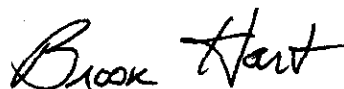
First, the dilatory time deadline of six months for the Department of Public Safety to send the written notices to inmates should be significantly expedited. Otherwise, inmates whose sentences -- if properly calculated -- would expire less than six months from the effective date of the law could remain illegally incarcerated for months before even receiving their written notices "of the defendant's right to have the court review the defendant's sentence."

Second, mere written notices may be ineffective for a large percentage of Hawaii inmates: those who are functionally illiterate, currently unrepresented by counsel, undereducated, immigrants from non-English speaking countries, mentally deficient and/or mentally ill. On August 16, 2009, KHNL News reported that "1 in 6 Hawaii adults are functionally illiterate," meaning that they "cannot read or write even at a basic level." (Presumably, such functional illiteracy is even more prevalent among the population of persons who are incarcerated.) Thus, the Hawaii Innocence Project and I request that the committee add language to the bill that would require the safeguard of having correctional facility case managers provide a clear verbal explanation of the meaning of the written notices to inmates who receive such notices. For inmates who are mentally deficient and/or mentally ill, the bill should additionally require that a mental health expert clearly explain the meaning of the written notices to such inmates.

In view of the foregoing, the Hawaii Innocence Project and I urge the House Committee on Finance to amend Senate Bill No. 213 (SD2, HD2) as discussed above, and then approve the amended version of that bill.

Very truly yours,

LAW OFFICES OF BROOK HART  
A Law Corporation



BROOK HART  
Hawaii Innocence Project,  
William S. Richardson School of Law



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April 6, 2015

VIA FAX

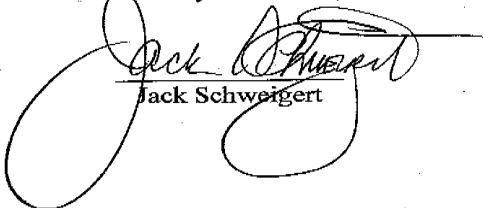
Sylvia Luke  
Chair, Committee on Finance  
State Capitol Building rm 306

Re: Favorable Support for S.B. No. 213, S.D. 2, H.D. 2

Dear Chair Luke and Fellow Committee Members,

As an attorney who has done several cases involving the overdeterment of inmates who got released from prison long after they had "done their time," it is my opinion that Senate Bill 213, S.D. 2, H.D. 2 is a procedural safeguard that will go a long way to stop this situation from continuing to occur.

Thank you & aloha,

  
Jack Schweigert

From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, April 05, 2015 3:09 PM  
To: FINTestimony  
Cc: barbarapolk@hawaiiantel.net  
Subject: Submitted testimony for SB213 on Apr 7, 2015 14:30PM

**SB213**

Submitted on: 4/5/2015

Testimony for FIN on Apr 7, 2015 14:30PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	No

Comments: Please pass this bill, which would result in adjusting sentences as originally set. Please do not ignore the injustice this bill would correct by claiming that the state does not have enough money to be just.

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From: mailinglist@capitol.hawaii.gov  
Sent: Saturday, April 04, 2015 7:22 PM  
To: FINTestimony  
Cc: mauicrowe@gmail.com  
Subject: Submitted testimony for SB213 on Apr 7, 2015 14:30PM

**SB213**

Submitted on: 4/4/2015

Testimony for FIN on Apr 7, 2015 14:30PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james crowe	Individual	Support	No

Comments: This is a simple updating and correcting of records. It will bring correct justice to the inmates affected. It will save money for the state and it's taxpayers.

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**FIN-Jo**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, April 07, 2015 10:04 AM  
**To:** FINTestimony  
**Cc:** theede@hawaii.rr.com  
**Subject:** \*Submitted testimony for SB213 on Apr 7, 2015 14:30PM\*



**SB213**

Submitted on: 4/7/2015

Testimony for FIN on Apr 7, 2015 14:30PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri Heede	Individual	Support	No

Comments:

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Committee on Finance  
Rep. Sylvia Luke, Chair  
Rep. Scott Nishimoto, Vice-Chair  
Tuesday, April 7, 2015  
2:30pm in Room 308

**LATE**

Re: Support for SB 213 SD 2, HD2 – SENTENCING

Dear Chair Luke, Vice-Chair Nishimoto and Members of the Committee:

I am a member of Community Alliance on Prisons- Maui Chapter and am writing in support of this legislation based on my past professional experience as Program Director of MEO's BEST Reintegration Program and as an attorney interested in Smart Justice policies.

Criminal justice reform has been catching national attention and is supported by conservatives and liberals alike – from the Koch Brothers, Sen. Cory Booker (D- NJ) , Sen. Rand Paul (R-KY) , Sen. Mike Lee (R-UT), George Soros, Newt Gingrich and the American Civil Liberties Union. While it is rare for these individuals and organizations to agree on a common issue, they agree that mass incarceration policies are outdated, and cost-ineffective in building safer communities.

Numerous national studies have shown that our incarcerated population has significantly increased due to changes in sentencing policies. Put simply, we lock up more people behind bars for longer periods of time. And we do this without weighing the costs of incarceration, and without considering more cost-effective alternatives to incarceration.

SB 213 SD2, HD 2 will make all sentences served before June 18, 2008 concurrent, unless the Court specifically orders that the sentences are to be served consecutively. This bill makes sense for two practical reasons:

1. Judges are better suited to exercise discretion when making sentencing decisions after hearing the individual facts of the case and taking into consideration sentencing recommendations, victims' statements, the defendant's past criminal record, and other factors. Judges are cognizant of their ability to order consecutive sentences, and will explicitly make this decision on the record where appropriate.

2. Hawai'i's prisons are overcrowded, and comes with a hefty price tag to taxpayers of approximately \$50,000 to incarcerate one person annually. According to the Department of Public Safety, 862 persons fit the criteria under this bill. Without this legislation, we will continue to require persons to serve consecutive sentences based upon the Department of Public Safety's arbitrary interpretation that all sentences should be served consecutively rather than concurrently despite being fully aware that the practice was the opposite for many decades.

Hawai'i is at a fiscal and moral crossroads. We can ill afford to waste taxpayers dollars to lock up individuals for longer periods of time, unless we are willing to accept the consequences of a conscious decision to warehouse people instead of investing in

education, substance abuse treatment, employment training, health care and other support services for our citizens and families.

Sincerely,

Carrie Ann Shirota, J.D.  
Haiku, Hawaii 96708  
cashirota808@gmail.com