



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

**Written Testimony in Support of
HB 2490 HD2 Relating to Juvenile Justice**

**SENATE PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY
AFFAIRS AND**

SENATE JUDICIARY AND LABOR COMMITTEE

Senator Wil Espero, Chair

Senator Clayton Hee, Chair

Senator Rosalyn Baker, Vice Chair

Senator Maile Shimabukuro, Vice Chair

**March 17, 2014
10 a.m. Room 016**

Chair Espero, Chair Hee, Vice Chair Baker, Vice Chair Shimabukuro and members of the Senate Public Safety, Intergovernmental and Military Affairs Committee and the Judiciary and Labor Committee, thank you for scheduling a hearing on HB 2490 HD2 Relating to Juvenile Justice.

The Office of the Governor submits written testimony in **support** of HB 2490 HD2 Relating to Juvenile Justice. This legislative proposal is the result of a working group composed of representatives from the executive, legislative and judicial branches of government as well as key stakeholder groups from law enforcement, the prosecutors and public defenders offices and community service providers.

With the assistance from the PEW Charitable Trusts, the working group reviewed data and research and developed the proposed policy changes that are focused on improving and enhancing the juvenile justice system and concentrating bed space at the Hawaii Youth Correctional Facility (HYCF) for serious offenders. By keeping our youth out of the HYCF, we will be able to realize savings and reinvest those savings into treatment programs for our troubled youth and provide more sentencing options for the family court judges.

Similar to the Justice Reinvestment Initiative passed in 2011 for the adult correctional system, we are hoping to make policy changes to reform our juvenile justice system.

Thank you for this opportunity to provide testimony in strong support of HB 2490 HD2.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i

March 17, 2014

RE: H.B. 2490, H.D. 2; RELATING TO JUVENILE JUSTICE.

Chair Hee, Vice-Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 2490, H.D. 2.

While the Department understands the desire to limit Hawai'i's youth correctional facility ("HYCF") to those who pose the greatest risk to public safety, the Department believes it would be highly irresponsible to disregard the fact that HYCF is the only secured long-term facility of any kind—now available to juveniles in Hawai'i—where various services such as substance abuse and mental health treatment are provided. Any efforts to decrease the population of HYCF, without adequate support programs and services in place ahead of time, would be entirely premature and place those juvenile offenders at greater risk of remaining untreated through adulthood, potentially fast-tracking them into the adult criminal system.

Given the severe lack of programs available to juvenile offenders in Hawai'i, HYCF is sometimes the only option for those who—though arguably of some risk to the public—are clearly a danger to themselves, and have been unable to receive the necessary treatment by any other means. The availability of services such as substance abuse and/or mental health treatment for juveniles is even worse than for adults, particularly in cases requiring long-term treatment. The Department strongly believes that additional services and programs are needed for all juvenile offenders in need of mental health and/or substance abuse services, as early as possible, to provide the best possible chance of intervention, treatment and/or recovery.

The Department has proposed ways to expand services for juvenile offenders, and even provide early-intervention before juveniles enter the justice system, by adapting some of the few programs and facilities that are currently available. For example, H.B. 237, H.D. 1 (currently with the House Committee on Finance) and S.B. 419, S.D. 1 (currently with the Senate Committee on Ways and Means) would appropriate funding to the Department of Education for two additional alternative schools, to be modeled after the highly-successful High Core program in the Central school district.

At these alternative schools, troubled youth would receive specialized services in an environment designed to meet their needs, and many would be redirected before they ever commit any offenses.

Another idea the Department has endorsed is to separate-out part of the juvenile detention facility in Kapolei, which is a secured facility that regularly has **dozens of bed spaces available**. If appropriate modifications were made and agencies arranged to provide services there, that facility could be used concurrently as a temporary detention facility—as it is used now—and as a secured residential facility for mental health and substance abuse treatment. This would also avoid (or defray) the huge expense and delays of having to build an all-new facility.

Risk-assessment & diversion

While the Department has no objections to using a validated risk assessment tool as **one of the factors** for decision-makers to consider, it is imperative that this one tool does not become a predominant factor. Given the many other factors and considerations that weigh heavily on decisions regarding diversion, detention, charging, disposition, and other matters, it would be unreasonable to give greater weight to a risk-assessment tool than to any other factor involved.

As to changes in the intake process (Page 22, Section 8, Subsection (3)(a)), it is unclear why court involvement is necessary. Based on our understanding of existing diversion programs--which divert cases from the juvenile justice system--one of the primary purposes of these programs is to avoid court involvement by diverting juveniles who do not require court intervention, speeding up the process for those juveniles, and easing caseload and calendaring issues for the courts. To add diversion programs to the court's long list of responsibilities seems inapposite to their purpose.

Probation and parole

Although the concept of "earned discharge" may seem good on its face, it is unclear exactly how this would work. Are credits taken away if the offender violates the terms and conditions of their probation, or do credits get erased altogether and start over again? Is it even possible to build a matrix as flexible and responsive as the oversight of an experienced judge who stays with the same juvenile for as long as they are under Family Court jurisdiction, weighing the ins and outs of that juvenile's history, circumstances, personality, and so forth?

The mere fact that an earned discharge program would require all probation be for set terms (as reflected on Page 33, Section 14, Subsection (1)(A)(ii)) is a problem unto itself, eliminating the court's ability to order "probation until further order of the court," and deteriorating the flexibility that our Family Courts were designed to employ. Requiring set terms of probation would only bring the Family Court system more in line with the adult criminal justice system, tying the hands of our Family Court judges. Mandating set terms of probation prohibits judges from immediately ending probation once a juvenile offender has met the terms and conditions of probation and shown sufficient indicia of compliance and/or rehabilitation; moreover, this requires the court to schedule a hearing for every extension of probation, if a juvenile has not complied or progressed as projected. Each additional hearing creates more court congestion, requires that the juvenile be taken out of school, and requires the parent to take time off of work; many families also have transportation challenges. Ultimately, this proposition minimizes the value of each judge's familiarity with the juveniles in their district and their experience in gauging the overall progress, attitude, and rehabilitation of these juveniles.

In terms of placement at HYCF (page 34, Section 14, subsection (1)(B)(i)), the Department reiterates that HYCF is currently the only secured long-term facility that can provide services such as

mental health and/or substance abuse treatment for juveniles. To strictly limit admission to certain types of offenses or scenarios would limit the Family Court's flexibility to carry out their purpose, which includes "foster[ing] the rehabilitation of juveniles in difficulty, render[ing] appropriate punishment to offenders, and reduc[ing] juvenile delinquency." (HRS §571-1) If detention is necessary to protect the immediate welfare of a juvenile, then HYCF may be their only option, due to the current lack of alternative resources or facilities.

With regards to specific factors that HYCF can consider for purposes of parole (page 17, Section 5, subsection (b)), the Department strongly believes this list of considerations must expressly state that this list is **not exhaustive**, to account for the many other factors involved in making such a determination. Moreover, the list should include whether the juvenile offender has completed all of their programs, as this is the only way to ensure that some of them receive the treatment and services they need.

Before any measures are taken to divert or release more juvenile offenders back into the community, they must have something more to go back to, other than the exact same environment from which they came. For this and all of the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, opposes H.B. 2490, H.D. 2. Thank you for this opportunity to testify.

LATE TESTIMONY



HB2490 HD2 RELATING TO JUVENILE JUSTICE

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senate Committee on Judiciary and Labor

March 17, 2014

10:00 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2490 HD2, which would strengthen our current juvenile justice system by focusing resources and providing additional tools for rehabilitation and reentry programs, to reduce long-term recidivism and enhance the continuum of care for youth offenders.

In 2010, OHA produced a comprehensive report detailing the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice system.¹ This report found that Native Hawaiian youth are disproportionately represented in the juvenile justice system, and are also most frequently arrested in all offense categories. Accordingly, addressing the prevalence of Native Hawaiian youth offenders in the criminal justice system, and providing them with adequate and effective rehabilitation opportunities, are key concerns within the Native Hawaiian community.

In order to address the findings in the 2010 report, since 2012, OHA has administered the legislatively-established Native Hawaiian Justice Task Force (NHJTF). A copy of the NHJTF 2012 legislative report and related materials are available at: www.oha.org/nativehawaiianjusticetaskforce. Consistent with the 2010 report, the NHJTF 2012 report focused in part on youth offender intervention, noting that "an individual's contact with the criminal justice system, regardless of race, often begins at youth."²

This bill furthers the findings and recommendations under section "C" of the NHJTF 2012 report, which relate to "[p]revention and early intervention programs for Native Hawaiians," and which recommend that the legislature consider the linkage between early prevention and/or intervention with adult incarceration.³ Substantial testimony before the NHJTF and mounting national empirical evidence suggest that incarceration of juveniles is not the most effective way of rehabilitating

¹ Office of Hawaiian Affairs; *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (2010) available at <http://bit.ly/1e7auks>.

² 2012 NATIVE HAWAIIAN JUSTICE TASK FORCE REP. sec. C, at 21.

³ *Id.* at 28.

early offenders and intervening in the cycle of recidivism.⁴ Instead, supporting positive reintegration into the youths' communities and families, encouraging prosocial mentor and peer networks and promoting rehabilitation from substance abuse or other past trauma will foster healing and help develop "executive decision making" skills that can prevent future unlawful behavior.

Accordingly, this bill offers comprehensive reentry planning to include interagency and organizational coordination for programming and treatment. It also provides for flexible incentive and consequence tools, including earned discharge and graduated sanctions for common probation violations, to reinforce reentry plans. **By focusing on individual risk and needs assessments, allowing for evidence-based rehabilitation options and closing gaps in the continuum of care for our juvenile offenders, this bill will help to heal our offending youth and make our communities safer in the long-term.**

Therefore, OHA urges the Committees to **PASS** HB2490 HD2. Mahalo for the opportunity to testify on this important measure.

⁴ Joel Rosch, *Deviant Peer Contagion: Findings from the Duke Executive Sessions on Deviant Peer Contagion*, THE LINK: CONNECTING JUVENILE JUSTICE AND CHILD WELFARE (Child Welfare League of Am., Washington, D.C.), Fall 2006.



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LATE TESTIMONY

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March 15, 2014

TO: Committee on Public Safety, Intergovernmental
and Military Affairs and Judiciary and Labor
FROM: Jaque Kelley-Uyeoka, Deputy CEO, Hale Kipa

RE: SUPPPORT OF HB 2490 Relating to Juvenile Justice

Dear Senators Will Espero, Chair; Rosalyn H. Baker. Vice Chair; Clayton Hee, Chair; Maile S.L. Shimabukuro,
Vice Chair,

Thank you for allowing Hale Kipa to testify in support of this bill. Hale Kipa serves many youth who have been arrested and are in the juvenile justice system and, as such, was also fortunate to be a member of the Juvenile Justice Working Group that provided input and direction for a comprehensive report released in December 2013 that led to this legislation.

This group of individuals demonstrated a passion for serving youth, having youth and parents be held accountable, putting policies, procedures and funds in place that will deter youth from juvenile justice involvement and lead successful lives, keeping the community safe and saving the State monies due to less youth incarceration. Strengthening youth and family engagement, reentry practices, probationary procedures and oversight have the great potential of keeping many youth in their communities and not locked away at great expense to Hawaii. Youth at the Hawaii Youth Correctional Facility would be the youth who truly are a danger to the community and they, too, would be afforded more treatment and services.

The Juvenile Justice Working Group also validated the commitment across State agencies to streamline practices, avoid duplication, work together more collaboratively to identify what is needed for the youth and his/her family and do whatever is essential to make it happen! The commitment and identified approaches are refreshing and critically and urgently needed at this time.

It is hoped that you will pass HB 2490. Thank you for your time.

Sincerely,

Jaque Kelley-Uyeoka, ACSW
Deputy CEO, Hale Kipa, Inc.



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

&

COMMITTEE ON JUDICIARY AND LABOR

Honorable Will Espero & Clayton Hee, Chairs

Honorable Rosalyn H. Baker & Maile S.L. Shimabukuro, Vice Chairs

Monday March 17, 2014

10:00 a.m.

Room 016

STRONG SUPPORT HB 2490 HD2 – RELATING TO JUVENILE JUSTICE

Hawai'i Friends of Justice and Civic Education is a non-profit incorporated to improve the justice system. We began in 1980 by providing a juvenile diversion pilot in collaboration with the family court of the first circuit. Since then we have designed, provided, evaluated, and published on numerous interventions for youth and adults harmed by crime and social injustice. We are consistently asked to contribute knowledge locally, nationally and internationally by organizations, scholars, practitioners, and students on our restorative justice, public health and solution-focused interventions. Several of our interventions are being replicated, including a restorative reentry planning process for incarcerated people, their harmed loved ones, and the community in New York, California, and other states and countries.

We strongly support the passage of this bill with the following three amendments:

1. Section 14 of the bill concerning HRS 571-48 (1)(B) should be amended to delete the provisions that juveniles whose probation has been violated or revoked, and juveniles under the jurisdiction of drug or girls court may be placed in the Hawai'i youth correctional facility (HYCF) when the court finds the youth is a "public safety risk." There is a plethora of evidence, and as this bill correctly finds, that "when less serious youth are placed in secure facilities, the risk of reoffending increases" (p. 2). Probation violations and revocations, and youth sentenced to drug or girls court are by nature "less serious offenders." The detrimental effects of incarceration on these youth remain true, even if a court believes a child poses a "public safety risk." Youth should not be incarcerated for any kind of status offenses.

2. Section 2 of the bill concerning reentry plans needs to be amended to include that youth must participate in developing her or his reentry plan. Individuals need to participate in their own reentry planning regardless of what professionals might think is "best" for them. Youth know more about themselves and their goals than anyone else no matter how "learned" the experts might be. If you are included in making their reentry plans it is likely they will be more meaningful and ultimately more effective.

3. Throughout the bill there are numerous references to assessments based on the youth's "risks and needs." There has been tremendous development in social psychology in the last 15 years showing people are better served by identifying their strengths instead of only their weaknesses and problems. "Strength based assessments" exist, and all youth who come into contact with the juvenile justice system, need to have their strengths assessed. All references to "risks and needs" in the bill should be amended to: "strengths, risks and needs."

I was a member of the task force that developed this bill and am the executive director of Hawai'i Friends of Justice & Civic Education, which I have worked with for over 20 years.

Mahalo for your public service,
Lorenn Walker, JD, MPH

LATE TESTIMONY

Date: March 16, 2014

To: Committee on Public Safety, Intergovernmental, and Military Affairs

(Senator Will Espero, Chair)

Committee on Judiciary and Labor

(Senator Clayton Hee, Chair)

Hearing: March 17, 2014 at 10:00 a.m. Room 016

From: Michelle Larson (University of Hawaii Manoa, Master of Social Work Candidate 2014)

Re: Support for H.B. 2490 HD 2

I support H.B. 2490 HD 2 because after reading the bill it seems that there is a major overhaul needed of the Juvenile Justice system. Especially, in regards to those youth that commit status offenses and the Judges, attorneys, probation officers, and others involved in the case, have very few alternatives to help this youth. Children (and youth) are highly vulnerable and they have little to no power to protect themselves and they do not always have a voice and they need willing adults to speak up for them. Those youth involved in the Juvenile Justice system need to know that there are consequences for breaking the law. However, the punishment should not exceed the crime. This bill has a comprehensive plan to improve the Juvenile Justice system and allows for alternative ways to reprimand a youth, to give them a chance to improve, and hopefully, never return to the Juvenile Justice system. The only issue that I have with this bill is the date that it goes into effect (2030). I am unfamiliar with the legislative process here in Hawaii, and this just might be a random date, but the sooner you can implement these necessary changes the better.

Thank you for taking the time to read this testimony.

Written Testimony in Support of
HB 2490 Relating to Juvenile Justice

LATE TESTIMONY

Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair

March 17, 2014
10am Room 016

Aloha Chair Hee and Committee Members:

Mahalo for all that you do to serve Hawai'i.

In this written testimony, I offer my strong support for House Bill 2490 in its purpose to restrict the use of secure confinement at the Hawaii Youth Correctional Facility to serious juvenile offenders and to require the use of a standardized risk and needs assessment to aid judicial decision-making prior to disposition. In much the same way that the Justice Reinvestment Initiative of 2011 helped to reform adult correctional policies in Hawai'i, the proposals of HB 2490 are based on data that demonstrates the vast majority of our youth offenders are not a threat to public safety and that the money used to securely confine and court-supervise these less serious cases could be better invested in expanding community-based services that support youth and their families earlier in the process and prevent penetration into the juvenile justice system. As a researcher for the University of Hawaii studying racial and ethnic disparities in the State's juvenile justice system and the Chair of Ethnic and Cultural Diversity for the Hawai'i Juvenile Justice State Advisory Council (JJSAC), the issue of over-representation of Native Hawaiian and other Pacific Islander youth is one of my greatest concerns – and legislation such as HB 2490 is as one step toward achieving greater justice and brighter futures for all of our local youth.

Thank you for this opportunity to testify.

Sincerely,
Tai-An Miao

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 17, 2014 11:05 AM
To: PSMTestimony
Cc: angelica.zabanal@gmail.com
Subject: *Submitted testimony for HB2490 on Mar 17, 2014 10:00AM*

LATE TESTIMONY

HB2490

Submitted on: 3/17/2014

Testimony for PSM/JDL on Mar 17, 2014 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Angelica Zabanal	Individual	Support	No

Comments:

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