Creating Better Outcomes, Safer Communities

Final Report of the
House Concurrent Resolution 85 Task Force on Prison Reform
to the Hawai‘i Legislature
2019 Regular Session

Prepared by the
HCR 85 TASK FORCE
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STATE OF HAWAI‘I
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FOREWORD

House Concurrent Resolution No. 85, H.D. 2, S.D. 1 (2016) requested the Chief Justice of the Hawai‘i Supreme Court to establish a task force to make recommendations to the Legislature on ways to improve Hawai‘i’s correctional system, including recommendations on costs, best practices, and the design of future correctional facilities. I am honored that Chief Justice Mark Recktenwald asked me to chair the HCR 85 Task Force, and I am pleased to present the Task Force’s Final Report to the Legislature and the public.

This report represents the views of a diverse group of stakeholders that includes legislators, the Judiciary, the Department of Public Safety, representatives of three Native Hawaiian organizations, the prosecutor for the City and County of Honolulu, the chair of the Hawai‘i Paroling Authority, a criminal justice scholar at the University of Hawai‘i at Mānoa, and several community advocates. With such a diverse group, there were many points of view on the complex issues of prison reform, but we all agreed on one thing, the importance of which cannot be overstated: **Hawai‘i’s correctional system is not producing acceptable, cost-effective, or sustainable outcomes and needs immediate and profound change.** Despite spending hundreds of millions of dollars a year on corrections, Hawai‘i has an overall recidivism rate of over 50%, we incarcerate a disproportionate percentage of Native Hawaiians, we are one of only five states to house over 20% of our prisoners in private prisons, and the State is planning to spend hundreds of millions of dollars on a new jail on O‘ahu and larger prisons on the neighbor islands that will only compound and perpetuate the bad outcomes the system is currently producing.

Beginning in June 2016, the Task Force and its five subcommittees—Program, Native Hawaiian, Education, Jail and Prison Design, and Faith—researched best practices in other states and countries, analyzed data, conducted a hearing on Native Hawaiian issues, and solicited the views of correctional experts. At the end of that process, we arrived at a new vision for corrections in Hawai‘i. It is a vision that will make our correctional system more responsive to the needs of prisoners, reduce the prison population and recidivism rates, rein in long-term costs, and make our communities safer. It is a vision that corresponds to the values of Hawai‘i’s people, and it is a vision that will put an end to the violence and trauma that are endemic to a punitive correctional system.

Reforming our correctional system will not be quick or easy. It took us forty years to create the problems we document in this report, and it will take many years to fix them, but it can be done if we are committed to creating a better system and have the courage to engage (and when necessary confront) the punitive mentality that created and sustains the current failed system.

The Task Force has taken a comprehensive approach to prison reform and is making recommendations in many areas. **Our primary recommendation is that Hawai‘i immediately begin to transition from a punitive to a rehabilitative correctional system**. Evidence from other states and countries confirms that the rehabilitative approach is the only sustainable way to make our communities safe. Mass incarceration does not work.

Our recommendations regarding the State's plan to build a new jail to replace the O'ahu Community Correctional Center (OCCC) deserve special attention. Studies have shown that just a few days in jail can increase the likelihood of a prison sentence and promote future criminal behavior. Because jails produce bad outcomes and are extremely costly to build, maintain, and operate, communities across the nation are finding ways to reduce their jail populations through bail reform and innovative diversion programs. We strongly recommend that Hawai'i join the national trend. We should immediately stop the costly planning for a huge new jail and form a collaborative working group of stakeholders and government officials to plan and design a jail that is smaller, smarter, and less expensive than the one now under consideration. It is essential that a broad range of community interests be engaged in the jail planning process so that the new jail reflects best practices and does not become another warehouse for the poor, homeless, and mentally ill.

Finally, we urge the Legislature to view this report as the first step in a long journey to implement realistic solutions to our correctional problems and reform our prison system. We have identified what we believe are the best ideas in prison reform, but those ideas will not amount to anything unless they are translated into legislation. That is why one of our most important recommendations is that the Legislature create and fund an **Implementation Commission** to ensure that the prison reform takes place in a timely, efficient, and effective manner.

Greg Berman, Director of the Center for Court Innovation, has said that criminal justice reform must be based on equal parts pragmatism and idealism. We believe our recommendations meet that criteria.

I wish to thank Chief Justice Mark E. Recktenwald for his continued support and counsel; Charlotte Carter-Yamauchi, Devin Choy, Lance Ching, and the staff of the Legislative Reference Bureau for their assistance in preparing this report; retired Judge Michael Town for his sound advice and hard work in organizing the faith subcommittee and working so hard to keep the Task Force on track; the many people who have regularly attended the Task Force and subcommittee meetings and shared their mana'o with us; and of course, my most sincere thanks to the members of the HCR 85 Task Force for their dedication and hard work as we search for ways to improve Hawai'i's correctional system.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Hawai‘i has undergone many changes in the past forty years, but perhaps none have been as dramatic as the changes in its correctional system. In just four decades, Hawai‘i’s combined jail and prison population (i.e., the State’s total incarcerated population) increased 670%, and its incarceration rate (the number of prisoners per 100,000 population) increased 400%. Our combined jail and prison population as of July 31, 2018, was 5,570, which is down about 9% from 2005, but is still an extremely high number given Hawai‘i’s relatively small population. By way of comparison, Hawai‘i has about the same number of prisoners as Sweden, even though Sweden has six times the population of Hawai‘i. Although our incarceration rate is relatively low for the United States, if Hawai‘i was a country, it would rank in the top twenty incarcerators in the world.

By the mid-1990s, Hawai‘i's prisons had become so overcrowded, and resistance to building new facilities in the islands so entrenched, that the State began sending prisoners to privately operated prisons on the United States mainland, a practice that continues to this day. As of July 31, 2018 Hawai‘i had 1,347 prisoners at the Saguaro Correctional Center in Eloy, Arizona, operated by CoreCivic (formerly Corrections Corporation of America). The State also houses about 150 prisoners at the Federal Detention Center in Honolulu. Hawai‘i is one of only five states that have 20% or more of their prisoners in private facilities, but even with all the outsourcing, Hawai‘i's prisons and jails are severely overcrowded. They are also in very poor condition and, in some cases, probably do not meet minimum constitutional standards.

The high number of prisoners has led to ever-increasing costs. Hawai‘i's corrections budget is over $226 million per year, and the Department of Public Safety (PSD) has estimated that a new 1,380-bed jail to replace the O‘ahu Community Correctional Center (OCCC) would cost about $525 million, or $380,000 per bed. The State also plans to spend $45 million to expand the Women’s Community Correctional Center (WCCC) to accommodate the women now held at OCCC. Further, the State plans to build new medium security housing units at the prisons on Maui, Kaua‘i, and Hawai‘i island. If Hawai‘i decided to build a prison in the islands to accommodate the 1,347 prisoners in Arizona, the cost would be about $512 million (assuming the same per-bed cost as the jail), bringing the total for a new jail and prison to over $1 billion.

Despite the hundreds of millions of dollars Hawai‘i spends on corrections each year, our correctional outcomes, while improving, are consistently poor. The recidivism rate for parolees is 53.3%. For prisoners who serve their maximum sentence (“max out”), the rate is 66.0%. Nearly two-thirds (63.2%) of recidivists reoffended within the first twelve months, and 88.9% reoffended within twenty-four months. The three-year recidivism rate for those who commit property crimes is 69.8%, and there are sometimes more than three hundred probation violators locked up at OCCC.

Hawaii's correctional system disproportionately incarcerates citizens of Native Hawaiian ancestry. Native Hawaiians and part-Native Hawaiians make up approximately 21% of the general population, but 37% of the prison population. A landmark study by the Office of Hawaiian Affairs in 2010 reported that Native Hawaiians are overrepresented at every stage of the criminal justice system. Despite numerous studies and recommendations going back at least to the 1980s, the State has not taken effective steps to address the overrepresentation of Native Hawaiians in the criminal justice system.

Hawai‘i’s prisons have serious problems with suicides and sexual assaults, and the State lacks an independent oversight commission to investigate prison conditions and how inmates are treated.

Finally, Hawai‘i has more than six hundred elderly prisoners who will soon be developing age-related illnesses that will consume a large portion of the Department of Public Safety’s medical budget.

If we continue on the path we have been on for the past forty years, we can expect the same poor outcomes and high recidivism rates we have experienced in the past, correctional costs will consume an ever-increasing share of the state budget, we will probably face federal lawsuits over the poor condition of our prisons and jails, and our communities will not be any safer despite the hundreds of millions of dollars we spend on corrections.

To improve outcomes and bring costs under control, Hawai‘i should transition from a punitive to a rehabilitative correctional system. In a rehabilitative system, the conditions of confinement are humane, not punitive, and the prison staff are focused on helping prisoners deal with the issues that brought them to prison.

The new model should be based on the spirit of goodwill and generosity found in the Aloha Spirit. In addition, the State should adopt the proven best practices of the highly successful Norwegian/European correctional system.

A rehabilitative correctional model based on "smart justice" and the humane treatment of prisoners by correctional officers who are trained to prepare inmates for successful release into the community will best serve the interests of Hawai‘i. Hawai‘i should also follow the lead of other states that are focused on reducing prison populations, expanding community-based corrections, and supporting effective offender reentry strategies.

In addition to making a paradigm shift in philosophy and approach, **Hawai‘i should adopt a comprehensive strategy to address the overrepresentation of Native Hawaiian in the correctional system.** This problem has persisted at least since the 1980s, and it is time to end it once and for all. Our recommendations in this area focus on diverting Native Hawaiian youth away from the criminal justice system, implementing culturally relevant programs throughout the correctional system, and significantly improving support for Native Hawaiians as they leave prison and reenter the community.

The problem is not simply that there are too many Native Hawaiians in the prison system, it is that there are too many *people* in the system. **The State should set numerical goals and a timetable to significantly reduce our prison population.** Setting numerical goals and a timetable is the only way to measure progress and ensure accountability in reducing both our Hawaiian and non-Hawaiian prison populations.

One of the keys to reducing the prison population is to **downgrade offenses and shorten sentences.** Among the changes to the penal code that Hawai‘i should consider are: (1) making

certain offenses eligible for community-based sentences; (2) reducing the length and severity of custodial sentences by redefining or reclassifying crimes or repealing mandatory penalties; (3) shortening lengths of stay in prison by expanding opportunities to earn sentence credits, which reduce time in custody and advance parole eligibility; and (4) reducing the number of people entering prison for violations of community supervision by implementing evidence-based practices, such as graduated responses to violations and community-based sanctions.

Oversight Commission. Prisons are closed institutions and, in a closed environment, abuse is difficult to discover, prevent, and prosecute. That is why many jurisdictions have created independent prison oversight commissions with broad authority to investigate and report on prison conditions and prisoner abuse. We recommend the creation of an independent oversight commission with broad authority to investigate and report on prison conditions and abuse. The Commission should be adequately funded and staffed, and its chairperson should be appointed by an elected official to a fixed term, confirmed by the Legislature, and subject to removal only for cause.

We also strongly recommend that the State create and fund a transitional coordinator position and an **Implementation Commission** to ensure that the transition to a rehabilitative system takes place in an efficient, orderly, and timely manner and there are regular reports to the Legislature on the progress of the transition.

Improved Programs. Effective programs are essential for a successful rehabilitative system. Hawai‘i is in the process of evaluating its programs, but the evaluations have not been made public. The State should continue its evaluations, but the results should be made public. The Department of Public Safety should terminate programs that are not evidence-based or not producing positive results. Program funding should focus on education, literacy, substance abuse, and sex offender treatment. Programs should have adequate staffing so that inmates can complete all required programs by the time they are first eligible for parole.

Corrections Academy. Hawai‘i does not provide standardized education and training for correctional workers. An untrained or poorly trained staff contributes to poor outcomes, an unsafe workplace, poor morale, and an inefficient workforce. The Task Force recommends that the State establish a Corrections Academy to ensure that the education and training needed by correctional personnel in the executive and judicial branches of government are delivered in a standardized and effective manner. The Corrections Academy should also collect and analyze data and recommend changes to the correctional system based on data analysis and best practices.

Reentry Plans. Preparing prisoners to reenter the community should begin the day they enter prison. Every inmate should be provided with an individualized reentry plan tailored to his or her risk of recidivism and programmatic needs. Reentry plans should be updated and revised continuously until the time of release and, while in prison, inmates should be provided education, employment training, life skills, substance abuse and mental health treatment, and other programs that target their criminogenic needs and maximize their likelihood of success upon release. To remedy gaps in education and employment skills, prisons should ensure that their educational programs expand the quality, scope, and delivery of both the academic and job training curricula, particularly for those with literacy and special learning needs.

While incarcerated, every inmate should be provided with the resources and opportunity to build and maintain family relationships, thereby strengthening the support system available to them upon release. The State should also contract with non-profit corporations to increase the number and quality of halfway houses, and make those halfway houses therapeutic centers where gains made in prison can be sustained and strengthened. Before leaving prison, every inmate should be provided with comprehensive reentry-related information and access to resources necessary to succeed in the community.

PSD should create a unit dedicated to finding appropriate housing for difficult-to-place inmates, such as those who are elderly, disabled, mentally ill, or have chronic illnesses. The State should designate Leahi Hospital as the default placement for compassionate release prisoners who require intermediate or acute levels of care.

Hawai‘i should make a commitment that, upon release, all prisoners will have: (1) a decent place to live; (2) a state identification card, a social security card, and a birth certificate; (3) health insurance and, if necessary, financial assistance benefits; (4) employment if the individual is employable; (5) ongoing addiction and/or mental health treatment; and (6) access to wellness centers rooted in Native Hawaiian values.

Finally, the State should identify statutes that erect barriers to reentry and determine whether they should be continued, amended, or terminated.

Treatment Courts. Treatment courts are an effective and efficient way to reduce the prison population and recidivism rate. Hawai‘i currently has treatment courts for drug, mental health, and veterans' issues, but there is a waiting list for admission to these courts. We recommend expanding the treatment courts to accommodate everyone who qualifies for admission to these highly successful programs.

Bail Reform. Last year, the Legislature created a task force to study pretrial procedures, including bail reform (HCR 134 (2017)). We do not know what that task force will recommend, but reducing the pretrial population by just 50% could save the State more than $45,000 per day, or $16 million per year. Reducing the number of pretrial detainees by 50% would also mean that the State would need about 250 fewer beds at the new jail, which would save hundreds of millions of dollars in construction costs, not to mention millions of dollars more in savings from reduced maintenance and operating costs over the life of the new jail.

Women Prisoners. Hawai‘i should recognize the behavioral and social differences between female and male offenders and adopt gender-responsive policies, programs, and practices, particularly with respect to trauma-informed care, developing healthy relationships, and providing holistic support for women. More women should have the benefit of work furlough programs such as the YWCA's Fernhurst *Ka Hale Ho‘āla Hou No Nā Wāhine (Home of Reawakening for Women)* which is trauma-informed, gender responsive, and culturally coherent.

Use of Private Prisons. Hawai‘i has been using private prisons since 1995. There has periodically been talk of bringing the mainland prisoners back to Hawai‘i, but there are no concrete plans to do

so. We recommend that the State develop a plan to eliminate the use of private prisons and bring Hawai‘i’s prisoners home. The plan should have a reasonable time table and be developed collaboratively by government and community stakeholders. The public-private group that works on the plan should have funding for staff and qualified experts to assist in exploring alternatives and drafting the plan.

Support for Federal Programs. United States Senator Brian Schatz of Hawaii has introduced legislation to repeal the ban on Pell Grant eligibility for prisoners, allowing both state and federal prisons to once again provide prison education. He is also working to ensure that the Second Chance Pell Pilot Program receives adequate funding, and that the United States Department of Education continues to implement the program. His other initiatives include urging colleges to remove criminal history questions from their admissions processes, improving compassionate release at the federal level, and improving the reporting requirements of the *Prison Rape Elimination Act* (PREA). Senator Schatz’s efforts, particularly restoring Pell Grants to prisoners, will benefit Hawai‘i and the State should actively support his efforts.

Stop the planning for a 1,380-bed jail on O‘ahu and expanding the prisons on the neighbor islands. The State is moving ahead with plans to build a 1,380-bed jail to replace OCCC. On August 28, 2018, Governor Ige announced that the new jail would be located at the site of the Animal Quarantine Station in Halawa. The estimated cost of the new jail is $525 million, plus an additional $45 million to expand the Women’s Community Correctional Center to accommodate the women previously held at OCCC. The State is also planning a major expansion of the prisons on Maui, Kaua‘i, and Hawai‘i island.

Jail is often the beginning of a long journey through the criminal justice system. A study by the Vera Institute of Justice found that "just a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter—making jail a gateway to deeper and more lasting involvement in the criminal justice system, at considerable costs to the people involved and to society at large.”

Because jails can produce many undesirable outcomes and are extremely costly to build, maintain, and operate, communities across the nation are reducing their jail populations through innovative programs, such as diverting individuals with mental health and substance abuse issues to alternative facilities; finding alternatives to bail for individuals who can be safely supervised in the community while awaiting trial; having expedited hearings for prisoners who are jailed for technical probation and parole violations; expediting indigence screening and program referrals; issuing citations for low-level offenses instead of arrest and jail; and offering individuals charged with low-level, non-violent offenses the option of being adjudicated in community courts instead of in the criminal justice system.

The Department of Public Safety and its consultants have not engaged the community in the jail planning process in a meaningful way, and they have not explored ways to reduce the jail population and thereby reduce the size and cost of the new jail. The Task Force recommends that the State immediately **stop planning a large new jail to replace OCCC and establish a working**

group of stakeholders and government officials to rethink the jail issue and create a jail that is smaller, smarter, and less expensive than the one now under consideration.

Planning for the new jail should focus on diverting low-level, non-violent offenders away from the criminal justice system, reforming the bail system to significantly reduce the number of pretrial detainees who remain in jail pending trial, reducing the jail population by eliminating short jail sentences in favor of community-based alternatives, housing the mentally ill in a separate facility where they can be cared for by mental health professionals rather than correctional officers, and creating alternative housing for sanctioned HOPE Probation violators and low-risk parole violators.

This report provides a broad outline of the direction we think Hawai‘i’s correctional system should take in the coming weeks, months, and years. We are confident that, if implemented, our recommendations will result in a correctional system that represents the core values of Hawai‘i’s people, reduces our prison population and recidivism rate, and makes our communities safer. The Task Force also believes that this is the most cost-effective and sustainable path in the long run and is in line with the reforms taking place in other states, as more people come to realize that a punitive and retributive correctional system simply does not work.

Reforming our prison system is not a simple or inexpensive matter, but it must be done, and now is the time to start. The alternative is to maintain the status quo, which means that the State will spend over a quarter of a billion dollars a year to keep upwards of 27,000 of its citizens under some form of correctional supervision without making our communities safer. Maintaining the status quo also means that Hawai‘i will have to face the possibility of federal lawsuits over the condition of its jails and prisons, civil lawsuits over prison suicides and medical negligence, ever-increasing costs, and a continuing high recidivism rate. Hawai‘i would also become an outlier as other states reform their correctional systems, reduce their prison populations and recidivism rates, and improve community safety.

KEY RECOMMENDATIONS OF THE HCR 85 TASK FORCE

CREATE A NEW VISION FOR CORRECTIONS IN HAWAI'I

Issue: Hawai'i's correctional system is not producing acceptable, cost-effective, or sustainable outcomes, and it is not making our communities safe. The State spends over $226 million a year on corrections, but we have a recidivism rate of over 50% and more than 27,000 citizens under some form of correctional supervision.

Recommendations:

1. Transition to a more effective and sustainable correctional system that focuses on rehabilitation rather than punishment.
2. Create an Implementation Commission and transitional coordinator position to ensure that the transition to a rehabilitative system takes place in a timely, efficient, and effective manner.
3. Create an Oversight Commission to immediately address prison suicides, sexual assaults, and other unacceptable and unlawful conditions in our prison system.
4. Create a Corrections Academy to train correctional workers at all levels in rehabilitative philosophy and practices.

REDUCE THE NUMBER OF NATIVE HAWAIIANS IN THE PRISON SYSTEM

Issue: Native Hawaiians make up about 21% of the general population, but 37% of the prison population. This overrepresentation has existed for decades and has led to intergenerational incarceration for some Native Hawaiian families.

Recommendations:

1. Develop evidence-based early intervention strategies that are focused on diverting Native Hawaiian youth away from the criminal justice system and toward pathways for success.
2. Create cultural courts in the criminal justice system.
3. Expand in-prison Native Hawaiian educational and cultural programs.
4. Make culturally relevant reentry programs available to Native Hawaiians.
5. Implement the recommendations of the 2012 Native Hawaiian Justice Task Force.

EVALUATE, IMPROVE, AND EXPAND EVIDENCE-BASED PROGRAMS

Issue: Evidence-based programs are an essential part of the rehabilitation process and are a cost-effective way to reduce recidivism.

Recommendations:

1. Ensure that every prisoner is functionally literate by the time of release
2. Expand opportunities for prisoners to take community college courses.
3. Create a prison-to-college pipeline.
4. Restore funding to the highly successful sex offender treatment program.
5. Require prisoners to participate in at least three programs that address criminogenic factors.
6. Expand restorative justice programs.

KEY RECOMMENDATIONS OF THE HCR 85 TASK FORCE

IMPROVE THE REENTRY PROCESS AND SUPPORT THE DEVELOPMENT OF NEW TRANSITIONAL HOUSING

Issue: Hawai‘i does not have an effective support system for prisoners reentering the community.

Recommendations:

1. At the time of release all prisoners should have a decent place to live, gainful employment, health insurance, identification, and access to addiction and mental health services.

2. Amend or eliminate statutes that erect barriers to reentry.

3. Create a unit within PSD to locate housing for difficult to place inmates who are eligible for compassionate release.

4. Designate Leahi Hospital as the default placement for compassionate release prisoners who require intermediate or acute levels of care.

5. Expand and improve transitional housing through partnerships with non-profit organizations.

BUILD A NEW JAIL THAT IS SMALLER AND SMARTER THAN THE JAIL NOW UNDER CONSIDERATION

Issue: The State is planning to spend over $525 million on a new jail on O‘ahu, but it has no plans or policies on how to make the pretrial process—from arrest to trial—more fair, just, and efficient, and no plans on how to reduce the jail population and ensure that the new jail does not become a warehouse for the poor, homeless, and mentally ill.

Recommendations:

1. Stop any further jail planning until there is a plan to reduce the jail population through diversion, bail reform, and other means, and ensure that the jail houses only those few individuals who are a danger to society or a flight risk.

2. Build the jail near the courts, not in Halawa Valley.

3. Build a jail that uses clustered housing and dynamic security.

4. Do not house the mentally ill, or probation or parole violators, in the new jail.

OTHER RECOMMENDATIONS

1. Adopt a rehabilitative vision and mission statement, and rehabilitative goals, objectives, and strategies for PSD.

2. Expand community-based treatment programs as an alternative to incarceration.

3. Expand the drug, mental health, and veterans’ courts.

4. Reform the cash bail system to reduce the jail population.

5. Create a Sentencing Reform Commission to review the penal code with the goal of downgrading offenses and shortening sentences.

6. Set numerical goals and a timetable for reducing Hawai‘i’s prison population.

7. Support federal legislation that would benefit Hawai‘i, such as restoration of Pell grants for prisoners.

8. Support the initiative to create a BA and MA program in Criminology/Criminal Justice at the University of Hawai‘i at Mānoa.

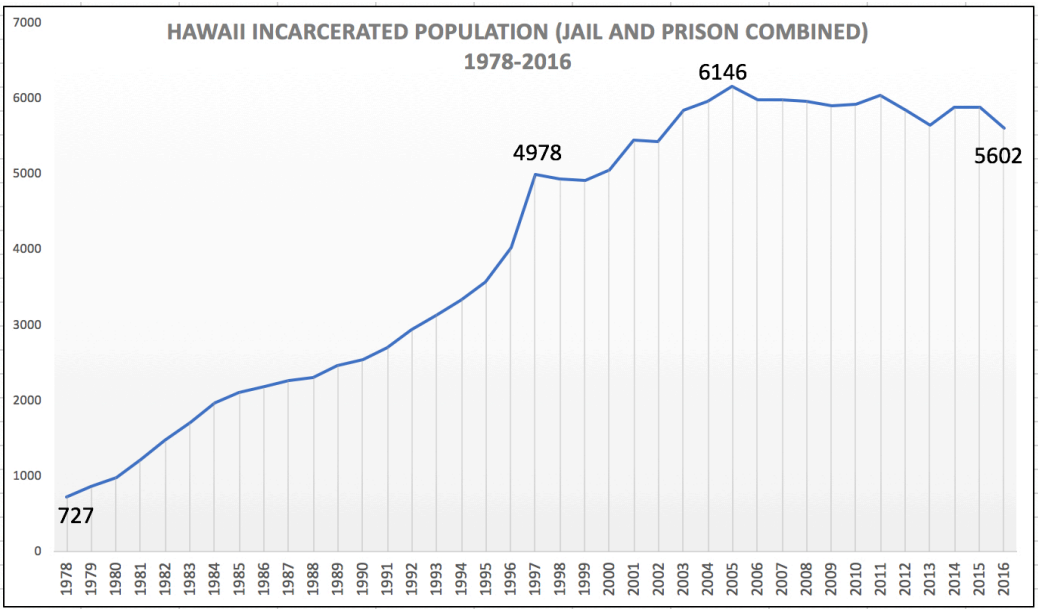
9. Support a second round of Justice Reinvestment for Hawai‘i.

CHAPTER 1

HAWAI'I'S CORRECTIONAL POLICIES ARE NOT PRODUCING ACCEPTABLE, COST-EFFECTIVE, OR SUSTAINABLE OUTCOMES

A. The Explosive Growth of Hawai'i's Prison Population

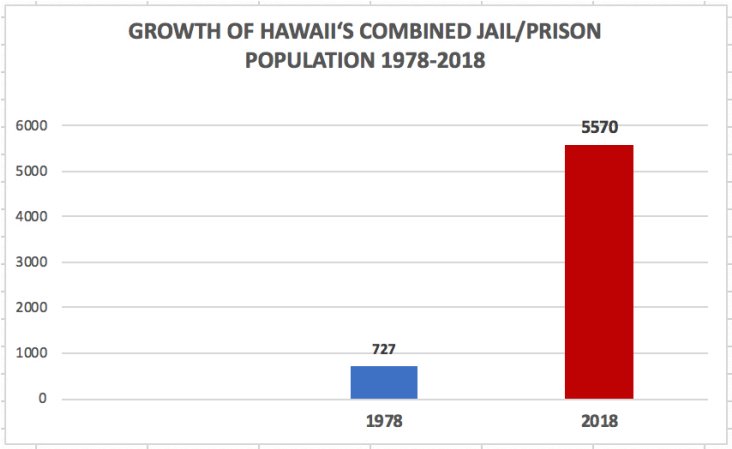
For the past four decades, Hawai'i's prison and jail populations* have been increasing at an alarming rate. From 1978 to 2016, the state population increased 53%, while the combined jail and prison population (i.e., the state's total incarcerated population) increased 670%, from just 727 total prisoners in 1978 to 5,602 prisoners in 2016.[1] In fact, during the 1980s, the average annual increase in Hawai'i's prison population was the second highest in the nation (17.7%).[2]



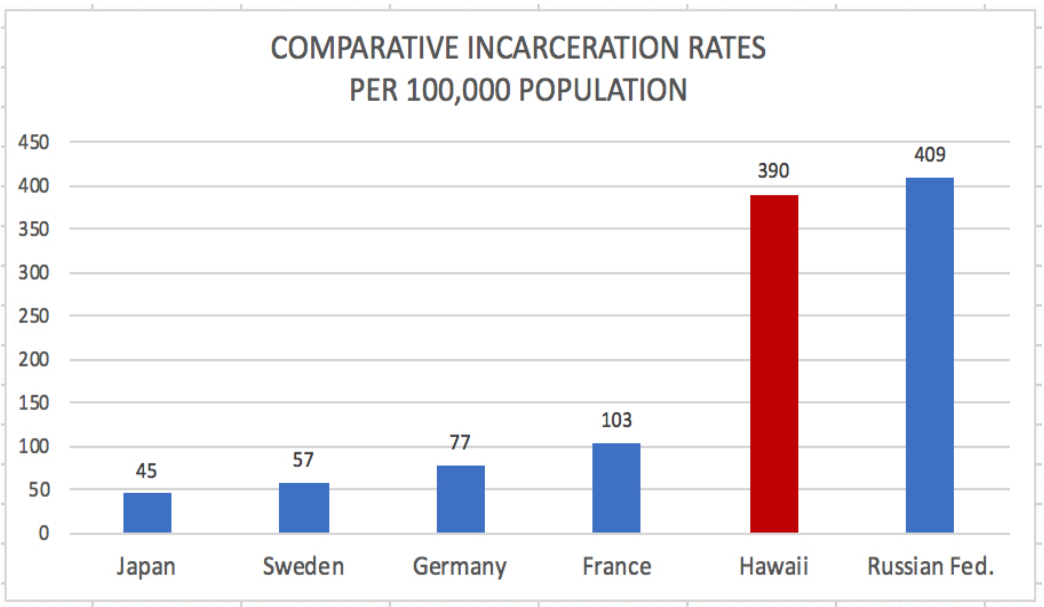
Source: E. Ann Carson and Joseph Mulako-Wangota, "Count of Year End Total Jurisdiction Population (Hawaii)," *Bureau of Justice Statistics*. Report generated using the Corrections Statistical Analysis Tool (CSAT) – Prisoners (August 13, 2018)

* As used in this report, "prison" refers to a long-term facility that houses people who have been convicted of a felony and sentenced to incarceration for one year or more. "Jail" refers to short-term facilities that primarily house inmates awaiting trial, probation violators, and people sentenced to incarceration for less than one year, typically misdemeanants.

As of July 31, 2018, Hawai‘i had a combined jail and prison population of 5,570.[3] That is down approximately 9% from 2005 when the incarcerated population was at its highest level (6,146 prisoners), but it is still an extremely high number considering Hawai‘i’s relatively small population. By comparison, Hawai‘i has about the same number of prisoners as Sweden, even though Sweden has six times the population of Hawai‘i.[4] Hawai‘i’s incarceration rate (the number of prisoners per 100,000 population) currently stands at 390[5] which is among the lowest in the nation.[6] Nevertheless, if Hawai‘i was a country rather than a state, it would rank among the top twenty incarcerators in the world.[7]



Source: Count of Year End Total Jurisdiction Population (Hawaii), *Bureau of Justice Statistics,* Corrections Statistical Analysis Tool (CSAT) – Prisoners (August 13, 2018) and PSD End of Month Population Report, July 2018.



Source: World Population Brief, Institute for Criminal Policy Research (ICPR), Highest to Lowest-Prison Population Rate, Entire World, accessed December 12, 2018

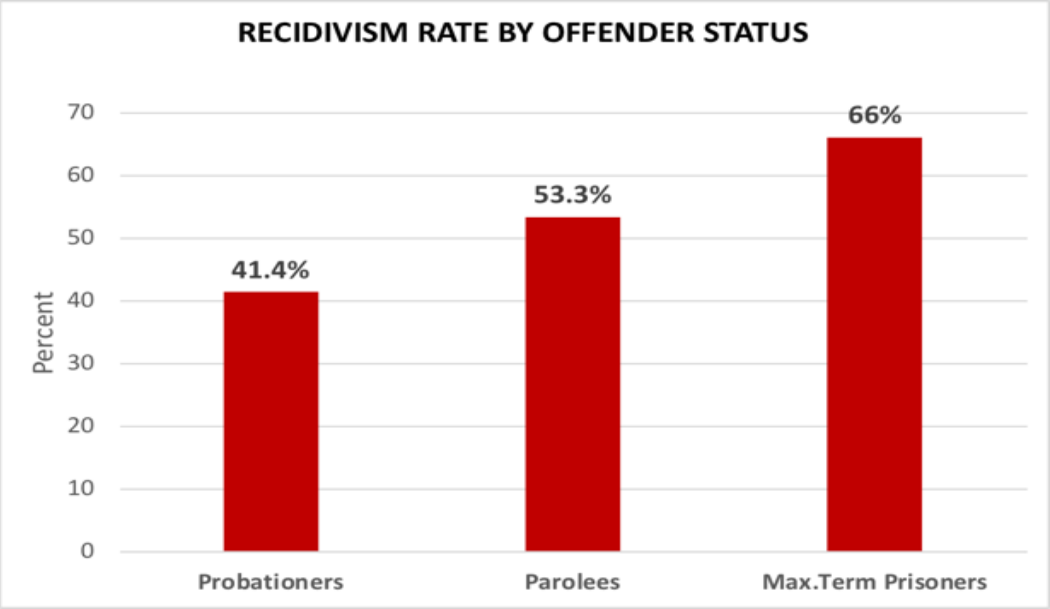
Hawai‘i’s correctional system includes not only those who are incarcerated, but also those on probation and parole. As of June 30, 2017, Hawai‘i had 1,517 people on parole[8] and 20,421 people on probation,[9] bringing the total number of people under some type of correctional supervision to 27,508.

Total Number of persons under correctional supervision in Hawai‘i FY 2016-2017

Incarcerated (Jail and Prison)	On Probation	On Parole	Total
5,570	20,421	1,517	**27,508**

B. Hawai‘i’s Recidivism Rate for Parolees and Prisoners Who “Max Out” is Over 50%

Recidivism refers to a person’s relapse into criminal behavior after receiving sanctions or undergoing interventions for a previous crime.[10] Recidivism is measured by criminal acts that result in a new arrest, or the revocation of probation or parole within three years of the start of supervision.[11]

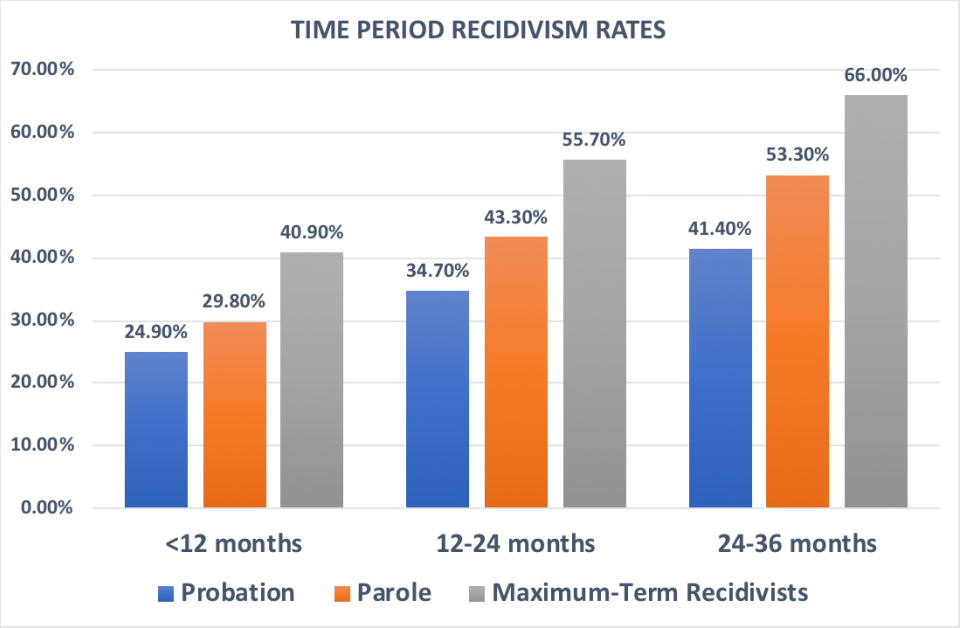


Source: 2017 Recidivism Update, State of Hawaii Interagency Council on Intermediate Sanctions (ICIS), July 2018

The Interagency Council on Intermediate Sanctions (ICIS) collects and analyzes Hawai‘i recidivism data. ICIS’s 2017 Update tracked the recidivism rates of 1,687 felony probationers, 775 parolees, and 291 maximum-term released prisoners for the period July 1, 2013, through June 30, 2014 (FY 2014).[12]

The recidivism rate for felony probationers was 41.4%, for parolees 53.3%, and for maximum term prisoners 66.0%.[13]

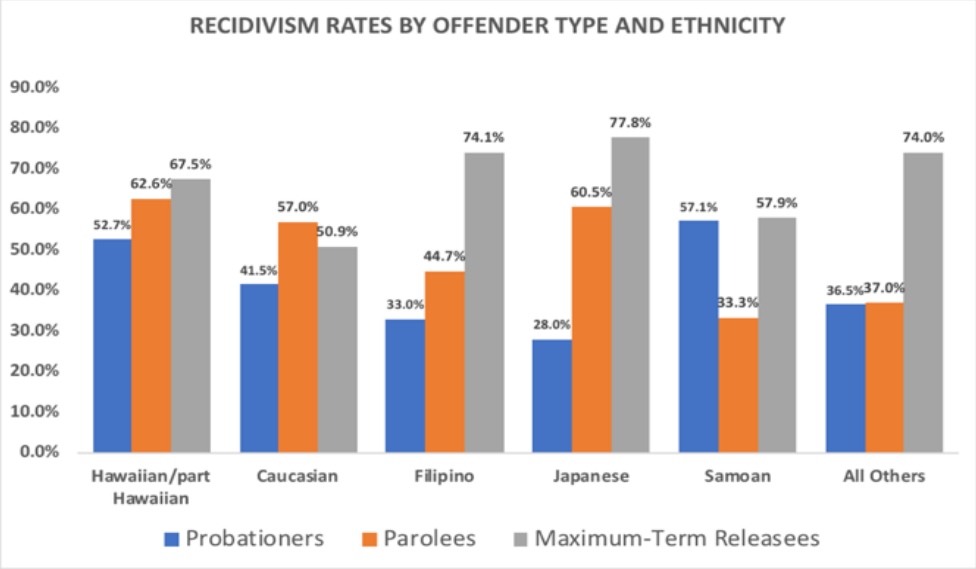
The overall recidivism rate for the entire FY 2014 study cohort was 47.3%.[14] From the supervision start date on July 1, 2013, 63.2% of the recidivists reoffended within the first 12 months, 88.9% reoffended within 24 months, and 11.1% reoffended within 24-36 months.[15]



Source: 2017 Recidivism Update, State of Hawaii Interagency Council on Intermediate Sanctions (ICIS), July 2018

The overall FY 2014 recidivism rate was 28.8% lower than the 1999 recidivism rate and was just short of the State's goal of reducing recidivism in Hawai'i by 30%.[16] Property crime offenders had the highest total recidivism rate (69.8%), while sex offenders had the lowest rate (35.2%).[17]

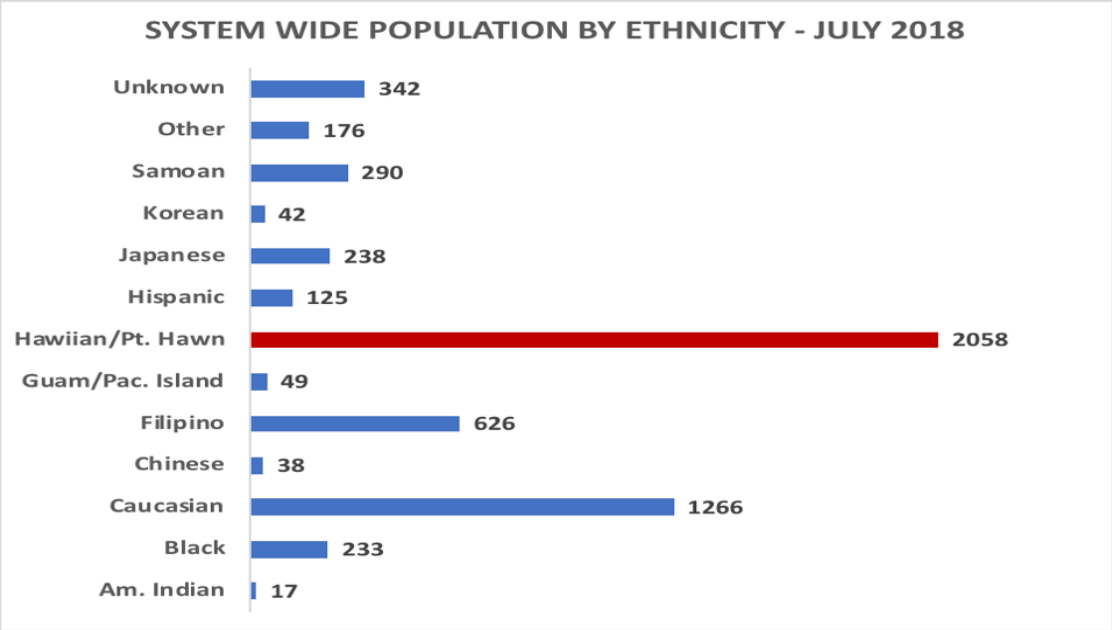
The recidivism rate was significantly higher for males (50.6%) than females (38.0%).[18] Among ethnic groups, the recidivism rate for Native Hawaiians and part-Native Hawaiians was highest (58.6%) followed by 50.0% for Samoans, 47.3% for Japanese, 46.0% for Caucasians, 39.5% for Filipinos, and 39.3% for all others.[19]



Source: 2017 Recidivism Update, State of Hawaii Interagency Council on Intermediate Sanctions (ICIS), July 2018

C. Native Hawaiians are Overrepresented in the Criminal Justice System

Hawai‘i disproportionately incarcerates citizens of Native Hawaiian ancestry. Native Hawaiians and part-Native Hawaiians make up approximately 21% of the general population,[20] but 37% of the prison population.[21]



Source: Hawaii Department of Public Safety, System Wide End of Month Data, July 2018

A landmark study by the Office of Hawaiian Affairs in 2010 reported that Native Hawaiians are overrepresented at every stage of the criminal justice system.[22] Despite numerous studies and recommendations going back at least to the 1980s, the State has not taken effective steps to address the overrepresentation of Native Hawaiians in the criminal justice system.[23]

D. Hawai‘i’s Prisons are Old, Dilapidated, and Overcrowded

Hawai‘i’s prisons are old, dilapidated, and severely overcrowded. Hawai‘i Community Correctional Center is currently operating at 185% of capacity, Maui Community Correctional Center is operating at 151% of capacity, Kaua‘i Community Correctional Center is operating at 196% of capacity, and OCCC is operating at 127% of capacity.[24]

FACILITY	DESIGN CAPACITY	OPERATIONAL CAPACITY	TOTAL POPULATION (HEAD CT.)	% OF DESIGN CAPACITY	% OF OPERATIONAL CAPACITY
HCCC	206	226	417	202	185
SNF	90	132	115	128	87
HMSF	496	992	753	152	76
KAUAI CCC	110	128	249	226	196
MAUI CCC	209	301	455	218	151
OAHU CCC	628	954	1211	193	127
WCCC	258	260	235	91	90
KULANI	200	200	156	78	78
WAIAWA	294	334	266	90	80

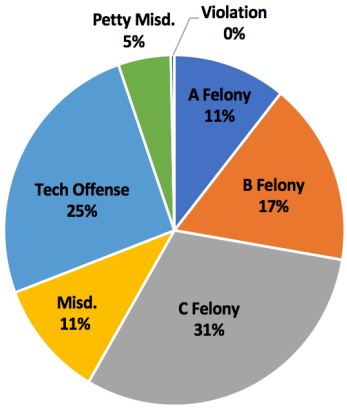
Hawaii Department of Public Safety End of Month Population Report, July 31, 2018

At OCCC, three prisoners are crowded into cells designed for two. As a result, one of the prisoners must sleep on the floor with his head next to the toilet. Faced with the lack of available cells, OCCC has so many prisoners crowded into one module that it is known as the "Thunderdome".[25] Conditions are so bad throughout the State that most facilities probably do not meet minimum constitutional standards.[26]

E. Most Hawai'i Prisoners are Incarcerated for Relatively Low-Level Offenses

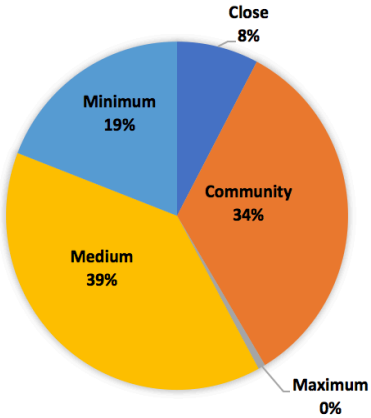
Many people believe that Hawai'i's prisons are filled with extremely dangerous and violent prisoners, but that is a misconception. The vast majority (72%) are incarcerated for relatively low-level offenses, i.e., class C felonies or below (misdemeanors, petty misdemeanors, technical offenses, or violations).[27] Only 28% are serving sentences for the more serious class A and B felonies,[28] and not all of the A and B felonies are for violent crimes, many are for drug offenses. Additionally, 53% of Hawai'i prisoners are classified as minimum or community custody inmates.[29]

HAWAII JAIL AND PRISON POPULATION BY SEVERITY OF OFFENCE



Source: Hawai'i Department of Public Safety HCR 85 Data Spreadsheet, July 31, 2018

CUSTODY STATUS OF HAWAII PRISONERS



Source: Hawai'i Department of Public Safety HCR 85 Data Spreadsheet, July 31, 2018

F. Hawai‘i Has an Aging Prison Population that Will Cost the State Millions of Dollars for Health Care in the Near Future

Hawai‘i has over 650 prisoners 55 years of age or older.[30] There is a growing body of evidence that at around age 55, prisoners start to develop health problems associated with people much older than 55 and consume a disproportionate share of the cost of prison health care.[31] A 2011 article in the *Annals of Internal Medicine* reported that the average cost of health care for just 21 seriously ill prisoners in California (0.01% of the state's prison population) exceeded $1.97 million per prisoner.[32]

The Task Force questions whether the State has the resources to provide adequate medical care to the large number of elderly prisoners, particularly in light of *Slingluff v. State of Hawai‘i*, which holds that the State has a legal duty to provide prisoners with the same level of medical care as is provided to patients who are not in prison.[33] Several recent settlements and damages awards to prisoners of $1 million or more reinforce the Task Force’s concern about the State's ability to adequately care for an aging prison population.[34]

G. Suicides Are an All Too Common Occurrence in Hawai‘i Prisons

Although the suicide rate for Hawai‘i prisons varies from year to year, in the eight-month period between June 15, 2017, and January 20, 2018, there were five suicides at correctional facilities in Hawai‘i.[35] Two of the deaths were at the Women’s Community Correctional Center,[36] which houses about 270 prisoners.[37] The deaths have been or are being investigated by the Department of Public Safety, but to our knowledge no outside experts have been consulted about the situation and the Department of Public Safety has consistently asserted that there is nothing wrong with its suicide prevention policies or staff training.[38]

H. The High Cost of Corrections is Not Sustainable

The more than $226 million Hawai‘i spends annually on corrections[39] is barely enough to maintain the system at its current level. The Departments of Public Safety and Budget and Finance estimate that a new 1,380-bed jail to replace OCCC will cost $525 million[40], or $380,000 per bed. Because the new jail is for men only, the State plans to spend $45 million to expand the Women’s Community Correctional Center in Kailua to house the women previously held at OCCC.[41] If the State were to build a new prison to house the 1,347 Hawai‘i inmates on the mainland at the same per bed cost as the jail, it would need an additional $512 million, bringing the total cost of a new jail and prison to over $1 billion. In addition, the State plans to build new medium security housing at the jails on Maui, Kaua‘i, and Hawai‘i island, at an as yet undetermined cost.[42]

Hawai‘i currently spends over $93,000 *per day* to house pretrial detainees at OCCC and $52,000 *per day* to house probation violators at OCCC.

Daily and Annual Cost of Housing One Prisoner for One Day at OCCC

PRISONERS STATUS	DAILY COST	ANNUAL COST
Pretrial Detainees	$93,936 per day	$34 million per year
Probation Violators	$52,744 per day	$19 million per year

Source: Hawai‘i Department of Public Safety, End of Month Population Report, July 31, 2018, and September 11, 2017 email from George King, PSD statistician.

I. Hawai‘i is at a Crossroads

Hawai‘i is at a crossroads. If we continue on the path we have been on for the past four decades, we can expect the same poor outcomes and high recidivism rates we have experienced in the past, and our communities will not be safer despite the hundreds of millions of dollars we will spend on corrections.

The Task Force believes that Hawai‘i must adopt a new and more sustainable correctional model that includes ways to significantly reduce the State‘s prison population and recidivism rate. This can be done by making greater use of community-based alternatives to incarceration and focusing on the development of successful, evidence-based restorative and rehabilitative strategies for those who go to prison.

CHAPTER 2

HAWAIʻI SHOULD TRANSITION TO A MORE JUST, EFFECTIVE, AND SUSTAINABLE CORRECTIONAL MODEL THAT FOCUSES ON REHABILITATION RATHER THAN PUNISHMENT

Every journey begins with a dream, a vision that can unite others. When people come together around a set of shared values, they can achieve extraordinary things.

—Nainoa Thompson

Hawaiʻi's approach to corrections must begin with recognition of the fact that all but a few of the men and women who go to prison will one day return to the community. They will live in our neighborhoods, stand next to us in the elevator, sit next to us on the bus, and wait in line with us at the supermarket. Some will have been in prison for a short time, others for many years. Some will have committed serious crimes, some only minor offenses, *but the time they have spent in prison will have shaped their lives for better or worse.* The question is: How do we shape their lives for the better? How do we change the behavior that landed them in prison and make them good citizens who we would want to live next door to us?

Prison reform is bringing liberals and conservatives together to an unprecedented consensus that helping prisoners overcome the thinking, habits, impulses, and poor decision-making that landed them in prison stands a far better chance of making a good citizen than a retributive and punitive approach. The transformation from a punitive to a rehabilitative culture based on proven models of combined sanctions and treatment will reduce recidivism and the prison population and significantly reduce the cost of administering Hawaiʻi's criminal justice system.

A. Our Prison System Should be Based Upon and Reflect Hawaiʻi's Core Values

The degree of civilization in a society can be judged by entering its prisons.

—Fyodor Dostoyevsky

Although Hawaiʻi has a diverse, multi-cultural population, many of its core values have deep roots in the Native Hawaiian culture. The heart of Hawaiian culture is the spirit of generosity, inclusiveness, acceptance, and good will embodied in the word "aloha," which means love, affection, compassion, mercy, sympathy, pity, kindness, sentiment, grace, and charity.[43] These are integral components of Hawaiʻi's core values, and over the years, they have found their way into proverbs that reflect aloha, such as:

- *E wehe i ka umauma i* - Be generous and kind to all (literally "open out the chest that it may be spacious").

- *'O ka pono ke hana 'ia a iho mai nā lani* - Continue to do good until the heavens come down to you.

- *'A'ohe lokomaika'i i nele i ke pāna'i* - No kind deed has ever lacked its reward.

- *E 'ōpū Ali'i* - Have the kindness, generosity, and even temper of a chief.

- *Ua mau ke ea o ka 'āina i ka pono* - The life of the land is preserved in righteousness.[44]

1. Pu'uhonua

Pu'uhonua is another important Hawaiian concept. It means a place of refuge, sanctuary, asylum; a place of peace, safety, and healing.[45] In 2015, a working group of Native Hawaiians led by Renwick "Uncle Joe" Tassill founded Holomua Pu'uhonua to explore ways that the concept of pu'uhonua could be used to build a stronger and more supportive community for prisoners. The group received grants from the Office of Hawaiian Affairs and the Administration for Native Americans and is developing plans to help *pa'ahao* (prisoners) transition back to the community. Holomua Pu'uhonua is represented on the Task Force, and we support their outstanding efforts to develop successful re-entry programs by adapting ancient Hawaiian concepts to help 21st century *pa'ahao* (prisoners) and others.

2. Ho'oponopono

Revered scholar and cultural practitioner Mary Kawena Pukui defines ho'oponopono as a process to put something right, a mental cleansing, a family conference in which relationships are set right through prayer, discussion, confession, repentance, and mutual restitution and forgiveness.[46] Scholars Richard and Lynette Paglinawan describe ho'oponopono as a healing process that teaches us to respect *mana* (an invisible connection that ties the living with the dead) and acknowledge that there are higher powers that hold jurisdiction over us.[47]

Native Hawaiians have been using ho'oponopono to "set things right" for centuries, and as the Paglinawans have noted, since Native Hawaiians do not always respond well to Western approaches, ho'oponopono is a practice that can be used "on the healing journey."

3. The Aloha Spirit

Hawai'i's core values are found in the Aloha Spirit that for centuries has guided the lives of Native Hawaiians. The characteristics of the Aloha Spirit are *Akahai* (kindness expressed with tenderness), *Lōkahi* (unity expressed with harmony), *'Olu'olu* (agreeable expressed with

harmony), *Ha'aha'a* (humility expressed with modesty), and *Ahonui* (patience expressed with perseverance).[48] "Aloha means mutual regard and affection and extends warmth in caring with no obligation in return. Aloha is the essence of relationships in which each person is important to every other person for collective existence. Aloha" means to hear what is not said, to see what cannot be seen and to know the unknowable."[49]

We should keep the concepts of aloha, pu'uhonua, and ho'oponopono at the forefront of our thinking as we seek ways to address the problems of 21st century *pa'ahao*. Our correctional system should be rooted in the values of Hawai'i and should reflect the Aloha Spirit in all of its manifestations.

B. Hawai'i's Correctional System Should Incorporate Key Elements of the Norwegian/European Correctional Model

HCR 85 specifically calls on the Task Force to identify and analyze effective incarceration policies used in other states and countries. In 2015, several of the Task Force members, including the chair, traveled to Norway and spent a week visiting Norwegian correctional facilities and meeting with correctional experts from Norway, Sweden, Ireland, and England. Norway is often regarded as the world's most successful prison system because of its humane conditions and successful outcomes, such as a 20% recidivism rate[50] and a 63 per 100,000 population incarceration rate[51] (compared to Hawai'i's 390 per 100,000).

Although the Task Force does not believe that the Norwegian correctional model can be transplanted in its entirety to Hawai'i, we believe that Hawai'i can benefit from identifying those elements of the Norwegian system that can be imported with appropriate modifications to improve our correctional system.[52] Representatives of the Colorado and North Dakota correctional systems have also studied the Norwegian and European models and are adopting them to meet their needs. As Rick Raemisch, Executive Director of the Colorado Department of Corrections has said, "Punishment doesn't work . . . . Understanding that there may be cultural differences that would not allow some methods to be successful here, *we always need to explore and implement methods [from other countries] that are proven to work*."[53]

Hawai'i's correctional system, like those in other states, is fundamentally punitive. Prisoners are confined to small cells and deprived of liberty, privacy, autonomy, possessions, relationships with family and friends, choices (about food, clothing, recreation, scheduling, and leisure activities), heterosexual relationships, and many of the comforts of everyday living, such as a reasonably peaceful, quiet, safe, and secure place to live.

Life in Hawai'i's prisons is highly structured, regulated, and regimented. It is fundamentally different from life on the outside, and as a result, prisoners who spend a significant amount of time in prison adjust to the structured environment and become "institutionalized".[54] Inmates participate in rehabilitative programs, but the programs operate within a punitive rather than a rehabilitative environment. Although Hawai'i has many dedicated correctional officers, the relationship between the inmates and guards is all too often an "us" versus "them" relationship

characterized by suspicion, hostility, and mistrust. Violence within the prison system is common.

The Task Force members who visited Norway describe a fundamentally different system in which loss of freedom is viewed as the only punishment ordered by the court and is, therefore, the only punishment prisoners should experience.[55] They should not be further punished by isolation, deprivation, or harsh conditions of confinement. In fact, one of the basic tenants of the Norwegian system is that rehabilitation is most successful when conditions within the prison resemble life on the outside as closely as possible (the "normality principle").[56]

In Norway, prisoners live in private rooms that have a comfortable bed, a desk, a television, and a private bathroom with a toilet, shower, and wash basin. Guards knock before entering a prisoner's room, and prisoners wear street clothes and live relatively normal lives—they go to work or school, shop for food, cook their meals, do house cleaning, socialize, watch television, read, and listen to music. Prisoners have frequent contact with family, and those who demonstrate trustworthiness are allowed increasingly greater privileges and are eventually allowed to spend weekends at home with their families. Prison staff are graduates of a two-year academy where they study law, psychology, human rights, and ethics, and they serve as social workers, guidance counselors, mentors, and role models for inmates. Security is maintained by having the staff closely interact with inmates on a daily basis. Because inmates have a close relationship with staff, fights among inmates and inmate attacks on guards are virtually unknown. Prisoners learn to trust and respect staff, and staff learn to trust and respect prisoners. Inmates earn privileges and, over time, move from high to medium to low security prisons and eventually to halfway houses. When they are finally released, Norwegian prisoners are guaranteed housing, a job that provices adequate income, education, health care, and, if needed, mental health or addiction treatment.[57]

The main elements of the Norwegian corrections system are:

1. The Normality Principle

As noted above, the normality principle states that life in prison should, to the greatest extent possible, mirror conditions outside of prison. It also holds that: (1) loss of freedom should be the only punishment; (2) conditions of confinement should not be punitive; (3) prisoners should be placed in the lowest possible security regime; and (4) sentences should be as short as possible to reduce the possibility of prisoners becoming "institutionalized," which makes reentry more difficult.[58]

2. Dynamic Security

Dynamic security is a concept and working method by which prison staff interact closely with prisoners, and through the interaction seek to better understand the needs of the prisoners, assess the risk they may pose to staff and other prisoners, and improve safety and security while contributing to the prisoner's rehabilitation and preparation for release.[59] With dynamic security, prison staff develop positive and trusting relationships with prisoners. They make sure that prisoners are kept

busy with constructive and purposeful activities and assist prisoners in completing the programs that are prerequisites to release. Dynamic security gives prison staff high quality intelligence about what is going on in the facility and reduces the chances of violence and escape. In Norwegian prisons, fights rarely break out because disputes between and among prisoners are detected and dealt with before they erupt into violence.

3. Import Model

The import model states that the services the prisoners require should be provided by the government agencies that provide the services to citizens outside of the prison.[60] Prison staff should not provide medical, dental, educational, vocational, library, or other services; those should be imported from the community. The advantages of the import model are:

- Better continuity in the deliverance of services – the offender will already have established contact with the service provider during his time in prison;

- The community becomes involved with the prison system resulting in more and better cross-connections and better community understanding of prison and prisoners; and

- The required services are provided and financed by the agencies that have the knowledge, experience, and personnel to provide them effectively and efficiently.

4. Progression Toward Reintegration

Progression through reintegration means that prisoners begin their sentence with a relatively high level of security and gradually progress to lower levels, eventually ending up in minimum security facilities, and then in halfway houses, unless security concerns dictate otherwise.[61]

The Task Force believes that a rehabilitative correctional system built around Native Hawaiian values and that uses the Norwegian/European correctional philosophy will best meet the needs of Hawai‘i. We recognize that such a system must be implemented gradually, with great care and intelligence, and if necessary, with pilot programs, but we are confident that it is the best path forward for our State.

C. Prison Reform in Hawai'i Should be Guided by Successful Programs and Best Practices in Other States

1. The Main Areas of Reform Across the Nation

The Vera Institute of Justice reported that in 2014 and 2015, forty-six states made 201 changes to their sentencing and corrections laws based on research showing that: (1) longer sentences have little effect in reducing recidivism and shorter sentence lengths do not have a significant negative impact on public safety; (2) many offenders can be safely and effectively supervised in the community at lower cost; and (3) post-punishment penalties and restrictions (the collateral consequences of criminal conviction) make it more difficult for those released from prison to live law-abiding lives.[62]

The main areas of reform across the country were:

Pre-Arrest Diversion. To divert individuals with mental illness and addiction problems, and those who have committed low-level, non-violent offenses, away from the criminal justice system and to agencies and programs that will help them.

Expanding Use of Treatment Courts. To divert people from the correctional system through drug courts, mental health courts, domestic violence courts, and veterans' courts.

Reducing the penalties for property crimes and drug offenses. To make the penalties for low-level drug and property crimes more proportional and reduce jail and prison populations.

Creating "safety valves" for mandatory sentences. To allow judges to depart from statutory mandatory minimum sentences, if deemed appropriate, or if designated criteria are met.

Creating evidenced-based re-entry programming and services. To support former inmates and reduce the chances of reoffending.

Increasing opportunities for early release. To expand the ways prisoners can shorten their sentences through participation in programming or compliance with disciplinary rules.

Facilitating access to public benefits. To help previously incarcerated people obtain the documentation needed to receive public benefits (housing, health care, and employment).

Easing the harmful impact of fees and fines. To facilitate reintegration and get

a fresh start after life in prison.

Limiting access to criminal history information. To help former prisoners find employment that pays a living wage.

Supporting family relationships. To encourage family visitation and assist children of incarcerated parents.

Bail Reform. To reduce jail populations and jail costs, while maintaining public safety.

2. How Five States Significantly Reduced Their Prison Populations

In September 2018, the Sentencing Project published a report on how five states—Connecticut (CT), Michigan (MI), Mississippi (MS), Rhode Island (RI) and South Carolina (SC)—reduced their prison populations by 14% to 25% over an eight- to ten-year period.[63] Each of the five geographically and politically diverse states enacted a range of policy changes to achieve the reductions, and all five were involved in the Justice Reinvestment Initiative process. The report highlights some of the key factors in successful prison reform and some of the policy options that are available to legislators and stakeholders who seek to significantly reduce their state's prison populations.

Leadership. In all five states, justice reform had high profile leadership. In two states—Michigan and Connecticut—reform was led by the Governor. In Mississippi, reform was led by a Corrections and Criminal Justice Task Force. In Rhode Island, a Justice Reinvestment Working Group took the lead, and in South Carolina, three Commission Working Groups focused on reform by revising sentencing guidelines, the parole system, and alternatives to incarceration.

Community Participation. In all five states the reform effort included a diverse group of public and private stakeholders. Michigan organized community leaders into a prison reform advisory council and formed regional steering and planning teams across the state to build support for change and promote collaboration. Connecticut created a Sentencing and Parole Review Task Force that included, among others, public defenders, civil rights groups, and the ACLU of Connecticut. The Criminal Justice Task Force that spearheaded reform in Mississippi included legislators, judges, law enforcement personnel, prosecutors, public defenders, the department of corrections, local officials, and community justice and civil rights groups. Rhode Island's Justice Reinvestment Working Group included community advocates and treatment professionals and organizations, and South Carolina's sentencing and oversight committee included both legislators and members of the public.

Resources and Expertise. All five states reached out to public and private organizations for funding and expertise. Michigan received technical assistance from the National Institute of Corrections (NIC), the National Governors Association, and the Council of State Governments. Michigan obtained funding and research support from national, state,

and local foundations as well as the state's major universities. Rhode Island partnered with Justice Reinvestment, and Mississippi received assistance from the Pew Charitable Trusts and the Crime & Justice Institute at Community Resources for Justice. South Carolina partnered with the Pew Center on the States, the Criminal Justice Institute, and Applied Research Services, Inc., for expertise in data gathering, analysis, development of potential reform approaches, and forecasts of reform impact on population and costs.

Policies and Practices Used to Reduce Prison Populations. The policies and practices that led to reduced prison populations generally fell into four broad categories.

a. Reducing Prison Admissions

- All five states reduced criminal penalties or adjusted penalties according to the seriousness of the offense.
- Four states eliminated mandatory minimum sentences, in some cases retroactively (CT, MI, RI, SC).
- Four states created or expanded specialty courts and/or other alternatives to incarceration (CT, MI, MS, SC).
- Two states modified their response to at-risk youth to disrupt the school-to-prison pipeline (CT, SC).

b. Reducing Incarceration for Those Who Fail Community Supervision

- Four states created graduated, intermediate sanctions for non-criminal violations of conditions of parole and/or probation (CT, MI, MS, SC).
- Three states improved collaboration between state and local governments on case management and supervision (CT, MI, RI).
- Three states put greater emphasis on intermediate outcomes (CT, MI, RI).
- Three states shortened the time of community supervision (MS, RI, SC).

c. Facilitating Release

- All five states incorporated dynamic risk and needs assessment into their justice processes.[64]
- Four states reduced barriers to release (CT, MI, RI, SC).

- Three states implemented conditional release approval before eligibility for release (CT, MI, RI, SC).

- Three states used feedback to releasing authorities regarding outcomes to build trust in reentry (CT, MI, RI).

- Three states used centralized reentry planning, trained specialists, and a goal of release at the earliest opportunity (CT, MI, MS).

- Three states simplified and/or expedited release processing especially when backlogged (CT, MI, RI).

d. Requiring Less Time Served Before Eligibility for Release

- Four states provided allowance or expansion of sentence credits through a variety of measures (CT, MS, RI, SC).

- Three states reduced criminal penalties even for those still in prison (CT, MI, SC).

- Two states modified their policy on aggravating factors for sentence enhancement (MS, SC).

- Two states reduced time served prior to eligibility for repeat paroles after revocation (MI, MS).

Lessons Learned. The report lists six lessons to be learned from the states that have been successful in achieving effective and sustainable prison population reduction reforms:

- **Adequate funding is critical to achieving reform.** The states reported that inadequate funding was an obstacle to achieving reforms. Enacting statutory mandates without adequate funding delayed reforms and resulted in some reforms failing to achieve full benefits or never being implemented.

- **Projected cost savings are difficult to achieve and actual savings are often overstated.** In particular, the states found that forecasts regarding expected cost savings were either faulty or overly optimistic, and that forecast savings were sometimes offset by missed or unanticipated expenses such as escalating prison health care costs.

- **The goals of reform must be explicit.** Conditions that are not specifically targeted by reform may remain unchanged. For example, several states found that reforms intended to reduce the prison population did not necessarily have a positive effect on the goal of reducing racial disparity.

- **The basic goal of Justice Reinvestment was not achieved.** The original concept of Justice Reinvestment was to put the savings generated by prison reform to work helping neighborhoods recover from overuse of incarceration and enhancing housing, health care, education, and employment. The five states in the report have been successful in transferring resources within the justice system from prisons to community supervision, but they did not achieve the goal of providing funds for housing, health, education, and other community programs and services.

- **Broad prison reform requires focusing on issues beyond population reduction.** To enable sustained or deeper prison population reductions there is a need for: (1) post-incarceration employment solutions; (2) reentry solutions for more serious or higher risk cases who are typically excluded from reforms; (3) adequate community funding solutions; and (4) rigorous monitoring and evaluation of justice reform implementation to propel change.

- **Enhancing penalties for violent offenses reduced the impact of sentencing reforms.** Policymakers in some states enacted harsher penalties for violent offenses as part of a reform "package" that included reduced penalties for non-violent offenses. This is a problematic strategy for two reasons: (1) it inherently reduces the potential decarceration impact of sentencing reform; and (2) research has documented that enhancing *already* harsh sentences adds little crime deterrent effect and produces diminishing returns for incapacitation effects.

D. Prison Reform in North Dakota

My job is to rehabilitate people. You can't do that if you treat people inhumanely.
—Leann Bertsch, Director of the North Dakota Department of Corrections and Rehabilitation

One state that has attracted national attention is North Dakota, which in the past four years has implemented an impressive array of system-wide changes to transition to the Norwegian/European correctional model and make its prison system more humane and effective.[65] Some of the relatively inexpensive (or no cost) reforms North Dakota has implemented include:

- Transitioning approximately 80% of the prisoners held in solitary confinement to general population housing and finding new uses for the cells previously used to isolate prisoners.

- Limiting the use of administrative segregation (solitary confinement).

- Expanding administratively segregated prisoners' access to treatment and socialization, including group therapy, increased motivational interviews with staff, increased out-of-cell time, enrichment activities, and social interaction.

- Revising the qualifications for correctional officer positions to emphasize a dual role focused on both security and positive prisoner engagement.

- Adopting new policies that eliminate many of the restrictions on community members who can tour their facilities and actively encouraging visitors.

- Re-examining food options to promote better health and increase prisoners' choice.

- Hiring a new Director of Recreation to identify opportunities for prisoners and staff to exercise and recreate together.

- Adopting formal mechanisms by which correctional staff at all levels can suggest and promote specific changes to policy and practice.

- Revising each correctional facility's mission statement—with input from correctional staff and some prisoners—to reflect a more professional and rehabilitation-oriented approach to correctional practice.

- Encouraging staff to think of creative ways to increase positive prisoner-staff interaction.

- Changing the policy governing staff-prisoner interactions from historical "don't touch the inmates" to encouraging staff to shake hands with prisoners.

- Changing the prisoner disciplinary system with the goal of shifting from roughly 300 potential behavioral violations to a "Ten Commandments" approach that emphasizes treating others with dignity and respect, as one would in the community.

- Changing procedures at their minimum security facility to allow residents to ride bicycles throughout the property; walk an extensive network of trails unaccompanied by staff; shop online for groceries; prepare their own food; take escorted trips into the community to obtain job counseling services; take escorted trips into the community for social interaction (get a cup of coffee, see a movie); and earn passes to leave the facility unescorted, including for overnight home visits.

- Opening a new transitional housing unit for those who have progressed to work release. Residents in the transitional housing unit get their own keys, have single- occupancy rooms at the facility, have access to a propane grill, and can request permission to leave unescorted for family activities, such as attending a child's high school graduation, attending a mother's birthday party, or having dinner with family.

- Normalizing life in their medium and maximum security prisons by, among other things, starting a prison band that will give monthly concerts for staff and other prisoners, placing potted plants throughout the facility, launching a recurring "family night" where children under 10 years of age are invited into the facility's auditorium to watch a movie and eat popcorn with their dads, and piloting seasonal "family days" in which prisoners' children, significant others, and parents are invited into the facility for an activity (e.g. pumpkin painting day, May Day).

CHAPTER 3

A NEW CORRECTIONAL SYSTEM REQUIRES A NEW VISION AND NEW GOALS AND OBJECTIVES

A. A New Vision Statement

Mālama kō aloha (Keep your Aloha no matter what the obstacles).

—Chiefess Manono[66]

Task Force members and community stakeholders, led by the Native Hawaiian subcommittee, spent many hours looking at correctional models and best practices from other states and countries, reflecting on our island heritage and values, and bringing together their varied experience to create a shared vision of the future. The vision statement for Hawai‘i's justice system that emerged from this collective effort encompasses goals for both the civil and criminal justice systems:

> *A justice system that is rooted in our cultural values, protects our rights and liberties, promotes safety, peace, understanding, and reconciliation, and through its policies, procedures, decisions and personnel restores communities and affirms the value of every person who comes into contact with the system.*
>
> *Commentary on the Vision Statement*
>
> A. The justice system should not just administer laws and maintain order, it should focus on building, strengthening, and repairing communities and making them safer.
>
> B. Every aspect of the justice system—courts, corrections, the Judiciary, probation, parole, the Office of the Attorney General—should grow out of and reflect the values of the people of Hawai‘i.
>
> C. The justice system should be a framework for promoting social progress. Social progress is achieved by recognizing and promoting the value of every member of society, including those who have committed crimes.

B. Guiding Principles, Goals, and Objectives for the New Correctional System

GUIDING PRINCIPLE 1

Our justice system should focus on the root causes of crime, not just the symptoms. Among the many causes of crime in our community are poverty, unemployment, underemployment, racism, lack of affordable housing, substandard housing, lack of education, mental illness, broken families, childhood trauma, abuse and neglect that lead to drug and alcohol abuse.

Goals and Objectives:

1. Reduce overreliance on incarceration as a response to social, economic, and public health issues.

   Objective 1: Create and expand programs that divert low-level offenders to community-based treatment programs.

   Objective 2: Reduce prison admissions by using incarceration as a last resort, and only when necessary to protect public safety.

   Objective 3: Reduce the prison population at every possible opportunity by reevaluating, restructuring, and expanding early release and compassionate release programs.

2. Eliminate the overrepresentation of Native Hawaiians in the criminal justice and correctional systems.

3. Break the cycle of intergenerational incarceration by providing support for children of incarcerated parents and intervention programs that target at-risk youth.

Commentary on Guiding Principle 1

A. As we focus on prison reform, we should not lose sight of the fact that the best way to make our communities safer is to prevent crime from happening in the first place. To do that, we need to address the root causes of crime in our communities. This applies with particular force to Hawai‘i’s children. Providing children with the foundation they need from their earliest years to avoid delinquency and ultimately crime is the surest way to consistently reduce our prison population and incarceration rate. Social scientists have identified many of the risk factors that lead to delinquency, and cost-effective, evidence-based interventions that minimize or moderate

those risks. For example, a study that followed children who participated in high-quality preschool and parent coaching programs found they were 20% less likely to be arrested for a felony or to be incarcerated as young adults than those who did not attend.[67] Hawai‘i should launch a coordinated and consistent effort by the Departments of Education, Health, and Human Services to provide interventions to children who need it at each critical stage of development, starting with prenatal care and continuing to young adulthood. Investing in children will go a long way toward preventing the onset of adult criminal careers and thus reduce the burden of crime on victims and society.[68]

B. Jails and prisons tend to produce poor outcomes. They may be necessary, but they should be used only as a last resort and sentences should be for the shortest time possible. Reducing the prison population should be a top priority with clearly stated and achievable goals.

C. Despite numerous studies and reports on the overrepresentation and disparate treatment of Native Hawaiians in the criminal justice and correctional systems, few, if any, steps have been taken to address this problem.[69] A concerted strategy should be developed, funded, and implemented without further delay.

D. Children of incarcerated parents are an extremely vulnerable group. Having a parent in prison or jail has been linked to a greater incidence of poor health, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), behavioral problems, learning disabilities, anxiety, and developmental delays.[70] To protect our children, it is imperative that we break the cycle of intergenerational incarceration.

GUIDING PRINCIPLE 2

Our justice system must reaffirm each inmate's inherent humanity and continuity of citizenship despite his or her loss of freedom.

Goals and Objectives:

1. Create a system of rehabilitation grounded in the culture and values of Hawai‘i.

   Objective 1: Provide corrections officers with comprehensive training that reinforces their purpose to positively motivate change and promote inmate well-being, healing, and rehabilitation.

The training should include frequent refresher courses on the latest correctional research and best practices.

Objective 2: Support continuity in relationships between inmates and their families by providing services and spaces to heal and improve relationships with primary support networks.

Objective 3: Provide culture-based and culturally competent programming.

Commentary on Guiding Principle 2

A. Loss of freedom should be the only punishment for those who go to prison. Prisoners should retain all other rights of citizenship, including the right to vote. Conditions in prison should not be punitive; they should resemble life on the outside to the greatest extent possible, and the focus of the correctional system should be on rehabilitation.

B. Correctional staff should receive extensive training on rehabilitative philosophy, programs, and practices and serve as role models, mentors, and counselors for inmates.

C. Contact with family and friends is important for social reintegration of prisoners.[71] Prison administrators should encourage communication with the outside world. Prisoners' contacts should be an entitlement, not a privilege, and should not be used as a reward or punishment.

GUIDING PRINCIPLE 3

Hawai'i's justice system should focus on accountability and rehabilitation instead of retribution.

Goals and Objectives:

1. Promote community safety by reducing recidivism.

Objective 1: Adopt the "Normality Principle," which states that life inside prison should resemble life in the community to the greatest extent possible. The loss of freedom should be the only punishment, and no prisoner should serve a sentence under a higher security regime than is necessary.

Objective 2: Adopt the "Import Model." Partner with community service providers and medical, educational, and faith-based resources to support prison operations, programs, rehabilitation, and reentry.

Objective 3: Ensure stable community reintegration by providing comprehensive post-release services.

Objective 4: Adopt the "Dynamic Security Model." The best security is based on frequent, friendly and supportive interaction between staff and inmates.

Objective 5: Establish strong, thorough, and independent oversight to ensure effective implementation of Task Force initiatives and continued progress in perpetuity.

Commentary on Guiding Principle 3

A. The logic of the normality principle is that the smaller the difference between life inside and outside of prison, the easier the transition from prison to freedom.[72] Normality is also consistent with the principle that loss of freedom is the only punishment. The normality principle recognizes obvious exceptions for security and control that are necessary in institutions like prisons.

B. The import model supports normality in that the agencies that provide services to people outside of prison also provide them to those on the inside. Importing medical, educational, social, and other services from the community is an efficient model and ensures that prisoners receive the same quality of services as those who are not in prison.

C. Comprehensive post-release services should include decent housing, employment, education, medical care, and mental health and addiction services, if needed.

D. Dynamic security means that correctional staff interact closely with inmates and serve as counselors, mentors, role models, and life coaches.[73]

C. The Task Force's Vision, Principles, Goals, and Objectives are Consistent with the European Prison Rules

Although the Task Force's vision, principles, goals, and objectives were developed independently and without consulting international standards, the Task Force's recommendations are similar to the Basic Principles of the European Prison Rules:[74]

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe upon prisoners' human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

7. Cooperation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.

8. Prison staff carry out an important public service and their recruitment, training, and conditions of work shall enable them to maintain high standards in their care of prisoners.

9. All prisons shall be subject to regular government inspection and independent monitoring.

The Task Force's vision statement, guiding principles, goals, and objectives provide a sound foundation for a more just, humane, effective, and sustainable correctional system. Adopting these core principles is the first step in reforming our correctional system, reducing recidivism, and making our communities safer.

CHAPTER 4

THE STATE MUST ADDRESS THE OVERREPRESENTATION OF NATIVE HAWAIIANS IN THE CORRECTIONAL SYSTEM

A. Background

Scholars in various disciplines have documented the historical and cultural trauma to Native Hawaiians following contact with the West in the later part of the 18th century. Disease decimated the population,[75] the social and economic structures that had supported a vital and vibrant Hawaiian culture for centuries broke apart,[76] the Hawaiian language was displaced by English,[77] the Hawaiian religion was displaced by Christianity,[78] foreign laws were introduced,[79] and constitutional provisions that limited the political power of Native Hawaiians and the Hawaiian monarchy were forced on the government by an armed militia.[80] At the same time, land tenure underwent radical changes with the Great Māhele and passage of the Alien Land Ownership Act of 1850, the Kuleana Act of 1850, and the Adverse Possession law of 1870, all of which, in one way or another, facilitated the transfer of land from Native Hawaiians to foreigners.[81]

Celebrating Makahiki at the Halawa Community Correctional Center. Photo courtesy of Kai Markell

By 1893, Native Hawaiians had lost much of their land, culture, laws, religion, political power, and language. About all that remained was their sovereignty, and that was taken away on January 17, 1893, when a small group of wealthy businessmen and sugar plantation owners, aided by the United States Navy, overthrew the government of Queen Lili‘uokalani.[82]

Colonialism, oppression, and the loss of sovereignty have had a continuing impact on the Native Hawaiian community. In 2010, the Office of Hawaiian Affairs (OHA) published a three- year collaborative study that showed that Native Hawaiians are overrepresented at every stage of Hawai‘i’s criminal justice system.[83] The disproportionality begins with arrest and accumulates at each stage in the system. According to the report, Native Hawaiians make up 24% of the State’s population but account for 33% of pretrial detainees, 39% of the prison population, and 41% of parole revocations.[84] Native Hawaiians receive longer prison sentences than most other racial or ethnic groups, they are more likely to go to prison if they are found guilty of a crime, and they are

disproportionately represented in the out-of-state prison population.[85] They serve more time on probation than any other ethnic group except Hispanics, and they make up the largest percentage of people who return to prison for parole violations.[86]

The OHA study cites several probable causes for the overrepresentation of Native Hawaiians in the criminal justice system, beginning with their marginalization through colonialism and racism and continuing to the present where Native Hawaiians have disproportionately high levels of childhood trauma and abuse, high unemployment, high underemployment, low educational attainment levels, low income status, and significant involvement in the juvenile justice system.[87]

Celebrating Makahiki at the Halawa Community Correctional Center. Photo courtesy of Kai Markell

In 2011 the Legislature created the Native Hawaiian Justice Task Force (NHJTF) to make recommendations on how to address the overrepresentation of Native Hawaiians in the criminal justice system.[88] The NHJTF held hearings throughout the State, and in 2012 issued a report that contained 48 findings and 38 recommendations, ranging from state support for early intervention programs to assist Native Hawaiians to dozens of changes to the criminal justice and correctional systems.[89]

The NHJTF recommendations have not been implemented, and the State has resisted efforts by the Native Hawaiian Legal Corporation to expand religious and culturally based programs and activities for Native Hawaiians incarcerated at private prisons in Arizona. Incredible as it may seem, until very recently, Native Hawaiians at the Saguaro Correctional Center in Eloy, Arizona were not allowed to correspond with their families in the Hawaiian language,[90] even though Hawaiian is one of the State's two official languages.[91]

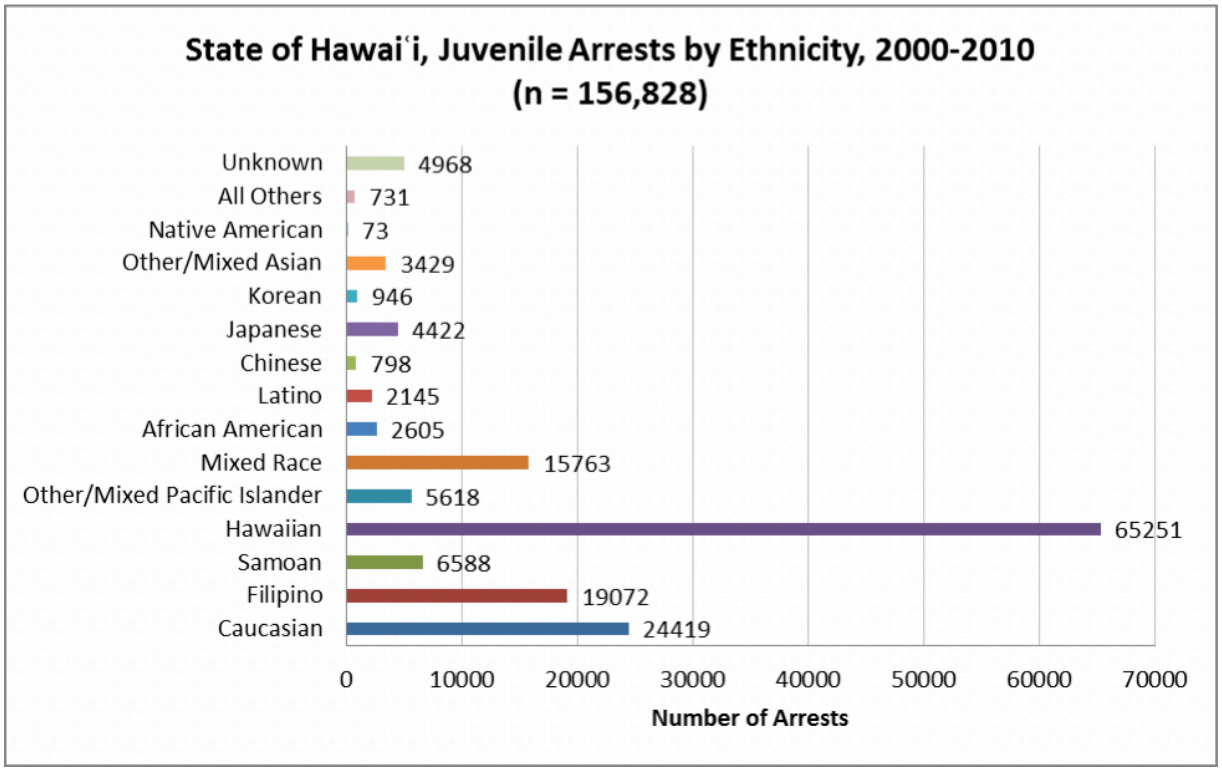
The 2010 OHA study found that:

> To reduce the harmful effects of the criminal justice system on Native Hawaiians and all people, Hawai‘i must take action, and seek alternative solutions to prison. Assistance and training is needed in law enforcement, holistic interventions need to be implemented and evaluated, **and a cultural shift in the way we imprison a person must change.** If not, we will exacerbate prison over-crowding, and continue to foster the incarceration of generations to come.[92]

The HCR 85 Task Force fully supports the above recommendation and strongly recommends that Hawai‘i adopt a new vision for corrections and repatriate traditional Hawaiian cultural practices that can restore harmony with ‘ohana (family), community, akua (spirit), and ‘āina (land). Only by supporting intrapersonal healing can we successfully reintegrate pa‘ahao (prisoners) and break the intergenerational cycle of incarceration.

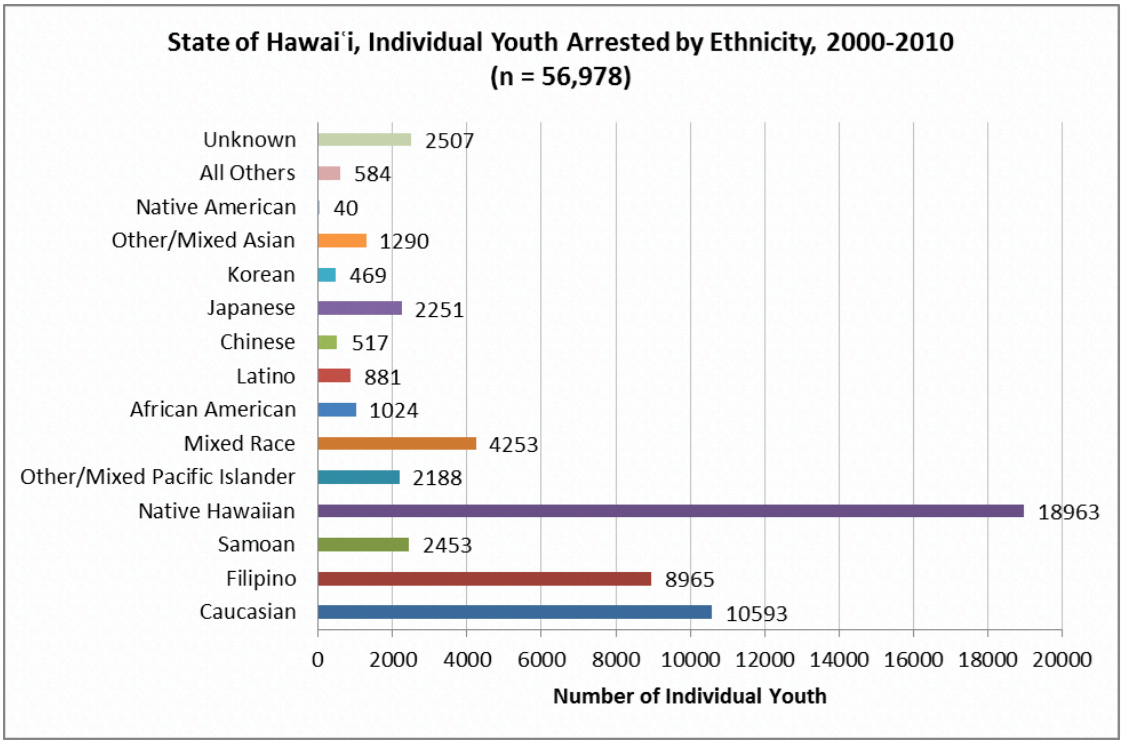
B. The Need for Community-Based Interventions for At-Risk Native Hawaiian Children

A major study by Dr. Karen Umemoto and her colleagues at the University of Hawai‘i at Mānoa found that arrests of Native Hawaiian youth "far outdistance the frequency of arrest for all other ethnic groups, comprising 65,251 or 41.6% of all juvenile arrests" over an eleven-year period.[93] In fact, the number of arrests of Native Hawaiian youth was higher than the volume of the next three ethnic groups combined.[94]



Source: Disproportionate Minority Contact in the Hawai‘i Juvenile Justice System 2000-2010, Final Report, June 2012

Considering the frequency of juvenile arrests by individuals, rather than by ethnicity, Native Hawaiians again held the highest ranking of all ethnic groups:



Source: Disproportionate Minority Contact in the Hawai'i Juvenile Justice System 2000-2010, Final Report, June, 2012

The study also found that Native Hawaiian youth disproportionately experienced negative outcomes at critical decision points in the juvenile justice process:

> At the statewide level, Native Hawaiian juveniles experienced disproportionately negative outcomes at every decision point for status offense arrests and at seven of eight decision points for law violations. The greatest degree of disproportionality can be seen at the point of arrest, with a rate of arrest 1.68 times higher than that of whites for law violations and 1.98 times that of whites for status offenses. For status offense arrests, Hawaiian cases were petitioned at a rate 1.68 times higher than for whites. For law violation arrests, Hawaiians were diverted at a lower rate than Whites (0.78). . . . *In sum, there was no decision point at which Native Hawaiians clearly fared better than the comparison group and almost every decision point resulted in disproportionate overrepresentation.*[95]

The study identified some of the factors that contribute to the disproportionate minority contact and the number of youth in the juvenile justice system including a lack of alternatives for diversion at the point of arrest, gaps in the continuum of care for youth, inadequate support for families of arrested youth, a lack of programs for chronic offenders and youths in need of specialized services, and policies and procedures that are outdated, ineffective, or need to be revisited.

The report reached two major conclusions:

> First, it is clear from this profile that the majority of adjudicated youth have experienced some type of hurt or trauma that contributes to behavior that is disruptive or harmful to themselves or others, and without help in healing these wounds and recovering a stable and healthy home life, it will be difficult for them to reach their full potential in life and, for some, to live free and clear of the justice system . . . *[U]nless these impacts are addressed and healing and recovery is achieved, harmful and hurtful (to self as well as others) behaviors will likely persist regardless of continued involvement in the justice system.*
>
> Second, there are important implications of these data for reducing disproportionate minority contact, particularly among Native Hawaiians who comprise the largest single ethnic group in the juvenile justice system. In light of the unique challenges and assets among Native Hawaiian youth . . . addressing family issues is critical to the successful outcomes of youth. These data also show that building on Hawaiian cultural values that would support the healing, reconciliation, recovery, restitution, forgiveness, and rebuilding processes could provide a firm foundation to accomplish that. Bringing in caring role models, especially male role models for boys, can also begin to address the lack of positive relationships with paternal guardians. And finally, the high frequency of depression and other emotional and psychological conditions suggests that culturally appropriate approaches that are more holistically focused on healing may be necessary to address the more deeply embedded problems that manifest in delinquent activity.[96]

The report ends with a series of recommendations on ways to reduce minority contact with the juvenile justice system, noting that programs designed to bring about behavioral changes by facilitating personal health, growth, and development were effective, while programs oriented towards instilling discipline through regimen or fear are not. The most effective programs are restorative (restitution, victim-offender mediation), skill building (cognitive-behavioral techniques, and social, academic, vocational skill building), counseling (group family and individual counseling and mentoring), and multiple coordinated services (case management, wrap around services).[97]

Some progress has been made in addressing disproportionate minority contact with the juvenile justice system since Dr. Umemoto's study was published in 2012, most notably the passage of Act 208, Session Laws of Hawai‘i 2018 which authorizes the Hawai‘i Youth Correctional Center to create, operate, and maintain the Kawailoa Youth and Family Wellness Center on its 600-acre site in Kailua, O‘ahu. The new center will provide mental health services and programs, substance abuse treatment crisis shelters for homeless youth, crisis shelters for victims of human and sex trafficking, vocational training, family counseling, and other programs to meet the needs of youth and young adults. This is a good beginning, but more needs to be done, and the Task Force recommends that the State implement more of the recommendations in Dr. Umemoto's report. This is critically important to prevent the at-risk and delinquent youth, and particularly Native Hawaiian youth, from ending up in the adult criminal justice system.

C. Create Cultural Courts to Divert Native Hawaiians Away from the Criminal Justice System

Treatment courts are a sensible, proven, and cost-effective alternative to incarceration.[98] Studies have shown, for example, that drug courts reduce crime, make communities safer, save money, ensure compliance, combat addiction, and reunite families.

Hawai‘i currently has treatment courts that deal with mental health issues, addiction, and the problems faced by veterans. The Office of Hawaiian Affairs has been working with the Judiciary on the creation of a cultural treatment court that would focus on diverting individuals to programs with a rich Native Hawaiian cultural component. The Task Force strongly supports the creation of cultural courts in all judicial circuits.

D. Expand In-Prison Cultural and Educational Programs for Native Hawaiians

There is a limited amount of research on cultural programming for indigenous prisoners, and the studies that do exist generally do not include control groups. That said, the data that is available is generally positive and there is "emerging evidence that culture-focused programs are useful in bringing about positive change in offenders."[99] For example, a proposed New Zealand model for the rehabilitation of Aboriginal offenders focuses on identifying culturally appropriate ways of promoting positive behavior through indigenous art, music, song, poetry, storytelling, drama, dance, traditional rituals and ceremonies, meditation, prayer, and other spiritual practices, and the use of native language.[100]

Hawai‘i has relatively little cultural programming in its prisons, and much of what does exist was approved by the Department of Public Safety and CoreCivic only after protracted litigation, some of which is still ongoing. Advocates for Native Hawaiians point to what they perceive as a general resistance to cultural programs and contend that PSD exaggerates security concerns as a pretext to prohibit or limit cultural programs. To improve and expand the quality of Native Hawaiian cultural practices throughout the prison system, the Task Force recommends that the State create and fund at least one full-time position to coordinate Native Hawaiian cultural, educational, and religious programming in all facilities.[101] Cultural practices should not be inhibited by exaggerated security concerns.

E. Make Culturally Relevant Reentry Programs Available to Native Hawaiians

Make culturally relevant reentry programs available to Native Hawaiians through:

1. Moku (district) specific drop-in and/or residential wellness centers rooted in Native Hawaiian values, practices, and principles.

2. Utilizing case navigators for ongoing support.

3. Drop-in and residential drug treatment programs.

4. Places that allow Native Hawaiians to engage in land and ocean-based activities, including growing their own food.

F. Implement the Recommendations of the 2012 Native Hawaiian Justice Task Force

The Office of Hawaiian Affairs' report on the disparate treatment of Native Hawaiians in the criminal justice system was the catalyst for Act 170, Session Laws of Hawai'i 2011, which created the Native Hawaiian Justice Task Force (NHJTF). The mandate of the NHJTF was to formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in Hawai'i's criminal justice system by looking at new strategies and recommending legislation and policies to reduce or prevent Native Hawaiians' involvement with the criminal justice system.

The NHJTF issued its report in 2012, noting that the issue of overrepresentation of Native Hawaiians in the criminal justice system had been studied many times before, and that studies in 1981, 1994, and 2010 "independently concluded that Native Hawaiians are overrepresented in the criminal justice system."[102]

The NHJTF's recommendations should be implemented as soon as practicable.

CHAPTER 5

THE LEGISLATURE SHOULD CREATE AN INDEPENDENT OVERSIGHT AND IMPLEMENTATION COMMISSION

The door is locked against the prisoner and he goes to live in a hidden world. If you were to enter that world you should be startled by what you see.

—Justice Anthony Kennedy

A. Independent Oversight is Essential Because Jails and Prisons are Closed Institutions and are Not Subject to the Public Scrutiny That Applies to Most Other Institutions

Jails and prisons are closed institutions.[103] They are separated from the rest of society by massive walls, or fences topped with concertina wire. Entry is limited to those who have been sent there by the courts, and visitors who have been vetted and approved by prison administrators. Visitors have little contact with prisoners, and prisoners have little contact with visitors or the outside world. Visiting hours are limited. Telephone calls are limited. Reading material is limited. Mail is opened and read by prison officials. Cameras are not allowed. Society knows little about what happens behind prison walls. In a speech to the American Bar Association Supreme Court Justice Anthony Kennedy said that prisoners live "in a hidden world".[104] Justice William Brennan called it "a shadow world . . . that few of us can imagine."[105]

The closed nature of jails and prisons is precisely what makes oversight so important. Michelle Deitch, one of the nation's leading experts in prison oversight, explains it this way:

> Prisons and jails are closed institutions, both literally and symbolically, and they operate far away from public view. In such closed environments, abuse is more likely to occur and less likely to be discovered. Staff members and inmates with malicious intent often find they can act with impunity, while those with more benign objectives may find their plans thwarted by a lack of resources or an institutional culture that is unsupportive of their efforts or content with the status quo. Insular environments tend to put prisoners at risk of abuse, neglect, and poor conditions, and the lack of outside scrutiny provides no challenge to this treatment.[106]

For most of the country's history, courts took a "hands off" approach to prison conditions and refused to hear the claims of prisoners, even when they were alleging serious violations of their constitutional rights. That changed in 1974 with *Wolff v. McDonnell,* in which the United States

Supreme Court held that "a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country."[107] *Wolff* held sway for a time, but its influence gradually diminished as the United States Supreme Court and Congress limited the role of the Judiciary in addressing prison conditions. One of the biggest setbacks to judicial oversight was the Prison Litigation Reform Act of 1995 (PLRA).[108] The PLRA limits the use of injunctive relief in prison cases, requires prisoners to exhaust administrative remedies and grievance appeals before filing suit, and limits the award of attorneys' fees against the government when prisoners prevail in litigation.

Despite the PLRA, federal courts still play an important role in protecting prisoners' rights, but experts caution that reliance on courts for oversight would be a serious mistake because judges can only remedy problems once a constitutional or statutory violation is found; they are not in a position to prevent problems in the first place.[109]

B. The Basic Elements of Effective Oversight

The idea behind oversight is that if prisons are to function as decent, safe, and humane institutions, they must be transparent in their operation and accountable for the protection of prisoners.[110] The goal of effective oversight is, therefore, to ensure transparency and accountability.

One of the landmark documents in prison oversight is the American Bar Association's (ABA's) 2006 resolution calling on federal, state, and local governments to establish "public entities, independent of any correctional agency, to regularly monitor and publicly report on conditions in prisons, jails, and other correctional and detention facilities . . . in their jurisdictions."[111] The resolution sets out the "key requirements" for effective oversight:

1. The monitoring entity must be adequately funded and staffed.

2. The head of the monitoring entity must be appointed for a fixed term by an elected official, confirmed by a legislative body, and be subject to removal only for cause.

3. Correctional and other governmental officials must be required to cooperate fully and promptly with the monitoring entity.

4. The monitoring entity must have broad and unhindered access to correctional facilities, personnel, inmates, and records bearing on the facility's operations and conditions.

5. Procedures must be in place to enable facility administrators, line staff, inmates, and others to communicate confidentially with the monitoring entity about the facility, and adequate safeguards must be established to protect those who communicate with the monitoring entity from retaliation or threats of retaliation for those comments.

6. The reports disseminated by a monitoring entity should review and assess a facility's policies, processes, programs, and practices objectively and accurately.

7. The monitoring entity's reports must be readily available to the public, including accessibility through the Internet, and must also be disseminated to the media, the Legislature, and the jurisdiction's top elected officials.

8. To guard against the risk that monitoring reports become meaningless pieces of paper, largely ignored by correctional officials, the following steps should be taken:

    A. Facility administrators should be required to respond publicly to the reports and to develop and implement in a timely way action plans to correct identified problems;

    B. Facility administrators should report to the public twice a year, recounting the progress that has been made in implementing the action plan;

    C. There must be an administrative entity with the authority to enforce the above requirements so that problems identified in a monitoring report are addressed and resolved with dispatch; and

    D. Until a problem highlighted in a monitoring entity's report is resolved, the monitoring entity should continue to assess and report on the problem and the progress made in solving it.

In 2010 the ABA House of Delegates approved the *ABA Standards on the Treatment of Prisoners.*[112] Standard 23-11.3 calls for an independent monitoring agency in each jurisdiction to "anticipate and detect systemic problems affecting prisoners, monitor issues of continuing concern, identify best practices within facilities, and make recommendations for improvement."[113] The agencies should have authority to:

1. Examine every part of every correctional facility;

2. Visit every correctional facility without prior notice;

3. Conduct confidential interviews with prisoners and staff; and

4. Review all records, except that special procedures may be implemented for highly confidential information.

Standard 23-11.3 also states that correctional agencies should be required to respond in a public document to the findings of the monitoring agency, develop an action plan to address identified problems, and periodically document compliance with recommendations or explain

noncompliance. The monitoring agency should continue to assess and report on previously identified problems and the progress made in resolving them until the problems are resolved.

As the ABA standards indicate, there are many elements to effective oversight, including inspection, regulation, investigation, reporting, and monitoring. The goal in all cases is transparency and accountability, both of which are important in all governmental endeavors, but particularly important, even critical, where an all-powerful institution has total control over the lives and well-being of citizens.[114] And while effective oversight is important for all prisoners, its importance is even greater when it comes to protecting the most vulnerable individuals in the prison system: those in administrative segregation, those who are subject to sexual assault, those with physical and mental disabilities, elderly prisoners, and prisoners with special medical needs.[115]

C. The Need for Independent Oversight in Hawai'i

In Hawai'i, the Office of the Ombudsman is authorized to investigate inmate complaints and recommend steps to resolve them. In FY 2015-2016, the Ombudsman received 2,706 complaints, of which 1,706, or 63%, were against the Department of Public Safety.[116] The Ombudsman declined 933 of the complaints, 96 were discontinued, 69 were assisted, 73 were substantiated, 457 were not substantiated, and 78 were pending at the end of the report period.[117]

Despite its many good works, the Office of the Ombudsman is not a substitute for an independent correctional oversight commission. It is not specifically focused on correctional matters, it generally responds to complaints rather than exercising oversight and initiating investigations, and it is required to "maintain secrecy in respect to all matters and the identities of the complainants or witnesses" coming before it.[118]

While independent oversight is a correctional "best practice" and as such should be an integral part of any correctional system, there have been public reports in the past two years that highlight and support our recommendation for strong, independent oversight, including the following:

- **September 2017.** Three correctional officers were attacked by OCCC inmates who were angry and frustrated over long periods of lockdown due to staffing shortages. A veteran OCCC sergeant who asked to remain anonymous for fear of retaliation told Hawaii News Now "I've been involved now with the department for a while and I feel like it's really gone down and the safety is being more and more jeopardized." The article also noted that OCCC, which was designed for 629 inmates, housed upward of 1,100 inmates.[119]

- **January 2017.** The American Civil Liberties Union of Hawai'i (ACLU) filed a 28-page complaint with the United States Department of Justice alleging unconstitutional conditions at Hawai'i's prisons. The complaint documented unsafe and unsanitary living conditions, overcrowding, "woefully inadequate" medical and psychiatric care, understaffing, and other clearly unconstitutional conditions.[120]

• **February 2017.** The Honolulu Star-Advertiser reported that for two years in a row, guards at Hawai‘i correctional facilities committed more sexual assaults on inmates than inmates committed on each other.[121]

• **March 2017.** The Honolulu Star-Advertiser reported that ten women at WCCC filed a federal lawsuit alleging that they were sexually assaulted by both male and female guards. According to the lawsuit, the inmates were given food, makeup, crystal methamphetamine and special privileges for complying with sexual demands.[122]

• **July 2017.** On July 16, 2017, a jury on Maui found a guard at the Maui Community Correctional Center guilty of second-degree sexual assault and two counts of third-degree sexual assault on an inmate. According to the victim, the guard threatened to take her work furlough privileges away from her if she did not agree to have sex with him.[123]

• **June 2017 to January 2018.** In the eight-month period from June 2017 to January 2018, there were five suicides at Hawai‘i correctional facilities.[124]

D. Hawai‘i Should Establish an Implementation Commission and Fund a Transitional Coordinator Position to Ensure That Prison Reform Takes Place in an Orderly, Efficient, and Effective Manner

The need for a strong implementation component to the oversight commission is clearly evident from the way the Department of Public Safety (PSD) responded to Act 149, Session Laws of Hawai‘i 2014. Act 149 required PSD to establish "within the department" a reentry pilot project for non-violent, low-risk drug offenders. The program was to have up to 100 participants and its effectiveness was to be evaluated with respect to participants' arrest records, substance abuse problems, employment status, compliance with terms and conditions of release, housing status, and the availability of positive support groups. The program was to follow "evidence-based principles," and data was to be collected by service providers and submitted to PSD every six months for evaluation purposes. PSD was required to submit an annual report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Sessions of 2015 and 2016.

PSD's report to the 2015 Legislature had no findings and no recommendations. It simply said: "PSD is unable to provide findings and recommendations as the appropriated funds have not been released by the Department of Budget and Finance."[125]

The report to the 2016 Legislature was not much better. It said:

> Since the last report to the Legislature, PSD has established the Reentry Office within the Corrections Division, and the recruitment of five civil service staff is currently underway. These include three program specialists, one supervisor, and one support position.

> PSD has already implemented certain functions envisioned by Act 149 by assigning tasks to existing staff, for example, the liaison with the Crime Victims Compensation Commission and the Interagency Council on Intermediate Sanctions. The Department is firmly committed to developing, coordinating, and monitoring the necessary functions to carry out the purposes of the Act.[126]

Once again, there were no findings, no data, and no recommendations for proposed legislation.

There was no report to the 2017 Legislature.

Reentry is a complex and often difficult transition for offenders, their families, and the community. It is well known that former offenders are "likely to struggle with substance abuse, lack of adequate education and job skills, limited housing options, and mental health issues."[127] Congress recognized this by passing the Second Chance Act of 2007, which provides federal grants for programs that support research and evaluation of reentry programs.[128]

The Hawai‘i Legislature is to be commended for passing Act 149 and seeking evidence-based programs to assist offenders and reduce recidivism. Unfortunately, PSD and DAGS did not follow through on the Legislature's good intentions, and the community has suffered by not having data on which to base new programs or improve existing ones. PSD's response to Act 149 highlights why the State needs an independent commission to ensure that any prison reform measures that the Task Force recommends, and the Legislature enacts, are faithfully and competently executed. This is particularly important because the HCR 85 Task Force is recommending a fundamental shift in the culture of the Hawai‘i correctional system that will require exceptionally strong leadership and extensive retraining of correctional staff. To ensure that the transition to a rehabilitative system occurs in an orderly, timely, effective, and sustainable manner, the oversight commission and transitional coordinator should monitor and oversee implementation of the new correctional model and report to the Legislature on the progress that is being made by the Department of Public Safety so that we do not have a repeat of the Act 149 situation.

CHAPTER 6

EVIDENCE BASED PROGRAMS ARE ESSENTIAL TO PREPARE PRISONERS FOR REENTRY INTO THE COMMUNITY

A. Introduction

Best practices in correctional programming require that: (1) programs must target the right people who are identified through assessment; (2) programs be evidence-based; and (3) programs be implemented with quality and fidelity to the successful model.[129] Additionally, programs must address multiple needs simultaneously, including both behavioral health needs and criminogenic needs. Studies have shown that programs that address one to two criminogenic needs reduce recidivism by 14% to 19%, while programs that address three or more criminogenic needs result in a 22% to 51% reduction in recidivism.[130]

B. Educational Programs

The Task Force's Education subcommittee focused on supporting and expanding the role of educational programming in all correctional facilities, and greatly expanding the interface between the University of Hawai‘i at Mānoa and the Department of Public Safety.

A 2014 Rand Report found that while more than 700,000 incarcerated individuals leave federal and state prisons each year, 40% will have committed new crimes or violated the terms of their release and be reincarcerated within three years of release.[131] Although a number of factors affect the ability of ex-offenders to successfully reintegrate into communities, a key factor is that many do not have the knowledge, training, and skills to support successful reentry.[132]

In Hawai‘i, for example, prisoners typically read at the 4th through 6th grade level.[133] Research at the national level shows that just 16.5% of state prisoners have a high school diploma, compared with 26% of the general population, and only 14.4% have some postsecondary education, compared with 51% of the general adult population.[134]

The low level of educational attainment, coupled with a lack of vocational skills, represents a significant challenge for ex-offenders returning to their communities and impedes their ability to find employment.

The Rand study found that although there is a general consensus that education is an important component of rehabilitation, the question remains: "How effective is it in helping to reduce

recidivism and improve post release employment outcomes?" To answer this question, the researchers conducted a meta-analysis and systematic review to measure the effectiveness of correctional education for incarcerated adults and juveniles and a survey of states' correctional education directors to understand concerns and emerging trends.

The results of the meta-analysis showed that correctional education for incarcerated adults reduces the risk of post-release reincarceration by 13 percentage points *and does so cost- effectively*, with a savings of five dollars on reincarceration costs for every dollar spent on correctional education.[135] Researchers also found that correctional education may increase post-release employment, another key to successful reentry. Overall, the study showed that "*the direct costs of reincarceration were far greater than the direct costs of providing correctional education*."[136]

In addition to working to strengthen in-facility educational programming, the Task Force supports the University of Hawai'i's efforts to bring best practices to all aspects of public safety in Hawai'i. In particular, the Task Force supports the work of the Research and Evaluation in Public Safety (REPS) project within the Social Science Research Institute. The REPS project provides hands-on evaluation services and is also assisting the Department of Public Safety with training efforts, both within the facilities and in programs that assist prisoner re-entry.

Lastly, the Task Force supports the expansion of college-level offerings at all correctional facilities, building on the current efforts that the community colleges have launched.

C. Effective Substance Abuse Treatment

The corrections professionals on the Task Force estimate that at least 90% of Hawai'i's prisoners have addiction problems. Unless *effective* substance abuse treatment programs are identified and implemented, most of those prisoners will continuously cycle through the criminal justice system, meaning that the prison population and recidivism rate will never be reduced, and correctional costs will never be brought under control.

The National Institute on Drug Abuse (a part of the National Institutes of Health) lists ten reasons why addiction is difficult to treat: (1) it is a complex disease that affects brain function as well as behavior; (2) no single treatment is appropriate for everyone; (3) to be effective, treatment needs to be readily available; (4) remaining in a treatment program for an adequate amount of time is critical; (5) medications are an important element of treatment, especially when combined with counseling and other behavioral therapies; (6) treatment plans and services must be assessed continuously and modified as necessary to ensure that they meet the patient's changing needs; (7) many drug-addicted individuals have other mental disorders; (8) treatment needs to be voluntary to be effective; (9) drug use must be continuously monitored during treatment; and (10) medically assisted detoxification is only the first stage of addiction treatment and, by itself, does little to change long-term drug abuse.[137]

To this list might be added the fact that the goal of treatment is not just to stop drug use, but also to return the patient to productive functioning in the family, workplace, and community. Furthermore, we know that addiction is a chronic disease, and like other chronic diseases, relapsing

is likely, with symptom recurrence rates similar to those for other well-characterized chronic medical illnesses—such as diabetes, hypertension, and asthma.[138] Relapse does not mean that treatment failed, but that it needs to be reinstated or adjusted, or that alternate treatment is needed.

D. Some Cost Considerations

HCR 85 directs the Task Force to study best practices and their costs. The Task Force did not have the funds or expertise required to do an accurate and reliable cost-benefit analysis of its recommendations, but a few observations on costs are in order.

The state correctional budget of roughly $226 million does not reflect all of the direct costs of imprisonment in Hawai‘i. For example, funds to pay settlements and judgments of prison lawsuits, sometimes amounting to millions of dollars, are paid from state general funds and not from the corrections budget. This year, part of the planning for a new jail was done by employees on the payroll of the Department of Accounting and General Services (DAGS) and the Department of Budget and Finance, not the Department of Public Safety. Also, because the state Employees' Retirement System is not fully funded, the personnel budget of the Department of Public Safety does not reflect all of the costs that will ultimately have to be paid for operating the prison system.

A joint study of 40 states by the Pew Center on the States and the Vera Institute of Justice found that the actual direct cost of incarceration was 13.9% higher than was reflected in state corrections budgets.[139] Direct costs, however, are only part of the story. Incarceration also involves significant indirect costs to individuals, families, and communities. A 2010 study by Dr. Bruce Western of the Harvard Kennedy School and Dr. Beck Pettit of the University of Washington found that:

- Past incarceration reduced annual earnings by 40%;
- By age 48, the typical former inmate will have earned $179,000 less than if he had never been incarcerated;
- Children with fathers who have been incarcerated are significantly more likely than other children to be expelled or suspended from school (23% compared with 4%);
- Family income averaged over the years a father was incarcerated is 22% lower than the year before the father was incarcerated; and
- The indirect costs of incarceration reverberate across generations because parental income is a strong indicator of a child's future economic mobility.[140]

A 2016 economic analysis by the White House reported other negative economic effects from incarceration, such as:

- If a father is incarcerated, the probability that his family will fall into poverty increases by 40%;

- Because incarceration secludes individuals from their families and communities, it decreases the likelihood of marriage and increases the likelihood of divorce; and

- Parental incarceration is a strong risk factor for a number of adverse outcomes for children, including antisocial and violent behavior, mental health problems, failure to graduate from school, and unemployment.[141]

Fixing Hawai‘i’s correctional system will cost money, but not fixing it will cost a lot more.

CHAPTER 7

THE LEGISLATURE SHOULD CREATE AN ACADEMY TO TRAIN CORRECTIONAL WORKERS AT ALL LEVELS

A. Training Correctional Staff

Hawai‘i does not provide standardized education and training for correctional workers. An untrained or poorly trained staff contributes to poor outcomes, an unsafe workplace, poor morale, and an inefficient workforce. The Task Force recommends that the State establish a Corrections Academy to ensure that the quality and type of education and training needed by correctional personnel is delivered in a standardized and effective manner.

The Corrections Academy should be structured to provide training to new correctional employees and ongoing training and education to the staff of all agencies and departments involved in correctional work. The training should focus on the principles of rehabilitation, the role of the correctional professional in promoting rehabilitation, conflict resolution, counseling, the use of risk assessment instruments, cognitive behavior intervention, motivational interviewing interventions, collaborative casework, the implementation of effective, evidence-based programs for offenders, and other relevant subjects.

Many states in the Western Region already have training offices, including Arizona, Colorado, Idaho, New Mexico, Oregon, Utah, and Wyoming.

Norway’s successful correctional system is due in part to its Correctional Service Academy that educates new correctional workers and provides continuing education to meet the Correctional Service's ongoing needs. The Academy also conducts research that contributes to professional development and education, good practice, and good decision making in the Correctional Service. The Norwegian Academy typically receives around 1,200 applications per year and admits about 200 students (16% of applicants) into its intensive, two-year program. Academy students receive full pay while attending the Academy, and graduation from the Academy is a prerequisite for working in the Norwegian Correctional Service.

Hawai‘i may not be able to create a Norwegian-style academy, but it should take the first steps in that direction by creating an academy committed to improving the knowledge and skills of those who work in the correctional system.

B. Research and Evaluation

The Task Force also recommends that the Corrections Academy create and maintain a performance management system and assist in the transition to a rehabilitative correctional system.

Models for the Corrections Academy can be found in Washington State, which created an Institute for Public Policy,[142] and Pennsylvania, which developed a policy-driven Commission on Crime and Delinquency.[143] The support and implementation side of the Corrections Academy would, among other things:

- Develop data collection systems and collect relevant data;
- Conduct program evaluations;
- Measure program and policy outcomes;
- Recommend evidence-based programs and policies;
- Conduct cost-benefit analysis;
- Enhance accountability and transparency;
- Report on progress to the Legislature, funding sources, and community stakeholders;
- Provide guidance on best practices and promising practices;
- Develop staff manuals and training curricula;
- Report on studies, findings, and reports that appear in the correctional literature;
- Evaluate and improve risk assessment and classification instruments; and
- Assist in the transition from a punitive to a rehabilitative system.

The Task Force believes that developing details of the academy and its cost requires specialized skill beyond those we possess, and therefore we recommend the creation of a working group to do detailed planning for the academy and draft proposed legislation for its creation, staffing and funding. The working group should include, at a minimum: PSD, Adult Probation, the Hawai‘i Paroling Authority, criminal court judges, the University of Hawai‘i Research and Evaluation in Public Safety (REPS), and community organizations that advocate for prisoners and that provide services to those involved in the correctional system.

C. Encourage the University of Hawai‘i to Offer Accredited Degrees in Criminal Justice

The University of Hawai‘i does not offer a degree in criminal justice. Offering such a degree would produce highly educated individuals to staff and administer Hawai‘i’s correctional system, and the faculty would constitute an important reservoir of expertise for consultation and research on criminal justice matters.

An initiative to create an accredited BA and MA program in criminology and criminal justice at the University of Hawai‘i at Mānoa is currently underway. A steering committee chaired by Task Force Member Meda Chesney-Lind is leading this effort, and an “authorization to plan” has been submitted to the College of Social Sciences. The Task Force hopes that the Legislature and the public will support this important effort that will clearly benefit both the University and Hawai‘i’s criminal justice system.

CHAPTER 8

HAWAIʻI SHOULD IMPROVE THE REENTRY PROCESS AND SUPPORT THE DEVELOPMENT OF NEW TRANSITIONAL HOUSING

Returning to the community after spending time in jail or prison is a difficult transition for most offenders, as well as for their families and communities. Drug and alcohol addiction, job and housing instability, mental illness, lack of money, and health problems are part of the day-to-day realities for a significant share of this population.[144] The challenges, as one group of experts has said, are "large in scale, complex in task."[145]

In 2009, the Hawaiʻi State Legislature established a Reentry Commission within the Department of Public Safety to monitor and review reentry programs, including facility educational and treatment programs, rehabilitative services, work furlough, and the Hawaiʻi Paroling Authority's oversight of parolees.[146] The Commission was also tasked with ensuring that the offender reentry program created by Chapter 352, Hawaiʻi Revised Statutes, is implemented as soon as practicable to ensure that inmate release is not delayed due to lack of access to programs and services. The Reentry Commission was due to sunset on December 1, 2015, but the Legislature extended its expiration date to December 1, 2019.[147]

In 2018, the Reentry Commission released its *Strategic Plan 2017-2020* which establishes a general framework for improving reentry and a series of recommendations. The strategic plan represents progress in improving the reentry process. The HCR 85 Task Force recommends the following additional steps be taken to strengthen Hawaiʻi's reentry process:

1. Adopt the following principles developed for the Bureau of Prisons by President Barack Obama's Justice Department:[148]

   Principle I: Planning for reentry should begin at the time of admission. Every inmate should be provided with an individualized reentry plan tailored to his or her risk of recidivism and programmatic needs. Plans should be updated and revised continuously until the time of release.

   Principle II: While incarcerated, each inmate should be provided education, employment training, life skills, substance abuse treatment, mental health treatment, and other programs that target their criminogenic needs and maximize their likelihood of success upon release.

i. The curricula for these programs should be grounded in evidence that the program reduces recidivism.

ii. There should be standardization of evidence-based programming across facilities so that an inmate can complete programs even if transferred from facility to facility.

iii. To remedy gaps in education and employment skills, prisons must ensure their education programs will expand the quality, scope, and delivery of the agency's academic and job training curricula, particularly for those with literacy and special learning needs.

Principle III: While incarcerated, each inmate should be provided the resources and opportunity to build and maintain family relationships, strengthening the support system available to them upon release.

i. Create comfortable, friendly space for contact visits with family. Use video services only when family members are unable to visit in person.

ii. Expand the use of furloughs to visit family, children, and significant others.

iii. Focus on developing best practices in helping children of incarcerated parents.

Principle IV: During the transition back to the community, halfway houses and supervised release programs should ensure individualized continuity of care

i. Contract with non-profit corporations to increase the number of halfway houses.

ii. Make the halfway houses therapeutic centers where gains made in prison can be sustained and strengthened.

Principle V: Before leaving prison, every inmate should be provided comprehensive reentry-related information and access to resources necessary to succeed in the community.

2. PSD should create a unit dedicated to finding appropriate housing for difficult-to-place inmates such as those who are elderly, disabled, mentally ill, or have chronic illnesses. This unit should work with state and federal agencies to establish protocols that will quickly and efficiently process applications for health insurance and other benefits, and quickly respond to requests for medical records and other information from hospitals, care homes, and hospice. When a bed in a care home become available, PSD and the Paroling Authority must be able to quickly release the prisoner because most facilities cannot afford to keep a bed open for more than a day or two.

3. The State should designate Leahi Hospital as the default placement for compassionate release prisoners whose condition requires a Skilled Nursing Facility (SNF) or an Intermediate Care Facility (ICF).

4. At the time of release, all prisoners should have:

   A. A decent place to live;

   B. A state identification card, a social security card, and a birth certificate;

   C. Health insurance and, if necessary, public assistance benefits;

   D. Employment if the individual is employable;

   E. Ongoing addiction and/or mental health treatment; and

   F. Access to wellness centers rooted in Native Hawaiian values.

5. Review statutes that erect barriers to reentry and determine whether they should be continued, amended, or terminated.

6. Expand and improve transitional housing capacity through partnerships with non-profit corporations.

7. Streamline the State's compassionate release procedures and make eligibility for compassionate release the same for both PSD and the Hawai‘i Paroling Authority (which decides whether an individual should be granted compassionate release). The Task Force supports PSD's current eligibility criteria, which are:

A. The inmate has a terminal illness with a predictably poor prognosis;

B. The inmate has a debilitating and irreversible mental or physical condition that impairs the inmate's functional ability to the extent that they would be more appropriately managed in a community setting;

C. The inmate is too ill or cognitively impaired to participate in rehabilitation and/or to be aware of punishment; and

D. The inmate has a disease or condition that requires a complexity of treatment or a level of care that PSD is unable to provide on a long-term basis.

CHAPTER 9

HAWAIʻI SHOULD EXPAND ITS TREATMENT COURTS TO ACCOMMODATE MORE OFFENDERS

One of the first questions the Task Force asked was: "Do we have the right people in prison?" The answer was "probably not." As previously noted, 74% of Hawaiʻi's prisoners are incarcerated for relatively low-level offenses (class C felonies and below), including non-violent and drug offenses. Hawaiʻi could significantly reduce its prison population by diverting low-level offenders to treatment programs. This is already being accomplished through three treatment courts—drug court, mental health court, and veterans court—but these courts have long waiting lists. To accommodate all of those who are eligible to participate in treatment courts, the drug court would need to be expanded from 200 to 500 participants, the mental health court from 40 to 80 participants, and the veterans court from 20 to 40 participants. The Task Force believes these expansions make sense because treatment courts are a sensible and proven alternative to incarceration. The National Association of Drug Court Professionals, for example, reports that drug courts return up to $27 dollars for every $1 invested. They also improve financial stability, promote family reunification, and increase the rate of mothers with substance abuse disorders delivering fully drug-free babies.[149]

Mental health courts are newer than drug courts and have also been shown to be effective. A report prepared by the Council of State Governments Justice Center concluded that mental health courts play a significant role in responding to the disproportionate number of people with mental illness in the criminal justice system and, like drug courts after which they are modeled, move beyond the traditional focus of case processing to address the root causes of the behavior that brings mentally ill people before the court: "They work to improve outcomes for all parties, including individuals charged with crimes, victims, and communities."[150]

Expanding the treatment courts would not only improve correctional outcomes, it would save money in two ways: (1) by diverting several hundred individuals from jail and thereby allowing the State to build and maintain a significantly smaller and less expensive jail; and (2) community-based treatment costs a lot less than incarceration.

Chapter 10

HAWAIʻI SHOULD IMPROVE CONDITIONS FOR WOMEN PRISONERS AND ADOPT GENDER-RESPONSIVE POLICIES, PROGRAMS AND PRACTICES

What is the greatest lesson a woman should learn? That since day one, she's already had everything she needs within herself. It's the world that convinced her she did not.

—Rupi Kaur, The Sun and Her Flowers

A. Introduction[151]

Women make up about 12% of Hawaiʻi's combined jail/prison population (a total of 629 women as of June 30, 2018).[152] Unlike their male counterparts, female offenders tend to have a history of physical and/or sexual abuse, and they are the primary caretakers of young children at the time of arrest. Their involvement in criminal activity is often motivated by poverty and/or substance abuse, and they are less likely than men to have been convicted of a violent crime.[153]

Researchers have identified the following characteristics of women involved in the United States criminal justice system:

- Disproportionately women of color;
- In their early-to-mid-thirties;
- Most likely to have been convicted of a drug or drug-related offense;
- Fragmented family histories, with other family members also involved with the criminal justice system;
- Survivors of physical and/or sexual abuse as children and adults;
- Significant substance abuse problems;
- Multiple physical and mental health problems;

- Unmarried mothers of minor children; and

- High school degree/GED, but limited vocational training and sporadic work histories.[154]

In Hawai‘i, incarcerated women tend to be Native Hawaiian or Pacific Islanders, undereducated, and non-violent. Over 75% are mothers with children and they are, on the whole, resilient, resourceful, and motivated to succeed and return to their children and families.

There is now substantial evidence pointing to the need for policy makers and correctional officials to recognize the behavioral and social differences between female and male offenders and adopt gender-responsive policies, programs, and practices.

B. Trauma-Informed Facility and Staff

Trauma is generally defined as an external threat that overwhelms a person's coping resources. What constitutes a traumatic event is, of course, unique to each person, but in nearly every case it destroys trust and undermines a person's core sense of safety. The Substance Abuse and Mental Health Services Administration (SAMHSA) identifies six key principles of a trauma-informed approach to rehabilitation:[155]

- Safety
- Trustworthiness and transparency
- Peer Support
- Collaboration and mutuality
- Empowerment, voice, and choice
- Culture, historical, and gender issues

Due to the high prevalence of trauma among incarcerated women, correctional staff need to be trained in and practice a high level of trauma-informed care. An environment that supports posttraumatic growth provides important opportunities for positive change.

C. Healthy Relationships

Research on justice-involved women in Hawai‘i demonstrates that women feel "overwhelmed" by the roles they play within their families, their drug networks, the criminal justice system, and intimate partnerships.[156] Additionally, justice-involved women report that their introduction to drug use or criminal activity came via family members or intimate partners. Marriage and relationships can push women towards criminalized behaviors[157] rather than serve as a desistance factor, as seen with men.[158]

Support services for justice-involved women should focus on healthy relationships. Administrators and staff should model healthy relationship skills. Healthy relationships skill building should not focus solely on women's roles in intimate relationships, but also their relationship to self, family, and community. Healthy family relationships should be nurtured and

supported throughout women's incarceration, with special attention to relationships to their children and their children's caretakers. Family reunification should occur as frequently as possible. In-person visits are the best forms of communication.[159] Other states have found nurseries in women's prisons to be a highly successful modality for reducing recidivism for mothers, promoting secure attachments and long-term positive outcomes for their children, and saving the State money.[160] Hawai'i should consider adopting a similar program. Numerous research studies show the negative impact of parental incarceration, from Social Determinants of Health[161] to the Adverse Childhood Experiences Survey.[162] For future generations in Hawai'i, more is needed to support families impacted by incarceration.

D. Support Services

In addition to focusing on healthy relationships, programs for justice-involved women should be holistic and support the entire woman. Programs should address the areas that served as pathways to incarceration while offering opportunities for success in the community. A survey of justice-involved women identified the following areas as their primary and basic needs:[163]

- Drug treatment
- Employment
- Financial aid
- Money management/budgeting
- Cultural support
- Education/vocational skills
- Support groups/women's issues
- Housing
- Legal help

The needs identified above are similar to what research suggests are most critical for successful reentry.[164] However, research also indicates that the succession of program supports matters. Ideally, programs relating to the person, their history, trauma, and education would take place before beginning life skills. Additionally, there should be a continuum of services offered post-incarceration. Anecdotally, women have reported knowing they need assistance, but not knowing where to go for support; this ultimately resulted in their return to behaviors that led to their criminal involvement.

E. Community-Based Programs and Facilities

The current model of prisons in Hawai'i reinforces institutionalized thinking and thought patterns and re-traumatizes women. Women should be placed in community-based programs as soon as possible after incarceration. Being part of a community and learning to navigate that community reinforces the reality that there is something beyond incarceration. It allows women to practice new skills in a supportive environment, navigate the challenges of daily life and learn that they can rely on themselves instead of engaging in unhealthy relationships, drugs, and alcohol. The facility should resemble a home setting rather than an institution, like many of the European correctional facilities, and should be safe, orderly, and clean.

F. YWCA Fernhurst Model *Ka Hale Hoʻāla Hou No Nā Wāhine*

A local program that embodies much of what is described above and could serve as a model for other programs, is the YWCA Fernhurst *Ka Hale Hoʻāla Hou No Nā Wāhine (the home of reawakening for women;* formally with TJ Mahoney & Associates). The community-based furlough program works with women who are between a year and 6 months of being released on parole or completion of their sentence.

Women spend approximately 6 months at the program. The program serves up to 26 women at a time. Although the stay is relatively short (6 months compared to years of incarceration), it works to build womens' capacities so that they are the best versions of themselves prior to parole. The setting is trauma-informed, gender responsive, and culturally coherent. Additionally, the furlough program is connected to several career and personal development programs offered at YWCA Oʻahu. The Fernhurst program also offers Homebase; a supportive transitional housing environment for women on parole or for those who have completed their sentence. Homebase is often their only available safe, affordable housing option. Both Fernhurst programs focus on compassionate accountability, enabling women to take ownership of their actions and be accountable, while supporting their belief in themselves and their ability to do better. The long-term goals of the program are:

- Positive coping skills
- Access to positive social networks
- Employability skills
- Financial independence
- Access to permanent affordable housing

The Fernhurst program is rooted in over twenty-five years of experience working with justice-involved women. The small size of the program allows the model to be flexible and adaptive as the needs of the women served change. Community partnerships are critical to the program's success and involve health care, mentoring, apprenticeships, and access to positive social networks.

At YWCA Fernhurst, trauma-informed practices look like compassionate accountability and building trusting relationships. It is highly structured with clearly defined expectations of staff and program participants. The Resident Manual (provided to residents on Day 1) outlines the program structure and provides consistency and stability. Through structure, the women practice the skills necessary for successful community reintegration, reinforcing skills such as patience, perseverance, delayed gratification, and tolerating uncertainty. Fernhurst staff see themselves as supportive partners in the women's journey. A key piece of trauma-informed practice for residents and staff alike is a clear understanding that change is a process and not an event.

As expected, the majority of women in the furlough program are mothers. Fernhurst offers family reunification activities often and works to incorporate the caregivers of children as well. One of the simplest and most impactful experiences we can give the children is the opportunity to create new and happy memories in a healthy, supportive environment. YWCA Fernhurst continues to evaluate its support services and service delivery methods. The community-based model allows women to transition back into the community gradually, rather than the abrupt and cliff-like effect created by current incarceration and parole policies. The key elements of the program, being trauma-informed, strengths-based, gender responsive and culturally coherent are the basis for the program's success and should be adopted by the State.

CHAPTER 11

HAWAIʻI SHOULD DEVELOP A PLAN TO BRING ALL OF ITS MAINLAND PRISONERS BACK TO HAWAIʻI AND TO STOP USING PRIVATE PRISONS

Hawaiʻi began using private prisons in 1995 in response to overcrowded conditions at its prisons on Oʻahu and the neighbor islands.[165] The first prisoners were sent to private prisons in Texas, but within a short time, Hawaiʻi was using private prisons in Kentucky and Arizona.[166] By October 2005, Hawaiʻi had a higher percentage of its prisoners in out-of-state facilities than any other state.[167] Although Hawaiʻi no longer leads the nation in the use of private prisons, it still has about one quarter of its prisoners housed at the Saguaro Correctional Center in Eloy, Arizona operated by CoreCivic, a publicly traded corporation.[168] As of year-end 2016, Hawaiʻi was one of only five states to house at least 20% of its prisoners in private prisons.[169]

PSD reports that the cost of housing an inmate on the mainland is $82.61 per day, compared to $182 per day in Hawaiʻi.[170] This cost difference has led some to support the continuing use of private prisons. Others, however, contend that "the costs of private imprisonment are more than merely financial, because relying on mainland prisons severs an inmate's family ties, undermines rehabilitation, and decreases the odds of successful employment after release."[171] And some experts, such as Ted Sakai, who was Director of the Department of Public Safety from 1998 to 2002, believes that the financial savings may be illusory because keeping prison jobs in the State would have a "multiplier effect" on the local economy.[172]

A comparison of recidivism rates for parolees who had been incarcerated on the mainland and parolees incarcerated in Hawaiʻi, found, among other things, that:

- A little more than half of parolees in both cohorts failed on parole within three years;
- The average time to recidivism in both cohorts was about 15 months; and
- The recidivism rate for the mainland cohort (53%) was slightly lower than the recidivism rate from the Hawaiʻi cohort (56%), *but the difference was not statistically significant.*[173]

In 2012, prisoners and former prisoners told the Native Hawaiian Justice Task Force that out-of-state prisons provided more consistent programs and less crowded living conditions than Hawaiʻi prisons. Prisoners also reported that the guards at mainland prisons treated them with greater respect than the guards in Hawaiʻi, but that being transferred to a mainland prison was a "drastic dislocation from their home, culture, family, job prospects, and community support."[174]

One of the people who testified before the NHJTF was Delbert Wakinekona. In 1976, Mr. Wakinekona was transferred from the Hawai‘i State Prison (now OCCC) to Folsom Prison in California under an interstate compact because he was allegedly dangerous and a security risk. Mr. Wakinekona challenged the transfer in federal court as a violation of his constitutional rights. His case, *Olim v. Wakinekona*,[175] was heard by the United States Supreme Court in 1983. In a 6 to 3 decision, the court held that transferring a prisoner from one state to another, even to one thousands of miles away from the prisoner's home, did not violate the constitution and that such transfers were not reviewable by federal courts.

Delbert Wakinekona
Photography by Per Liljas, used with permission.

In a dissenting opinion, Justice Thurgood Marshall wrote that transferring a prisoner to a location far from the prisoner's home and family amounts to double punishment:

> There can be little doubt that the transfer of Wakinekona from a Hawaii prison to a prison in California represents a substantial qualitative change in the conditions of his confinement. In addition to being incarcerated, which is the ordinary consequence of a criminal conviction and sentence, Wakinekona has in effect been banished from his home, a punishment historically considered to be "among the severest." For an indeterminate period of time, possibly the rest of his life, nearly 2,500 miles of ocean will separate him from his family and friends. As a practical matter, Wakinekona may be entirely cut off from his only contacts with the outside world, just as if he had been imprisoned in an institution which prohibited visits by outsiders. Surely the isolation imposed on him by the transfer is far more drastic than that which normally accompanies imprisonment.[176]

The NHJTF found the words of Justice Marshall "particularly relevant"[177] and recommended that returning prisoners to Hawai‘i should be a top priority, and that they should be returned "as soon as practicable, consistent with public safety."[178] It also recommended that "[o]nce the inmates are returned from private, out of state facilities, the State should consider passing legislation prohibiting future use of private for-profit correctional facilities."[179]

Private prisons have been controversial ever since they were introduced almost 40 years ago. The Task Force is aware of the arguments for and against them. We believe, as did the NHJTF and Governor Neil Abercrombie, that private prisons do not serve the best interest of Hawai‘i. We recommend the creation of a working group of public and private stakeholders to develop a plan to bring back all Hawai‘i prisoners as soon as practicable consistent with public safety, and that the Legislature prohibit the future use of private, for-profit correctional facilities.

CHAPTER 12

THE STATE SHOULD SUPPORT FEDERAL JUSTICE REFORM LEGISLATION THAT WOULD BENEFIT HAWAIʻI

United States Senator Brian Schatz of Hawaiʻi has sponsored or is supporting federal legislation to improve Hawaiʻi's correctional system. The State should support this legislation and work with Senator Schatz to further develop ideas that would benefit Hawaiʻi.

A. Expanding Prison Education Opportunities

Since 1994, prisoners have not had access to federal Pell Grants to help pay for post-secondary education, and as a result, the number of education programs in prisons has fallen from over 350 in 1982 to only 12 by 2005.[180] The loss of post-secondary education programs for prisoners is short-sighted because these programs reduce costs and improve public safety more effectively and efficiently than incarceration. Studies have shown that each dollar spent on education programs reduces incarceration costs by $4 to $5 during the first 3 years after an individual is released.[181] And an investment of $1 million in prison educational programs prevents about 600 crimes, while the same money invested in incarceration only prevents about 350 crimes.[182]

On February 3, 2018, Senator Schatz introduced the *Restoring Education and Learning* (REAL) *Act*[183] that would once again make prisoners eligible for Pell Grants to fund higher education. He is also supporting the Second Chance Pell Pilot Program, an initiative started under the Obama Administration to select colleges and universities that partnered with state and federal prisons to provide post-secondary prison education. Senator Schatz is working to ensure that the pilot program receives adequate funding and that the United States Department of Education continues to implement the program, including assistance addressing the specific financial aid needs of incarcerated students.[184]

On October 11, 2018, Senator Schatz introduced the *Promoting Reentry through Education in Prisons* (PREP) *Act*[185] that would reform the Federal Bureau of Prisons' educational programs by creating a dedicated Office of Federal Correctional Education. The bill would build on reforms started by the Obama Administration in its Roadmap to Reentry initiative.[186]

Additionally, Senator Schatz has directed the Government Accountability Office, the National Institute of Corrections, and the United States Department of Education to conduct an evaluation of prison education programs, including the Second Chance Pell Pilot, to ensure that there will be robust research and data on the effectiveness of these programs.

B. Ending Collateral Consequences for Justice-Involved Individuals

As we noted in the reentry section of this report (Chapter 8), individuals with criminal or juvenile justice involvement often experience barriers to educational opportunities, decreased earnings, increased unemployment, and increased poverty. To address this problem, Senator Schatz has asked the "Big Six" higher education associations and The Common Application to urge their members to remove criminal history questions from their admissions processes. The Association of American Colleges and Universities and the American Association of Community Colleges both answered Senator Schatz's request and urged their members to remove those questions. The Common Application announced that it would remove its criminal history question starting on its 2019-20 application.

To assist colleges and universities in removing criminal history questions, Senator Schatz introduced the *Beyond the Box for Higher Education Act.*[187] The bill would encourage colleges and universities to remove criminal and juvenile justice questions from their admissions applications and give more Americans a chance to earn a higher education.

Through the appropriations process, Senator Schatz directed the United States Department of Education to proactively distribute the "Beyond the Box: Increasing Access to Higher Education for Justice-Involved Individuals" resource guide to colleges and universities. He also directed the Department to provide technical assistance to colleges and universities to help examine whether, when, and how to use criminal justice information in the higher education admissions and enrollment process.

C. Streamlining Federal Compassionate Release

Although federal compassionate release does not directly impact state prisoners, it is an important issue for Hawai'i citizens who are incarcerated in federal prisons. Senator Schatz introduced the *Granting Release and Compassion Effectively* (GRACE) *Act* to improve the United States Bureau of Prison's approval process for compassionate release and create an expedited process for terminally ill patients.[188] The bill would make the compassionate release process fairer and more accountable and would, in in the long term, reduce overall federal prison spending without compromising public safety. The bill was included in the bipartisan criminal justice reform bill, the *First Step Act*, which passed the House of Representatives in 2018 and is expected to pass the Senate.[189]

D. Supporting Prison Rape Elimination Act Programs

The *Prison Rape Elimination Act* of 2003 (PREA)[190] was designed to end sexual violence in federal, state, and local detention facilities. Under PREA, DOJ created regulations to detect, prevent, and respond to sexual assault and abuse in confinement. PREA requires the governors of each state to report to DOJ on an annual basis about their progress in complying with its

regulations. Currently, 19 states have certified full compliance and an additional 29 states are working toward full implementation.

Even with PREA, sexual abuse in confinement remains a challenge. To improve PREA's outcomes, Senator Schatz has worked with United States Senator John Cornyn of Texas to get full funding for prison rape prevention and prosecution programs, and to improve PREA compliance audits.

CHAPTER 13

NEW JAILS AND PRISONS WON'T SOLVE HAWAIʻI'S CORRECTIONAL PROBLEMS. THE STATE NEEDS NEW THINKING, BETTER IDEAS, AND A COMMITMENT TO REHABILITATION RATHER THAN PUNISHMENT

We can't solve problems by using the same kind of thinking we used when we created them.
–Albert Einstein

The State is moving ahead with plans to replace OCCC with a 1,380-bed jail for men in Halawa Valley. It is also planning to greatly expand the Women's Community Correctional Facility in Kailua,[191] and build new medium security housing units at the prisons on Maui, Kauaʻi, and Hawaiʻi island.[192]

The new jail for men is estimated to cost $525 million.[193] The estimated cost of the WCCC expansion is $45 million, bringing the total cost of the new facilities on Oʻahu to $570 million. The State has not released a cost estimate for the new prison beds on Maui, Kauaʻi, and Hawaiʻi island but they will certainly cost millions more.

Building new jails and prisons without fundamentally changing our approach to corrections would be short-sighted and a waste of money. The current system has been producing consistently poor outcomes for at least 40 years, and it will continue to do so *even with new facilities* because the problem is not the facilities—bad as they may be—but our belief that locking people up under harsh conditions for long periods of time will make them better citizens. Until we recognize that *our approach is wrong*, our correctional outcomes will not improve and our communities will not be safer. What Hawaiʻi needs at this critical juncture is to transition to a much more effective and sustainable correctional model that focuses on rehabilitation rather than punishment, and to adopt a strategic plan that addresses the many factors that are driving mass incarceration and keeping our recidivism rate above 50%.

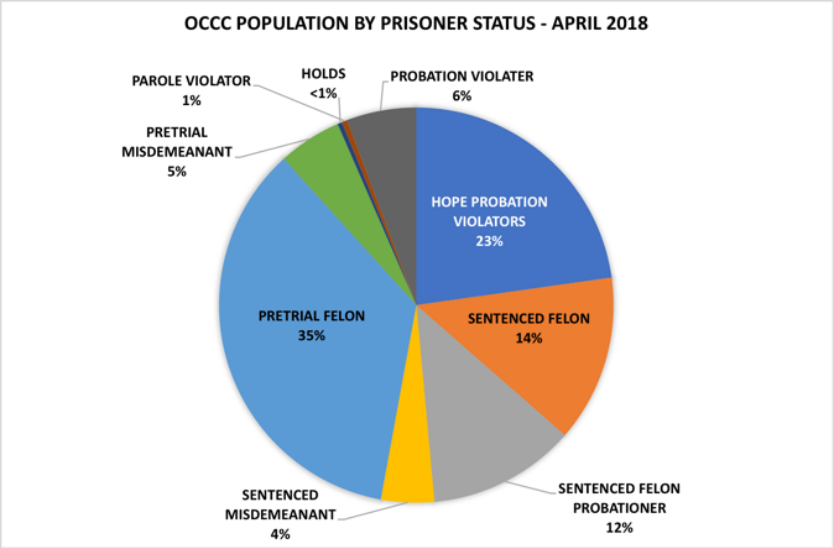
Before committing to the size, design, or location of a new jail, or any expansion of our correctional system, the State—working in a truly collaborative manner with stakeholders and the public—should focus on expanding programs that divert low-level offenders away from the criminal justice system, enact bail reform to reduce the number of pretrial detainees in the jail, create forensic treatment facilities for offenders who are mentally ill, expand community-based programs as an alternative to jail for misdemeanants, house HOPE Probation violators in community-based

housing instead of jail, and reserve jail for the small number of individuals who are a flight risk and/or a danger to society.

> By a substantial margin (76% vs. 19%) the public would rather see their tax dollars support programs that try to prevent crime by helping offenders find jobs and get treatment than be used to build more prisons.
>
> *- National Center for State Courts (2006)*

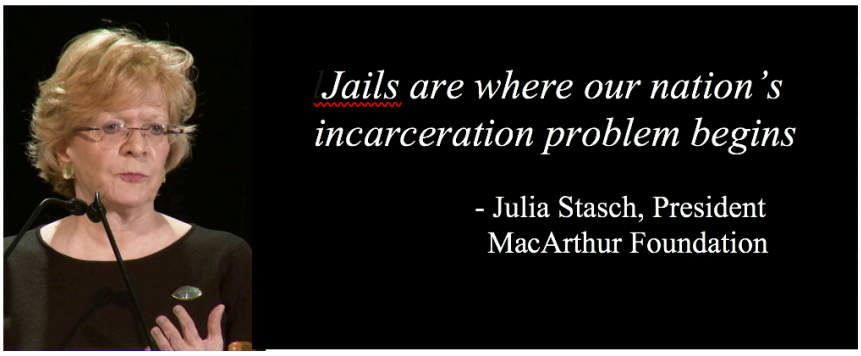
A. The Difference Between Jails and Prisons

It is important to understand the difference between jails and prisons. Prisons are secure facilities that typically house people who have been convicted of a felony and are serving a sentence of more than one year. Jails, in contrast, do not house long-term prisoners. They typically house: (1) pretrial detainees, i.e., people who are presumed innocent and awaiting trial; (2) probation violators; (3) persons serving sentences of one year or less; (4) a small number of convicted felons who are serving very short sentences; and (5) felons who have served most of their sentences and are preparing to reenter society. In the 19-month period from January 2016 to July 2017, approximately 45% of the men at OCCC were pretrial detainees, i.e., individuals who are trying to arrange for bail, cannot afford bail, have been denied bail, or are waiting for paperwork or a determination on conditions of release.[194]



Source: PSD Prisoner Data for OCCC as of April 30, 2018

B. Criminal Justice Policies Drive the Jail and Prison Population



Jail populations are largely determined by criminal justice policies. Policies that favor incarceration drive jail populations up; policies that favor alternatives to incarceration drive jail populations down. The policies that have the greatest effect on jail population include: the presence or absence of diversion programs for non-violent, low-level offenders; bail policies and procedures that affect the release of pretrial detainees; the validity of the pretrial risk assessment instruments that are being used to make pretrial release decisions; how efficiently paperwork is processed; the use of drug, mental health, and veterans courts; prosecutorial policies; probation violation policies; the extent to which judges impose sentences of one year or less; and policing policies. A clear understanding of the policies that drive the jail population up or down is essential to good jail planning.

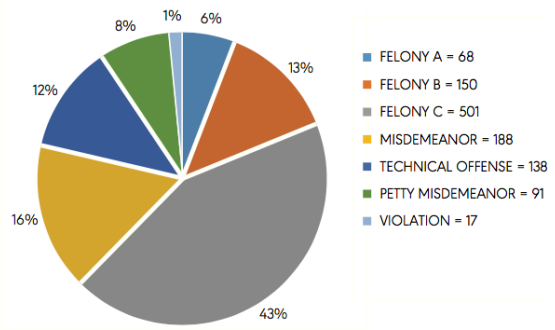
C. Most of the OCCC Inmates are Relatively Low-Level Offenders and the Mentally Ill

OCCC is located on a 16-acre property along Kamehameha Highway in Kalihi.[195] It is the largest jail in Hawai‘i and serves the entire Honolulu/O‘ahu population. OCCC has been operated by the State of Hawai‘i since 1975 when it acquired the facility from the City and County of Honolulu, which previously operated it as O‘ahu Prison.[196] From 1978 to 1987, OCCC served as both a local jail and a prison since the largest percentage of the inmate population was geographically centered on O‘ahu. Since the opening of the Halawa Correctional Facility in 1987, OCCC has functioned as a traditional jail, primarily housing prisoners awaiting trial (i.e., male and female pretrial detainees), male inmates serving sentences of one year or less, sentenced male felons with less than one year left on their sentences and who are preparing to transition back into the community, and probation violators.[197]

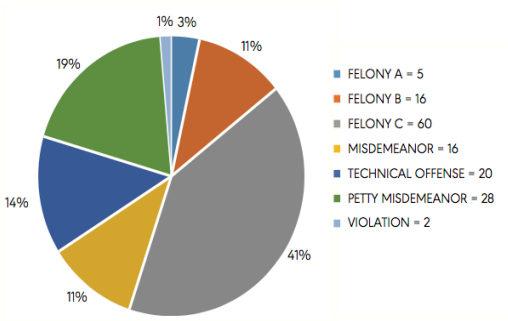
Over the years, OCCC has expanded in a patchwork fashion from 456 beds to its current design capacity of 628 beds and an operational capacity of 954 beds, but it has "consistently operated above these capacities."[198] As of November 30, 2018, OCCC housed 1,212 prisoners: 1,050 males and 162 females.[199]

The Department of Public Safety has published demographic data on the OCCC population in connection with its plans for a new jail. Unless otherwise indicated, the data in the remainder of this section is taken directly from the Department of Public Safety's April 2017 newsletter on the future of OCCC[200] or from the brochure entitled Frequently Asked Questions (May 19, 2017).[201]

Severity of Offense. The vast majority (81%) of the male OCCC population are associated with relatively low-level Class C felonies (43%) or lesser offenses—misdemeanors, petty misdemeanors, technical offenses, or violations. Among the women, 86% of the offenses are Class C felonies or below, and 45% of those are misdemeanors, petty misdemeanors, technical offenses, or violations.

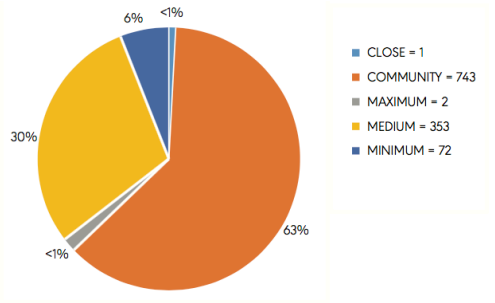


Severity Classification by Gender (Men)

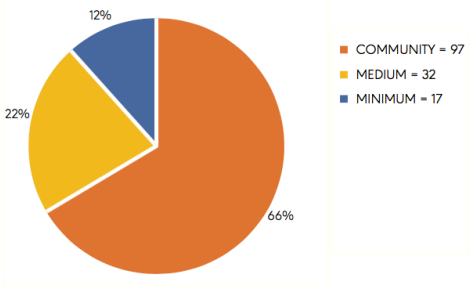


Severity Classification by Gender (Women)

Security Classification. Nearly 70% of the men at OCCC are in the two lowest security classifications—Community Custody (63%) and Minimum Security (6%). Less than 1% of the men have close or maximum security classifications. Over three quarters of the female inmates (78%) are community or minimum security, and none are close or maximum security.



Security Classification by Gender (Men)

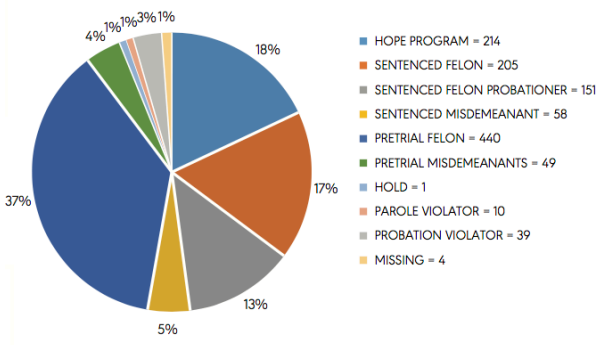


Security Classification by Gender (Women)

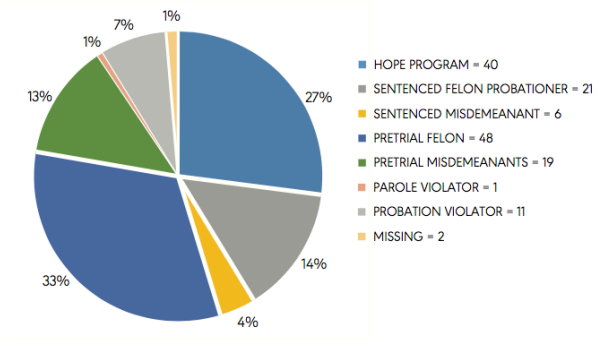
Status Classification. Status classification for men at OCCC is organized into 10 categories: Pretrial Felons, Pretrial Misdemeanants, Sentenced Felons with less than one year left on their sentence, Sentenced Misdemeanants, HOPE Probation Violators, Sentenced Probation Violators, Other Probation Violators, Parole Violators, Hold, and Missing (data unavailable) prisoners.

Male Status. Among the male population, Pretrial Felons comprise the largest group (37%). HOPE Probation Violators make up 18% of the male population, followed by Sentenced Felons (17%) and Sentenced Felon Probationers (13%). The remaining 15% of the male population comprise six categories: Sentenced Misdemeanants (5%), Pretrial Misdemeanants (4%), and Probation Violators (3%). Parole Violators, Hold, and Missing (data unavailable) comprise less than 1% each.

Female Status. The female population at OCCC is organized into eight categories with no inmates classified as Sentenced Felons or Hold. Pretrial Felons make up the largest portion of the female inmate population (33%). HOPE Probation violators comprise 27% of the female population followed by Sentenced Felon Probationers (14%) and Pretrial Misdemeants (13%). The remaining 13% of the female population comprise four categories: Sentenced Misdemeanants (4%) and Probation Violators (7%), with Parole Violators and Missing (data unavailable) comprising less than 1% each.



Status Classification by Gender (Men)



Status Classification by Gender (Women)

The Homeless and Mentally Ill at OCCC. In 2016, the Honolulu Police Department made 16,000 arrests, of which 6,880 or 43% were homeless people.[202] The latest statistics indicate that 72% of the homeless detainees who came through the Honolulu police cellblock were mentally ill or under the influence of drugs.[203]

The Department of Public Safety estimates that approximately 9.5% to 12% of all OCCC inmates are deemed mentally ill.[204] That means that as of June 30, 2018, when the total population was 1,340, OCCC housed between 127 and 161 mentally ill individuals. On average these individuals cycle through OCCC three times per year, with some being incarcerated up to eight times per year.[205] PSD estimates that over the past year, approximately 696 Severe and Persistently Mentally Ill (SPMI) people were incarcerated at OCCC, and that 450 to 600 of those individuals were at one time or another on suicide watch.[206] Additionally, PSD estimates that there were 38 inmates who were considered mentally ill, but not Severe or Persistent.[207] In addition to those diagnosed as SPMI, "many among the OCCC population suffer from either Antisocial and/or Borderline Personality Disorders, combined with Substance Use and Abuse Disorders."[208]

Chapter 14

COLLABORATION IS THE KEY TO PLANNING A JAIL THAT IS AFFORDABLE, SAFE, EFFECTIVE, AND MEETS THE NEEDS OF THE COMMUNITY

A. Collaboration and Community Input is a Best Practice

In 2015, the MacArthur Foundation announced a five-year $75 million initiative to change the way America thinks about and uses jails. The initiative was designed to support states, cities, and counties that want to create smarter and more effective justice systems that improve public safety, save taxpayer money, and lead to better social outcomes. In announcing the initiative, MacArthur President Julia Stasch said:

> Jails are where our nation's incarceration problem begins; there are nearly 12 million jail admissions every year, and jails too often serve as warehouses for those too poor to post bail, non-violent offenders, or people with mental illness. With this substantial, long-term commitment and investment, MacArthur hopes to support and demonstrate alternatives to incarceration as usual, and to create demand and momentum for change across the country.[209]

The core of the MacArthur initiative was a competition called the Safety and Justice Challenge, through which the Foundation channeled millions of dollars to communities that have demonstrated a commitment to reducing their reliance on jails and creating improved justice systems through innovative, collaborative, and evidence-based solutions.

After a highly competitive selection process that drew applications from nearly 200 jurisdictions in 45 states and territories (Hawai'i was not one of them), the Foundation chose 20 jurisdictions for initial grants to develop jail reform plans. Out of the 20 jurisdictions that received initial grants, the Foundation selected 11 jurisdictions for grants of between $1.5 and $3.5 million to reduce their jail populations and address racial and ethnic disparities in their justice systems.

The 11 jurisdictions that received grants were selected, in part, because they placed strong emphasis on "community engagement and collaboration with local law enforcement, corrections officials, prosecutors, defenders, judges, and other stakeholders" and developed an expansive array of alternatives to incarceration.[210] For example, Philadelphia, Pennsylvania, developed a range of strategies to reduce jail admissions by creating alternatives to cash bail, reducing case processing time, increasing pretrial releases, developing non-incarceration sanctions for parole violators, and improving access to defense counsel. It also initiated a program to divert first-time, low-level

offenders with treatment needs to a community-based site for clinical assessment and referral. Philadelphia also plans to develop and validate a new risk assessment tool for use in pretrial decision-making.

The plan in Milwaukee, Wisconsin, is somewhat different. It calls for expansion of the county's mental health diversion program and a new post-booking mental health stabilization program to remove people with mental health issues from jail and connect them with services within 48 hours. For those who continually cycle through the criminal justice system on public nuisance offenses, a new strategy was developed to foster improved information-sharing, prompt and effective interventions, and minimal use of jail. Milwaukee has also started work on a system-wide trauma-informed response to justice system involvement, including diversion and sentencing options initiated by the county prosecutor.

New Orleans, Louisiana, is reducing its jail population by expanding the use of summons in lieu of arrest; deploying a newly trained Crisis Intervention Team to increase pre-booking diversion of people with mental health or substance abuse problems; and instituting a variety of measures to increase pretrial release, such as new risk-based decision-making protocols, strengthening defense representation at first appearance hearings, initiating a new round of bond review hearings for any person detained after seven days, and implementing implicit bias training for criminal justice employees.

All of the proposals funded by the MacArthur Foundation have two things in common: (1) they focused on the conditions within the community that are driving up jail admissions; and (2) the jail reduction strategies were developed in a collaborative manner by a wide range of stakeholders. For example, the successful Milwaukee proposal was developed by a planning group that comprised nearly 50 stakeholders from the city; the county; the federal government; and private organizations, including the Urban League, the Legal Aid Society, the NAACP, and the Milwaukee Area Workforce Investment Board.

One of the lessons of the MacArthur Safety and Justice Challenge is that there are many ways for a community to reduce its jail population. The main thing is for communities to understand that reducing their jail populations is a smart strategy for improving public safety, saving taxpayers' money, and creating better social outcomes:

> Potential solutions to the nation's over reliance on jails include policing and arrest practices, using citations in lieu of arrests, risk and needs assessments, improved case processing, problem solving courts, specialty dockets, pretrial diversion, jail programming and case management services, sentencing to alternatives to jail, deferred prosecution, violation response matrices, transitional housing programs, and reentry programming to decrease the odds that exiting inmates will reoffend and return to jail. *It is essential that these reforms are implemented in accordance with a strategic planning process for system-wide change.*[211]

B. PSD Has Not Engaged the Community in the Jail Planning Process in a Meaningful Way

The first chapter of PSD and DAGS' Progress Report to the 2016 Legislature on the new jail states that the two departments have worked with their consulting team to determine the "vision for the future of OCCC, the nature, scale, capacity and key features of the proposed facility, and the topics of importance and issues of concern regarding the future of OCCC."[212] That statement perfectly captures the problem with the planning process: every important element of the jail—vision, nature, scale, capacity, and key features—was decided by PSD, DAGS, and the consulting team—*the Community was not involved at all.* A project designed in this way has little chance of success because jails impact many parts of the community and must be developed in an open and collaborative manner that involves a wide range of stakeholders. The Task Force made this point in its 2016 Interim Report.[213] It is so important that the basic principles are worth repeating. Here is what the authorities say about the importance of having a truly collaborative jail planning process:

- Successful jurisdictions use a collaborative approach to planning that includes representation of all actors in the criminal justice system and the community, including advocates, judges, administrators, legislators, prosecutors, the defense bar, correctional officers, program operators, and community members. The "buy in" from key stakeholders is *absolutely essential.*[214]

- "Community participation in planning is important because the jail belongs to the community it serves; it is not solely the concern of the sheriff or director of corrections. The type of facility a community builds and the way it is used are as much a reflection of community values as they are of local, state, and federal laws. It is common for stakeholders such as victim advocates, business leaders, the clergy, educators, and elected officials to actively participate on the community advisory committee. Stakeholders who have overall responsibility for the jail, such as county [or state] commissioners and the sheriff, should also be represented on the community advisory committee."[215]

- "Affected groups must be on board to advance the new way of doing business, and to move forward despite barriers and setbacks. Engaging the community, the workforce, and other interested groups doesn't happen on its own. As motivation for change starts to build, conversations can begin with affected parties. Transparency and genuine opportunities for input by constituents support engagement."[216]

PSD has held informational meetings on the new jail that included an opportunity for the public to comment, but that is not collaboration:

Collaboration is working together toward a common purpose—sharing a vision, preparing a plan, and implementing the plan to achieve outcomes. It is standing behind that plan as a singular group when outcomes are not realized, regrouping and trying something anew. Collaboration means sharing the burden, the responsibility, and the consequences together as a system. One of the main defining characteristics that make the eight local criminal justice systems qualitatively different from many others throughout the country is their ability to collaborate at a systemic level—to put the greater good of the system and the principles of justice before all else with individual stakeholders adjusting policy and practice to support the overall vision.[217]

CHAPTER 15

THE FIRST QUESTION ANY COMMUNITY CONTEMPLATING A NEW JAIL SHOULD ASK IS NOT "HOW BIG IT SHOULD IT BE?" BUT "HOW SMALL CAN WE MAKE IT?"

A. Jail Planning Requires Community Engagement

The most important question a community can ask when planning a new jail, is not "how big does it have to be", but *"how small can we make it?"*[218] Answering that question must engage the whole community, which is why virtually every jurisdiction that is considering a new jail is bringing together stakeholders in a collaborative process to address the conditions that are driving jail populations up. Community engagement in the planning process is not merely a national trend, it is a best practice that is almost universally followed. It is the first thing a community contemplating a new jail must do, and the experience of the MacArthur Safety and Justice Challenge illustrates how it is done.

B. Strategies to Reduce the Jail Population

1. Bail Reform

House Concurrent Resolution 134, H.D. 1, Regular Session 2017, calls on the Judiciary to convene a task force to, among other things, recommend ways to maximize the release of pretrial detainees who are in jail awaiting trial. Chief Justice Recktenwald designated First Circuit Court Judge Rom A. Trader to chair the Task Force, which will present its final report to the Legislature at least twenty days prior to the 2019 legislative session.

The HCR 85 Task Force does not know what the HCR 134 Task Force will recommend, but we hope it will propose alternatives to cash bail, at least for indigent defendants who do not pose a danger to society and are not a flight risk. This is significant because if the State could reduce the number of pretrial detainees at OCCC by just 50%, it could save a substantial amount of money. For example, as of July 31, 2018, there were 1,400 inmates assigned to OCCC, of which 612 or 43.7% were pretrial detainees (525 felony detainees and 87 misdemeanor detainees).[219] It costs $152 per day to incarcerate an inmate at OCCC, therefore the cost of housing the 612 pretrial detainees on July 31, 2018, was $93,024. If half of the pretrial detainees were released through bail reform, the cost of housing the remaining half would be $46,512 per day ($16.9 millon per year).

Reducing the number of pretrial detainees by 50% through bail reform would also mean that the State would need half as many pretrial beds at the new jail, and that would save hundreds of millions of dollars in construction costs, not to mention millions of dollars more in additional savings from reduced maintenance and operating costs over the life of the new jail.

2. The HOPE Probation Program

HOPE Probation (Hawaii's Opportunity Probation with Enforcement) is a program that seeks to reduce recidivism by high-risk probationers through the use of swift, certain, consistent, and proportionate sanctions for any violation of the conditions of probation.

Probationers enrolled in HOPE Probation are subject to frequent, random drug testing. A violation of the terms of probation, such as a positive drug test or a missed meeting with a probation officer results in jail time, which could be as short as a two days, or longer depending on the nature of the violation and the circumstances.

The initial evaluation of Hawai‘i’s HOPE Probation program in 2009 showed positive results.[220] Participants had large reductions in positive drug tests and missed appointments and were significantly less likely to be arrested during follow-up at 3 months, 6 months, and 12 months.[221] They averaged approximately the same number of days in jail for probation violations, serving more but shorter terms. They spent about one-third as many days in jail on probation revocations or new convictions. In a follow-up study published in 2016, HOPE probationers again showed positive results in terms of reduced drug use, fewer probation revocations, being less likely to commit new crimes during the follow-up period, and being more likely to receive early termination of probation, but there was no statistical difference in terms of new charges for violent crimes.[222]

After its initial success in Hawai‘i, HOPE Probation spread to many jurisdictions on the mainland. However, evaluations of the mainland programs, for the most part, were negative.[223] They showed little difference between those in “swift and certain” (SAC) programs, and those in probation-as-usual (PAS) programs.[224]

One of the most successful programs on the mainland was in Washington State where a large number of participants were tracked for one year. The SAC participants showed a consistent pattern of reduced crime, but the differences between the SAC group and the supervision-as-usual control group were small.[225] Additionally, the SAC group received cognitive behavior therapy, and it is possible that the differences in reconvictions could be attributable to the therapy rather than to the punitive-based deterrent effect of SAC.[226]

Evaluation of programs following the HOPE Probation model in Massachusetts, Oregon, and Texas reported no better recidivism outcomes for HOPE Probation than for probation-as-usual.[227]

The main criticisms of the HOPE Probation model are: (1) it has not been shown to produce long-term behavioral changes; (2) there is no persuasive body of evidence demonstrating that compliance with supervision conditions is associated with lower recidivism rates; and (3) HOPE

Probation punishes, but punishment does not address the main factors related to criminogenic behavior.

Several Task Force members have expressed concerns about the HOPE Probation program because those who fail to comply with the terms of probation are given an "open" prison term followed by probation, which, in some cases, can result in some offenders being under some form of correctional supervision for many years.

The bottom line is that the HOPE Probation program continues to have staunch supporters, and staunch critics. The Task Force's concern is that as of April 30, 2018, there were 303 HOPE probationers at OCCC, comprising about 22 percent of the total jail population.[228] It costs $46,000 *a day* to house 303 prisoners at OCCC, and building more than 300 beds for them at the proposed new jail and the women's facility in Kailua, could easily exceed $100 million.

The Task Force questions whether it is necessary or cost effective to house probation violators in jail. We recommend that the State consider using other types of housing for most HOPE probation violators, and at least some of the parole violators who are in prison. These probation and select parole violators could be housed in dormitories built as part of the OCCC replacement project, or assigned to community-based facilities where, in either case, the reasons they violated the conditions of probation or parole could be addressed by mental health and/or addiction treatment professionals, and hopefully remedied.

3. The LEAD Program

Hawai‘i has started a jail diversion pilot program in O‘ahu's Chinatown based on the highly successful LEAD (Law Enforcement Assisted Diversion) program that was started in the Seattle area in 2011. The pilot project is popular with residents and has received unanimous support from the Downtown/Chinatown Neighborhood Board.

LEAD gives law enforcement officers discretion to redirect low-level, non-violent offenders to community-based services instead of jail and prosecution. Evaluations of Seattle's LEAD program show that participants were 58% less likely to be arrested after enrollment,[229] and were significantly more likely than the control group to obtain housing, employment, and legitimate income in any given month subsequent to their LEAD referral.[230] LEAD has been established or is under consideration in more than forty jurisdictions across the continental United States and has proven to be effective in offering individual case management services that are non-coercive and non-punitive.[231]

Nearly 40% of OCCC's inmates are charged with misdemeanors or lower offenses, i.e., petty misdemeanors, technical offenses, or violations.[232] LEAD will divert some of these individuals to programs that will assist them, so that they will not enter the criminal justice system and be admitted to jail.

LEAD has strong leadership and broad community support. There is every reason to believe that it will be a success and will expand to many other neighborhoods on O‘ahu and significantly reduce the number of beds needed for any new jail. It is worth noting that after hearing a presentation on LEAD, police chiefs on neighbor islands expressed an interest in establishing LEAD on their islands.

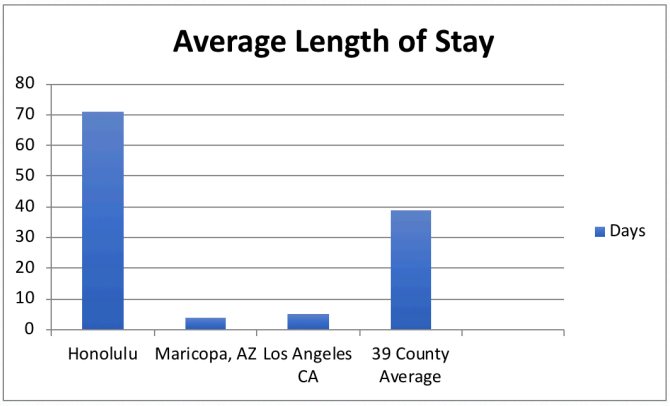
4. Improved Pretrial Procedures and Case Processing

A critical factor in reducing jail populations is the length of stay (LOS) for those who are admitted to jail. The Justice Reinvestment-Hawai‘i Initiative (JRI) studied case processing in Hawai‘i and found that between 2006 and 2011, the average length of stay for felons released on their own recognizance increased from 31 days to 59 days, and the average length of stay for felons who received supervised release increased from 84 days to 102 days.[233]

FY 2006 Releases	Average LOS
Bail (33%)	31 days
Release on own recognizance (8%)	31 days
Supervised Release (34%)	84 days

FY 2011 Releases	Average LOS
Bail (42%)	32 days
Release on own recognizance (14%)	59 days
Supervised Release (29%)	102 days

JRI also reported that the length of stay for individuals in the City and County of Honolulu compared unfavorably with other counties. A 2008 study found that Honolulu had *the longest average length of stay in jail for those ultimately released during the pretrial stage.* Of the 39 counties, 32 were able to release defendants under non-financial conditions in 15 days or fewer, but Honolulu’s average length of stay for the same type of defendants was 71 days.[234]



Source: Justice Reinvestment in Hawaii, August 2014

JRI recommended, among other things, that Hawai‘i require the use of an objective risk assessment tool to inform pretrial detention and release decisions and that it conduct risk assessments within three days of admission to jail.[235] These recommendations were enacted into law in 2012[236] and were expected to reduce the length of stay at OCCC by identifying low-risk individuals who could be released quickly.

On May 16, 2017, the Task Force's Program subcommittee met via Skype with Bree Derrick, Program Director of the Council of State Governments who worked on Hawai‘i's Justice Reinvestment Initiative. In preparation for the meeting Ms. Derrick obtained data from PSD that shows that between December 2011 and December 2016, the pretrial population for Honolulu increased by 8%. The data also showed that the prisoners who were released on their own recognizance or on supervised release spent almost twice as many days in jail as those released on bail or bond:

Type of Release	Percent	Days to Release
Bail/Bond	48%	38 days
Release on Own Recognizance	16%	85 days
Supervised Release	37%	97 days

Ms. Derrick did not speculate on why the pretrial population was increasing, but she mentioned that JRI had some concern that Hawai‘i's risk assessment instrument might be putting an unusually high number of inmates in the "high risk" category. She also noted that the instrument had a number of "overrides" that could be affecting risk levels. She recommended taking a hard look at the risk assessment instrument to find out whether it is contributing to the increase in pretrial detainees, and whether the "overrides" might also be contributing to the problem.

The Task Force concurs with those recommendations and also recommends that the State undertake a concerted effort to significantly reduce the length of stay at OCCC. Improving case processing and expediting releases will significantly contribute to reducing jail populations.

5. Eliminate Short Sentences in Favor of Community-Based Alternatives

A growing body of research suggests that even short-term incarceration may increase the likelihood of future criminal justice involvement, especially for individuals who pose a low risk of re-arrest.[237] Currently, there are 176 male sentenced felony probationers and 39 male sentenced misdemeanants at OCCC.[238] Sentencing just half of those relatively low-level offenders to community-based programs instead of incarceration would reduce the jail population and save millions of dollars in new jail construction costs.

Reducing the use of short jail sentences can be an effective public safety strategy. The State should expand the availability of evidence-based alternatives to longer jail sentences and use risk and need assessment instruments to match defendants with appropriate programs.

6. The Mentally Ill Should Not Be Housed in Jails

When Task Force members visited OCCC in November 2015, there were 97 prisoners in the mental health and combined mental health/medical modules. Hand written signs over two of the cells read "Jane Doe," indicating that neither the police nor prison officials had been able to identify the occupants, one of whom was dancing about wildly while pulling on her hair. The other Jane Doe was lying on the floor of the cell in what appeared to be a catatonic state.

Anyone who has spent time with the mentally ill knows that they suffer from their disease as much as patients with physical illnesses:

> Untreated or undertreated, mentally ill prisoners suffer painful symptoms. They rant and rave, babble incoherently or huddle silently in their cells. They talk to invisible companions and live in worlds constructed of hallucinations. They lash out without provocation and often refuse to obey orders. They beat their heads against cell walls, cover themselves with feces, and self-mutilate until their bodies are riddled with scars. Many attempt suicide; some succeed.[239]

When correctional officers are in charge of the mentally ill, things often go wrong. Nothing illustrates this better than the findings of the United States Department of Justice team that conducted an on-site inspection of OCCC in 2005.

They found, among other things, that OCCC staff:

- Subjected detainees with mental illness to harmful methods of isolation, seclusion, and restraint.
- Used psychotropic medications as punishment.
- Used a practice they called "therapeutic lockdown" to punish detainees by putting them in solitary confinement and denying them contact with mental health staff.
- Failed to assess and monitor suicide watch detainees in a timely manner. While in isolation and on suicide watch, detainees did not have sufficient contact with security and mental health staff to provide constitutionally-required care.
- Failed to provide detainees with constitutionally adequate mental health treatment or therapy programs and services.
- Failed to provide detainees adequate discharge services, increasing the likelihood of detainees being reincarcerated.

- Failed to adequately assess detainees' mental health needs or to provide them with adequate or needed treatments, therapies, or services.

- Lacked adequate clinical leadership or organizational structures.[240]

The Vera Institute of Justice has noted that the prevalence of people with mental illness in jail is at odds with the design, operation, and resources of most jails.

> Characterized by constant noise, bright lights, an ever-changing population, and an atmosphere of threat and violence, most jails are unlikely to offer any respite for people with mental illness. According to the latest available data, 83 percent of jail inmates with mental illness did not receive mental health care after admission. The lack of treatment in a chaotic environment contributes to a worsening state of illness and is a major reason why those with mental illness in jail are more likely to be placed in solitary confinement, either as punishment for breaking rules or for their own protection since they are also more likely to be victimized.[241]
>
> While most people with serious mental illness in jails, both men and women, enter jail charged with minor, non-violent crimes, they end up staying in jail for longer periods of time. In Los Angeles, for example, Vera found that users of the Department of Mental Health's services on average spent more than twice as much time in custody than did the general custodial population—43 days and 18 days respectively.[242]

The Task Force believes that mentally ill detainees should be housed in a separate facility that follows best psychiatric practices and provides humane treatment.

We also note that the Department of Public Safety has recommended expanded residential service programs for individuals with co-occurring mental illness and substance abuse disorders, and a statutory requirement that fitness examinations be completed within 30 days. Currently, the examinations can take up to four months.[243]

CHAPTER 16

DESIGNING JUSTICE—CREATING MORE HUMANE AND REHABILITATIVE JAILS

Jails as we know them are obsolete – they are based on outmoded ideas and are not suitable to current challenges.

—Ken Ricci, architect and national jail expert

Although PSD's 2016 Report to the Legislature says that it has already determined the vision, nature, scale, capacity, and key features of the new jail, they have not made that information public, except for capacity (1,380 beds). The following are some important design issues that should be considered for any new jail:

Vision Statement

A large percentage of the jail population consists of people who are awaiting trial. They have not been convicted of a crim, and they are are preseumed innocent. They should not be treated as criminal because they are not criminals, and the design and operation of the new jail should reflect that fact. The jail design should be non-punitive and should respect the dignity of every person admitted to the facility.

Capacity

As noted above, the State should establish and expand "off ramps" such as LEAD to reduce the number of beds needed for the new jail. The projected jail population should be reduced by bail reform, better risk assessment instruments, improved case management, faster paperwork processing, reducing the HOPE Probation population, shorter sentences for low level offenders, and moving the mentally ill to an appropriate non-carceral setting for treatment.

Clustered Housing and Direct Security

Clustered housing refers to a design in which single cells of similarly classified inmates are arranged around a central living area used for dining, case management, programs, and recreation.[244]

Direct security refers to a management/architectural design in which corrections officers are stationed in the inmate residential area.[245] Clustered housing combined with dynamic security provides improved opportunities for staff to interact with inmates in a friendly, helpful, and supportive way. By reducing the physical barriers between staff and inmates, dynamic security helps staff to strengthen communication with inmates and identify problems before they escalate.

Smart Design

Architect and jail expert Ken Ricci has noted that a large percentage of those admitted to jail are diagnosed as having mental health issues, and therefore it is important to have judges and mental health workers on site at the jail to quickly assess detainees, and either send them to a secure facility if they are dangerous, release them if they are not a risk to public safety, or get them to a hospital or clinic for treatment if they are mentally ill. Such decisions should be made within 24 hours in most cases. New jails should not "replicate the discredited warehouse model"[246] now found in many cities (including Honolulu). Further, large-capacity, high-rise jails are "conceptually deficient and operationally obsolete" at the outset. Jails in the 21st century should be "smaller, smarter, greener, and kinder."[247]

Large-capacity, high-rise jails are "conceptually deficient and operationally obsolete". Jails in the 21st century should be"smaller, smarter, greener, and kinder " – *Ken Ricci, Architect*

Site Selection

How should the jail relate to the broader community? Should it be built in an isolated location to satisfy the not-in-my-backyard mentality? Or can a well-designed jail benefit the community of which it is a part?

The City of New York is exploring ways to reconnect jails to the urban environment and provide economic opportunities to nearby business such as markets, restaurants, and retail shops that can appeal to the many people who frequent the jail, including lawyers, doctors, teachers, clergy, volunteers, service providers, members of the parole board, administrators, guards, social workers, police, sheriffs, and the families of prisoners.[248]

Wrapping Old Ideas in A New Package Will Not Improve Public Safety

PSD and DAGS have spent millions of dollars on the preliminary design and site selection for a new jail, but they have not focused on the most important elements of jail planning, which are: (1) engaging the community in a meaningful way; (2) finding ways to reduce the jail population; and (3) designing a jail that meets the needs of the community and reflects its core values. Unless PSD, DAGS, and their consultants change course quickly, we have no doubt that the new jail will have a slick modern look, but it will amount to nothing more than a repackaging of all the problems and bad ideas of the old jail, and like the old jail, it will create bad outcomes for the next half century or more.

The jail that the State is planning will be a relic of the past the moment it is completed, because no matter how modern it looks from the outside, it will be based on outmoded and obsolete ideas and a failed planning process. The Legislature should recognize this and **order** PSD and DAGS to start the jail planning process over again and focus on building a smart, small, and humane 21st century jail instead of the monolithic 19th century jail that is now on the drawing boards.

CHAPTER 17

CONCLUSION AND RECOMMENDATIONS

Adopting the recommendations in this report will result in a correctional system that represents the core values of Hawai‘i’s people, reduces the prison population and recidivism rate, and makes our communities safer. The Task Force also believes that this is the most cost-effective and sustainable path for the future, and it is in line with the reforms taking place in other states as more people come to realize that a punitive and retributive correctional system simply does not work. The opportunities for real and lasting change in our correctional are all within reach, and we hope Hawai‘i will join the many cities, states, and countries that are reducing their jail and prison populations and revitalizing their communities with the savings that accrue from smarter criminal justice policies. For example:

- In Oklahoma City, a Task Force created by the Chamber of Commerce and led by NBA team owner Clay Bennett is at the forefront of jail reform. Even though jails are “outside the chamber’s wheelhouse,” the city’s business leaders felt they had no choice but to get involved: “The jail is filled with mothers, poor people who are addicted or mentally ill. Until we fix this, I don’t care what else we’ve done. We’ve failed,” Bennett said.[249] The Task Force’s goal was to create a local justice system that reflected the community’s values of “fairness, compassion and good governance” and create a jail that is a safe and humane place for both staff and inmates.[250] With the assistance of the Vera Justice Institute, the Oklahoma City Task Force developed, and are starting to implement, strategies to reduce their jail population and create a more equitable, humane, and cost-effective justice system.[251]

- The City of New York is home to one of the country’s largest and most notorious jails—Rikers Island. In 2016, the Speaker of the City Council decided that something had to be done about the jail, and turned to Judge Jonathan Lippman, the retired Chief Judge of the New York Court of Appeals. Judge Lippman formed a commission that developed a brilliant and comprehensive plan to replace the Rikers Island jail with smaller, safer, and more humane community jails in each of the city’s five boroughs, and to completely rethink incarceration and jail design.[252] The commission now has full-time staff and is working with city and state officials to implement its recommendations.[253]

- West Virginia's prison population increased 50% between 2002 and 2012, and was projected to grow an additional 24% by 2018. Recognizing that such increases were unacceptable, state leaders, working with the Council of State Governments Justice Center, developed a data-driven policy framework to reduce corrections spending and increase public safety. West Virginia focused on expanding drug courts and substance abuse counselling, and providing inmates with greater supervision after release.[254] As a result of these and other policies, the state brought its incarceration rate under control and avoided having to spend $200 million on a new prison.[255]

- Texas is the prototypical "lock'em up, tough on crime" state, which is why, in 2007, it desperately needed 17,000 new prison beds at a cost of more than $2 billion.[256] Instead of building new prisons and sticking taxpayers with the bill, state leaders studied the drivers of prison growth and researched effective approaches to reducing recidivism.[257] After completing a lengthy survey, legislators adopted a "justice reinvestment" package for treatment and diversion programs designed to stop prison expansion while protecting public safety. Texas expanded its specialty courts from nine to more that 160, reduced parole revocations by 39%,[258] built hundreds of new halfway house and substance abuse treatment beds, and capped parole caseloads at 75 to ensure closer supervision.[259] The result was that probation failures fell,[260] parolees committed fewer crimes,[261] the Texas crime rate fell faster than the national rate,[262] the Texas government saved $2 billion, and for the first time in modern history, instead of building new prisons, Texas closed or shut down nine juvenile detention facilities.[263]

These are but a few of the dozens of success stories from across the country where communities have come together to address the forces driving up jail and prison populations and costs. Instead of building new jails and prisons, they have reformed their bail systems, reduced sentences for low-level offenses, increased the availability of mental health and substance abuse treatment, focused on diverting the poor and mentally ill from the criminal justice system, strengthened reentry programs, expanded drug and mental health courts, and adopted community-based alternatives to prison that help, heal, educate, and support rather than punish.

Mai nānā ʻinoʻino
Behold not with malevolence
Nā hewa o kānaka
The sins of man
Akā e huekala
But forgive
A maʻemaʻe no
And cleanse[*]

[*] *Ka Aloha O Ka Haku*, also known as "Liliʻuokalani's Prayer" was composed by Queen Liliʻuokalani on March 22, 1895 while imprisoned in ʻIolani Palace following the overthrow of her government by sugar planters and the United States Navy.

RECOMMENDATIONS OF THE HCR 85 TASK FORCE

1. Transition to a more effective and sustainable correctional model that focuses on rehabilitation rather than punishment.

Related Recommendations

A. Rehabilitation should be the primary mission of the Department of Public Safety ("PSD"). PSD's vision statement, mission statement, and departmental goals and objectives should clearly and explicitly reflect that mission and endorse the principle that rehabilitation is the most effective means of reducing recidivism and making our communities safer.

B. The Hawai‘i criminal justice system (courts, corrections, parole, probation, and attorney general) should be guided by the following principles:

i. The best way to make our communities safer is to prevent crime from happening in the first place. To do that, we must develop, fund, and support programs and institutions that address the root causes of crime in our communities.

ii. The criminal justice system should be grounded in Hawai‘i's core values and recognize the inherent worth of every person. It should not just administer laws and maintain order, it should develop policies and programs that strengthen, restore, and repair our communities and make them safer.

iii. The criminal justice system should focus on accountability and rehabilitation instead of retribution and punishment.

C. The basic elements of the rehabilitative correctional system should include:

i. Loss of freedom should be the only punishment of a prison sentence. Conditions within the prison should not be punitive. Prisoners should be treated with dignity and respect and be provided with the skills they need to make a successful transition back into the community.

ii. Prison staff should be retrained to support the rehabilitative process. The training should, at a minimum, include psychology, ethics, law, and the principles of dynamic security. Prison staff should be selected on the basis of their ability to help inmates overcome criminogenic behavior and staff should serve as role models, counselors, and mentors for inmates.

iii. The correctional system should reflect Hawai‘i’s core values, particularly the Aloha Spirit as defined in §5-7.5, Haw. Rev. Stat.

iv. The State should adopt the four key elements of the highly successful Norwegian/European correctional system, namely:

a. Normality Principle – Conditions inside of prisons should mirror conditions on the outside to the greatest extent possible. This avoids “institutionalizing” prisoners and better prepares them for release.

b. Dynamic Security – Guards should have close, supportive, and continuous interaction with prisoners.

c. Import Model – The government agencies that deliver services to the general public should also serve prisoners.

d. Progression Toward Reintegration – Prisoners should proceed towards release in a systematic way, going from high security to lower security, and finally to release, unless security reasons dictate otherwise.

2. Adopt a comprehensive strategy to address the overrepresentation of Native Hawaiians in the criminal justice and correctional systems.

Related Recommendations

A. Break the cycle of intergenerational incarceration of Native Hawaiians starting with improvements to the juvenile justice system such as those recommended by Dr. Karen Umemoto and her colleagues at the University of Hawai‘i in their report *Disproportionate Minority Contact in the Hawai‘i Juvenile Justice System 2000-2010*.

The recommendations, broadly stated, fall into four categories:

i. Build a more comprehensive, collaborative, and restorative juvenile justice system to divert youth away from the juvenile system and toward pathways of success.

ii. Improve outcomes for Native Hawaiian youth at all critical decision points in the juvenile justice system: arrest, detention, prosecution, sentencing, probation and protective supervision placement, incarceration, and reentry.

iii. Utilize anti-bias and youth development training.

iv. Improve data collection and conduct further research to improve outcomes for Native Hawaiian youth.

B. To address the overrepresentation of Native Hawaiian adults in the criminal justice and correctional system, the State should:

i. Create cultural courts in each judicial circuit to divert Native Hawaiians from prison and promote rehabilitation.

ii. Fund at least one full-time position to coordinate Native Hawaiian cultural, educational, and religious programming in all PSD facilities. Cultural practices should not be inhibited by exaggerated security concerns.

iii. Expand Native Hawaiian educational programs in the prison system. The curricula should include, at a minimum, Hawaiian history, culture, language, dance, and religion.

iv. Make culturally relevant reentry programs available to Native Hawaiians through:

a. Drop-in and/or residential wellness centers rooted in Native Hawaiian values, practices, and principles.

b. Case navigators that provide ongoing support to recently released prisoners.

c. Drop-in and residential drug treatment programs.

d. Places that allow Native Hawaiians to engage in land and ocean-based activities, including growing their own food.

C. Implement the recommendations of the 2012 Native Hawaiian Justice Task Force.

3. Set numerical goals and a timetable for reducing Hawai‘i’s prison population, and in particular, the number and percent of Native Hawaiians in the correctional system.

4. Create a Sentencing Reform Commission to review the penal code with the goal of downgrading offenses and shortening sentences.

Related Recommendations

A. Among the changes to the penal code that the Sentencing Reform Commission should consider are:

i. Making certain offenses eligible for community-based sentences.

ii. Reducing the length and severity of custodial sentences by redefining or reclassifying crimes or repealing mandatory penalties.

iii. Shortening lengths of stay in prison by expanding opportunities to earn sentence credits, which shave off time in custody and advance parole eligibility.

iv. Reducing the number of people entering jails and prison for violations of community supervision by implementing evidence-based practices such as graduated responses to violations.

5. Create an Independent Prison Oversight and Implementation Commission

Related Recommendations

A. Independent prison oversight is a “best practice.” Hawai‘i should create an Independent Prison Oversight and Implementation Commission with authority to:

i. Examine every part of every correctional facility.

ii. Visit every correctional facility without prior notice.

iii. Conduct confidential interviews with prisoners and staff.

iv. Review all records, except that special procedures may be implemented for highly confidential information.

B. The Commission should be adequately funded and staffed, and the Executive Director should be appointed by an elected official to a fixed term, confirmed by the Hawaii State Senate, and subject to removal only for cause.

C. Procedures should be in place to enable inmates and staff to communicate confidentially, and adequate safeguards should be established to protect those who communicate with the Commission from retaliation.

D. The Commission's reports should be readily available to the public, posted on the internet, and be disseminated to the media, the Legislature, and top elected officials.

E. To guard against the risk that monitoring reports are ignored by correctional officials, facility administrators should be required to respond publicly to the reports and to develop and implement in a timely way action plans to correct identified problems.

F. The Commission should oversee the transition from a punitive to a rehabilitative correctional system and ensure that prison reform laws and policies are promptly, faithfully, and effectively implemented.

6. Create a Corrections Academy to educate and train correctional workers at all levels.

Related Recommendations

A. The Corrections Academy should train and educate correctional administrators, staff, guards, parole and probation officers, judges, and Judiciary staff.

B. A primary mission of the Corrections Academy staff should be to stay abreast of the correctional literature and maintain a library of studies and reports on best practices. The Corrections Academy should independently collect and analyze correctional data and recommend changes to the correctional system based on data analysis and best practices.

C. The University of Hawai‘i at Mānoa should be encouraged to offer bachelor and master degrees in criminal justice. This would provide a reservoir of highly educated correctional professionals who can staff, support, and continuously improve the correctional system.

7. Improve in-custody programs by focusing on evidence-based programs that will prepare prisoners for reentry into society.

Related Recommendations

A. Many of the programs offered in Hawai‘i’s prisons are being evaluated by the Research and Evaluation in Public Safety Project (REPS) at the University of Hawai‘I’s Social Science Research Institute. PSD should make the evaluations public, and eliminate programs that are not successful and replace them with programs that have a proven track record of success.

B. Hawai‘i should improve in-custody programs by:

i. Expanding restorative justice programs.

ii. Expanding opportunities for prisoners to take community college courses.

iii. Creating a prison-to-college pipeline.

iv. Ensuring that every prisoner is functionally literate by the time they are released.

v. Adequately funding Hawai‘i’s sex offender treatment program.

vi. Expanding and strengthening visitation and family contacts.

vii. Evaluating programs on a continuous basis and making those evaluations public.

8. Improve the reentry process and support the development of new transitional housing.

Related Recommendations

A. Adopt the following principles of reentry (based on principles developed by President Barack Obama’s Justice Department):

i. Planning for reentry should begin at the time of admission. Every inmate should be provided with an individualized reentry plan tailored to his or her risk of recidivism and programmatic needs. Plans should be updated and revised continuously until the time of release.

ii. While incarcerated, each inmate should be provided with education, employment training, life skills training, substance abuse treatment, mental health treatment, and other programs that target their criminogenic needs and maximize the likelihood of success upon release.

a. The curricula for these programs should be grounded in evidence-based programs that reduce recidivism.

b. There should be a standardization of evidence-based programming across facilities so that an inmate can complete programs even if he or she is transferred from one facility to another.

c. To remedy gaps in education and employment skills, prisons should ensure that education programs expand the quality, scope, and delivery of the academic and job training curricula, particularly the curricula targeted to those with literacy and special learning needs.

iii. While incarcerated, each inmate should be provided the resources and opportunity to build and maintain family relationships, strengthening the support system available upon release.

a. Create comfortable, friendly space for contact visits with family. Use video services only when family members are unable to visit in person. Telephone calls to family members should be encouraged and provided to inmates free of charge.

b. Expand the use of furloughs to visit family, children, and significant others.

iv. Develop new programs to support and aid children of incarcerated parents.

v. During the transition back to the community, halfway houses and supervised release programs should ensure individualized continuity of care.

a. Contract with non-profit corporations to increase the number of halfway houses.

b. Make the halfway houses therapeutic centers where gains made in prison can be sustained and strengthened.

vi. Before leaving prison, every inmate should be provided with comprehensive reentry-related information and access to the resources necessary to succeed in the community.

B. PSD should create a unit dedicated to finding appropriate housing for difficult-to-place inmates such as those who are elderly, disabled, mentally ill, or have chronic illnesses. This unit should work with state and federal agencies to establish protocols that will quickly and efficiently process applications for health insurance and other benefits, and quickly respond to requests for medical records and other information from hospitals, care homes, and hospices. When a bed in a care home becomes available, PSD and the Paroling Authority must be able to quickly to arrange for prisoners to be admitted because most facilities cannot afford to keep a bed open for more than a day or two.

C. The State should designate Leahi Hospital as the default placement for compassionate release prisoners whose condition requires a Skilled Nursing Facility (SNF) or an Intermediate Care Facility (ICF).

D. At the time of release, all prisoners should have:

i. A decent place to live.

ii. A state identification card, a social security card, and a birth certificate.

iii. Health insurance and, if necessary, public assistance benefits.

iv. Employment if the individual is employable.

v. Ongoing addiction and/or mental health treatment if necessary.

vi. Access to wellness centers rooted in Native Hawaiian values.

vii. Access to higher education or programs to complete a secondary education.

E. Review statutes that erect barriers to reentry and determine whether they should be continued, amended, or terminated.

F. Expand and improve transitional housing capacity through partnerships with non-profit corporations.

G. Streamline the State's compassionate release process.

9. Expand Hawai‘i’s treatment courts to accommodate more offenders.

10. Improve conditions for incarcerated women.

A. Develop and implement more gender-specific programs for women.

B. Developand fund additional Fernhurst-style facilities to accommodate more women on work furlough and recently paroled women.

11. Support federal justice reform legislation that would benefit Hawai‘i.

A. The Restoring Education and Learning Act (REAL).

B. The Second Chance Pell Pilot Program.

C. Funding for the Prison Rape Elimination Act.

D. Legislation to end collateral consequences for justice-involved individuals.

E. Legislation to streamline federal compassionate release.

12. Develop a realistic plan to stop using private prisons and bring our prisoners on the mainland home. The plan should be a collaborative effort by government officials and public stakeholders and should be part of a comprehensive strategic plan that includes the replacement of OCCC and the transition to a rehabilitative correctional model.

13. Stop planning a large capacity jail to replace OCCC and establish a working group of stakeholders and government officials to rethink the jail issue and create a jail that is smaller and smarter than the one now under consideration.

Related Recommendations

A. Before committing to the size, design, or location of the new jail, the State—working collaboratively with stakeholders and the public—should determine the vision, goals, objectives, and philosophy of the new jail, how

it will operate, the types of people it will house, the programs it will operate, the services it will provide, and how it will provide them.

B. Law Enforcement Assisted Diversion (LEAD) is a highly successful program to divert low-level, non-violent offenders away from the criminal justice system and provide them with individualized case management services. A LEAD pilot program is now underway in Honolulu's Chinatown. If, as we suspect, the program is successful, LEAD should be expanded to other neighborhoods and other communities throughout the state.

C. The jail should be designed with clustered housing.

The clustered housing model is a best practice that calls for the use of single cells arranged around a central living area or "pod." Services are provided in the living area or "community centers" where individuals can move about freely.

D. The jail should be designed for direct supervision.

A "direct supervision" jail places a correctional officer within the "pod" or central living area where he or she can see the inmates and relate to them on a personal level. This increases the officer's ability to closely monitor activity within the unit and detect problems before they escalate. If properly implemented, direct supervision can significantly reduce violence and create a safer environment for staff and inmates.

E. Reduce the jail population by eliminating short jail sentences in favor of community-based alternatives.

A growing body of research suggests that short-term incarceration increases the likelihood of future criminal justice involvement, especially for individuals who pose a low risk of re-arrest. If half of OCCC's low level offenders were sentenced to community-based programs instead of jail, it would reduce the jail population and the likelihood of those individuals reoffending.

F. Bail reform.

Reform Hawai'i's bail system to ensure that no pretrial detainees are detained in jail solely because they are unable to post bail or obtain a bail bond. This would significantly reduce the jail population.

G. Improve pretrial procedures and case processing.

Hawai‘i’s pretrial procedures should be streamlined so that defendants spend no more than 72 hours in jail before being released on bail, bond, their own recognizance, or supervised release.

H. The mentally ill should not be housed in jail.

In 2016, the Honolulu Police Department made 16,000 arrests, of which 6,880 or 43% were homeless people. The police department has also reported that 72% of the homeless detainees that came through the Honolulu cellblock were mentally ill or under the influence of drugs

PSD estimates that 9.5% to 12% of all OCCC inmates are mentally ill. That means that as of July 31, 2018, when the total OCCC population was 1,397, there were between 133 and 168 mentally ill individuals in the jail. On average, mentally ill individuals cycle through the jail three times per year, with some being incarcerated up to eight times per year. PSD estimates that over the past year, approximately 696 Severe and Persistently Mentally Ill (SPMI) people were incarcerated at OCCC, and that 450 to 600 of those individuals were at one time or another on suicide watch. Additionally, PSD estimates that there were 38 inmates who were considered mentally ill, but not Severe or Persistent. In addition to those diagnosed as SPMI, many among the OCCC population suffer from either Antisocial and/or Borderline Personality Disorders combined with Substance Use and Abuse Disorders.

The mentally ill should not be housed in jails; they should be housed in separate facilities staffed by mental health professionals.

I. A judge and mental health workers should be on-site at the jail to facilitate release or referral to a mental health center.

J. Create alternative (non-jail) housing for sanctioned HOPE Probation violators and low-risk parole violators.

HOPE Probation is a program that seeks to reduce the recidivism rate of high-risk probationers through the use of swift, certain, and proportional sanctions for violation of the conditions of probation. A short jail term is one of the sanctions available for HOPE Probation violations. As of July 31, 2018, there were 259 HOPE Probation violators at OCCC.

The Task Force questions whether it is necessary and cost effective to put probation violators in jail. We recommend that the State consider using minimum security, non-jail sanctions for most HOPE Probation violators and at least some of the 476 parole violators who are in prison. These

probation and select parole violators could be housed in dormitories built as part of the OCCC replacement project or, if circumstances warrant, assigned to community-based facilities where, in either case, the reasons they violated the conditions of probation or parole could be addressed and hopefully remedied.

ENDNOTES

[1] E. Ann Carson and Joseph Mulako-Wangota, "Count of Year End Total Jurisdiction Population (Hawaii)," *Bureau of Justice Statistics.* Report generated using the Corrections Statistical Analysis Tool (CSAT) – Prisoners, (August 13, 2018), https://www.bjs.gov/index.cfm?ty=nps.

[2] Bureau of Justice Statistics, *Historical Statistics on Prisoners in State and Federal Institutions Yearend 1925-86*, by Patrick A. Langan, John V. Fundis, Lawrence A. Greenfeld, and Victoria W. Schneider, NCJ -111098 (Washington, D.C.: May 1988), 2, https://www.ncjrs.gov/pdffiles1/digitization/111098ncjrs.pdf.

[3] Hawaii Department of Public Safety (PSD), End of Month Population Report, July 31, 2018 (hereafter cited as PSD Monthly Population Report), http://dps.hawaii.gov/about/divisions/corrections/.

[4] World Prison Brief, Institute for Criminal Policy Research (ICPR), Data for Sweden, http://www.prisonstudies.org/country/sweden. In 2017, Sweden's population was 10.07 million compared to Hawai'i's population of 1.43 million. *See* World Bank Data, "Population Total Sweden 2017," https://data.worldbank.org/indicator/SP.POP.TOTL?end=2017&locations=SE&start=1981; United States Census Bureau, Quick Facts Hawaii, "Hawaii population estimates, July 1, 2017," https://www.census.gov/quickfacts/hi.

[5] The incarceration rate is calculated by dividing the prison population by the general population and multiplying by 100,000. As of July 31, 2018, Hawai'i's combined jail and prison population was 5,570 (*see* note 3) and the estimated state population was 1.43 million. World Population Review, Hawaii population 2018, http://worldpopulationreview.com/states/hawaii-population/.

[6] Council of State Governments Justice Center, *50-State Data on Public Safety, Hawaii State Workbook: Analyses to Inform Public Safety Strategies*, March 2018), 60. The Council of State Governments Justice Center notes that between 2005 and 2015 Hawai'i's prison population had the sixth-largest decrease in the country, and that Hawai'i's incarceration rate is the thirty-ninth highest in the country.

[7] World Prison Brief, Institute for Criminal Policy Research (ICPR), Highest to Lowest-Prison Population Rate, Entire World, http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All.

[8] Hawaii Paroling Authority, "2017 Annual Statistical Report," Table III Total Parole Caseload, https://dps.hawaii.gov/wp-content/uploads/2017/11/2017-Annual-Report.pdf.

[9] *See* Hawaii State Judiciary, "Hawaii State Judiciary 2017 Annual Report," 55, http://www.courts.state.hi.us/wp-content/uploads/2016/03/2017_Judiciary_Annual_Report.pdf.

[10] *See* National Institute of Justice, Office of Justice Programs, "Recidivism," last modified June 17, 2014, https://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx.

[11] National Institute of Justice, "Recidivism."

[12] Timothy Wong, "2017 Recidivism Update," *State of Hawaii Interagency Council on Intermediate Sanctions (ICIS),* July 2018, https://icis.hawaii.gov/wp-content/uploads/2018/08/Hawaii-Revidivism-2017.pdf.

[13] Wong, "Recidivism Update," 3.

[14] Wong, "Recidivism Update," 4.

[15] Wong, "Recidivism Update," 4.

[16] Wong, "Recidivism Update," 21.

[17] Wong, "Recidivism Update," 16.

[18] Wong, "Recidivism Update," 17.

[19] Wong, "Recidivism Update," 18.

[20] Lindsay Hixson, Bradford B. Hepler, and Myoung Ouk Kim, "The Native Hawaiian and Other Pacific Islander Population: 2010" (Washington, D.C.: United States Census Bureau, May 2012), 19, https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf. The 21.3% includes Native Hawaiians alone and in any combination with other races.

[21] Hawaii Department of Public Safety (PSD), System Wide End of Month Data, July 2018, (hereafter cited as PSD System Wide Data). As of the end of July 2018, 36.96% of Hawai'i's combined jail/prison population were Hawaiians and part-Hawaiians.

[22] Justice Policy Institute, Myron B. Thompson School of Social Work, and Georgetown Law, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (Honolulu: Office of Hawaiian Affairs, 2010), 17, http://www.justicepolicy.org/uploads/justicepolicy/documents/10-09_rep_disparatetreatmentofnativehawaiians_rd-ac.pdf.

[23] Native Hawaiian Justice Task Force, *The Native Hawaiian Justice Task Force Report,* 2012, 14, http://lrbhawaii.info/reports/legrpts/oha/2013/act170_slh11.pdf. The report notes prior studies that had been conducted on the impact of the criminal justice system on Native Hawaiians. Among the many studies on this subject are: *Study of Native Hawaiians in the Criminal Justice System* (Honolulu: Alu Like, 1977); *Crime and Justice Related to Hawaiians and Part-Hawaiians in the State of Hawai'i* (Honolulu: Alu Like, 1981); *Criminal Justice and Hawaiians in the 1990's: Ethnic Differences in Imprisonment Rates in the State of Hawai'i* (Honolulu: Alu Like, 1994); *Report of the Working Conference on Native Hawaiians in the*

Criminal Justice System (Honolulu: Alu Like, 1994); *Action plan regarding Native Hawaiians in the criminal justice system*: *Presented to the Eighteenth Legislature, State of Hawai'i* (Honolulu: Alu Like, 1995); and *Hawaiian Youth in the Juvenile Justice System* (Honolulu: Alu Like, 1998).

[24] PSD Monthly Population Report, July 31, 2018. The Department of Public Safety publishes the "design capacity" and "operational bed capacity" of each correctional facility in the State. The "design capacity" is the number of prisoners the facility was designed to hold. The "operational bed capacity" is the number of inmates that the Department has determined that the facility can accommodate based on its staffing, programs, and services. (George King, PSD statistician, email to Robert Merce, December 18, 2017). The Department of Public Safety also publishes an end of month "head count" and "assigned count" for each facility. The head count is the number of inmates at the facility when the head count is taken. The assigned count is the number of inmates assigned to the facility. The head count is typically lower than the assigned count because, for example, an inmate who is assigned to the facility may be hospitalized and therefore absent from the head count. The Department of Public Safety measures overcrowding by dividing the head count by the operational capacity, and we have used that method in this report. We note, however, that this is a very conservative method since in some cases, the operational capacity is significantly higher than the design capacity, and the head count is often lower than the assigned count. For example, the Halawa Medium Security Facility (HMSF) has a design capacity of 496, but an "operational bed capacity" of 992. Using the operational bed capacity instead of the design capacity and the head count instead of the assigned count in most cases will yield a lower overcrowding figure.

[25] Comment by Nolan Espinda, Director of Public Safety, during tour of OCCC by House Committee on Public Safety and HCR 85 Task Force members, November 17, 2015.

[26] On January 6, 2017, the American Civil Liberties Union (ACLU) of Hawai'i filed a Complaint with the United States Department of Justice requesting an investigation of overcrowding and other allegedly unconstitutional conditions at Hawai'i's prisons. *See* ACLU-Hawaii letter to Vanita Gupta and Steven Rosenbaum, January 6, 2017, https://acluhawaii.files.wordpress.com/2017/01/acluhidojcomplaintprisonovercrowding.pdf. Among other things, the complaint alleges that Hawai'i's correctional facilities continue to "overtax virtually every constitutionally required support system and service and creates a harmful and intolerable environment," rendering prison officials incapable of providing inmates with adequate shelter, sanitation, medical and mental health care, food services, and protection from harm. The complaint specifically alleges that conditions at Hawai'i's prisons violate the Eighth and Fourteenth Amendments to the United States Constitution and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997 et seq. The complaint requests the Department of Justice to investigate the claims in the complaint, "order the State of Hawaii to cease its unconstitutional policies and practices, and if necessary, take appropriate legal actions."

[27] PSD System Wide Data, July 2018.

[28] PSD System Wide Data, July 2018.

[29] PSD System Wide Data, July 2018.

[30] PSD System Wide Data, July 2018 (As of July 31, 2018, there were 661 inmates age 55 or older in Hawai‘i’s correctional system).

[31] Brie A. Williams, Rebecca L. Sudore, Robert Greifinger, and R. Sean Morrison, “Balancing Punishment and Compassion for Seriously Ill Prisoners,” *Annals of Internal Medicine*, vol. 155, no. 2 (2011): 122-126.

[32] Williams, “Balancing Punishment and Compassion,” 123.

[33] 131 Hawai‘i 239, 317 P.3d 683 (Haw. App. 2013). In 2013, former prisoner Gregory Slingluff was awarded approximately $1 million for injuries he sustained when prison doctors failed to diagnose and treat an infection of his scrotum.

[34] For example, in 2016, former OCCC prisoner Aaron Persin settled his claims against the State of Hawaii for approximately $7.2 million. The claims stemmed from a scratch he sustained at OCCC which became infected and resulted in the loss of both hands and both feet. *See* Brent Remadna, “State pays millions in settlement to amputee who lost limbs while in custody,” *KHON*, January 26, 2016.

[35] Letter from Nolan Espinda (PSD Director) to HCR 85 Task Force Chair Michael D. Wilson, March 6, 2018, Attachment A.

[36] Nolan Espinda, letter.

[37] PSD Monthly Population Report, June 30, 2017.

[38] *See* Leila Fujimori, “Prison questioned about inmate's suicide,” *Honolulu Star-Advertiser,* August 6, 2017, and Rick Daysog, “Deceased inmate’s father calls for reform after rash of Halawa suicides,” *Hawaii News Now,* September 28, 2018.

[39] State of Hawaii Department of Budget and Finance, “Executive Biennium Budget, Fiscal Biennium 2017-2019, Operating and Capital Budget-Department of Public Safety,” https://budget.hawaii.gov/wp-content/uploads/2016/12/24.-Department-of-Public-Safety-FB17-19-PFP.pdf.

[40] State of Hawaii Department of Accounting and General Services (DAGS), “Final Environmental Impact Statement for the Replacement of the Oahu Community Correctional Center, Expansion of Women's Community Correctional Center, and New Department of Agriculture Animal Quarantine Station,” prepared by PBR Hawaii and Associations Inc. on behalf of Architects Hawaii, Ltd. (June 26, 2018): 49 and 150, https://dps.hawaii.gov/wp-content/uploads/2018/07/2018-07-08-OA-FEIS-Replacement-of-Oahu-Community-Correctional-Center.pdf.

[41] DAGS, *Final EIS for Replacement of OCCC*, 49.

[42] Hawaii Department of Public Safety, *Pre-Assessent Consultations-New MediumSecurity Housing Units at Kauai, Maui, and Hawaii Community Correctional Centers*, July 30, 2017, https://dps.hawaii.gov/wp-content/uploads/2018/07/PreAssess-Consultations-Neighbor-Island-CCC-Housing-7-30-18.pdf

[43] Mary Kawena Pukui and Samuel H. Ebert, *Hawaiian Dictionary: Hawaiian-English, English-Hawaiian* (Honolulu: University of Hawaii Press, 1986), 21.

[44] All of the proverbs are from Mary Kawena Pukui, *'Ōlelo No'eau, Hawaiian Proverbs & Poetical Sayings,* Bernice P. Bishop Museum Special Publication No. 71 (Honolulu: Bishop Museum Press, 1983).

[45] Pukui, *Hawaiian Dictionary*, 358.

[46] Pukui, *Hawaiian Dictionary*, 341.

[47] Richard Kekumuikawaiokeola Paglinawan and Lynette Kahikili Paglinawan, "Living Hawaiian Rituals: Lua, Ho'oponopono, and Social Work," *Hūlili: Multidisciplinary Research on Hawaiian Well-Being,* vol. 8 (Honolulu: Kamehameha Schools, 2012), 11-28.

[48] Haw. Rev. Stat. §5-7.5(a).

[49] Haw. Rev. Stat. §5-7.5 (a).

[50] Ragnar Kristoffersen, "Relapse study in the correctional services of the Nordic countries. Key results and perspectives," *EuroVisa*, vol. 2, no. 3 (2013), 169, https://brage.bibsys.no/xmlui/bitstream/handle/11250/160435/EuroVista-vol2-no3-6-Kristofferson-edit.pdf?sequence=3&isAllowed=y.

[51] World Prison Brief, Institute for Criminal Policy Research (ICPR), Data for Norway, http://www.prisonstudies.org/country/norway. The incarceration rate is based on an estimated national population of 5.32 million at the end of September 2018.

[52] Anita Hurlburt, a student at the University of Hawai'i's William S. Richardson School of Law, has written an excellent senior thesis on how the humane, evidence-based rehabilitaiton principles of the Norwegian correctional system can be applied in Hawai'i. *See* Anita H. S. Hurlburt, "Building Constructive Prison Reform on Norway's Five Pillars, Cemented with Aloha," *Asian-Pac. L. & Pol'y J.,* vol. 19, issue 2 (May 14, 2018), http://blog.hawaii.edu/aplpj/files/2018/04/APLPJ_19.2_Hurlburt.pdf.

[53] Christopher Moraff, "Can Europe Offer the U.S. a Model for Prison Reform?" *Next City,* June 19, 2014 (emphasis added), https://nextcity.org/daily/entry/us-prisons-reform-european-prisons-model. *See also* Doran Larson, "Why Scandinavian Prisons Are Superior," *The Atlantic,* September 24, 2013; Editorial Board, "Lessons From European Prisons," *New York Times,* November 7, 2013.

[54] During a tour of the Waiawa Correctional Facility on January 12, 2017, Acting Warden Sean Ornellas told Task Force members that one of the aims of the facility is to "deinstitutionalize" prisoners who have been incarcerated in Arizona and at the Halawa Correctional Facility.

[55] Norwegian Ministry of Justice and the Police, *Punishment that works – less crime – a safer society, English Summary, Report to the Storting on the Norwegian Correctional Services*, (October 2008).

[56] Norwegian Ministry of Justice and the Police, *Punishment that works*.

[57] "Fact Sheet on the Correctional Services in Norway," *U.S.-European Criminal Justice Innovation Program*, October 2015.

[58] Are Høidal, "Values and Principles For the Norwegian Correctional Service," slide show presentation to U.S.-European Criminal Justice Innovation Program, October 5, 2015.

[59] Høidal, "Values and Principles."

[60] Høidal, "Values and Principles."

[61] Høidal, "Values and Principles."

[62] Rebecca Silber, Ram Subramanian, and Maia Spotts, "Justice In Review: New Trends in State Sentencing and Corrections 2014-2015," *Vera Institute of Justice*, (Washington, D.C.: May 2016), https://www.vera.org/publications/justice-in-review-new-trends-in-state-sentencing-and-corrections-2014-2015.

[63] Dennis Schrantz, Stephen T. DeBor, and Marc Mauer, "Decarceration Strategies: How 5 States Achieved Substantial Prison Population Reductions," *The Sentencing Project* (Washington, D.C.: September 2018), https://www.sentencingproject.org/publications/decarceration-strategies-5-states-achieved-substantial-prison-population-reductions/.

[64] Council of State Governments Justice Center, "In Brief: Understanding Risk and Needs Assessment," https://csgjusticecenter.org/jr/in-brief-understanding-risk-and-needs-assessment/. "Risk and needs assessments" refers to an actuarial evaluation to guide decision making at various points across the criminal justice continuum by approximating a person's likelihood of reoffending and determining what individual criminogenic needs must be addressed to reduce that likelihood.

[65] The North Dakota correctional system has been the focus of national attention and widely covered in the media. *See e.g.*, Andrew Hazzard, "Focus On Reform: North Dakota Uses Education, Work to Prepare Prisoners For Re-entry," *Bismark Tribune,* October 14, 2017, https://bismarcktribune.com/news/state-and-regional/focus-on-reform-north-dakota-uses-education-work-to-prepare/article_2d8fc7a3-0f28-5222-a1b9-f7b3b22a9be4.html; Dashka Slater, "Prison Break: Can Norway-style prisons work in America? That's what North Dakota is trying to figure out," *Mother Jones*, July/August 2017, http://prisonlaw.com/wp-

content/uploads/2017/06/pbarticlewithout-co80.pdf; Fareed Zakaria, "Last Look: North Dakota's prison reform," *CNN*, August 6, 2017, https://www.cnn.com/videos/tv/2017/08/07/exp-gps-0806-last-look-north-dakota-prisons.cnn; David Kidd, "Tender Justice: North Dakota is conducting a prison experiment unlike anything else in the United States," *Governing*, August 2018, http://www.governing.com/topics/public-justice-safety/gov-north-dakota-prison-criminal-justice-reform.html. *See also* Prison Law Office, European-American Prison Project, http://prisonlaw.com/european-prison-project/ - bismark%20tribunehttp://bismarcktribune.com/news/state-and-regional/focus-on-reform-north-dakota-uses-education-work-to-prepare/article_2d8fc7a3-0f28-5222-a1b9-f7b3b22a9be4.html http://prisonlaw.com/european-prison-project/.

[66] After the death of Kamehameha I in 1819, a battle of the old versus the new ensued at Kuamoʻo on the Kona coast, just South of Keauhou Bay. On one side was Chief Kekuaokalani, Kamehameha I's favorite nephew, who wished to preserve the traditional Hawaiian religion and kapu. On the other were forces loyal to Prince Liholiho, heir to the throne who, along with Queen Kaʻahumanu, had disregarded the *kapu* and declared the old ways dead. When Kekuaokalani's wife, Chiefess Manono, saw her husband fall in battle, she picked up his spear and carried on the fight, chanting *Mālama kō aloha,* which means "keep your Aloha [no matter what the obstacles]." She died with her husband and hundreds of other warriors on the lava fields of Kuamoʻo, but her admonition to all Hawaiians lives on. The phrase *Mālama kō aloha* is used in this report with the permission of Chiefess Manono's descendants, including the ʻohana of renowned Hawaiian cultural practitioner Winona Beamer.

[67] Sandra Bishop-Josef, William Christeson, Natasha O'Dell Archer, Chris Beakey, and Kara Clifford, "I'm the Guy You Pay Later, Sheriffs, Chiefs and Prosecutors Urge America to Cut Crime by Investing Now in High-Quality Early Education and Care," *Fight Crime, Invest in Kids,* (2013), http://www11.maine.gov/doe/sites/maine.gov.doe/files/inline-files/ME-Im-the-Guy-Report%5B1%5D.pdf.

[68] Peter W. Greenwood, "Prevention and Intervention Programs for Juvenile Offenders," *The Future of Children*, vol. 18, no. 2 (September 2008): 185, https://www.researchgate.net/publication/49852121_Prevention_and_Intervention_Programs_for_Juvenile_Offenders.

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