

DEPARTMENT OF THE PROSECUTING ATTORNEY
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**THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR,
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i**

February 7, 2013

RE: S.B. 316; RELATING TO PUBLIC SAFETY.

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 316.

This bill permits a court to dispose of a juvenile case by referring the defendant to a restorative justice program when the court deems it would be in the best interest of the child and the child admits guilt.

First, we want to clarify on what the definition of “dispose” is as used in the bill. We have strong concerns if the intent is to simply divert cases and expunge the records.

Second, there is no definition of “restorative justice program” and no process for this program codified in the Hawaii Revised Statutes (HRS), which is of concern to the department. A true restorative justice program focuses on restoring the direct victim of the offender, such as benefitting the victim financially, psychologically, and emotionally. It also requires both parties - the offender and the victim to participate voluntarily with the objective that there is some type of concrete benefit for the victim, with the offender only receiving benefits as a by-product of the process. Nothing in this bill will ensure the true integrity of a restorative justice program. Further, there have been other programs that label themselves as restorative justice programs but have nothing to do with a true restorative justice program.

Third, the department has concerns on restorative justice programs because when the victim faces his or her offender, there is always the potential for an uncomfortable or even unsafe environment for the victim. Also, if there is no follow-up support on the offender, there will be a higher risk that the offender will re-offend.

Lastly, the court has the power to authorize informal adjustments for law violators pursuant to section 571-31.4, HRS, status offenders pursuant to section 571-31.5, HRS, and both law violators and status offenders pursuant to section 571-31.6, HRS to include other suitable methods, programs, and procedures as listed in section 571-31.4, HRS. It is not clear why it is necessary to insert an undefined "restorative justice program" in section 571-21, HRS.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 316. Thank you for the opportunity to testify on this matter.

LORENN WALKER, J.D., M.P.H.
COMMITTEE ON JUDICIARY AND LABOR

Honorable Senator Clayton Hee, Chair
Honorable Senator Maile S.L. Shimabukuro, Vice Chair
Other Honorable Committee Members

Thursday, February 7, 2013
10:00 a.m.
Conference Room 016

STRONG SUPPORT SB316 - RELATING TO JUVENILES

Please vote yes to amend HRS §571-21(b) allowing family court judges to dispose of juvenile law violation cases by referring them to a restorative justice program when it is in the best interest of juveniles who admit guilt.

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) confirms restorative justice is a *best practice* and a “model program.” <http://www.ojjdp.gov/mpg/progTypesRestorative.aspx> OJJDP also cites a comprehensive report by leading juvenile justice experts on how to improve our juvenile justice system that includes restorative justice, which provides “benefits [recidivism reduction] that exceeds costs” *Reforming Juvenile Justice: A Developmental Approach* (p. 6-21), Bonnie, Chemers & Schuck, 2012, http://www.nap.edu/catalog.php?record_id=14685.

Restorative justice, which is consistent with Native Hawaiian conflict resolution practices (naturally restorative), has been shown to work in Hawai'i. A juvenile diversion pilot program with the Honolulu Police Department, where over 100 arrested juveniles participated in restorative conferences with people they harmed including their loved ones, other direct victims, schools, and police, showed significant benefits: “Conferencing: A New Approach for Juvenile Justice in Honolulu,” *Federal Probation Journal*, Vol. 66:1, 2002. The United Nations Children’s Fund (UNICEF) also provides this paper as an example available in its *Toolkit on Diversion and Alternatives to Detention*: http://www.unicef.org/tdad/index_56513.html The research showed people who participated, and were harmed by the juveniles’ offenses, were highly satisfied with restorative conferences; the juveniles were more likely to fulfill restitution agreements made at the conferences compared to court ordered restitution; and juveniles who participated were less likely to advance into violent offenses compared to youth without conferences.

In 2007 & 2008 we conducted 12 community focus groups, which strongly supported restorative justice for youth. In addition to the HPD project, we have also conducted restorative justice research for youth and provided: in 2012 reentry and transition planning circles for juveniles incarcerated at the Hawai'i Youth Correctional Facility; in 2009 family meetings with youth charged with status offenses for the family court; and in 2008 with homeless youth at the Youth Outreach Center (YOs) developed and researched a restorative group planning process that showed positive outcomes in assisting youth achieve goals including finding employment and housing (Waikiki Youth Circles: Homeless Youth Learn Goal Setting Skills, Walker, *Journal of Family Psychotherapy*, Vol. 19(1) 2008 - paper is available at www.lorennwalker.com).

Restorative justice does not require face-to-face meetings between people harmed by crime and the people who caused it. There are a variety of effective restorative processes provide benefits without any face to face meetings (including one for crime victims who do not know who harmed them or do not wish to meet with offenders, see: Restorative Justice Without Offender Participation: A Pilot Program for Victims, Walker, International Institute for Restorative Practices, February 2004 – paper is available at www.lorennwalker.com). Please see my website www.lorennwalker.com for more information on my work and experiences with the juvenile justice system. Mahalo for your good public service.