

HAWAI'I CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

**2020 ANNUAL REPORT
DECEMBER 2020**

COMMISSION MEMBERS

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Judge Ronald Ibarra (Ret.)

ACKNOWLEDGEMENTS

The Hawaii Correctional System Oversight Commission is grateful to the many community activist and inmate family members who regularly attended our inperson and electronic meetings over the past year. Their participation enriched our discussions and contributed to this report.

We are particularly indebted to the Office of Hawaiian Affairs (OHA) and Kamaile M. Maldonado, Esq., *‘Aho Pueo Kulekele Aupuni* (Policy Advocate). Aware of the lack of staff to support the work of the Commission, OHA has been most generous in providing clerical and technical support where they could. Ms. Maldonado was a member of both the HCR 135 (2017) Task Force on Pretrial Reform and the HCR 85 (2016) Task Force on Prison Reform, and one of the contributing authors of the resulting reports submitted to the 2019 Legislature. Given her in-depth familiarity with recommendations of the HCR 135 Task Force and the subsequent hearings during the 2019 legislative session, she has significantly contributed to our discussions on the subject of pretrial reform. The section of this report on Pretrial Reform is authored by Ms. Maldonado and we are most thankful to OHA for her assistance.

A number of documents provided by participants are attached and add to the overall purpose of this report. These are:

Outbreak (August 2020), Lawyers for Equal Justice (authors Tom Helper, Stephanie Turrentine, and Isaiah Feldman-Schwartz). This report, in response to the Hawaii Supreme Court COVID-19 order concerning release of inmates to reduce overcrowding in correctional facilities, “examined data and information from Court filings and media reports to explain and evaluate the release initiative, and the reaction to it.”

Recommendations Regarding The New Jail To Replace the Oahu Community Correctional Center (OCCC), submitted by Robert Merce, Esq., on November 13, 2020. Mr. Merce was a member of both the HCR 135 (2017) Task Force on Pretrial Reform and the HCR 85 (2016) Task Force on Prison Reform, and was the primary author of the HCR 85 (2016) Task Force on Prison Reform report.

Letter dated December 29, 2020, submitted by the Office of the Public Defender to the Commission concerning the impact of the Hawai‘i Supreme Court orders and “lessons learned during the pandemic can help Hawai‘i reshape its pretrial system into one that is both fairer and more effective.”

INTRODUCTION

INTRODUCTION

The Hawaii Correctional System Oversight Commission was created by Act 179, Session Laws of Hawaii 2019, to “ensure transparency, support safe conditions for employees, inmates, and detainees, and provides positive reform towards a rehabilitative and therapeutic correctional system.” The establishment of the Commission was a result of recommendations provided by the Task Force on Prison Reform to the Hawaii State Legislature.

Background

For more than a decade, the Department of Public Safety has proposed to the Hawaii State Legislature the need to relocate and develop a new jail on Oahu to replace the aging and out-of-date Oahu Community Correctional Center, with an estimated construction cost in excess of \$500 Million. While some planning steps have been funded, the high cost of construction has inhibited any decision to move forward.

In 2016, in part to study and consider alternatives to massive construction costs, the Legislature determined “Hawaii’s correctional system can benefit from the implementation of effective incarceration policies, programs, and best practices that aim to reduce correctional spending, alleviate inmate overcrowding at correctional facilities, lower recidivism, and address other challenges.” To that end, the Legislature passed House Concurrent Resolution No. 85 which established a task force to “study effective incarceration policies in Hawaii and other jurisdictions, and suggest improvements for Hawaii’s correctional system, including recommendations for designs of future correctional facilities.”

The Task Force on Prison Reform was made up of a “diverse group of stakeholders,” representing criminal justice agencies, Native Hawaiian organizations, and community advocates. The report states emphatically, emphasizing the members diversity, “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.**”

The Task Force recommended, among many other things, the creation of an independent oversight commission “to ensure transparency and accountability” of Hawaii’s correctional system.

Act 179, Session Laws of Hawaii 2019

Part I of Act 179, SLH 2019 (codified in Chapter 353L, HRS), established the Hawaii Correctional System Oversight Commission and consolidated into it two existing commissions: the Reentry Commission and the Corrections Population Management Commission. Its five members are appointed by the Governor, the President of the Senate, the Speaker of the House, the Chief Justice, and the Office of Hawaiian Affairs Board of Trustees Chairperson.

The Commission's mandate includes:

1. Investigating complaints at correctional facilities;
2. Facilitating a correctional system transition to a rehabilitative and therapeutic model;
3. Establishing maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility;
4. Monitoring and reviewing the Comprehensive Offender Reentry Program; and
5. Ensuring that the Comprehensive Offender Reentry Program is working to properly provide programs and services.

In addition to the Commission members, Act 179 created an Oversight Coordinator to "administer" the Commission and empowered that position to investigate allegations of State law or rule violations, with expansive authority to obtain information, enter correctional facilities, and hold private hearings in accordance with Chapter 91, HRS. Similar authority was not granted to the Commission members.

2020 Commission Activities

The Commission met monthly throughout 2020, in person prior to pandemic stay-at-home orders and electronically through Zoom beginning in April 2020. This report will review, in part, the discussions of those meetings. Many community members and inmate advocates attended regularly and actively participated in the meetings. We are most grateful for their insights and contributions.

Funds appropriated for the Commission were never released by the Department of Budget and Finance (B&F), precluding the Commission's ability to hire staff and greatly impeding progress in achieving its mandate. Administratively attached to the Department of the Attorney General, a member of the Commission met with the Department's administrative staff to discuss and develop a consultant contract with a corrections oversight professional. At the time of the meeting, in March 2019, it was discovered that no account had been established by the Department and no funds had been requested to be transferred from B&F. The Commission requested the Department establish the account and the Commission member drafted a Request for Exemption from Bidding and consultant contract. The no money was requested for the remainder of FY 2018-2019 and the work completed was for naught. During FY 2019-2020, at the behest of the Commission the Department did request at least partial funding, but was denied by B&F.

Without funding, no staff could be hired although the Commission advertised, interviewed, and recommended three names to the Governor as required by Act 179. It was basically impossible for the Commission to carry out the mandated investigative function as most of the responsibility was designated to the Oversight Coordinator.

Report Content

This report contains three topics discussed and studied during 2020 meetings and the Commission's resulting recommendations:

1. Infectious Disease Emergency Capacities;
2. Pretrial Release;
3. Moratorium on New Development and Facility Expansions.

Conclusion

This report will discuss what was accomplished in 2020. We, the members of the Hawaii Correctional System Oversight Commission, vow to continue our work during these most challenging times.

SECTION 1
INFECTIOUS DISEASE EMERGENCY CAPACITIES

INTRODUCTION

COVID-19 cases in Hawaii have rapidly increased over the course of the pandemic, including major outbreaks at Oahu Community Correctional Center, Halawa Correctional Facility and Waiawa Correctional Facility. Experience in other jurisdictions shows the rapid spread of the virus in correctional facilities is inevitable, given that social distancing and adequate space for quarantine and isolation is impossible in the confines of jails and prisons. And persons incarcerated are far more likely to suffer from chronic illnesses than the general population, increasing the risk of serious (and possibly deadly) infection. Excessive crowding in all Hawaii correctional facilities has existed for decades, putting the State in an especially vulnerable position for large outbreaks.

Determining “maximum inmate population limits for each correctional facility” is one of the mandates of Act 179, Session Laws of Hawaii 2019, which established the Commission. This responsibility was previously assigned to the now dissolved Corrections Population Management Commission (CPMC). In-depth analysis of facility capacities was conducted twenty years ago and published in the CPMC’s *2001 Annual Report* and these capacities are still in use today as the official facility operating capacities. However, the CPMC did not anticipate an infectious disease epidemic that might reach into our correctional facilities. Such an epidemic requires separation of inmates who may be infected or exposed in order to protect the remainder of the population and the staff of the facilities.

The purpose of this document is to establish the ***Infectious Disease Emergency Capacities*** of Hawaii’s correctional system for housing inmates who, in accordance with CDC guidelines, are required to be separated from the general population.

In its July 22, 2020 interim guidance report for correctional and detention facilities, the CDC is clearly aware that abiding by its established capacities to isolate and quarantine inmates in America’s over crowded facilities is very difficult, yet still argues best practices dictate the use of *individual cells for infected and suspected COVID-19 cases*. If single celling is not practicable, recommendations are provided for *cohort housing with not less than six feet in all directions around a single bed*. Confirmed cases must be housed in “a well ventilated room with solid walls and a solid door that closes fully,” and separately from suspected cases.

Those exposed to COVID-19 should be quarantined. If the exposure happened in a living unit, after the infected inmate is placed in medical isolation, the whole unit should be placed under quarantine as a cohort and no new inmates introduced until the quarantine is complete. New admissions to the facility are not to be housed with those exposed.

The analysis included in this report is broken down by living units within each correctional facility. The Commission’s intent is to designate maximum capacities *for each living unit*, should it be designated to house quarantined or medically isolated

inmates. Housing capacities for living units holding inmates not required to be separated from the general population are to remain at CPMC levels.

ASSUMPTIONS

1. The facility capacities identified in the 2001 report are retained. Since the CPMC 2001 report, The Commission is aware of the addition of one additional living unit within the system—a second minimum security dormitory was opened at the Hale Nani site of the Hawaii Community Correctional Center. Identified in this report as “Hale Nani Makai,” DPS provided a drawing and dimensions of this structure.
2. The American Correctional Association standards applied in 2001 are still in effect in 2020. NOTE: The Commission is well aware that ACA standards have evolved over the years, but did not have access to current standards. It is unlikely that standards have been modified to such an extent to render the 2001 unacceptable. DPS provided examples of changes made, such increased ratio of showers to inmates (from 1/8 to 1/12) and reduction of dedicated unencumbered space for single-celled inmates (from 35 square feet to 25 square feet). These limited changes do not impact the overall capacities established in 2001.
3. The National Commission on Correctional Health Care standards of 2001 still apply. NOTE: The Commission did not have access to current standards.
4. These Emergency Capacities are not intended to change the established design and operating capacities of any facility. Instead, they establish **emergency** capacities for any housing unit within a facility which is used to isolate or quarantine inmates because of an infectious disease. For example, OCCC has a design capacity of 628 and an operating capacity of 954. If a unit within OCCC is designated to quarantine inmates because of an infectious disease, the capacity of that unit is reduced to the Emergency Capacity for the period of quarantine. Module 19 has 36 cells: its Design Capacity is 36 (one inmate per cell) and its Operating Capacity is 72 (double cell throughout). If Module 19 is used for quarantine, then its capacity is lowered to 36 with one inmate per cell. During the time that quarantined inmates are housed in Module 19, then OCCC’s de facto Operating Capacity is lowered by 36 beds.
5. The capacities are based on the specific guidelines included in the Center for Disease Control’s (CDC) *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (July 22, 2020) and its earlier rendition issued March 23, 2020, relating to:
 - a. Medical isolation of confirmed or suspected COVID-19 cases;
 - b. Quarantine of the newly admitted;
 - c. Quarantine of those who had close contacts of COVID-19;

- d. Range of housing alternatives for medical isolation, in rank order of preference, from single cells with solid doors to cohorting in multi-person cells/dormitories;
 - e. Laboratory confirmed COVID-19 may be placed under medical isolation as a cohort if necessary; *do not* cohort confirmed cases with suspected cases or case contacts;
 - f. Cohorting of laboratory confirmed COVID-19 medical isolation cases, bunks must be at least 6 feet apart *in all directions*, double bunks must have only one occupant.
 - g. Consideration of medical isolation and quarantine of cases who have a higher risk of severe illness from COVID-19.
6. Because of their design, some housing units may have two or more distinct housing areas with shared common areas.
- a. For example, Annex 2 at OCCC has two dormitories with a shared common area in between the dormitories. Inmates from both dormitories use the common area. It is possible that they will share such facilities as toilets and showers, dining tables, and telephones. It is also possible that the housing unit (e.g. Annex 2) will house inmates with different COVID statuses, i.e. positive, quarantine or those determined to be negative and not requiring quarantine. If so, there must be clear rules that restrict the use of distinct parts of the common areas to inmates of one status. For example, inmates who are in quarantine cannot use the same bathroom as inmates who have tested negative and are not in quarantine. If separation is not possible, then areas must be sanitized after use by each group.
 - b. At some facilities, a group of cells open into a common dayroom. For example, at HCCC, twelve of the cells are located in a module setting, with four pods of three cells each. Each pod has a small dayroom of approximately 70sf immediately fronting the cells and a shower. If a pod is used for isolation or quarantine, then no inmates who do not require isolation or quarantine should be housed in the same pod.
7. CDC *FAQs for Administrators, Staff, People Who Are Incarcerated, Families* (updated April 10, 2020) section relating to separation of medical isolation and quarantine locations.
8. Housing for women inmates is often limited in Hawaii's jails, which are all co-ed facilities. Options for segregating women with suspected or confirmed COVID-19 from the general population varies, depending upon the configuration of the physical plant. Per the CDC guidelines, "Cohorting should only be practiced if there are no other available options."

REQUIRED CONDITIONS

The bulk of the CDC's July 22, 2020 interim guidance report is dedicated to practices correctional institutions should institute to best protect inmates and staff from the continued spread of COVID-19. As stated in the document, "Consistent application of preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19." In addition, the Commission believes that it is essential that the conditions of medical isolation and quarantine housing be distinguished from those that are placed in restrictive housing, including administrative or disciplinary segregation.

Required conditions in housing units used for quarantine or medical isolation because of the threat of infectious disease:

General Requirements for isolation or quarantine:

- In dormitories or multiple-occupancy cells used for quarantine, social distancing shall be followed to the fullest extent possible i.e., inmates shall be given six feet of personal space in all directions; double bunks should not be used.
 - Cells that are used for medical isolation or quarantine shall be single celled to the maximum extent possible. If single occupancy is not possible because the number of inmates requiring quarantine exceeds the space available, cohorting shall follow CDC guidelines.
- A. Activity Requirements for areas in which inmates are in isolation or quarantine
- All inmates shall be provided with hygiene items, such as soap, disposable paper towels, and hand sanitizer as required by guidelines of the Centers for Disease Control and Prevention (CDC).
 - All inmates shall wear protective masks while out of their cells, while in common areas, or when out of the housing unit.
 - All staff who work in or enter the housing unit shall wear protective masks.
 - All staff who work in or enter the housing unit shall be provided with hand sanitizer.
 - All hard surfaces that are used or touched by inmates or staff shall be sanitized at the beginning and end of each work shift. Hard surfaces include door handles, counters, table and desktops, and railings.
 - If inmates are quarantined in separate sections of a housing unit which also houses non-quarantined inmates, all common areas accessed by the quarantined inmates that are also accessed by non-quarantined inmates must be immediately sanitized in accordance with CDC guidelines.
 - Female inmates shall be isolated or quarantined separately from male inmates. All areas that house female inmates shall be staffed with female correctional officers in accordance with regular staffing plans.
 - Inmates who are require separate housing because of mentally illness during a non-emergency shall be quarantined or locked down in units separate from the general population. Entry into and release from mental

health housing units require the approval of a designated mental health professional.

- While in quarantine, inmates shall have access to caseworkers for such purposes as program planning and parole planning.
- To the extent possible, inmates shall be afforded the opportunity to continue with regular educational and treatment programs through electronic means if available.
- Inmates in quarantine shall be provided with
 - The opportunity for one hour of large motor exercise per day, preferably in open air.
 - Daily showers
 - Access to telephones at no or minimal cost.
- Inmates in quarantine shall be afforded regular daily access to dayrooms. A sufficient number of inmates shall have the opportunity for out of cell time while allowing for social distancing, for activities such as but not limited to
 - Telephone calls
 - Law library
 - Visits with spiritual advisors, so long as social distancing can be practiced.
 - Meals
 - Small group activities so long as social distancing can be practiced.

**HAWAII COMMUNITY CORRECTIONAL CENTER
INFECTIOUS DISEASE EMERGENCY CAPACITY
SEPTEMBER 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
Punahele	22	22	22
Komohana	64	64	32
b. Total Dormitory Capacity			
Waianuenue	20	40	10
Hale Nani (Mauka)	100	100	28
Hale Nani (Makai)*	n/a	n/a	20

*Hale Nani Makai was not used for housing at the time the CPMC capacity report was completed, so was not included in both design and CPMC capacity. See discussion below.

Hawaii Community Correctional Center (HCCC) occupies two sites – the main facility is on Punahele Street in Hilo, the second site is south of Hilo on Kanoiehua Highway. At the Punahele site there are three structures: Punahele and Komohana are made up of individual cells and Waianuenue is a dormitory with bays separating sleeping areas. The Hale Nani site south of Hilo has two open dorm buildings.

Areas with Cells: Total Capacity=54

All cells are reduced to one occupant in Punahele and Komohana.

Waianuenue: Total Capacity=10

Waianuenue is a L-shaped building made up of two separate living units (Dorm A and Dorm B), each with its own bathroom. Each dorm now has five cubicles that are open to the common area, with approximately 169 square feet per cubicle (12'9" X 13'4"). Given all cubicles are open with no wall or door to separate from others, each cubicle should hold no more than one inmate under emergency capacity.

Hale Nani Mauka: Total Capacity=28

Hale Nani Mauka is the same design as OCCC Annex 1 and MCCC Dorm 6 and 7, with a larger center area to accommodate a dayroom, dining room and kitchen. There are two dormitories, one on each side of the center area. Dorms are approximately 70' X 30' (2100 sf). Allowing for the length and width of a standard bunk (80" X 36") and six feet between each bunk, seven single bunks can be placed against each wall. This allows 14 single bunks in each dormitory, for a total of 28 bunks.

Hale Nani Makai: Total Capacity=20
(used as a program/office area at the time of the 2001 CPMC report)

Hale Nani Makai is a smaller building than Hale Nani Makau, but of the same basic design (two dorm wings off a central dayroom). When Hale Nani first opened, Makai was used as the living unit and Mauka was built later. Upon completion of Mauka, inmates were moved in and Makai became a program/office building. This was its use in 2001.

Former Public Safety Director Ted Sakai recalled the housing capacity of Hale Nani Makai at 60 inmates, allowing for 15 double bunks in each dorm. As Hale Nani Mauka was reduced by approximately 2/3rds of original CPMC capacity for this exercise, the same reduction is being applied to this building, reducing the capacity to 20.

IMPORTANT NOTE: The Commission did not consider the dimensions provided by the Department of Public Safety for the Hale Mauka and Hale Makai buildings as not accurate. Drawings provided have hand written measurements that indicate much larger spaces, with Hale Nani Mauka dorms at 210' X 30' (6300 sf) and Hale Nani Makai dorms at 120' x 30' (3600 sf) per dorm. The dimensions provided for Hale Nani Mauka do not reconcile with the space measured in 2001 or similar buildings at OCCC and MCCC, therefore the Commission is using the 2001 dimensions for this table exercise. A Google maps satellite view of the site clearly shows that Hale Nani Makai dorms are smaller than Mauka.

**MAUI COMMUNITY CORRECTIONAL CENTER
INFECTIOUS DISEASE EMERGENCY CAPACITY
SEPTEMBER 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
Module 2*	9	9	0
Module 3	6	6	6
Module A	24	48	24
Module B	24	48	24
Module C	6	6	6
Module D**		n/a	???
b. Total Dormitory Capacity			
Dorm 1	10	20	10
Dorm 2	10	20	10
Dorm 3***	0	12	6
Dorm 4	10	16	8
Dorm 5	10	16	8
Dorm 6	50	50	14
Dorm 7	50	50	14

*Module 2 is no longer used for housing.

**Module D appears to be new housing, added after the 2001 CPMC report, and assumed to be part of the original Module C. Require additional information from DPS.

***Dorm 3 is the oldest building on campus, built prior to the transfer of the old Maui jail to the State and, therefore, was never included in the design capacity. See discussion below.

Many changes have taken place since the 2001 CPMC report. For example, it appears that Module 2 is no longer in use as a housing unit while a new cell area has been identified (Module D). Dorm 6 and 7 were previously labeled as Dorm 7 and 8 in the 2001 CPMC report.

Areas with Cells: Total Capacity=60

All cells are reduced to one occupant. *Need to receive information concerning Module D from DPS.*

Dorm 1 and 2: Capacity=20

This building has two dorms off a central dayroom. Each dorm is 40' X 25' for 1000 square feet. Five single beds along each 40' wall allows for 10 occupants per dorm, for a total of 20 inmates.

Dorm 3: Capacity=6

This concrete building is very small (dorm is 741 square feet). The CPMC allowed capacity to exceed ACA recommended standards given its designate use to support the Maui drug court. Under emergency conditions, that is no longer acceptable. It was previously not included in the design capacity.

Dorm 4 and 5: Capacity=16

Another structure with two dorms off a central dayroom. The dormitories measure 36' X 23' and are smaller than those found in Dorm 1 and 2 (780 sf vs. 1000 sf). To allow 6 feet on all sides of each bed, not more than 8 single bunks should be placed in each dorm, for a total of 16 beds.

Dorm 6 and 7: Capacity=28

Dorm 6 and 7 is the same configuration and size as HCCC's Hale Nani Mauka and OCCC's Annex 1. The dorms are approximately 70' X 30' (2100 sf). Allowing for the length and width of a standard bunk (80" X 36") and six feet between each bunk, seven single bunks can be placed against each wall. This allows 14 single bunks in each dormitory, for a total of 28 bunks.

**OAHU COMMUNITY CORRECTIONAL CENTER
INFECTIOUS DISEASE EMERGENCY CAPACITY
AUGUST 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
Module 1	24	48	24
Module 2	24	48	24
Module 3	30	60	30
Module 4	30	24	30
Module 7	12	24	12
Module 8	12	24	12
Module 11	24	48	24
Module 13	24	48	24
Module 17	24	48	24
Module 18	36	72	36
Module 19	36	72	36
b. Total Dormitory Capacity			
Module 20	80	80	20
Annex 1	100	100	28
Annex 2	100	114	29
Pan Abode Mauka	12	24	12
Pan Abode Makai	12	24	12
Laumaka (work furlough)	48	96	48

Areas with Cells: Total Capacity=276

All cells are reduced to one occupant.

NOTE: In 2001, Module 4, a 30-cell unit, was the Mental Health Unit and had six cells removed from the capacity count as suicide management cells, and the remainder rated as single cell, for a total capacity of 24 (30-6=24).

Module 20: Total Capacity=20

Module 20 consists of two dorms joined by a common dayroom. Each dorm is 80' X 30' (2400 square feet) and consists of 10 bays. One single bunk can be placed in each bay, for 10 inmates per dorm.

Annex 1: Total Capacity=28

Annex 1 is the same design as HCCC's Hale Nani Mauka and MCCC's Dorm 6 and 7, but the dorms are broken down into 10 cubicles with impacts the number of beds that can be safely placed so that there is at least 6' clearance all around. Therefore, only one inmate should be placed in each cubicle. The cubicle partial walls extend 7' in to the room, leaving a center area 16' wide allowing for 4 additional bunks to be placed lengthwise in the center of the dormitory, resulting in 14 bunks per dorm for a total of 28.

Annex 2: Total Capacity=29

Annex 2 is a three-story concrete building divided into open bays on each floor. The bays are approximately 150 square feet each and should therefore hold not more than one inmate per bay. The first floor has 9 bays, with 10 bays on each higher floor.

Pan Abode Mauka: Total Capacity=12

This building is a dormitory setting with 12 cubicles and no interior dayroom. No more than one inmate should be assigned each cubicle.

Pan Abode Makai: Total Capacity=12

Though slightly larger than Pan Abode Mauka, this building also has 12 cubicles. Again, no more than one inmate should be assigned each cubicle.

Laumaka Work Furlough Center: Capacity=48

Laumaka is made up of three two-story units, with eight bedrooms one each floor. Only one inmate should be assigned each room.

**KAUAI COMMUNITY CORRECTIONAL CENTER
INFECTIOUS DISEASE EMERGENCY CAPACITY
AUGUST 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
Module A (12 cells)	12	24	12
Module B (6 cells)	18	24	12
b. Total Dormitory Capacity			
Module C	80	80	20
c. Cabins*			
Cabin 1 (n=4)	0	0	4
Cabin 2 (n=4)	0	0	4
Cabin 3 (n=4)	0	0	4

Areas with Cells: Total Capacity=18

Module A cells, at 75 square feet, is reduced to one occupant per cell. Module B has larger cells, at 158 square feet and can house two inmates who are quarantined or medically isolated.

Module C: Capacity=20

This L-shaped building has two dorms off a central dayroom. Each dorm has a total of 1680 sf and 10 cubicles. Until more information is received re dimensions, only one inmate should be housed in each cubicle, allowing 10 inmates per dorm.

Cabins A, B, and C: Capacity=12

Cabins A, B, and C are not included in the design or CPMC capacity. Originally built for temporary housing for Kauai residents after Hurricane Iniki, structures were moved to KCCC when no longer needed in the community. The cabins do not have fire suppression equipment or a second exit in case of fire and should not be used for inmate housing.

**WOMEN'S COMMUNITY CORRECTIONAL CENTER
INFECTIOUS DISEASE EMERGENCY CAPACITY
AUGUST 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
Olomana, Dorm B	12	12	12
Olomana, Dorm C	20	22	16
b. Total Dormitory Capacity			
Olomana, Dorm A	22	22	11
Olomana, Dorm D	16	16	8
Ka'ala, Dorm A	32	32	14
Ka'ala, Dorm B	32	32	11
Ka'ala, Dorm D	16	16	8
Akahi, Dorm A	44	44	12
Akahi, Dorm B	44	44	12
Maunawili, Dorm D*	20	20	0*

*Maunawili, Dorm D is no longer used for housing.

Olomana, Dorm B: Total Capacity=12

All cells will be single occupancy.

Olomana, Dorm C: Total Capacity=16

All cells will be single occupancy.

Olomana, Dorm A: Total Capacity=11

Olomana, Dorm A is one large dorm with 11 sleeping bays of 70 square feet. One inmate per bay. *May have to be one inmate per every other bay, as each bunk is approximately 36' wide, which would only allow 4 feet to the next cubicle wall.*

Olomana, Dorm D: Total Capacity=8

Olomana, Dorm D, is a former staff apartment with four bedrooms ranging in size from 177 sf to 225 sf. This should accommodate two inmates per bedroom.

Ka'ala, Dorm A: Total Capacity=14

Ka'ala, Dorm A is one large dorm with 14 sleeping bays of 70 square feet. One inmate per bay. *May have to be one inmate per every other bay, as each bunk is approximately 36' wide, which would only allow 4 feet to the next cubicle wall.*

Ka'ala, Dorm B: Total Capacity=11

Ka'ala, Dorm B, is one large dorm with 11 sleeping bays of 74 square feet. One inmate per bay. *May have to be one inmate per every other bay, as each bunk is approximately 36' wide, which would only allow 4 feet to the next cubicle wall.*

Ka'ala, Dorm D: Total Capacity=8

Ka'ala, Dorm D, is a former staff apartment with four bedrooms ranging in size from 177 sf to 225 sf. This should accommodate two inmates per bedroom.

Akahi, Dorm A: Total Capacity=12

Akahi, Dorm A, is one large dorm with 12 sleeping bays of 142 sf. Bathroom facilities shared with Dorm B. One inmate per bay.

Akahi, Dorm B: Total Capacity=12

Same configuration as Dorm A.

Maunawili, Dorm D: Total Capacity=0

This living unit is currently not in use.

**WAIAWA CORRECTIONAL FACILITY
INFECTIOUS DISEASE EMERGENCY CAPACITY
AUGUST 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
None			
b. Total Dormitory Capacity			
Building 2		20	0
Building 4		48	???
Building 5		40	???
Building 6		40	???
Building 9		100	26
Building 10*		100	26

*DPS indicated that it is currently using only one dorm in Building 10, but could use both in the time of an infectious disease emergency.

Waiawa Correctional Facility is a minimum security facility made up of dormitories.

NOTE: The plans for the original buildings (Buildings 4, 5 and 6), apartments renovated to dormitories, were forwarded by DPS, but the dimensions included for each dormitory were difficult to read. Additional information was requested from DPS, but not received.

Building 2: Total Capacity=0

Building two is no longer in use.

Building 4: Total Capacity=???

There is a range of different sized rooms found in this converted apartment building. Need more information before capacity can be determined.

Building 5: Total Capacity=???

There is a range of different sized rooms found in this converted apartment building. Need more information before capacity can be determined.

Building 6: Total Capacity=???

There is a range of different sized rooms found in this converted apartment building. Need more information before capacity can be determined.

Building 9: Total Capacity=26

This building is designed with two dorms, broken down into bays, connected by a common dayroom. Each dorm has 13 bays, only one inmate should occupy each bay.

Building 10: Total Capacity=26

Building 10 is the same configuration as Building 9. but the Department has indicated through previous shared documents that only one dorm is currently in use.

**KULANI CORRECTIONAL FACILITY
INFECTIOUS DISEASE EMERGENCY CAPACITY
AUGUST 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
None			
b. Total Dormitory Capacity			
Dorm 1	20	20	14
Dorm 2	20	20	14
Dorm 3	20	20	14
Dorm 4	20	20	14
Dorm 5	20	20	14
Dorm 6	20	20	14
Dorm 7	40	40	24

Kulani Correctional Facility is a minimum security facility made up of dormitories.

Dorm 1: Total Capacity=14

Dorm 1 sleeping area is 1320 square feet, approximately 70' X 18.8'. The length of the wall allows for 7 single bunks on each side, with approximately 6' between the end of each bed.

Dorm 2: Total Capacity=14

Dorm 2 sleeping area is 1330 square feet, 70' X 19'. The length of the wall is adequate for 7 bunks along each wall; the center of the dorm allows for 6' between the end of each bed.

Dorm 3: Total Capacity = 14

Dorm 3 is the same design and layout as Dorm 1.

Dorm 4: Total Capacity = 14

Dorm 4 is the same design and layout as Dorm 1.

Dorm 5: Total Capacity = 14

Dorm 5 is the same design and layout as Dorm 1.

Dorm 6: Total Capacity = 14

Dorm 6 is the same design and layout as Dorm 2.

Dorm 7: Total Capacity=24

Dorm 7 is comprised of two large sleeping rooms adjoined by a dayroom and common bathroom. The dormitories are 1440 square feet (60' X 24'). Six single bunks along each wall would allow 12 inmate per dorm for a total of 24. There is not adequate space in the area between the foot of each bunk (11 feet) to allow for addition beds to be placed length-wise.

**HALAWA CORRECTIONAL FACILITY
INFECTIOUS DISEASE EMERGENCY CAPACITY
AUGUST 2020**

EMERGENCY CAPACITY

Housing Capacity			
	Design	CPMC	EMERG
a. Total Cell Capacity			
Module 1*	124	248	124
Module 2	124	248	124
Module 3	124	248	124
Module 4*	124	248	124
Module 5	30	30	30
Module 6	30	42	30
Module 7	30	60	30
b. Total Dormitory Capacity			
None			

Halawa Correctional Facility is made up of two separate and distinct buildings—the Special Needs Facility and Halawa Medium Security Facility. Both buildings consist of cells, with no dormitories on the site.

Special Needs Facility: Total Capacity=90

The Special Needs Facility is made up of three housing units (Modules 5, 6 and 7) with 30 cells each. The 2001 CPMC report considered the types of inmates assigned each housing unit and designated some cells as singled cells. For this exercise, all cells will house one inmate.

Halawa Medium Security Facility: Total Capacity=496

Modules 1,2, 3 and 4 are each divided into two Blocks. Each Block is in turn divided into two Quads. A Quad has 31 cells; a Block has 62 cells and a Module has 124 cells. All cells have solid walls. However, the doors are not solid. Under CEC Guidelines, it is recommended that inmates are quarantined in single cells with solid walls and doors. If a Quad is used for quarantine, then its capacity is 31.

SECTION 2

PRETRIAL REFORM

PRETRIAL REFORM

The Hawai'i Correctional System Oversight Commission urges this Legislature to reconsider two important pretrial reform proposals originally proffered in 2019 by the House Concurrent Resolution 134 Task Force on Pretrial Reform, and now incorporated into the Commission's pretrial reform bill, to help reduce unnecessary pretrial detention while improving public safety. In addition to establishing the Hawai'i Correctional System Oversight Commission, Act 179, Session Laws of Hawaii 2019, also formalized a number of the legislative recommendations of the HCR 134 Task Force on Pretrial Reform. As passed, this legislation omitted two critical recommendations of the Task Force that would eliminate money bail for defendants accused of low-level, non-violent offenses, and establish rebuttable presumptions regarding pretrial release or detention for higher level non-violent offenses. The Commission believes that these impactful procedural changes would further reduce unnecessary and costly pretrial incarceration and urges the Legislature to reconsider these proposals including amendments proposed during the 2019 legislative session. (A draft bill to amend Chapter 804, HRS, Bail: Bond to Keep the Peace, is included below.)

Background

The HCR 134 Task Force thoroughly examined Hawai'i's pretrial system and developed a broad and detailed set of recommendations to improve the system's efficiency and fairness. HCR 134, Regular Session 2017, requested the Judiciary to convene a task force of statewide experts to examine Hawai'i's pretrial process and overcrowded pretrial detention system, and to make recommendations to maximize pretrial release and improve public safety. Representatives from the Judiciary, Legislature, Executive Administration, Attorney General, county Prosecutors, the defense bar, county police departments, the Office of Hawaiian Affairs, and the community met monthly for one year between 2017 and 2018, to tour correctional facilities, research national and local best practices, accept public testimony, and develop recommendations. In its final report published December, 2018,¹ the Task Force noted its myriad findings on inefficiency and unfairness in Hawai'i's pretrial system, and the Task Force issued 25 key recommendations to help improve the fairness and efficiency of pretrial determinations. Among other things, these legislative proposals urged faster, more accurate, and more comprehensive bail reports as well as prompt hearings on bail. They also encouraged judges to place fewer conditions on pretrial release and to set bail based on a defendant's ability to pay. The Task Force also urged that the legislature invest in a Statewide Criminal Pretrial Justice Data System and Criminal Justice Research Institute within the Judiciary to provide ongoing research and recommendations on improving Hawai'i's pretrial system. The Judiciary has recently hired staff to establish this Institute.

¹ HCR 134 TASK FORCE, HAWAII CRIMINAL PRETRIAL REFORM: RECOMMENDATIONS OF THE CRIMINAL PRETRIAL TASK FORCE TO THE THIRTIETH LEGISLATURE OF THE STATE OF HAWAII, Dec. 2018, *available at* https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf.

Discussion

The HCR 134 Task Force's legislative recommendations were mostly incorporated into Act 179, Regular Session 2019. In its final report, the Task Force made 24 substantive recommendations, 17 of which were legislative in nature and most of these included suggested statutory amendments. All of these legislative recommendations, including several recommended appropriations, were incorporated into several legislative vehicles introduced during the 2019 legislative session.² These proposals were thoroughly debated and broadly supported and, in the end, most of the Task Force's legislative recommendations were incorporated into HB1552 (2019) which passed and was enacted as Act 179 (2019).

Two of the most substantive of these recommendations were not incorporated into the final bill as passed and their great potential was not realized. HCR 134 Task Force key recommendations numbers 20 and 21 would have most substantially changed the processes by which judges made pretrial determinations and, therefore, they held the highest potential for the greatest reduction of unnecessary pretrial incarceration. Recommendation number 20 would have nearly eliminated the use of money bail for low-level, non-violent offenses except for exceptional cases where a history of non-appearance or violence has been shown. Recommendation number 21 would, in cases of non-serious felony offenses, create a rebuttable presumption in favor of release under the "least restrictive conditions" necessary to ensure appearance and public safety. Under this construction, defendants would only be detained if there were clear and convincing evidence of a serious risk that the defendant would flee, obstruct justice, tamper with a witness, endanger another or themselves, or engage in illegal activity. The amendment language would also establish a rebuttable presumption that such a serious risk exists if the defendant had a previous conviction for a crime of violence or the defendant was already pending trial or sentencing, or was on probation or parole for a crime of violence at the time of arrest. Only when a defendant presents a serious risk of non-appearance or danger and when "no condition or combination of conditions will reasonably eliminate or mitigate the risks" would detention be appropriate under these proposals.

Unfortunately, the passage of Act 179, even with its remaining pretrial reforms, failed to achieve a substantial reduction in the statewide pretrial detained population. Figure 1 demonstrates a small reduction in the statewide jail population headcount around the time of the publication of the HCR 134 Task Force Report. This slight change may be attributed to efforts and improvements within the Judiciary in response to the Task Force's findings. However, there was no substantial change in the jail population in the six months after Act 179's enactment. In fact, the only major change in jail populations occurred as a result of Judiciary-lead collaborative action in response to the COVID-19 pandemic. In March and August, 2020, the Supreme Court appointed a Special Master, retired Judge Dan Foley, and ordered lower courts, prosecutors, defense attorneys, and the Department of Public Safety to collaboratively identify pretrial detainees and

² These included HB1289, HB1552, SB1421, SB1422, SB1423, and SB1539, 30th Leg. (2019).

sentenced offenders who could be safely released to help “decompress” overcrowded jails and to prevent, and then mitigate, COVID-19 outbreaks in state correctional facilities. Indeed, these emergency efforts brought incarcerated populations to within facilities’ operational capacities, and near to their design capacities, for the first time in decades.

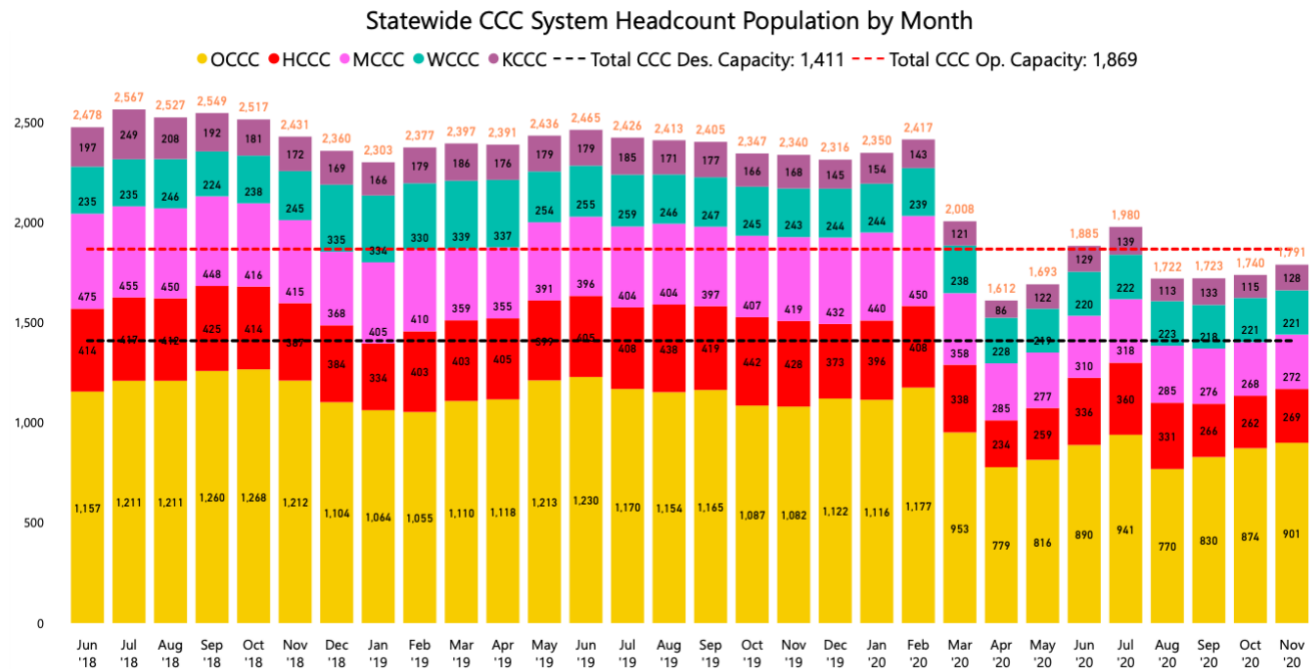


Figure 1. PSD Statewide Headcounts by facility. Department of Public Safety, End of Month Population Reports June 2018 – November 2020.

As jail populations were reduced in light of COVID-19, pretrial populations did not proportionately decrease. In Figure 2, the black line indicates the statewide jail population which sharply decreased due to the COVID-related releases in March and August, 2020. Meanwhile, the blue shaded portion represents the proportion of the statewide jail population composed of pretrial detainees, with the grey shaded area showing the proportion of non-pretrial detainees among the jail population. As the figure shows, since the time of the COVID-related releases although the jail populations have waivered and diminished, the pretrial proportion of those populations have remained constant or increased. These data indicate the need to revisit pretrial reform efforts with a more aggressive approach.

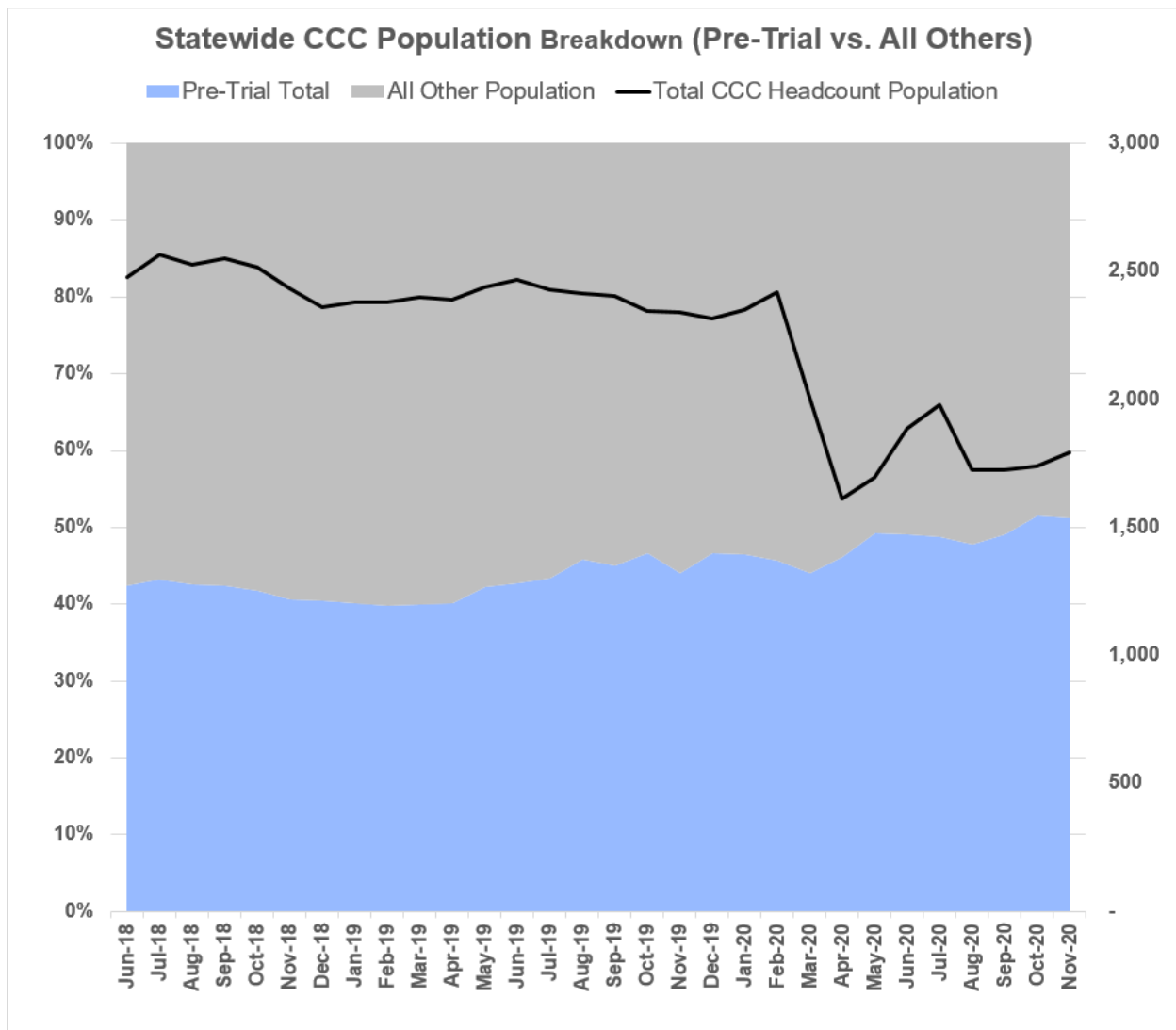


Figure 2. Statewide CCC Headcount Population Breakdown (Pre-Trial vs. All Others). Department of Public Safety, End of Month Population Reports, June 2018 – November 2020.

Conclusion

The Oversight Commission urges the legislature to revisit pretrial reform efforts and help realize the important goals of the HCR 134 Task Force to reduce unnecessary, costly, and dangerous pretrial incarceration. HCR 134 Task Force key recommendations 20 and 21 should be reconsidered—along with two amendments previously proposed and considered by the House during the 2019 session—for immediate passage in the 2021 session. The Commission bill incorporates the language suggested by the Task Force, as well as two amendments described below:

- The new HRS Section proposed in Section 2 of the bill, Subsection (b)(2) includes a list of exclusions from eligibility for application of the proposed process favoring release on recognizance. As indicated in Part (B) of this Subsection,

(page 4, line 19), the Commission elected to impose a 10-year time limit upon the exclusion for defendants with prior convictions for crimes of violence. Although the House Judiciary Committee originally proposed a 20-year time limit for this exclusion,³ the Commission hopes that a 10-year time restriction will limit this exclusion to the most recent and relevant violent crimes, while expanding the pool of defendants eligible for release on recognizance under the proposed new section.

- Also in the new HRS Section proposed in Section 2 of this bill, in Subsection (c) (page 5, lines 10-13), the Commission added language to authorize the Director of Public Safety to release any defendant detained for the inability to post a bail amount of less than \$99. This language was originally added to this subsection by the House Committee on Public Safety, Military, and Intergovernmental Affairs,⁴ including a requirement that electronic monitoring equipment be used. The Commission agrees that the Director of Public Safety should maintain and nimbly exercise authority to help reduce overcrowding and unnecessary pretrial incarceration. However, the Commission declined to include the electronic monitoring requirement due to concerns about the availability and affordability of electronic monitoring devices for defendants who could not afford even very low bail amounts. Such a requirement would likely obstruct the use of the proposed administrative release authority.

³ HB1289 HD2, 30th Leg. (2019).

⁴ HB1289 HD1, 30th Leg. (2019).

A BILL FOR AN ACT

RELATING TO CRIMINAL PRETRIAL REFORM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there is a need to address the substantial and continued overcrowding of facilities used to house pretrial defendants through the adoption of certain recommendations made by the criminal pretrial task force, regarding pretrial detention and release.

House Concurrent Resolution No. 134, H.D.1 (2017), requested the judiciary to convene a criminal pretrial task force to:

- (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and
- (2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals.

Accordingly, the judiciary convened a criminal pretrial task force that consisted of twenty-nine members from various

agencies and organizations with a broad spectrum of knowledge and experience. The task force met between August 11, 2017, and July 6, 2018, and submitted its report to the legislature on December 14, 2018. The report contained twenty-five recommendations, some of which were accompanied by proposed legislation that was authored by the task force.

Although a substantial number of the task force's recommendations were subsequently enacted by Act 179, Session Laws of Hawaii (2019), two critical recommendations were not included in the Act. These recommendations would substantially change the process for pretrial determinations and would offer the greatest potential to maximize pretrial release. Act 179 instead focused on those recommendations which would most improve fairness and administrative efficiency. However, this approach has failed to substantially reduce the pretrial population in Hawaii's jails, and the continued overcrowding that was a primary contributing factor in the large-scale COVID-19 outbreak at the Oahu Community Correctional Center during the summer of 2020.

The legislature accordingly intends to implement certain recommendations of the criminal pretrial task force that were accompanied by proposed legislation authored by the task force, and not adopted in Act 179.

The purpose of this Act is to amend chapter 804, Hawaii Revised Statutes, to:

- (1) With certain exceptions, eliminate the use of monetary bail and require defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses; and
- (2) Create rebuttable presumptions regarding both release and detention for certain offenses and to specify circumstances in which these presumptions apply.

SECTION 2. Chapter 804, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§804- Monetary bail; non-violent offenders. (a) Any defendant arrested and charged with a traffic offense, a violation, a non-violent petty misdemeanor offense, or a non-violent misdemeanor offense shall be released on the defendant's own recognizance conditioned upon:

- (1) The defendant's appearance in court; and
 - (2) Any other least restrictive, non-financial condition necessary to:
 - (A) Ensure the defendant's appearance in court; and
 - (B) Protect the public.
- (b) This section shall not apply if:

(1) The offense involves:

- (A) Assault;
- (B) Terroristic threatening;
- (C) Sexual assault;
- (D) Abuse of family or household members;
- (E) Violation of a temporary restraining order;
- (F) Violation of an order for protection;
- (G) Operating a vehicle under the influence of an
intoxicant;
- (H) Negligent homicide; or
- (I) Any other crime of violence; or

(2) One or more of the following apply:

- (A) The defendant has a history of non-appearance in
the last twenty-four months;
- (B) The defendant has at least one prior conviction
for a misdemeanor crime of violence or felony
crime of violence within the last ten years;
- (C) The defendant was pending trial or sentencing at
the time of arrest;
- (D) The defendant was on probation, parole, or
conditional release at the time of arrest;
- (E) The defendant is also concurrently charged with a
violent petty misdemeanor, a violent misdemeanor,

or any felony offense arising from the same or
separate incident; or

(F) The defendant presents a risk of danger to any
other person or to the community.

(c) If any of the exceptions in subsection (b) apply, bail
may be set in a reasonable amount. If the defendant is unable
to post the amount of bail, the defendant shall be entitled to a
prompt hearing under section 804-7.5. If the defendant is
unable to post bail in the amount of \$99 or less, the director
of public safety shall be authorized to release the defendant."

SECTION 3. Section 804-3, Hawaii Revised Statutes, is
amended by amending subsections (a) through (c) to read as
follows:

"(a) For purposes of this section~~[, "serious crime"]~~:

"Serious crime" means murder or attempted murder in the
first degree, murder or attempted murder in the second degree,
[or] a class A [or B] felony, [except forgery in the first
degree and failing to render aid under section 291C-12, and
"bail"] or a class B or C felony involving violence or threat of
violence to any person.

"Bail" includes release on one's own recognizance,
supervised release, and conditional release.

~~(b) [Any person charged with a criminal offense shall be
bailable by sufficient sureties; provided that bail may be~~

~~denied where the charge is for a serious crime, and:]~~ There shall be a rebuttable presumption that a person charged with a criminal offense, other than a serious crime, shall be released or admitted to bail under the least restrictive conditions required to ensure the person's appearance and to protect the public, unless the prosecution demonstrates by clear and convincing evidence that:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or ~~[therefore,]~~ injure~~[,]~~ or intimidate, or attempt to thereafter~~[,]~~ injure~~[,]~~ or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

If the prosecution demonstrates by clear and convincing evidence that one or more of the foregoing serious risks exists, the person shall be detained if the court finds that no condition or combination of conditions is sufficient to reasonably eliminate, reduce, or mitigate the risks presented.

(c) Under subsection (b) (1) a rebuttable presumption arises that there is a serious risk that the person will flee or

will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life with or without possibility of parole. For purposes of subsection (b) (3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:

- (1) The defendant has been previously convicted of a serious crime involving violence or threat of violence against a person within the ten-year period preceding the date of the charge against the defendant;
- (2) The defendant is [~~already on bail on~~] pending trial or sentencing for a felony charge involving violence or threat of violence against a person; or
- (3) The defendant is on probation or parole for a serious crime involving violence or threat of violence to a person."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: _____

By Request

SECTION 3
MORATORIUM ON NEW DEVELOPMENT
AND
FACILITY EXPANSIONS

STATEMENT ON PLANS TO RELOCATE THE OAHU COMMUNITY CORRECTIONAL CENTER

PROPOSED ACTION

At its meeting of November 17, 2020, the Commission was asked by a community member to consider a recommendation that the Department of Public Safety “immediately pause the planning for the new jail and create an Advisory Committee to review, *and if necessary revise*, the planning that has been done to date, and to actively participate in the planning process going forward. The Committee should include a wide range of community stakeholders and, as envisioned by the HCR 85 Task Force, it should be a *full partner* in the planning process along with DPS, DAGS, Architects Hawaii, and others.” (Emphases in the original.)

RECOMMENDED ACTION

It is recommended that the Commission adopt the recommendation and inform the Governor, the Speaker of the House, the President of the Senate, the Director of Public Safety, and any others as necessary.

BACKGROUND

The House Concurrent Resolution 85, SLH 2016, Task Force was comprised of a diverse group of stakeholders and chaired by the Honorable Justice Michael Wilson. The Task Force presented its findings to the Legislature in 2019. Among other things, the Task Force found:

1. The jail (OCCC replacement) has been planned without any meaningful input or guidance from the community; and
2. The planners failed to take a critical step in the planning process which is to identify the factors driving the jail population and to recommend policies that would significantly reduce that population without compromising public safety.

The Task Force also stated that cities and counties across the country are actively reducing their jail populations and building smaller and less expensive jails by diverting individuals with mental health and substance abuse issues to community-based treatment facilities; reforming their bail systems to ensure the speedy release of individuals who can be safely supervised in the community while awaiting trial; expediting hearings for people charged with technical probation and parole violations; expediting indigence screening and program referrals; expanding the use of citations for low-level, non-violent offenses; and expediting case processing.

FINDINGS

The Commission has found:

- The plans for relocating OCCC call for a new correctional center with the capacity to house 1380 male inmates at the current Animal Quarantine Station site in Halawa Valley and for the construction of additional capacity at the Women's Community Correctional Center in Kailua to accommodate female detainees.
- The new correctional center will be designed to accommodate 1044 male detainees and 336 pre-release male inmates.
- Of the 1044 proposed detention beds, 844 (83%) will be medium/minimum; 108 (10%) will be maximum/special needs; and 72 (7%) will be designated for mental health.
- The projected cost of the new OCCC is over \$500 million.
- The Final Draft Environmental Impact Statement was published on June 26, 2018. The proposed capacity and levels of security were based on projections of the inmate population based on data available at that time. Since then, the data indicates that the population of OCCC has declined markedly. On June 30, 2108, OCCC held 1027 male inmates. On December 7, 2020, the male inmate population at OCCC had declined to 792. The data for the past year, even for the period before the pandemic, indicates that this decline in population may not be an anomaly.
- During the COVID-19 pandemic, the various criminal justice agencies in Hawaii endeavored to help reduce the population of our correctional facilities. This was done in order to reduce the chronic overcrowding that would inflame the spread of the virus should it enter any one of the facilities. As a result, the population of OCCC has been reduced since the onset of the pandemic, and since then the highest end of the month count of male inmates was 840, in July.
- The criminal justice agencies were able to reduce the population of the correctional facilities through a combination of initiatives involving all agencies of the criminal justice system.
- The preliminary data indicates that the accelerated releases did not result in an increase in arrests. The Lawyers for Equal Justice found "Of the 300 individuals released, the vast majority did not reoffend. Of those who did reoffend, most were re-arrested for poverty related offenses." ("Outbreak" Lawyers for Equal Justice, August 2020, p. 16: see Appendix ____)
- In a letter dated May 28, 2020, to the Governor and others, the Commission recommended "that two critical pieces be put in place as soon as possible. First, there needs to be a coordinated system to help link detainees and offenders with needed services in the community. Second, we urge that there be a focused effort to gather and analyze the relevant data on the releases so that an objective evaluation of the process can be conducted. We need to review all of the data in order to get a fair and accurate picture of the the extent to which public safety has been affected by the recent releases." We believe that these recommendations are critical to the planning of the new correctional center. To the best of our knowledge, neither recommendation has been implemented.
- On December 7, 2020, the male population at OCCC included 325 pre-trial felons; 225 pre-trial misdemeanants; and 167 probation violators. Because of

COVID related concerns, there were only 12 sentenced felons in the pre-release program.

- On the same day, Hawaii's two minimum security facilities were underutilized. The Kulani Correctional Facility has a capacity of 200, but held 172 inmates. The Waiawa Correctional Facility has a capacity of 334 but held 228 inmates.

CONCLUSIONS

Given the above, the Commission concludes:

- There needs to be a re-assessment of the capacity of the new correctional center.
- A significant proportion of the detainees at OCCC are charged with misdemeanors or are already on probation. Therefore, there needs to be serious consideration of the kinds of programs needed for these groups and whether these programs can be effectively offered in settings less secure than a correctional facility.
- With the proposed addition of 336 pre-release beds and the retention of the 96 bed Laumaka Work Furlough Center, PSD will have 432 pre-release beds. In addition, the Department currently has 534 minimum security beds at the Waiawa and Kulani Correctional Facilities. The December 7, 2020 report indicates that the existing pre-release and minimum security facilities are underutilized. There needs to be an assessment of the purpose of the proposed pre-release beds, their role in the correctional process and their potential impact on the existing minimum security facilities.
- Concurrently, there needs to be an assessment of housing assignments for sentenced felons and parole violators under PSD jurisdiction. On December 7, 2020, 1078 male inmates were housed at the Saguaro Correctional Center in Arizona. The Commission could support the addition of the additional pre-release beds if these beds will facilitate a more efficient and effective re-entry process for inmates currently housed at Saguaro.
- The Lawyers for Equal Justice found that that of those granted release because of the pandemic and were rearrested, "most were re-arrested for poverty related offenses," e.g. houselessness offenses such as entry of a closed public park or obstruction of a public sidewalk. While this finding is general and preliminary, it indicates the need for the development of social services, housing, employment and mental health programs. Such programs promise to help detainees secure their release and also avoid re-incarceration. Further, there needs to be focused research into the relationship between such services and incarceration rates, to determine the effectiveness of such programs but also to advise decision makers on improvements needed by these programs.
- The releases during the pandemic – under the supervision of the Supreme Court and otherwise – indicates that the criminal justice system already has mechanisms that can help manage the correctional population. The State needs to assure that such mechanisms continue to be implemented, and also identify other measures that need to be taken.

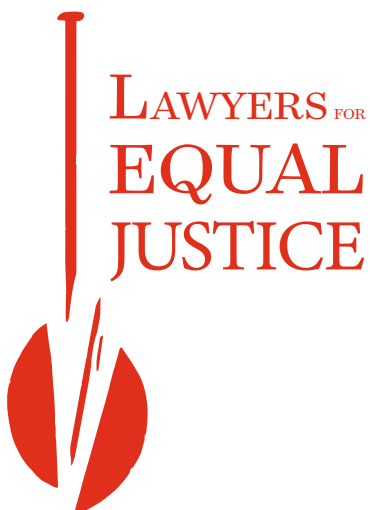
The Hawaii Corrections System Advisory Commission therefore concurs that the planning for the new OCCC should be paused and that an Advisory Committee be convened to review, and if necessary revise, the planning that has been done to date, and to actively participate in the planning process going forward.

SUMMARY OF RECOMMENDATIONS

Based on the reports herein, the Hawaii Correctional System Oversight Commission recommends:

1. The Hawaii State Legislature fund and the Governor fill the Oversight Coordinator and staff positions created under Act 179, SLH 2019.
2. The Department of Public Safety adopt and enforce the Infectious Disease Emergency Capacities, which is a part of this report.
3. Chapter 804, HRS, relating to bail be amended concerning monetary bail and non-violent defendants. A draft proposal is part of this report.
4. The planning for the new Oahu Community Correctional Center should be paused and the an advisory committee consisted of stakeholders be convened to review and, if necessary, revise the planning that has been done to date. Expansions of existing facilities should also be reviewed and, if necessary, revised.

ATTACHMENTS

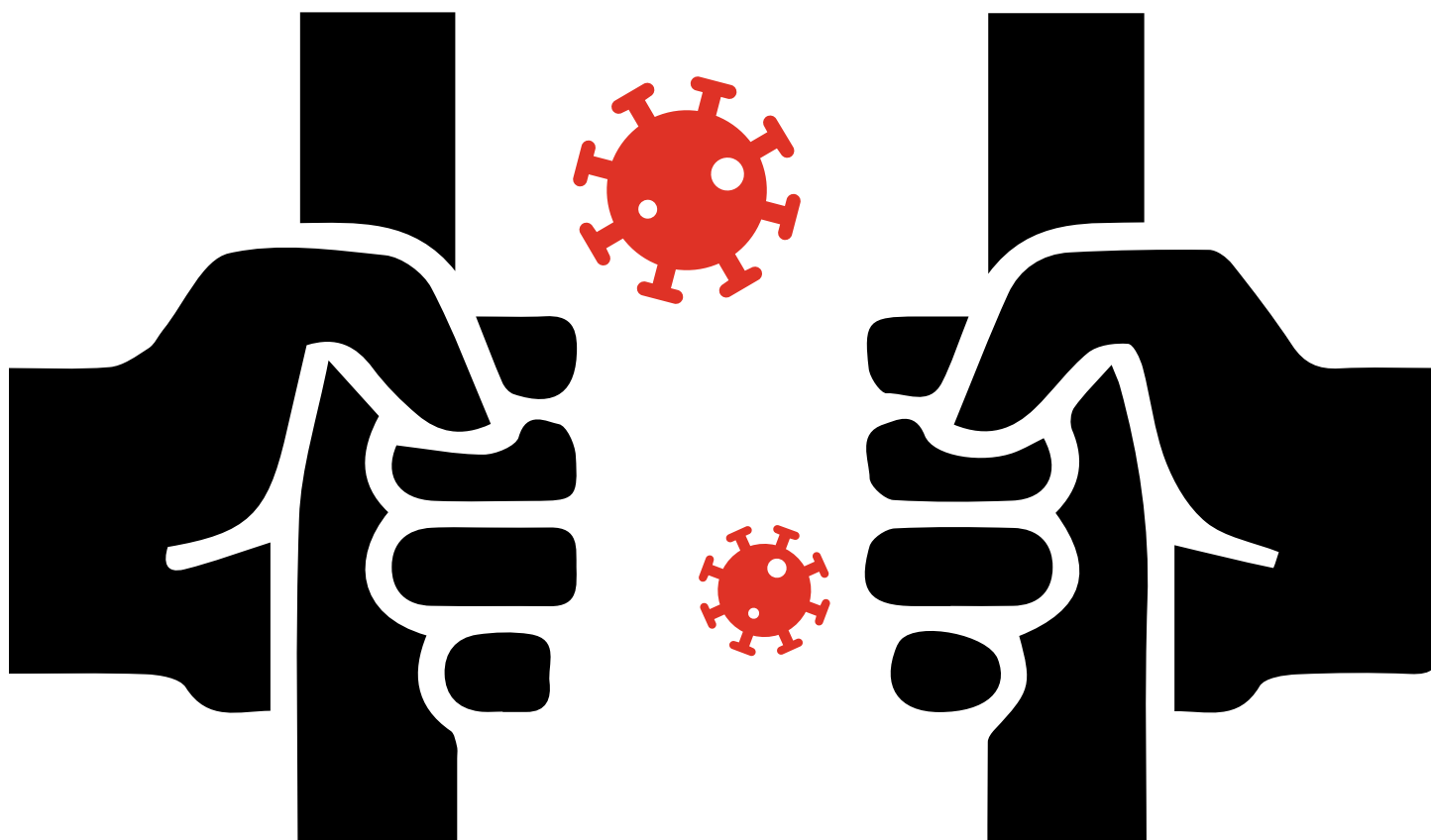


In the Spring of 2020, prosecutors, politicians and the media inflamed public fears of crime and minimized real threats to public health, undermining an initiative to reduce the populations of Hawai'i correctional facilities and prevent outbreak.

Today, in the face of an alarming coronavirus flare-up in our correctional facilities, it is critical that we learn from that mistake.

AUGUST, 2020

OUTBREAK





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hiequaljustice.org

Lawyers for Equal Justice (LEJ) is a non-profit law firm that advocates for low income residents of Hawai'i. The central mission of Lawyers for Equal Justice is to help our clients gain access to the resources, services and fair treatment that they need to realize their opportunities for self-achievement and economic security. Our cases change systems and policies to make justice, equality and opportunity available to everyone.

Since 2004, Lawyers for Equal Justice (LEJ) has been using class action litigation to stand up for the rights of hundreds of thousands of low-income households throughout Hawai'i. LEJ's cases have resulted in deep and lasting changes, improving health and safety, increasing economic and educational opportunities, and saving lives.

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PUBLIC HEALTH IS ONLY AS SECURE
AS THE HEALTH OF THE MOST
VULNERABLE AMONG US. COVID-19
HAS CAST THIS FACT INTO SHARP
RELIEF: ONLY BY CARING FOR ONE
ANOTHER CAN WE DEFEAT THE
PANDEMIC.

INTRODUCTION

COVID-19 FESTERS wherever people are forced into close contact with one another, spreading quickly through those on the front lines to their friends, families and surrounding communities. It is no surprise, then, that jails and prisons across the country have played host to the most catastrophic outbreaks to date. In the context of COVID-19, correctional facilities are public health disasters waiting to happen.

In August of 2020, the pandemic hit Hawai'i's correctional facilities for the first time. As of August 16, 170 inmates and 34 staff workers at O'ahu County Correctional Center (OCCC) [had tested positive](#).

The spread into OCCC is no surprise. Although Hawai'i

correctional facilities had avoided an outbreak for months due to good luck and a policy of reducing the incarcerated population, the state's notoriously overcrowded and unclean correctional facilities invite rapid disease transmission.

The State of Hawai'i should learn the lessons taught by the events of the spring of 2020, when public servants stepped in to avoid an outbreak of COVID-19 in correctional facilities, and preserve public health.

From April 16–June 5, 2020, in response to a petition filed by the Hawai'i State Office of the Public Defender (OPD), the Hawai'i Supreme Court embarked on an ambitious and far-sighted initiative aimed at reducing the population

of the state's jails and prisons. The goal of the initiative was to prevent the sort of devastating COVID-19 outbreaks experienced in correctional facilities across the rest of the country, while ensuring public safety.

The Supreme Court designed a process that allowed individuals incarcerated for lower-level offenses to petition lower courts for release. The process provided an opportunity for prosecutors to object to release, and allowed releases only if the judge was satisfied release would not endanger the public.

As a result of the initiative, the population of Hawai'i correctional facilities fell by more than 800 people with no appreciable

increase in crime. As a result, Hawai'i avoided both outbreaks within correctional facilities and spread to communities.

Despite this success, media coverage of the release initiative was overwhelmingly negative. Prosecutors and others issued dire warnings that the courts were releasing large numbers of violent criminals, and that crime was spiking. Politicians repeated these claims in even more dramatic terms. Media outlets printed the inflammatory statements without meaningful rebuttal or context.

In this report, Lawyers for Equal Justice (LEJ) explores the reasons for the gulf between public perception of the project and reality. The report is not merely an academic attempt to correct the historical record, but an effort to ensure that the mistakes of May and June are not repeated in August and September.

The outbreak that the Supreme Court tried so desperately to avert in April is now upon us, exacerbated (if not caused) by the discontinuation of the release program. County jails have

rapidly refilled in the wake of the termination of the Supreme Court proceedings. Hundreds of inmates and correctional officers are infected.

Government officials, the media and the public must recognize that it is essential to reduce the number of people in those facilities to levels that will ensure health and safety for all. If we again allow fear of a nonexistent crime wave to overshadow the very real and immediate dangers of the current flare-up, that outbreak could easily overwhelm Hawai'i's health system.

KEY FINDINGS

1. During the Supreme Court proceedings, law enforcement officials generally agreed that Hawai'i correctional facilities were overcrowded and unsafe, that releases were necessary to avoid the spread of the pandemic, and that public safety could be protected if a judge reviewed each case. By contrast, in lower court filings and public statements, some of those same officials routinely and cynically mischaracterized the release process to play on public fears about crime.
2. The vast majority of the formerly-incarcerated people released through the Supreme Court process were not re-arrested. Of those who were released and then re-arrested, 80 percent were re-arrested for houselessness-related offenses, such as entry of a closed public park, or violations of the terms of their release, such as failing to call a probation officer.
3. In covering the release initiative, major media outlets tended to: vastly exaggerate the threat the releases posed to public safety; fail to adequately describe the courts' efforts to protect public safety; fail to report that almost all the re-arrests were for houselessness-related offenses; and ultimately allotted over 17 times more space to concerns about crime than to concerns about public health.
4. The Department of Public Safety explicitly disclaimed its legal obligation to provide reentry services to individuals who were released, leaving many people with no support whatsoever as they attempted to transition back into society.

METHODOLOGY & DATA

TO PRODUCE THIS REPORT, LEJ STAFF EXAMINED DATA AND INFORMATION FROM COURT FILINGS AND MEDIA REPORTS TO EXPLAIN AND EVALUATE THE RELEASE INITIATIVE, AND THE REACTION TO IT.

COURT FILINGS

LEJ conducted an extensive review of court filings. The review included all documents filed with the Supreme Court and all the reports of Special Master Daniel Foley,¹ including dozens of exhibits.

The review also included lower court documents. On May 26, 2020, the Honolulu Police Department (HPD) identified 300 individuals whom it alleged had been released

on O'ahu due to COVID-19. See [Appendix A](#) for the list released by the police department.

Of those actually released as part of the Supreme Court initiative, 39 were re-arrested (HPD over-stated the number as 50, but that figure appears unsupported by court records). LEJ conducted an extensive review of the relevant court filings for each of these individuals,

including court minutes, motions for release filed by OPD, motions in opposition to release filed by the Office of the Prosecuting Attorney, declarations of probation officers, and other filings. See [Appendix B](#) for LEJ's database evaluating the court filings of the 50 alleged reoffenders identified by HPD.

In addition, LEJ drew from the HPD list a sample of 13 cases

¹ The Supreme Court appointed retired Intermediate Court of Appeals Judge Daniel Foley as Special Master on April 16, 2020 to help the parties try to agree on ways to voluntarily reduce facilities populations.

Of those actually released as part of the Supreme Court initiative, 39 were re-arrested (HPD over-stated the number as 50, but that figure appears unsupported by court records).

involving people released through the Supreme Court process who had not been re-arrested as of June 5—the date the initiative ended. LEJ reviewed the court dockets for these individuals as well to evaluate the prosecutors’ treatment of individuals who did not commit any new offenses after they were released. See [Appendix C](#) for LEJ’s database evaluating the court filings for these 13 individuals.

MEDIA REPORTS

To evaluate media coverage of the COVID-19 release initiative, LEJ looked for articles published between April 15 (the date the Supreme Court started the initiative) and June 6 (the day after the Supreme Court ended it) for a total of 53 articles from nine different news outlets across the State of Hawai‘i.

To find these articles, LEJ searched the websites of major Hawai‘i news outlets for news articles containing relevant keywords, including “inmate release,” “prisoner release,” and “rearrested.” LEJ discarded opinion pieces, editorials and other commentary. See [Appendix D](#) for LEJ’s database of media reports.



ANALYSIS

THE SUPREME COURT INITIATIVE

THE SUPREME COURT AND ALL PARTIES ACCEPTED THE BASIC FACT THAT IT WAS ESSENTIAL TO REDUCE THE NUMBER OF PEOPLE INCARCERATED.

Our review of Supreme Court filings shows broad consensus about the need for at least some releases. Department of Public Safety Director Nolan P. Espinda himself said it best, in an op-ed published just before the pandemic struck:

“Unfortunately, the critical overcrowding situation must be addressed right now. Since the 1990s, Hawai‘i’s prison and jail population has grown well beyond capacity, during which time no new facilities were added. We are forced to triplebunk single cells, add beds to crowded dorms and convert spaces normally used for rehabilitative programs to housing. Overcrowding and inefficient infrastructure create safety and security risks to staff, inmates and the public.”¹

In its very first filing with the

Supreme Court on March 26, 2020, the Office of the Public Defender (OPD) set forth a detailed statement of facts, taken almost entirely from statements of public officials and national experts and national and local data.

OPD quoted the Centers for Disease Control (CDC), the World Health Organization, and other authorities to point out that people in correctional facilities are uniquely vulnerable to disease outbreaks because of their inability to socially distance, and because of the difficulties in maintaining hygiene while inside.

In the words of the CDC, the preeminent public health authority in the United States:

“Incarcerated [or] detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced ... Options for medical isolation of COVID-19 cases are limited.”²

The OPD observed that states across the country had ordered the

release of “as many prisoners as [possible]” in order to respond to this grave public health threat.

In a March 31 response to OPD’s petition, the Hawai‘i State Attorney General (AG) did not present any expert opinion to challenge the assertions that conditions in Hawai‘i facilities were dangerous, and that a significant reduction in facility populations was essential to protecting public health.

Instead, the AG conceded that “reducing the jail and prison population could potentially assist the state’s existing operational plan to address COVID-19 in correctional facilities.”

Unsurprisingly, the Supreme Court agreed, holding on April 2, 2020 that:

“There is a significant interest in reducing inmate populations to protect those who work at or are incarcerated in these overcrowded facilities. COVID-19 outbreaks within overcrowded facilities or facilities in which appropriate physical distancing is not possible will not only place inmates at risk of

1. Nolan P. Espinda, “[Dispelling Myths About Prison Overcrowding](#),” *Honolulu Star-Advertiser*, Jan. 21, 2020

2. Centers for Disease Control, “[Interim Guidance on Management of Coronavirus Disease 2019 \(COVID-19\) in Correctional and Detention Facilities](#),” Updated March 23, 2019

OUTBREAKS IN CONTINENTAL CORRECTIONAL FACILITIES

8 of the top 10 COVID-19 clusters in the U.S. have been in correctional facilities.¹

A state prison in Marion, Ohio had 78 percent of its incarcerated population test positive for the virus—a total of over 2,000 people infected in just one facility. At one point, incarcerated people in Ohio represented 20 percent of all infections in that state.²

A federal prison in Texas had more than 1,300 of its roughly 1,750 incarcerated population test positive for the virus—three out of every four incarcerated individuals in the facility.³

Over 260 staff members have tested positive for COVID-19 at San Quentin state prison in California. At least two dozen incarcerated individuals and one guard have died from the virus.⁴

EXPERT TESTIMONY ON THE DANGERS OF COVID-19 IN CORRECTIONAL FACILITIES

“The various modules are so far beyond their design or operational capacities that it is physically impossible to effectively implement social distancing measures...[this] mean[s] that OCCC is a COVID-19 ticking time bomb.”⁵ — Dr. Pablo Stewart

“The individuals represented by petitioner are at high risk of serious, life-threatening COVID-19 infection, and that their continued confinement in crowded facilities subjects them to a heightened risk of contracting and further spreading

COVID-19.”⁶ — Public health and human rights experts (Robert L. Cohen, M.D., Joe Goldenson, M.D., Kathryn Hampton, MSt, Ranit Mishori, M.D., Michael Puisis, O.D., Rae S. Seitz, M.D., and Brie Williams, M.D.)

“The problem will be dangerously exacerbated if jails and prisons do not act immediately to reduce their prison populations and contain the spread of the virus.”⁷ — Various public health and human rights experts (same as above)

1. Taylor Miller Thomas, “[How U.S. prisons became ground zero for COVID-19](#),” *Politico*, June 25, 2020

2. Josiah Bates, “[Ohio began mass testing incarcerated people for COVID-19. The results paint a bleak picture for the the U.S. Prison System](#),” *Time*, April 22, 2020

3. Casey Tolan, Nelli Black, Drew Griffin, “[Inside the federal prison where three out of every four inmates have tested positive for coronavirus](#),” *CNN*, August 8, 2020

4. Associated Press, “[Guard at California's San Quentin Prison dies of coronavirus](#),” *U.S. News and World Report*, August 10, 2020

5. Submitted to the Supreme Court in First Special Master’s Report on April 9, 2020

6. Brief of Amici Curiae submitted to the Supreme Court on April 6, 2020

7. Ibid.

“There is a significant interest in reducing inmate populations to protect those who work at or are incarcerated in these overcrowded facilities. COVID-19 outbreaks within overcrowded facilities or facilities in which appropriate physical distancing is not possible will not only place inmates at risk of death or serious illness, but will also endanger the lives and well-being of staff and service providers who work in the facilities, their families, and members of the community at large.

“Outbreaks within these facilities will severely tax the limited resources of community health care providers, including hospital beds, ventilators, and personal protective equipment because of virulent spread within close quarters, and will also require the utilization of additional resources to provide constitutionally mandated medical care.” — Supreme Court decision

death or serious illness, but will also endanger the lives and well-being of staff and service providers who work in the facilities, their families, and members of the community at large. Also, outbreaks within these facilities will severely tax the limited resources of community health care providers, including hospital beds, ventilators, and personal protective equipment because of virulent spread within close quarters, and will also require the utilization of additional resources to provide constitutionally mandated medical care.”

In the legal proceedings that followed, no party involved—neither the Attorney General, the Department of Public Safety, nor the Office of the Prosecuting Attorney

of any county—ever sought to overturn these findings.

THE PROCESS ESTABLISHED BY THE SUPREME COURT PROVIDED STRONG PROTECTIONS FOR PUBLIC SAFETY.

In its order on April 15, the Supreme Court mandated a four-step process specifically aimed at reducing the population of each facility to its design capacity, while ensuring that public safety was protected:

1. The court ruled that only certain categories of individuals were eligible to apply for COVID-19 release. The court categorically excluded individuals with high-level felony convictions from even applying for

release under the initiative (although those individuals could still pursue routine, non-emergency avenues for legal relief).

2. The court invited OPD to file motions for emergency release on behalf of certain individuals. Most of those who were eligible were people charged with—but not convicted of—misdemeanors, people who could not afford bail, or people incarcerated due to technical parole or probation violations.

3. The court invited the Office of the Prosecuting Attorney to object to any proposed release.

4. The court directed the trial courts to grant release unless “the court finds that the release of the inmate would pose a significant

The court directed the trial courts to impose cash bail only if an individual was a “threat to public safety or a flight risk,” explaining that people “who are poor and not a risk to public safety or a flight risk should not be held simply because they do not have the means to post cash bail.”

risk to the safety of the inmate or the public.”

The court took one other step to reduce the incarcerated population: limiting the number of new individuals coming into correctional facilities by suspending the practice of incarcerating individuals simply because they were unable to make bail. The court directed the trial courts to impose cash bail only if an individual was a “threat to public safety or a flight risk,” explaining that people “who are poor and not a risk to public safety or a flight risk should not be held simply because they do not have the means to post cash bail.”

THE RELEASE INITIATIVE
DRAMATICALLY REDUCED THE
POPULATIONS OF HAWAII
CORRECTIONAL FACILITIES.

By May 11, 2020, the overall jailed population in the state had been reduced by 832: from 2,189 people to 1,357 people.¹ According to HPD, the Supreme Court’s expedited motions procedure accounted for a reduction of about 300 people on O’ahu. LEJ believes that the remainder of the reduction was accomplished through motions made by defense attorneys on the neighbor islands and by reducing the flow of individuals into correctional facilities, largely by suspending the practice of incarcerating people who could not afford bail.

INCARCERATED POPULATIONS
AND COVID-19 CASES ARE AGAIN
ON THE RISE FOLLOWING THE
TERMINATION OF THE SUPREME
COURT’S INITIATIVE.

On June 5, 2020, the Supreme

Court terminated the release initiative, noting that “although the pandemic continues, the rate of new infections in Hawai‘i remains at very low levels” and that “much of the urgent relief requested” had been “addressed.” However, all four county jails remain above design capacity.²

Moreover, as of July 20, 2020, the population of the four county jails had grown to 1,718 people, erasing in the span of a single month nearly half of the total reduction that had been achieved.³

Meanwhile, new daily COVID-19 cases are close to 10 times what they were at their previous peak in March and April,⁴ and DPS has admitted that overcrowding prompted them to cut short what was supposed to be a mandatory 14-day quarantine before moving incoming prisoners into the general population.

1. Corrections Division, State of Hawai‘i Department of Public Safety, “[Weekly Population Reports](#),” March–May, 2020

2. Corrections Division, State of Hawai‘i Department of Public Safety, “[Weekly Population Report](#),” June 1, 2020; Design capacity is the number of inmates that planners or architects intended for the facility.

3. Corrections Division, State of Hawai‘i Department of Public Safety, “[Weekly Population Report](#),” July 20, 2020

4. Hawai‘i Department of Health [COVID-19 Data Dashboard](#), Accessed August 17, 2020

PUBLIC OFFICIALS & THE MEDIA

The out-of-court statements of many public officials, prosecutors, and state legislators, disregarded the real threat COVID-19 posed to incarcerated individuals and to the public. The media echoed these statements uncritically.

Our analysis of 53 news reports reveals that government officials and the media misinformed the public in four main ways:

1. The media failed to adequately describe the safeguards the Supreme Court established to protect public safety.

2. The Honolulu Prosecutor and other government officials disregarded the public health concerns that made the initiative necessary in the first place.

3. Government officials and the media exaggerated and inflamed concerns about crime by emphasizing a handful of fear-inducing incidents at the expense of the reality that very few of the people who were released committed new offenses. The media also failed to mention that almost all of the new offenses were related to homelessness.

4. Public officials and the media blamed very real problems experienced by people who were released, especially homelessness, on the release initiative, instead of on the Department of Public Safety, the entity obligated to provide reentry services.

As described above, the Supreme Court's release initiative combined three safeguards to prevent releases that might endanger public safety.

First, individuals convicted of the most serious offenses were not even eligible to apply for release under the initiative.

Second, prosecutors had the opportunity to provide evidence that a release might endanger public safety.

Third, release was granted only if a court found that a release would not endanger public safety.

THE MEDIA FAILED TO ADEQUATELY DESCRIBE THE SAFEGUARDS THE SUPREME COURT ESTABLISHED TO PROTECT PUBLIC SAFETY.

Media reports generally failed to accurately describe these safeguards: only about half the articles mentioned any safeguards at all, and only 13 percent mentioned the fact that those who posed a threat to public safety were not to be released. These failures to accurately describe the procedural safeguards contributed

to the misperception that the Supreme Court disregarded or minimized public safety concerns.

THE HONOLULU PROSECUTOR AND OTHER GOVERNMENT OFFICIALS DISREGARDED PUBLIC HEALTH CONCERNS.

In lower court filings, the Honolulu City Prosecutor's office used essentially the same two scripts to argue against emergency releases, which included the following statements:

"[T]he risk of Defendant contracting COVID-19 while in custody is low."

"PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection in its facilities which, as of this date, remain COVID-19 free."

"Defendant has presented no evidence indicated he is particularly susceptible to COVID-19-related illness."

Every one of these assertions is deeply problematic. As an initial matter, the Honolulu Prosecutor did not support any of these bald assertions with actual medical

or expert evidence about the incarcerated individual or about the risk of infection in Hawai'i correctional facilities.

The assertion that “Defendant has presented no evidence indicating he is particularly susceptible to COVID-19-related illnesses” and the virtually identical assertion in the second script that “there is no showing that Defendant is susceptible to COVID-19 infection” are nonsensical. Humans have no immunity to the virus and there is no treatment or cure (hence the global pandemic),¹ not to mention the particular risk to people in jails and prisons (as documented above).

The assertion that, by arguing for release of an individual, OPD was raising a “contamination while incarcerated” scenario that was somehow “emotionally charged,” is both ironic and deeply troubling. OPD scrupulously documented the heightened dangers of a COVID-19 outbreak in correctional facilities with expert testimony from mainland and local experts and with actual examples of real-life catastrophes.

The Attorney General and the prosecutors made no attempt to refute that evidence in the Supreme Court; the Supreme Court explicitly found a heightened danger; and the Honolulu Prosecutor's lower

HONOLULU PROSECUTOR LOWER COURT FILING, VERSION 1

The basis of defendant's Motion is the current COVID-19 pandemic and the understandable concern arising therefrom. This Court, however, should not allow emotionally charged arguments citing to a **possible** “contamination while incarcerated” scenario detract from the carefully considered, fact based considerations, which went into the sentence/bail status of the defendant leading to current incarceration.

Further, Defendant's contention that release is necessary because continued imprisonment at this time places him at “serious risk of loss of life or permanent injury” is completely unsubstantiated. Defendant has presented no evidence indicating he is particularly susceptible to COVID-19-related illnesses. Additionally, the risk of Defendant contracting COVID-19 while in custody is low—especially when compared with the significant risk of harm to both Defendant and the public posed by his release.

HONOLULU PROSECUTOR LOWER COURT FILING, VERSION 2

1. There is no showing that Defendant is particularly susceptible to COVID-19;
2. PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection within its facilities which, as of the filing of this memorandum, remain COVID-19 free; and

court filings themselves were unsupported by evidence. The Prosecutor is correct that one side of the argument is “emotionally charged,” but it is his own, not that of the Supreme Court, the Special Master, or the Public Defender.

The out-of-court statements of many public officials, among them Honolulu Police Chief

Susan Ballard, prosecutors, and state legislators, disregarded the real threat COVID-19 posed to incarcerated individuals and to the public. The media echoed these statements uncritically. See [Appendix E](#) for a sample of these statements and associated media coverage.

A number of public officials cited

1. Robert D. Kirkcaldy, Brain A. King, and John T. Brooks, “COVID-19 and Postinfection Immunity: Limited Evidence, Many Remaining Questions,” *JAMA Network*, May 11, 2020

MISLEADING STATEMENTS BY THE HONOLULU PROSECUTOR

In submissions to the Special Master and the Supreme Court, the Honolulu prosecutor consistently issued inflammatory warnings of a crime wave:

“While we understood, only low-level non-violent offenders would be considered, we have seen class A drug cases, sex assault, robbery, assault, terroristic threatening and burglary cases, all subject for release ... We understand the police have seen an increase in robbery type offenses, as we see it, it’s a matter of time before we see an increase in other type of violent crimes.”¹

“Originally, the public defender did not include violent offenders or domestic violence offenders, however, our experience has been that even these defendants have been released by the court

over state’s objections. This has created a tipping point whereas the current situation where the release of dangerous and repeat offenders is more dangerous than the possibility of an outbreak overwhelming our healthcare system.”²

“Despite these low numbers and no reported cases of the virus in our prison facilities, data from Department of Public Safety reveals that over 800 inmates were released into our communities for COVID reasons...these numbers are staggering, especially in light of the fact that those released are not provided any support or resources once in the community.”³

“Let us hope that it does not take someone being killed or seriously injured for the Supreme Court orders to be lifted.”⁴

the fact that there had not been any reported COVID-19 cases in Hawai‘i correctional facilities to argue that releases were unnecessary. The media often amplified these statements. For example, *KITV* quoted Representative Gene Ward as saying, “There’s no evidence of anyone in the prisons having [COVID-19] so they’re safer [in prison].”⁵

Additionally, a *Honolulu Star-Advertiser* article quoted Attorney General Clare Connors, Honolulu Prosecutor Dwight Nadamoto, Hawai‘i County Prosecutor Mitch Roth, and Maui County Prosecutor Donald Guzman each saying the lack of COVID-19 cases in correctional facilities is reason to stop releases.⁶

This assertion is wildly

misguided. Dr. Pablo Stewart, a nationally recognized expert in prison health conditions and attending physician at OCCC, explained to the Supreme Court that—given the dirty and crowded conditions in Hawai‘i correctional facilities—even a single case of COVID-19 inside the walls would be very likely to spread catastrophically, as has occurred

1. Submitted to the Supreme Court in Third Special Master’s Report, 5th Exhibit, on April 30, 2020

2. Submitted to the Supreme Court in Fourth Special Master’s Report, 5th Exhibit, on May 15, 2020

3. Submitted to the Supreme Court in Fourth Special Master’s Report, 6th Exhibit, on May 15, 2020.

4. Submitted to the Supreme Court in Fifth Special Master’s Report, 1st Exhibit, on May 28, 2020

5. TJ Horgan, “[Lawmaker condemns the release of hundreds of inmates from Hawaii’s prisons](#),” *KITV*, May 4, 2020

6. Gordon Y.K. Pang, Rosemarie Bernardo, “[Attorney general, prosecutors want inmate releases halted](#),” *Honolulu Star-Advertiser*, May 6, 2020

“There’s no evidence of anyone in the prisons having [COVID-19] so they’re safer [in prison].” — Hawai‘i State Representative Gene Ward, House District 17

in other correctional facilities across the country. As we have seen, Dr. Stewart’s predictions have been confirmed by the explosion of cases at OCCC.

As of July 21, 2020, there have been at least 70,717 reported cases of COVID-19 amongst incarcerated individuals in the United States. At least 712 incarcerated individuals have died from the virus.¹ Outbreaks in mainland correctional facilities have proven very difficult to contain.

Until August, Hawai‘i was the only state in the union with no confirmed cases of COVID-19 in correctional facilities. The fact that there had been no spread in Hawai‘i was a sign that the initiative was successful, not that it was unnecessary. Tragically, the expert warnings have now been confirmed. With the termination of the policy, the incarcerated population climbed, and the conditions returned to facilitate a devastating outbreak.

THE MEDIA INFLAMED CONCERNS ABOUT PUBLIC SAFETY BY EMPHASIZING A HANDFUL OF DRAMATIC STORIES AT THE EXPENSE OF THE REALITY THAT VERY FEW OF THE PEOPLE WHO WERE RELEASED COMMITTED NEW OFFENSES, AND ALMOST ALL OF THE NEW OFFENSES WERE RELATED TO HOUSELESSNESS.

Law enforcement officials consistently claimed that the release initiative endangered public safety. The media often parroted these inflammatory statements, failing to provide context for the allegations. A sampling of headlines and quotations during the program demonstrates the problem:

“Lawmakers and authorities call for change after early release crime spike.”²

“Prosecutors raise alarms about hundreds of offenders released amid pandemic.”³

Honolulu Police Chief Susan Ballard said, “the releases pose a bigger threat to public safety as some of those who are released re-offend and prey on the community.”⁴

Hawai‘i County Prosecutor Mitch Roth said, “the release of dangerous and repeat offenders is more dangerous than the possibility of an outbreak overwhelming our care system.”⁵

As these headlines and quotations suggest, roughly 70 percent of articles mention concerns about crime, while only 13 percent mention concerns for public health. Ultimately, crime concerns are allotted over 17 times the amount of media coverage given to public health concerns. See [Appendix F](#) for further analysis of this coverage.

Many articles followed a predictable format: They begin with a catchy headline highlighting the purported dangers of releasing incarcerated individuals, include a paragraph or two of background

1. The Marshall Project, [“A state-by-state look at coronavirus in prisons,”](#) July 23, 2020

2. Gina Mangieri, [“Lawmakers and authorities call for change after early release crime spike,”](#) KHON2, May 19, 2020

3. Chelsea Davis, [“Prosecutors raise alarms about hundreds of offenders released amid pandemic,”](#) *Hawaii News Now*, May 4, 2020

4. Mark Ladao, [“More than 50 inmates out of 300 released are rearrested,”](#) *Honolulu Star-Advertiser*, May 27, 2020

5. John Burnett, [“Roth: Jail releases possibly more dangerous than outbreak,”](#) *Hawaii Tribune-Herald*, May 19, 2020

While the media focused on the inflammatory statements of public officials, the data painted a very different picture. Of the 50 individuals whom HPD claimed had been re-arrested after a COVID-19-related release, only 39 were actually released pursuant to the process put in place by the Supreme Court. Of these 39 people, almost 80 percent were re-arrested for houselessness-related offenses or violations of the terms of release.

information on the releases and a brief mention of health concerns, and then spend the vast majority of coverage on negative anecdotes.

For example, one *Honolulu Star-Advertiser* article is titled “Several Hawaii inmates released during coronavirus pandemic rearrested for new crimes.”¹ The article jumps right into a series of anecdotes about individuals supposedly released due to COVID-19 who allegedly reoffended.

Of the 22 total paragraphs in this article, 17 are dedicated to discussion of crime, including 14 focused on individual cases. The individual cases chosen for the article are the few most serious crimes committed, with no context or acknowledgement that these do not represent the vast majority of those who were released.

Not until the last few paragraphs of the article is the rationale for the release initiative discussed. Even there, the article glosses over

the public health concerns at the root of the initiative to leave room for prosecutors to disagree, as if the well-established connection between carceral facilities and COVID-19 outbreaks is a matter of active debate.

While the media focused on the inflammatory statements of public officials, the data painted a very different picture. Of the 50 individuals whom HPD claimed had been re-arrested after a COVID-19-related release, only 39 were actually released pursuant to the process put in place by the Supreme Court. Of these 39 people, almost 80 percent were re-arrested for houselessness-related offenses or violations of the terms of release.

Typical houselessness-related offenses include entry of a closed public park or obstruction of a public sidewalk. In one case, an individual was released without anywhere to go, fell asleep on the bench outside the courthouse, and

was then re-arrested for doing so. Most of the violations of terms of release were incidents as minor as failing to notify a probation officer of a change in address.

This data belies the claim that the people released due to COVID-19 were re-arrested en masse for threatening the safety of our communities. Of the 300 individuals released, the vast majority did not reoffend. Of those who did reoffend, most were re-arrested for poverty-related offenses. If anything, the data shows that our legal system criminalizes poverty.

The larger context is also instructive. In 2017, the Hawai‘i Attorney General reported 2,622 arrests for serious crimes, including murder, rape, robbery, assault, burglary and theft.² HPD’s data on the re-arrests of people who were released due to COVID-19 shows, at most, five crimes on O‘ahu fitting into that category. Far from showing

1. Rosemarie Bernardo and Gordon Y.K. Pang, “[Several Hawaii inmates released during coronavirus pandemic rearrested for new crimes](#),” *Honolulu Star-Advertiser*, May 9, 2020

2. Uniform Crime Reporting (UCR) [Program State and County Crime Statistics](#), Crime Prevention & Justice Assistance Division, Attorney General’s Office, State of Hawai‘i

HPD's data on the re-arrests of people who were released due to COVID-19 shows, at most, five [serious] crimes on O'ahu. Far from showing a crime wave or spike, the data shows that the release initiative had essentially no impact on the crime rate.

a crime wave or spike, the data shows that the release initiative had essentially no impact on the crime rate.

PUBLIC OFFICIALS AND THE MEDIA BLAMED VERY REAL PROBLEMS EXPERIENCED BY PEOPLE WHO WERE RELEASED, ESPECIALLY HOUSELESSNESS, ON THE RELEASE INITIATIVE, INSTEAD OF THE DEPARTMENT OF PUBLIC SAFETY.

Some officials criticized the release initiative because many incarcerated individuals were released without the support they needed to succeed after release. For example, the Honolulu Prosecutor said in a statement to the Supreme Court:

"It was abundantly clear, the Office of the Public Defender

had not engaged any community agencies to help support the hundreds of inmates, who they advocated release of."¹

Houselessness among formerly incarcerated people is not a new problem: a 2017 report found that 30 percent of those released from Hawai'i's jails and prisons exited the correctional facility where they had been incarcerated without anywhere to go.²

Nonetheless, the criticism of the release initiative is correct, but it should have been aimed at the entity legally responsible for reentry: the Department of Public Safety (DPS).

As the agency tasked with overseeing Hawai'i's incarcerated people, DPS is charged with facilitating the reentry of those people into our communities. These duties are imposed by law.

DPS "shall develop a

comprehensive and effective offender reentry system plan" (emphasis added).³ In addition to this system-wide plan, DPS "shall develop comprehensive reentry plans ... for individuals exiting correctional facilities," and such plans "shall include...transitional programs to address the needs of individuals exiting the correctional system" (emphasis added).⁴

DPS is also responsible for tracking "the number of individuals who exit jail or prison with a reentry plan,"⁵ and reporting those figures annually.⁶

DPS is further required to "issue civil identification cards" to people soon to be released and to assist each person in obtaining "birth certificate, social security card, and any other relevant identification documents."⁷ These identification documents are, in the words of the U.S. Department

1. Submitted to the Supreme Court in Fourth Special Master's Report, 6th Exhibit, on May 15, 2020

2. Gavin Thornton, James Koshiba, and Joyce-Lee Ibarra, "[Touchpoints of Homelessness: Institutional Discharge as a Window of Opportunity for Hawai'i's Homeless](#)," Aloha United Way, 2017

3. Haw. Rev. Stat. § 353H-3(a)

4. Haw. Rev. Stat. § 353H-3(b)

5. Haw. Rev. Stat. § 353H-8 (b)(2)

6. Haw. Rev. Stat. § 353H-9

7. Haw. Rev. Stat. § 353H-32

ANALYSIS

“They let you out with zero. I had the clothes on my back. Everything else was still locked in the property crate. My phone, little bit [of] money I had, even the shoes I came in with. I tried to get my stuff back, but it was after 3 [p.m.], and they said the office was closed so I had to wait until the next day. I hear if they let you out on a Friday [after 3 p.m.], you got to wait ‘til Monday.” — Formerly incarcerated individual

Deputy Director Kimoto tried to pin responsibility for transitional programming on the Office of the Public Defender. This view finds no support in Hawai‘i law nor DPS’ own administrative documents, both of which make clear that DPS’ reentry obligations hold for all formerly incarcerated individuals without exception.

of Justice, “critical to successful reentry.”¹

State-issued ID is necessary to apply for employment, pursue educational opportunities, find housing, comply with conditions of parole, and fill prescriptions. Unfortunately, DPS has consistently struggled to meet its obligations.

The ID mandate went into effect on January 1, 2018,² but between November 2018 and October 2019, more than half of all people released from Hawai‘i jails left without a civil identification card. The same was true for birth certificates and social security cards.³

In some cases, people do not even get their belongings. The property room at OCCC, for example, is open Monday to Friday from 8 a.m. to 4 p.m. People who are released when the property room is closed need to come back to the jail when it reopens. This presents an especially difficult problem for those who are released after the property room closes for the weekend on Friday afternoon. A story from a formerly incarcerated person encapsulates the sordid state of affairs:

“Yeah, they let you out with zero. I had the clothes on my back. Everything else was still locked

in the property crate. My phone, little bit [of] money I had, even the shoes I came in with. I tried to get my stuff back, but it was after 3 [p.m.], and they said the office was closed so I had to wait until the next day. I hear if they let you out on a Friday [after 3 p.m.], you got to wait ‘til Monday.

“I walked barefoot back toward town. A bus driver let me on with my [OCCC] bracelet [proof that I’d just been released]. I tried to find someone I knew back in the area where I was camped before. But it was all different. My tent was gone. This one guy Steve I knew from before let me stay with him.”⁴

1. U.S. Dep’t of Justice, *Prison Reform: Reducing Recidivism by Strengthening the Federal Bureau of Prisons*, 2017

2. Haw. Rev. Stat. § 353H-32

3. State of Hawai‘i Dep’t of Pub. Safety, *Reentry Coordination Office Annual Report on Civil Identification Documents*, 2019

4. Gavin Thornton, James Koshiba, and Joyce-Lee Ibarra, “*Touchpoints of Homelessness: Institutional Discharge as a Window of Opportunity for Hawai‘i’s Homeless*,” Aloha United Way, 2017

That was before the pandemic began; there is no evidence that DPS has improved its practices since the COVID-19 outbreak. From April to June, hundreds of people re-entered the community from jails and prisons as a result of the COVID-19 crisis. However, the DPS entity responsible for reentry—the Reentry Coordination Office (RCO)—was conspicuously absent.

On April 28, 2020, a member of the Emergency Reentry Project (EREP), a coalition of community advocates and stakeholders,¹ wrote to DPS senior management “to ask what the Reentry Coordination Office has been doing to assist in the reentry process for those who have been released due to the novel coronavirus pandemic.”

DPS Director Nolan Espinda responded on May 1, 2020 by suggesting that private actors—rather than DPS, the state agency legally responsible for the provision of reentry services—seek “alternative transitional housing

... for those inmates who risk becoming homeless upon release.”²

In the week that followed, DPS’ efforts to disclaim any responsibility for people released due to the pandemic became even more transparent. On May 6, 2020 a representative of the EREP spoke on the phone with DPS Deputy Director for Corrections Shari Kimoto.

According to Deputy Director Kimoto, who oversees the RCO, DPS had no responsibility to provide reentry services to “COVID releases.”

Deputy Director Kimoto tried to pin responsibility for transitional programming on the Office of the Public Defender.³ This view finds no support in Hawai‘i law nor DPS’ own administrative documents, both of which make clear that DPS’ reentry obligations hold for all formerly incarcerated individuals without exception.

Remarkably, media coverage of reentry issues reinforced rather than contradicted the idea that

entities other than DPS were responsible for reentry services.

For example, one *Hawai‘i News Now* article asserts: “The sudden release of inmates also put significant strain on agencies that assist the homeless and mentally ill, since many of the inmates who fall into those categories were not able to seek adequate help upon their release.”⁴

Another article quotes House Speaker Scott Saiki saying, “[the release program] has shifted the financial burden primarily from the public safety system to local governments, service providers and the private sector.”⁵

Only a single article out of the 53 in the database even mentioned DPS’s responsibility for reentry.⁶ (In general, *Honolulu Civil Beat* articles tended to provide more context than those of other outlets.) No others mentioned that DPS had tried to disclaim responsibility for its legal obligation. None mentioned the history of problems with reentry that long predated the pandemic.

1. The EREP includes representatives from the Office of the Public Defender, ACLU of Hawai‘i, Office of Hawaiian Affairs, Hawai‘i Innocence Project, Medical-Legal Partnership for Children, Community Alliance on Prisons, Hawai‘i Justice Coalition, Law Enforcement Assistance Diversion Program, Hawai‘i Health and Harm Reduction Center, and the Hawai‘i Correctional Systems Oversight Commission.

2. April 28, 2020 and May 1, 2020 correspondence between Kat Brady and Nolan Espinda re: Emergency Reentry Project.

3. *Office of the Public Defender v. Connors* and *Office of the Public Defender v. Ige*, Fourth Summary Report and Recommendations of the Special Master, Exhibit 12

4. HNN Staff, “[COVID-19 risk decreased, state Supreme Court ends inmate early release program](#),” *Hawaii News Now*, June 5, 2020

5. Lynn Kawano, “[Inmate releases amid COVID-19 fears are putting a big strain on service providers](#),” *Hawaii News Now*, May 18, 2020

6. Yoohyun Jung, “[Critics say Hawaii prisons are failing to help released inmates](#),” *Honolulu Civil Beat*, May 23, 2020

CONCLUSION

WE MUST REDOUBLE OUR EFFORTS TO DEFEND THE HEALTH OF ALL OF THE MEMBERS OF OUR COMMUNITIES, INCLUDING THE INCARCERATED, BY REDUCING THE NUMBER OF PEOPLE HELD IN HAWAI'I'S JAILS AND PRISONS.



THE UNSPOKEN implication of much of the discussion surrounding the COVID-19 release initiative is that the process should never have begun, and that the hundreds of individuals released should still be incarcerated. Nothing could be further from the truth.

While it lasted, and for two months after, the Supreme Court initiative succeeded in averting an outbreak in the state's unsanitary and overcrowded correctional

facilities. Only after the initiative ended, and populations in those facilities increased, did the pandemic strike.

The pandemic is now spreading through our correctional facilities. The threat of an uncontrolled outbreak looms larger than ever. We must pick up where the Supreme Court left off in June. We must again work creatively to reduce the populations of our facilities and to provide an adequate level of

social services to those released. Public officials—especially law enforcement—should support the reduction, not undermine it.

The media should reject efforts to mischaracterize reductions by ensuring those efforts are put in an accurate context.

Above all, we must all recognize that releasing incarcerated individuals, far from threatening public health and safety, is essential to the protection of those interests.



APPENDIX A: HPD LIST OF ALLEGED RELEASEES

On May 26, 2020, the Honolulu Police Department (HPD) released the following list of individuals whom it alleged had been released in the First Circuit as a result of the Supreme Court's initiative. Prior to May 26, it had been impossible to get any kind of meaningful list of names from either the police or the prosecutor. In this case, HPD did not explain what the numbers in the fourth column mean. However, individuals whose names are highlighted had allegedly been rearrested since they were released.

[VIEW LIST](#)

APPENDIX B: FACT CHECK OF ALLEGED RE-ARRESTEES

We evaluated court filings associated with each of the highlighted names on the HPD list to determine why each individual had been released—in particular, whether they were on the Office of the Public Defender's (OPD) list of requested releases as part of the COVID-19 initiative or for some other reason, as well as whether each individual had in fact been re-arrested, and if so, the grounds for the new arrest.

Roughly 90 percent of those re-arrested were charged with offenses relating directly to homelessness and poverty, not because of violent activity. In many cases in which violence did lead to a re-arrest, the defendant in question was released for other reasons, and sometimes the prosecutor filed no motion in opposition.

For privacy, we are only printing the first names of the defendants listed.



Name: Vanity S
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC161001208;
 1CPC-19-0000209
Charges: HRS 708-851(1)(a), forgery 1;
 HRS 710-1026.9, resisting an order to stop
 a motor vehicle
Released: 4/8/2020
COVID-19 Motion: No
Motion in Opposition: No
New Case: Federal case
New Charges: Car-jacking
Comments: Released pursuant to
 procedural COVID-19-related order



Name: Brittney N
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-20-0000327
Charges: HRS 708-836, unauthorized
 control of a propelled vehicle
Released: 3/24/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCC-20-0009889;
 1DCC-20-0011383; 1DCC-20-0011551
New Charges: Violation of emergency
 proclamation
Comments: All new charges are
 houselessness-related



Name: Lucan K
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-17-0001360
Charges: HRS 712-1243, promoting a
 dangerous drug 3
Released: 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of probation for
 failure to communicate with probation
 officer
Comments: Technical probation violation



Name: Taylor M
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1PC141002037
Charges: HRS 708-831, theft 2
Released: 4/23/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of probation for
 failure to communicate with probation
 officer
Comments: Technical probation violation



Name: Daniel B
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1DCW-20-0001137
Charges: HRS 708-823(1), criminal property damage 4, intentional/knowing; HRS 711-1106(1)(a), harassment, strikes shoves, kicks
Released: 4/27/2020
COVID-19 Motion: No
Motion in Opposition: No
New Case: 1CPC-20-0000492
New Charges: Murder 2
Comments: Defendant was not even arrested in his Custody Case until 4/25/2020. Both of the charges against him at that time were petty misdemeanors, and he was released on his own recognizance



Name: Manawis M
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1PC121000151; 1PC111000047
Charges: HRS 708-831, theft 2; HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5, prohibited acts related to drug paraphernalia
Released: 4/23/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0007841; 1DCC-20-0008460
New Charges: Trespassing; indecent exposure; violation of emergency proclamation (park closure)
Comments: All new charges are houselessness-related



Name: Thomas N
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC141001315
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5, prohibited acts related to drug paraphernalia
Released: 3/30/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCC-20-0005115; 1DCC-20-0005145; 1DCC-20-0004962; 1DCC-20-0005180; 1DCC-20-0005223; 1DCC-20-0005628; 1DCC-20-0006638; 1DCC-20-0008591; 1DCC-20-0008944
New Charges: Violation of emergency proclamation (park closure)
Comments: All new charges are houselessness-related



Name: Sky T
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC131001510; 1PC131001766
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5, prohibited acts related to drug paraphernalia; HRS 708-833(1), theft 4
Released: 4/15/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0005004; 1DCC-20-0005011
New Charges: Violation of emergency proclamation (park closure)
Comments: All new charges are houselessness-related

APPENDIX B



Name: Vagn R
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1PC141001852
Charges: HRS 708-836, unauthorized control of a propelled vehicle
Released: 4/23/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: No new charges
Comments: Defendant has not been re-arrested



Name: William B
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-20-0000083
Charges: HRS 708-852, forgery 2
Released: 4/1/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of supervised release for failure to communicate with court officer
Comments: Technical probation violation



Name: Kendall K
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-19-0001648
Charges: HRS 708-836, unauthorized control of a propelled vehicle
Released: 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of supervised release for failure to communicate with court officer
Comments: Technical probation violation



Name: Phillip T
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001390; 1FFC-20-0000065
Charges: HRS 708-831(1)(b), theft 2, exceeding \$750; HRS 586-4(e)(1), violation of a TRO
Released: 4/20/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1CPC-20-0000673
Charges: Burglary
Comments: Technical probation violation



Name: Terdon W
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-20-0000004
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 4/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0007283; 1DCC-20-0014700
New Charges: Violation of emergency proclamation (park closure)
Comments: All new charges houselessness-related



Name: Timmy T
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001632
Charges: HRS 708-836.5, unauthorized entry into a motor vehicle 1
Released: 3/24/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation



Name: Ronald N
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001678
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 3/27/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCC-20-0009031; 1DCC-20-0012178; 1DCC-20-0012613
New Charges: Violation of emergency proclamation
Comments: All new charges are houselessness-related



Name: MT R
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001862
Charges: HRS 708-836.5, unauthorized entry into motor vehicle 1
Released: 4/6/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0012314; 1DCC-20-0013890; 1DCC-20-0008732
New Charges: Entry into a closed public park; obstruction of a public sidewalk
Comments: All new charges are houselessness-related



Name: Diamond S
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-20-0000272
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 3/24/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1CPC-20-0000638
New Charges: Robbery



Name: Joshua H
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001741
Charges: HRS 707-711(1)(d), assault 2; HRS 707-716(1)(e), terroristic threatening 1
Released: 3/29/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1FFC-20-0000413
New Charges: Domestic violence



Name: Joseph A
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1PC161000406
Charges: HRS 708-891.5, computer fraud 2; HRS 708-839.55, unauthorized possession of confidential personal information; HRS 702-222, accomplice; HRS 708-852, forgery 2
Released: 4/20/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: No new charges
Comments: Rearrested for a separate, technical probation violation



Name: Joshua L
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC161000438
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5(a), drug paraphernalia; HRS 708-814(1)(a); criminal trespassing 2, enclosed/fenced premises
Released: 4/23/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: No new charges
Comments: Defendant has not been re-arrested

APPENDIX B



Name: Marcel M
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0000223
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 707-712(1)(a), assault 3
Released: 3/30/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCW-20-0001056; 1DCC-20-0014906; 1DCW-20-0001064; 1DCC-20-0008998; 1DCW-20-0001177; 1DSS-20-0000591
New Charges: Assault 1; violation of emergency proclamation; terroristic threatening 2; harassment, strikes, shoves, kicks; restraining order



Name: Herbert V
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0000760; 1CPC-20-0000159
Charges: HRS 708-836.5, unauthorized entry into a motor vehicle 1; HRS 712-1243, promoting a dangerous drug 3
Released: 3/3/2020
COVID-19 Motion: No
Motion in Opposition: N/A
New Case: No new case
New Charges: Revocation of probation for failure to comply with terms of release
Comments: Defendant was released in the course of normal court business before the Supreme Court issued any COVID-19-related orders



Name: Jessen G
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-17-0000933
Charges: HRS 708-839.55, unauthorized possession of confidential personal information
Released: 4/23/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1FFC-20-0000419
New Charges: Abuse of family member; unlawful imprisonment
Comments: Following re-arrest, defendant again released; under stay away order with respect to complaining family member



Name: Eddie F
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0000286
Charges: HRS 708-810(1)(b), burglary 1, bodily injury; HRS 707-716(1)(e), terroristic threatening 1; HRS 586-11(a)(1)(B), first conviction domestic abuse; HRS 708-823(1), criminal property damage 4, intentional/knowing
Released: 3/27/2020
COVID-19 Motion: No
Motion in Opposition: N/A
New Case: 9 new citations
New Charges: Violation of emergency proclamation; entry into a closed public park; obstruction of a public sidewalk
Comments: All new charges are houselessness-related



Name: Cody G
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001497;
 1CPC-19-0000210
Charges: HRS 705-500, criminal attempt;
 HRS 708-836.5, unauthorized entry into a
 motor vehicle 1; HRS 710-1021, escape 2;
 HRS 708-836, unauthorized control of a
 propelled vehicle; HRS 707-712.6, assault
 of a law enforcement officer 2; HRS
 708-823(1), criminal property damage 4,
 intentional/knowing
Released: 4/7/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: No new charges
Comments: Defendant has not been re-
 arrested



Name: Matthew C
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001822;
 1CPC-18-0000134
Charges: HRS 712-1243, promoting a
 dangerous drug 3; HRS 708-833(1), theft 4;
 HRS 708-839.55, unauthorized possession
 of confidential personal information
Released: 4/20/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1CPC-20-0000500;
 1CPC-20-0000499
New Charges: Forgery 2; identity theft 3;
 unauthorized possession of confidential
 personal information; criminal attempt;
 theft exceeding \$250; theft exceeding
 \$750
Comments: Technical probation violation



Name: Isaac S
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1PC161000702
Charges: HRS 712-1243, promoting a
 dangerous drug 3; HRS 329-43.5(a), drug
 paraphernalia; HRS 708-814(1)(b), criminal
 trespassing 2, commercial premises &
 written warning
Released: 4/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of probation for
 failure to communicate with probation
 officer
Comments: Technical probation violation



Name: Justner Y
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-20-0000178
Charges: HRS 712-1243, promoting a
 dangerous drug 3
Released: 3/24/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCC-20-0007309;
 1DCC-20-0010849; 1DCC-20-0012005,
 1DCC-20-0013431; 1DTI-20-100109
New Charges: Violation of emergency
 proclamation; sit/lie public sidewalk;
 obstruction of a public sidewalk
Comments: All new charges are
 houselessness-related

APPENDIX B



Name: Steven W
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001251
Charges: HRS 708-831(1)(b), theft 2, exceeding \$750
Released: 3/31/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: No new case
New Charges: Revocation of supervised release for failure to communicate with court officer
Comments: Technical probation violation



Name: Matthew F
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-18-0001803
Charges: HRS 708-841(1)(a), robbery 2, theft or motor vehicle theft & force
Released: 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of supervised release for failure to communicate with court officer
Comments: Technical probation violation



Name: Michael H
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-18-0000637
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation



Name: Gail K
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-18-0001790
Charges: HRS 708-803, habitual property crime
Released: 3/31/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation



Name: James H
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-18-0000486
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 708-833(1), theft 4
Released: 4/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0016070; 1DCC-20-0013968
New Charges: Violation of emergency proclamation; obstruction of a public sidewalk
Comments: All new charges are houselessness-related



Name: Christin B
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0000943
Charges: HRS 707-716(1)(e), terroristic threatening 1; Class B Felony, HRS 134-25, failure to properly store a pistol or revolver
Released: 3/27/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of supervised release for failure to communicate with court officer
Comments: Technical probation violation



Name: Brendy B
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-20-0000169
Charges: HRS 708-836, unauthorized control of a propelled vehicle; HRS 708-832(1)(a), theft 3, exceeding \$250
Released: 3/31/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation



Name: Quinton Q
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-17-0001474
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5(a), drug paraphernalia
Released: 4/1/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation



Name: Michelle K
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-18-0001642
Charges: HRS 708-836, unauthorized control of a propelled vehicle
Released: 4/23/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0016069
New Charges: Violation of emergency proclamation; trespassing; obstruction of a public sidewalk
Comments: All new charges are houselessness-related



Name: Aleki T
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-17-0001450
Charges: HRS 708-836, unauthorized control of a propelled vehicle
Released: 4/3/2020
COVID-19 Motion: No
Motion in Opposition: N/A
New Case: 6 new citations
New Charges: Violation of emergency proclamation; obstructing a public sidewalk; trespass; sit/lie
Comments: All new charges are houselessness-related



Name: David T
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-18-0000424
Charges: HRS 712-1246.5, promoting a harmful drug 4
Released: 3/31/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCC-20-0013745; 1DCW-20-0001327
New Charges: Sit/lie; trespassing
Comments: All new charges are houselessness-related



Name: Kiakahi B
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-18-0000779
Charges: HRS 711-1110.9, violation of privacy 1
Released: 4/20/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1DCW-20-0001323
New Charges: Criminal tampering 2
Comments: Touched someone else's property without consent

APPENDIX B



Name: Bowen B
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 11CPC-19-0001108; 1CPC-19-0001193; 1CPC-19-0000482
Charges: HRS 708-836, unauthorized control of a propelled vehicle; HRS 710-1026(1)(a), resisting arrest, physical force; HRS 286-102, no motor vehicle driver's license; HRS 710-1027, resisting an order to stop a motor vehicle; HRS 291-2, reckless driving; HRS 708-839.55, unauthorized possession of confidential personal information; HRS 708-839.8, identity theft 3; HRS 708-833(1), theft 4; HRS 708-831(1)(a), theft 2, person
Released: 4/2/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1CPC-20-0000570
New Charges: Unauthorized control of a propelled vehicle; resisting an order to stop a motor vehicle



Name: Joshua B
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-18-0000906; 1CPC-20-0000039
Charges: HRS 709-906(1)(5), abuse of a family or household member, refusal to comply with the lawful order of a police officer; HRS 707-721(1), unlawful imprisonment 1; HRS 708-836.5, unauthorized entry into motor vehicle 1
Released: 3/23/2020
COVID-19 Motion: No
Motion in Opposition: N/A
New Case: 1DCC-20-0013010; 1CPC-20-0000591
New New Charges: Violation of emergency proclamation; theft
Comments: Released on own recognizance on 3/23 in order referencing COVID-19 pandemic among other factors; Supreme Court orders not referenced, no COVID-related motion filed



Name: Franklin P
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-17-0001410; 1CPC-19-0001609
Charges: HRS 708-831(1)(b), theft 2, exceeding \$750; HRS 708-836, unauthorized control of a propelled vehicle; HRS 712-1243, promoting a dangerous drug 3; Felony Class C, HRS 708-821(1)(b), criminal property damage 2 exceeding \$1,500; HRS 286-102, driving without a valid driver's license
Released: 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1CPC-20-0000578
New Charges: Unauthorized control of a propelled vehicle



Name: James V
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-17-0001034
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 4/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation



Name: Mark D
Jurisdiction: First Circuit
HPD Re-Arrest Listed: No
Custody Case: 1CPC-20-0000389
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 3/23/2020
COVID-19 Motion: No
Motion in Opposition: N/A
New Case: 1DCC-20-0011545
New Charges: Violation of emergency proclamation
Comments: All new charges are houselessness-related



Name: Amos F
Jurisdiction: First Circuit
HPD Re-Arrest Listed: No
Custody Case: 1CPC-19-0001703
Charges: HRS 708-836, unauthorized control of a propelled vehicle
Released: 3/27/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCW-20-0000936; 1DCW-20-0001146
New Charges: Theft of goods valued at less than \$250 from Aloha Island Mart; terroristic threatening



Name: Arthur M
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1PC151001321
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 4/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: 1CPC-20-0000532; 1CPC-20-0000625
New Charges: Theft of goods valued at less than \$250 from Macy's; possession of methamphetamine
Comments: Defendant was rearrested on old charges and has not even allegedly committed a new crime since he was released this spring



Name: Christopher K
Jurisdiction: First Circuit
OPD Requested Release: Yes
Custody Case: 1CPC-18-0000105; 1PC151000641
Charges: HRS 708-839.8, identity theft 3; HRS 708-839.55, unauthorized possession of confidential personal information; HRS 708-832(1)(a), theft 3 exceeding \$250
Released: 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
New Case: No new case
New Charges: Revocation of probation for failure to communicate with probation officer
Comments: Technical probation violation

APPENDIX B



Ali'iolani Hale, Hawai'i
Supreme Court



Name: Thomas F
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0001811
Charges: HRS 708-821(1)(b), criminal property damage 2, exceeding \$1,500
Released: 3/27/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: 1DCC-20-0007360; 1DCC-20-0010751; 1DCC-20-0011697; 1DCC-20-0014237
New Charges: Theft 4; violation of emergency proclamation
Comments: All new charges houselessness-related



Name: Chad W
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-19-0000758
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 708-823, criminal property damage 4, intentional/knowing
Released: 3/30/2020
COVID-19 Motion: Yes
Motion in Opposition: No
New Case: No new case
New Charges: Revocation of supervised release for failure to communicate with court officer
Comments: Technical probation violation

APPENDIX C: FACT CHECK OF NON RE-ARRESTEES

In addition to the names that were highlighted, indicating alleged re-arrest, we drew a sample of 13 names from the HPD list that were not highlighted in order to investigate prosecutorial practices in the average case, where release had not been followed by re-arrest. The two scripts used by the Honolulu Prosecutor are used in more than half the cases listed in this appendix.

For privacy, we are only printing the first names of the defendants listed.



Name: Charlani M
Jurisdiction: First Circuit
OPD Requested Release: Yes, probation violations, 144
Custody Case: 1PC091001102
Charges: HRS 708-836.5; unauthorized entry into motor vehicle 1
Released: 04/09/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: "1. There is no showing that defendant is susceptible to COVID-19 infection; 2. PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection in its facilities which, as of this date, remain COVID-19 free; and 3. The public safety must take priority and the release of a person with confirmed inability to conform their conduct to legally imposed conditions thereon cannot be reasonably expected to conform their conduct to those conditions imposed by Governor

Ige and Mayor Caldwell to halt of the progress of the virus in the community which include 'sheltering in place,' social distancing and self-quarantine."

"Given a conflict between the safety of the public versus an individual's safety from a 'what if' situation, the Court must rule for public safety."

"In the event the Court decides to release Defendant based upon the threat of COVID-19 infection, for the protection of the public, it must first insure that: 1. Defendant is free of COVID-19; 2. Defendant has a verifiable place to stay once released where he/she can 'shelter-in-place' and/or be quarantined. This means the person or persons with whom Defendant will be staying both acknowledge and accept Defendant as a co-dweller in the shelter."



Name: Howard L
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC111001143
Charges: HRS 707-0711/1D, assault 2

Released: 04/07/2020
COVID-19 Motion: Yes
Motion in Opposition: No



Name: Terii N
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC111000152
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5(a), drug paraphernalia
Released: 04/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: "1. There is no showing that defendant is susceptible to COVID-19 infection; 2. PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection in its facilities which, as of this date, remain COVID-19 free; and 3. The public safety must take priority and the release of a person with confirmed inability to conform their conduct to legally imposed conditions thereon cannot be reasonably expected to conform their conduct to those conditions imposed by Governor

Ige and Mayor Caldwell to halt of the progress of the virus in the community which include 'sheltering in place,' social distancing and self-quarantine."

"Given a conflict between the safety of the public versus an individual's safety from a 'what if' situation, the Court must rule for public safety."

"In the event the Court decides to release Defendant based upon the threat of COVID-19 infection, for the protection of the public, it must first insure that: 1. Defendant is free of COVID-19; 2. Defendant has a verifiable place to stay once released where he/she can 'shelter-in-place' and/or be quarantined. This means the person or persons with whom Defendant will be staying both acknowledge and accept Defendant as a co-dweller in the shelter."



Name: Kirk I
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC121000168; 1PC131000568
Charges: HRS 708-852, forgery 2; HRS 705-500, criminal attempt; HRS 708-831(1)(b), theft 2, exceeding \$300; HRS 708-811, burglary 2
Released: 3/16/2020 (order granting defendant's motion for release on his own recognizance to a representative of Sand Island Treatment Center); and again on 4/22/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: "The release of Defendant at this time would pose a significant risk to the safety of both Defendant and the public."

"This Court, however, should not allow emotionally charged arguments citing to a possible 'contamination while incarcerated' scenario detract from the carefully considered, fact based

considerations, which went into the sentence/bail status of the defendant leading to current incarceration."

"COVID-19 does not subvert the seriousness of Defendant's offense or the history and characteristics of Defendant that warranted his incarceration; nor does it lessen the amount of protection the public needs from Defendant."

"Defendant has presented no evidence indicating he is particularly susceptible to COVID-19-related illnesses. Additionally, the risk of Defendant contracting COVID-19 while in custody is low—especially when compared with the significant risk of harm to both Defendant and the public posed by his release."

"Given consideration of safety of the public versus the Defendant's safety, the public safety must prevail."



Name: Rufino D

Jurisdiction: First Circuit

OPD Requested Release: Yes, probation violations, 79

Custody Case: 1PC121000317

Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5(a), drug paraphernalia

Released: 04/23/2020

COVID-19 Motion: Yes

Motion in Opposition: Yes

Quotes: "The release of Defendant at this time would pose a significant risk to the safety of both Defendant and the public."

"This Court, however, should not allow emotionally charged arguments citing to a possible 'contamination while incarcerated' scenario detract from the carefully considered, fact based considerations, which went into the sentence/bail status of the defendant leading to current

incarceration."

"COVID-19 does not subvert the seriousness of Defendant's offense or the history and characteristics of Defendant that warranted his incarceration; nor does it lessen the amount of protection the public needs from Defendant."

"Defendant has presented no evidence indicating he is particularly susceptible to COVID-19-related illnesses. Additionally, the risk of Defendant contracting COVID-19 while in custody is low—especially when compared with the significant risk of harm to both Defendant and the public posed by his release."

"Given consideration of safety of the public versus the Defendant's safety, the public safety must prevail."



Name: Christopher F

Jurisdiction: First Circuit

OPD Requested Release: Yes, probation violations, 87

Custody Case: 1PC131001810; 1DTA-13-04537

Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 711-1101(1)(a), disorderly conduct, fight, threat

Released: 04/20/2020

COVID-19 Motion: Yes

Motion in Opposition: Yes

Quotes: "1. There is no showing that defendant is susceptible to COVID-19 infection; 2. PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection in its facilities which, as of this date, remain COVID-19 free; and 3. The public safety must take priority and the release of a person with confirmed inability to conform their conduct to legally imposed conditions thereon cannot be reasonably expected to conform their

conduct to those conditions imposed by Governor Ige and Mayor Caldwell to halt of the progress of the virus in the community which include 'sheltering in place,' social distancing and self-quarantine."

"Given a conflict between the safety of the public versus an individual's safety from a 'what if' situation, the Court must rule for public safety."

"In the event the Court decides to release Defendant based upon the threat of COVID-19 infection, for the protection of the public, it must first insure that: 1. Defendant is free of COVID-19; 2. Defendant has a verifiable place to stay once released where he/she can 'shelter-in-place' and/or be quarantined. This means the person or persons with whom Defendant will be staying both acknowledge and accept Defendant as a co-dweller in the shelter."



Name: Chau L
Jurisdiction: First Circuit
OPD Requested Release: Yes, probation violations, 126
Custody Case: 1PC131001348; 1DCC-20-0013815
Charges: HRS 712-1243, promoting a dangerous drug 3; HRS 329-43.5(a), drug paraphernalia
Released: 04/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: “1. There is no showing that defendant is susceptible to COVID-19 infection; 2. PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection in its facilities which, as of this date, remain COVID-19 free; and 3. The public safety must take priority and the release of a person with confirmed inability to conform their conduct to legally imposed conditions thereon cannot be reasonably expected to conform their conduct to those conditions imposed by Governor

Ige and Mayor Caldwell to halt of the progress of the virus in the community which include ‘sheltering in place,’ social distancing and self-quarantine.”

“Given a conflict between the safety of the public versus an individual’s safety from a ‘what if’ situation, the Court must rule for public safety.”

“In the event the Court decides to release Defendant based upon the threat of COVID-19 infection, for the protection of the public, it must first insure that: 1. Defendant is free of COVID-19; 2. Defendant has a verifiable place to stay once released where he/she can ‘shelter-in-place’ and/or be quarantined. This means the person or persons with whom Defendant will be staying both acknowledge and accept Defendant as a co-dweller in the shelter.”



Name: Tisha D
Jurisdiction: First Circuit
OPD Requested Release: Yes, probation violations, 80
Custody Case: 11PC121000010
Charges: HRS 712-1243, promoting a dangerous drug 3
Released: 04/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: “The release of Defendant at this time would pose a significant risk to the safety of both Defendant and the public.”

“This Court, however, should not allow emotionally charged arguments citing to a possible ‘contamination while incarcerated’ scenario detract from the carefully considered, fact based considerations, which went into the sentence/bail status of the defendant leading to current incarceration.”

“COVID-19 does not subvert the seriousness of Defendant’s offense or the history and characteristics of Defendant that warranted her incarceration; nor does it lessen the amount of protection the public needs from Defendant.”

“Defendant has presented no evidence indicating she is particularly susceptible to COVID-19-related illnesses. Additionally, the risk of Defendant contracting COVID-19 while in custody is low—especially when compared with the significant risk of harm to both Defendant and the public posed by her release.”

“Given consideration of safety of the public versus the Defendant’s safety, the public safety must prevail.”



Name: Suzan S
Jurisdiction: First Circuit
OPD Requested Release: Yes, probation violations, 173
Custody Case: 1PC141000369
Charges: HRS 708-831(1)(b), theft 2, exceeding \$300
Released: 04/17/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: "The release of Defendant at this time would pose a significant risk to the safety of both Defendant and the public."

"This Court, however, should not allow emotionally charged arguments citing to a possible 'contamination while incarcerated' scenario detract from the carefully considered, fact based considerations, which went into the sentence/ bail status of the defendant leading to current incarceration."

"COVID-19 does not subvert the seriousness of Defendant's offense or the history and characteristics of Defendant that warranted her incarceration; nor does it lessen the amount of protection the public needs from Defendant."

"Defendant has presented no evidence indicating she is particularly susceptible to COVID-19-related illnesses. Additionally, the risk of Defendant contracting COVID-19 while in custody is low—especially when compared with the significant risk of harm to both Defendant and the public posed by her release."

"Given consideration of safety of the public versus the Defendant's safety, the public safety must prevail."



Name: Christopher Y
Jurisdiction: First Circuit
OPD Requested Release: Yes, probation violations, 207
Custody Case: 1PC141000013
Charges: HRS 708-831(1)(b), theft 2, exceeding \$300
Released: 04/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: "1. There is no showing that defendant is susceptible to COVID-19 infection; 2. PSD has adopted extensive policies and procedures to deter and respond to a COVID-19 infection in its facilities which, as of this date, remain COVID-19 free; and 3. The public safety must take priority and the release of a person with confirmed inability to conform their conduct to legally imposed conditions thereon cannot be reasonably expected to conform their conduct to those conditions imposed by Governor

Ige and Mayor Caldwell to halt of the progress of the virus in the community which include 'sheltering in place,' social distancing and self-quarantine."

"Given a conflict between the safety of the public versus an individual's safety from a 'what if' situation, the Court must rule for public safety."

"In the event the Court decides to release Defendant based upon the threat of COVID-19 infection, for the protection of the public, it must first insure that: 1. Defendant is free of COVID-19; 2. Defendant has a verifiable place to stay once released where he/she can 'shelter-in-place' and/or be quarantined. This means the person or persons with whom Defendant will be staying both acknowledge and accept Defendant as a co-dweller in the shelter."

APPENDIX C



Name: Huron R
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1CPC-17-0000660; 1CPC-17-0001622
Charges: HRS 708-852, forgery 2; HRS 708-831(1)(b), theft 2, exceeding \$750
Released: 4/21/2020
COVID-19 Motion: Yes
Motion in Opposition: Yes
Quotes: “The release of Defendant at this time would pose a significant risk to the safety of both Defendant and the public.”

“This Court, however, should not allow emotionally charged arguments citing to a possible ‘contamination while incarcerated’ scenario detract from the carefully considered, fact-based considerations, which went into the sentence/bail status of the defendant leading to current incarceration.”

“Further, Defendant’s contention that release is necessary because continued imprisonment at this time places him at ‘serious risk of loss of life or

permanent injury’ is completely unsubstantiated. Defendant has presented no evidence indicating he is particularly susceptible to COVID-19-related illnesses. Additionally, the risk of Defendant contracting COVID-19 while in custody is low—especially when compared with the significant risk of harm to both Defendant and the public posed by his release.”

“Based on the most current relevant information, the release of Defendant into the general population on Oahu could actually increase his chances of contracting COVID-19.”

“The Department of Public Safety has implemented a number of safeguards to curb the possibility of inmates being exposed to COVID-19, along with policies and procedures to prevent transmission of infectious agents within its correctional facilities.”

“Given consideration of safety of the public versus the Defendant’s safety, the public safety must prevail.”



Name: Jennifer C
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC121000219; 1PC131000876; 5DCC-20-0000061
Charges: HRS 708-831(1)(b), theft 2, exceeding \$300; HRS 708-852, forgery 2; HRS 708-839.8, identity theft 3; HRS 708-839.55, unauthorized

possession of confidential personal information; HRS 705-500, criminal attempt; HRS 708-833, theft 4; VL KCC 19-2.3 (a), illegal camping; VL KCC 19-1.4(a)(13), unauthorized structure
Released: 3/31/2020
COVID-19 Motion: Yes
Motion in Opposition: Not specific to COVID-19



Name: Kainoa S
Jurisdiction: First Circuit
OPD Requested Release: No
Custody Case: 1PC131001316; 1DTC-19-014865

Charges: HRS 708-836, unauthorized control of a propelled vehicle
Released: 04/08/2020
COVID-19 Motion: Yes
Motion in Opposition: No

APPENDIX D: EVALUATION OF MEDIA REPORTS

The Society of Professional Journalists' [Code of Ethics](#) encourages reporters to “seek the truth and report it.” But this includes a specific call to provide context: “Take special care not to misrepresent or oversimplify in promoting, previewing or summarizing a story.” As well as to avoid stereotyping: “Journalists should examine the ways their values and experiences may shape their reporting.”

The code also asks that journalists minimize any harm their reporting may cause in pursuit of the truth: “Balance the public’s need for information against potential harm or discomfort; show compassion for those who may be affected by news coverage; and avoid pandering to lurid curiosity, even if others do.”

Reporting is a tough job. But it’s also a job that comes with an immense responsibility. Disseminating accurate information, particularly in matters of public health and safety, is of utmost importance to the public good. Using the code as a frame of reference, and in particular the above considerations, LEJ evaluated each article for a number of criteria, including:

- The extent to which the article mentioned the health and safety of incarcerated individuals and the public;
- The extent to which the article devoted substantially more space to concerns about crime than to any other subject;
- The extent to which the article accurately described the process established by the Supreme Court; in particular, that individuals convicted of the most serious offenses were not even eligible to apply for release, and that an individual would be released only if the court heard from the prosecutor and determined that release would not threaten public safety;
- The extent to which the article uncritically repeated anecdotes about individual releasees to imply that significant numbers of releases and rearrests involved particularly serious crimes;
- The extent to which the article addressed problems with the reentry system; in particular, whether it noted the long history of dysfunctional DPS administration of Hawai‘i’s reentry programs, or simply blamed reentry problems on the Supreme Court, the Office of the Public Defender, or the release; and initiative itself;
- Whether the article contained anything from the perspective of incarcerated individuals or about the dangerous conditions in the correctional facilities.

Based on this criteria, we assigned each article a color. Green means the article was mostly fair and contained helpful information, with a minimal focus on rare, albeit sensational, cases. Yellow means the article may have contained some good information, but over-emphasized security concerns. Red means the article severely over-emphasized security concerns, and/or the article contained little useful information at all, and overall contributed to a false sense that the release program was endangering the community.





Total Articles: 53

Outlets: 9

Authors: 26

Published: April 16–June 6, 2020

Total paragraphs: 724

Paragraphs about health concerns for inmates	47	6.49%	Found in 32/53 articles (60.38%)
Paragraphs about public health concerns	11	1.52%	Found in 7/53 articles (13.21%)
Paragraphs about (accurate) release process	61	8.43%	Found in 29/53 articles (54.72%)
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	7	0.97%	Found in 7/53 articles (13.21%)
Paragraphs about public safety concerns	191	26.38%	Found in 37/53 articles (69.81%)
Paragraphs about violent offenders and reoffenders (specific cases)	100	13.81%	Found in 20/53 articles (37.74%)
Paragraphs about reentry concerns	41	5.66%	Found in 13/53 articles (24.53%)
Paragraphs about reentry that address DPS's role/overall context	7	0.97%	Found in 1/53 articles (1.89%)
Paragraphs that mention baseline recidivism rate/context	3	0.41%	Found in 2/53 articles (3.77%)
Article includes inmate voices or perspective?	4 Yes		Found in 4/53 articles (7.55%)
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	2 Yes (but only the CDC)		Found in 2/53 articles (3.77%)
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	9 Yes		Found in 9/53 articles (16.98%)



Article: "[Hawaii Supreme Court: Inmate Release To Be Considered By Judges](#)"

Outlet: *Honolulu Civil Beat*

Author: Yoohyun Jung

Published: April 16, 2020

Total paragraphs: 6

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	4	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	Yes		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Hawaii Supreme Court allows plan to release inmates on individual basis](#)"

Outlet: *Honolulu Star-Advertiser*

Author: Star-Advertiser Staff

Published: April 16, 2020

Total paragraphs: 9

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	6	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“108 inmates on Big Isle seek early release because of pandemic”](#)

Outlet: *Hawaii Tribune-Herald*

Author: John Burnett

Published: April 17, 2020

Total paragraphs: 18

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: [“Hawaii's jail population drops by 619 inmates since March”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Star-Advertiser Staff

Published: April 17, 2020

Total paragraphs: 15

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	3	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: ["Jail population decreases by 619 people since beginning of March"](#)

Outlet: KITV4

Author: KITV4 Staff

Published: April 19, 2020

Total paragraphs: 7

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: ["Inmate count at MCCC down 33% since February"](#)

Outlet: *The Maui News*

Author: Lila Fujimoto

Published: April 25, 2020

Total paragraphs: 31

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	19
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	18
Paragraphs about (accurate) release process	4	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hawaii Supreme Court order mandates quicker release of non-violent inmates”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Gordon Y.K. Pang

Published: April 26, 2020

Total paragraphs: 21

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	3	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: [“Virus prompts Hawaii court's order of faster inmate release”](#)

Outlet: *Hawaii News Now*

Author: The Associated Press

Published: April 27, 2020

Total paragraphs: 12

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: "[Waipahu woman released due to pandemic is now back in custody for a carjacking](#)"

Outlet: *Hawaii News Now*

Author: HNN Staff

Published: April 30, 2020

Total paragraphs: 8

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	7
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	7
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[500 Hawaii inmates released early over fears of COVID-19's spread in overcrowded facilities](#)"

Outlet: *Hawaii News Now*

Author: Rick Daysog

Published: April 30, 2020

Total paragraphs: 13

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	6
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	5
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	2
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Hilo jail population down 160 inmates due to court order”](#)

Outlet: *Hawaii Tribune-Herald*

Author: John Burnett

Published: May 1, 2020

Total paragraphs: 10

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hundreds of Hawaii inmates freed from overcrowded facilities to limit exposure to COVID-19”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Mark Ladao

Published: May 1, 2020

Total paragraphs: 22

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Inmates released amid COVID-19 pandemic”](#)

Outlet: KHON2

Author: Max Rodriguez

Published: May 1, 2020

Total paragraphs: 10

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	3
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	1
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	1
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	Yes	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: [“Suspect charged with murder after fatal stabbing in Aiea”](#)

Outlet: Hawaii News Now

Author: HNN Staff

Published: May 2, 2020

Total paragraphs: 6

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	6
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	6
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hawai‘i Judiciary Frees 37% of Prison Population in Two Months”](#)

Outlet: *Big Island Now*

Author: Max Dibble

Published: May 3, 2020

Total paragraphs: 16

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	7
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	4
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: [“Prosecutors raise alarms about hundreds of offenders released amid pandemic”](#)

Outlet: *Hawaii News Now*

Author: Chelsea Davis

Published: May 4, 2020

Total paragraphs: 21

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	11
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	6
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: "[Hawaii Supreme Court stops inmate early release program](#)"

Outlet: KITV4

Author: TJ Horgan

Published: May 4, 2020

Total paragraphs: 8

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	2
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	1
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Lawmaker condemns the release of hundreds of inmates from Hawaii's prisons](#)"

Outlet: KITV4

Author: TJ Horgan

Published: May 4, 2020

Total paragraphs: 15

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Jail population in Wailuku drops below 300 with inmate releases”](#)

Outlet: *The Maui News*

Author: Lila Fujimoto

Published: May 4, 2020

Total paragraphs: 9

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Attorney general, prosecutors want inmate releases halted”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Gordon Y.K. Pang, Rosemarie Bernardo

Published: May 6, 2020

Total paragraphs: 19

Paragraphs about health concerns for inmates	4	Paragraphs about public safety concerns	5
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	Yes	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“COVID-19 outbreak in prison could overwhelm healthcare system”](#)

Outlet: KITV4

Author: Diane Ako

Published: May 6, 2020

Total paragraphs: 12

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	2
Paragraphs about public health concerns	4	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	1
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	Yes	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hawaii Jails Have Released More Than 800 Inmates Since March”](#)

Outlet: Honolulu Civil Beat

Author: Yoohyun Jung

Published: May 7, 2020

Total paragraphs: 5

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Several Hawaii inmates released during coronavirus pandemic rearrested for new crimes”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Rosemarie Bernardo, Gordon Y.K. Pang

Published: May 9, 2020

Total paragraphs: 22

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	17
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	14
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	1
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Some inmates seeking release are accused of violent acts”](#)

Outlet: *Hawaii Tribune-Herald*

Author: John Burnett

Published: May 10, 2020

Total paragraphs: 23

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	15
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	12
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: [“Jail population plummets: HTH sought list of inmates released to due pandemic—but there isn’t one, officials say”](#)

Outlet: *Hawaii Tribune-Herald*

Author: John Burnett

Published: May 10, 2020

Total paragraphs: 25

Paragraphs about health concerns for inmates	4	Paragraphs about public safety concerns	3
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hawaii jail population drops, list of released unavailable”](#)

Outlet: *The Garden Island*

Author: Associated Press

Published: May 11, 2020

Total paragraphs: 12

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Dozens of inmates in quarantine at Waiawa Correctional Facility”](#)

Outlet: *Hawaii News Now*

Author: HNN Staff

Published: May 12, 2020

Total paragraphs: 5

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“More than a dozen granted early release amid pandemic have been re-arrested”](#)

Outlet: *Hawaii News Now*

Author: HNN Staff

Published: May 14, 2020

Total paragraphs: 10

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	5
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	1
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“House Committee Wants More Detailed Reports On Jail Releases”](#)

Outlet: *Honolulu Civil Beat*

Author: Blaze Lovell

Published: May 15, 2020

Total paragraphs: 19

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	3
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	Yes		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hawaii legislators want weekly report on inmate releases”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Rosemarie Bernardo, Leila Fujimori

Published: May 15, 2020

Total paragraphs: 12

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	2
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Jail Populations Expected to Continue Decline Through June”](#)

Outlet: *Big Island Now*

Author: Big Island Now Staff

Published: May 16, 2020

Total paragraphs: 15

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	4
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	2
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Inmate releases amid COVID-19 fears are putting a big strain on service providers”](#)

Outlet: *Hawaii News Now*

Author: Lynn Kawano

Published: May 18, 2020

Total paragraphs: 13

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	6
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Four people recently released from prison due to concerns about COVID-19 were arrested Sunday](#)"

Outlet: KHON2

Author: KHON2 Staff

Published: May 18, 2020

Total paragraphs: 5

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	5
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	5
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Hawaii lawmakers question release of inmates amid pandemic](#)"

Outlet: KITV4

Author: KITV4 Web Staff

Published: May 18, 2020

Total paragraphs: 7

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“4 recently released inmates caught in a stolen car, police say”](#)

Outlet: KITV4

Author: KITV4 Web Staff

Published: May 18, 2020

Total paragraphs: 4

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	2
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	2
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Lawmakers urge paroling authority to delay another large prisoner release”](#)

Outlet: Hawaii News Now

Author: Lynn Kawano

Published: May 19, 2020

Total paragraphs: 14

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	7
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	2
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	3
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Roth: Jail releases possibly more dangerous than outbreak](#)"

Outlet: *Hawaii Tribune-Herald*

Author: John Burnett

Published: May 19, 2020

Total paragraphs: 25

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	8
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	3
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	3
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: "[Hawaii inmate early-release reviews are over](#)"

Outlet: *Honolulu Star-Advertiser*

Author: Andrew Gomes

Published: May 19, 2020

Total paragraphs: 25

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	4	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Lawmakers and authorities call for change after early-release crime spike”](#)

Outlet: KHON2

Author: Gina Mangieri

Published: May 19, 2020

Total paragraphs: 21

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	6
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	1
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	4
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Hawaii Prosecutors Want COVID-19 Inmate Releases Stopped”](#)

Outlet: Honolulu Civil Beat

Author: Yoohyun Jung

Published: May 20, 2020

Total paragraphs: 13

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	4
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	1
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Hawaii lawmakers raise concern on notifying crime victims during the inmate release process](#)"

Outlet: KHON2

Author: KHON2 Web Staff

Published: May 20, 2020

Total paragraphs: 8

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	3
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Honolulu police have rearrested dozens of inmates released due to coronavirus, lawmakers told](#)"

Outlet: Honolulu Star-Advertiser

Author: Kevin Dayton

Published: May 21, 2020

Total paragraphs: 15

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	9
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	4
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	1	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Lawmakers join AG in voicing concerns about inmates' release due to COVID-19”](#)

Outlet: KITV4

Author: KITV4 Web Staff

Published: May 21, 2020

Total paragraphs: 9

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	3
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Inmates numbers at Maui jail are still on the decline”](#)

Outlet: *The Maui News*

Author: Lila Fujimoto

Published: May 21, 2020

Total paragraphs: 15

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	2	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Inmates released due to pandemic are back behind bars”](#)

Outlet: *Hawaii News Now*

Author: Lynn Kawano

Published: May 22, 2020

Total paragraphs: 11

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	6
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	4
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Program that allowed the release of hundreds of inmates has been ended”](#)

Outlet: *KHON2*

Author: KHON2 Staff

Published: May 22, 2020

Total paragraphs: 4

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“Critics Say Hawaii Prisons Are Failing To Help Released Inmates”](#)

Outlet: *Honolulu Civil Beat*

Author: Yoohyun Jung

Published: May 23, 2020

Total paragraphs: 29

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	14
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	7
Article includes inmate voices or perspective?	Yes	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“More than 50 inmates out of 300 released are rearrested”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Mark Ladao

Published: May 27, 2020

Total paragraphs: 12

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	5
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	1
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	Yes		



Article: "[Sentenced Prison Population New Focus on Inmate Reduction](#)"

Outlet: *Big Island Now*

Author: Big Island Now Staff

Published: May 29, 2020

Total paragraphs: 7

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	0
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Special master defends early release of Hawaii inmates, says recidivism rate low](#)"

Outlet: *Honolulu Star-Advertiser*

Author: Mark Ladao

Published: May 29, 2020

Total paragraphs: 12

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	1
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	2
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		

APPENDIX D



Article: [“Man released early due to COVID-19 arrested again in Kapolei”](#)

Outlet: *Honolulu Star-Advertiser*

Author: Star-Advertiser Staff

Published: May 31, 2020

Total paragraphs: 3

Paragraphs about health concerns for inmates	0	Paragraphs about public safety concerns	3
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	3
Paragraphs about (accurate) release process	0	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: [“COVID-19 risk decreased, state Supreme Court ends inmate early release program”](#)

Outlet: *Hawaii News Now*

Author: HNN Staff

Published: June 5, 2020

Total paragraphs: 10

Paragraphs about health concerns for inmates	1	Paragraphs about public safety concerns	1
Paragraphs about public health concerns	0	Paragraphs about violent offenders and reoffenders (specific cases)	0
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	2
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



Article: "[Hawaii Supreme Court lifts order requiring the release of inmates to prevent spread of COVID-19](#)"

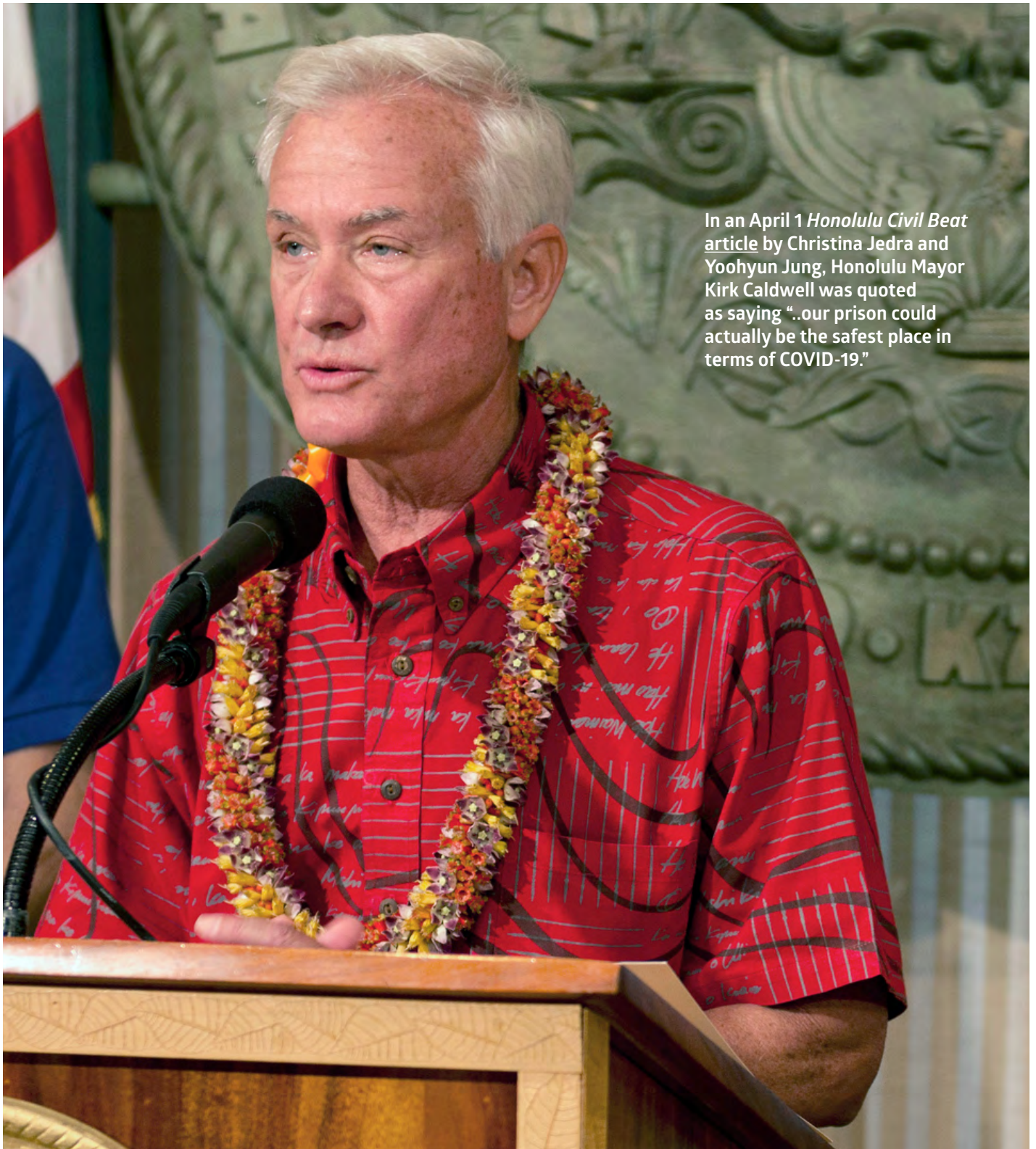
Outlet: *Honolulu Star-Advertiser*

Author: Gordon Y.K. Pang

Published: June 6, 2020

Total paragraphs: 26

Paragraphs about health concerns for inmates	2	Paragraphs about public safety concerns	6
Paragraphs about public health concerns	1	Paragraphs about violent offenders and reoffenders (specific cases)	1
Paragraphs about (accurate) release process	1	Paragraphs about reentry concerns	0
Paragraphs about Supreme Court criteria of denying release only if threat to public safety	0	Paragraphs about reentry that address DPS's role/overall context	0
Article includes inmate voices or perspective?	No	Paragraphs that mention baseline recidivism rate/context	0
Article mentions Dr. Stewart, or quotes any doctors/public health officials?	No		
Article mentions the fact that violent offenders were not originally on the list of individuals eligible to apply?	No		



In an April 1 *Honolulu Civil Beat* [article](#) by Christina Jedra and Yoohyun Jung, Honolulu Mayor Kirk Caldwell was quoted as saying “..our prison could actually be the safest place in terms of COVID-19.”

APPENDIX E: OFFICIAL STATEMENTS ON COVID-19 AND CORRECTIONAL FACILITIES

Public officials frequently refused to acknowledge the clear public health rationale for releasing incarcerated individuals.

- Honolulu Police Chief Susan Ballard said, “It is the HPD’s position that there was no urgency or legitimate reason for early or premature release.”¹
- Acting Honolulu prosecutor Dwight Nadamoto said, “Close to 300 inmates were released from O’ahu correctional facilities because of the *purported* threat from COVID-19” (emphasis added).²
- Maui County Prosecutor Donald Guzman said, “At this stage there hasn’t been any real data or incidences that lead to us believe that by continuing the release we’re stopping COVID-19 in the prisons.”³

LEJ’s review of the 53 articles in the media database show that the media consistently failed to put these quotes into context by including the undisputed expert consensus on the public health dangers posed by Hawai’i’s correctional facilities.

- While 32 articles (about 60 percent) mention the threat to the health of incarcerated people, only 7 articles (13 percent) mention that releases also protected the health of the general public.
- Of the 724 paragraphs in the 53 articles, only 58 (8 percent) mention health concerns at all.
- The few articles that did discuss public health often did so by quoting attorneys from the Office of the Public Defender about the dangers of a COVID-19 outbreak in correctional facilities, implying that a possible outbreak was simply an assertion made by one side in a debate, as opposed to a fact admitted by all parties and endorsed by the Supreme Court.
- Not a single media article mentioned Dr. Stewart’s detailed, firsthand observations of conditions at OCCC or the dangers those conditions presented—the “ticking time bomb.”

1. Mark Ladao, [“More than 50 inmates out of 300 released are rearrested,”](#) *Honolulu Star-Advertiser*, May 27, 2020

2. Gordon Y.K. Pang, [“Hawaii Supreme Court lifts order requiring the release of inmates to prevent spread of COVID-19,”](#) *Honolulu Star-Advertiser*, June 6, 2020

3. Gordon Y.K. Pang and Rosemarie Bernardo, [“Attorney general, prosecutors want inmate releases halted,”](#) *Honolulu Star-Advertiser*, May 6, 2020

APPENDIX F: OFFICIAL STATEMENTS ON CRIME AND RELEASE INITIATIVE

Public officials often exaggerated concerns about crime when it came to releasing incarcerated individuals.

- Hawai'i County Prosecutor Mitch Roth: "Oftentimes, we're believing that these people are dangerous when they're being released." He described some of the releases as "very troubling to me."¹
- Acting Honolulu Prosecutor Dwight Nadamoto: "When they pick up their offense, the new charge is like a robbery in the second degree, or a burglary in the first degree or something like that. These people have committed violent offenses."²
- Acting Honolulu Prosecutor Dwight Nadamoto repeatedly references specific cases he finds dangerous: "These are the type of people who are getting released."³
- State Senator Clarence Nishihara: "It's not just the safety of the inmates relative to [COVID-19] but at what expense to the public safety?"⁴
- State Attorney General Clare Connors, referring to 47 alleged reoffenders: "that's kind of a big number if you're a victim of one of those crimes."⁵

LEJ's review of the data shows that the substance of media reports disproportionately amplified a perceived threat to public safety:

- Of the 724 total paragraphs, 191 paragraphs (about 26 percent) detail concerns about crime.
- About 70 percent of articles mention concerns about crime, compared to only 13 percent that mention concerns for public health.
- 38 percent of articles discuss specific individuals who were released, and 100 paragraphs are dedicated to detailing these anecdotes.
- Only 9 articles (less than 17 percent) mention that those with high-level felony convictions were excluded from the Supreme Court release process.

1. John Burnett, "[Jail population plummets: HTH sought list of inmates released to due pandemic—but there isn't one, officials say](#)," *Hawaii Tribune-Herald*, May 10, 2020

2. Gina Mangieri, "[Lawmakers and authorities call for change after early release crime spike](#)," *KHON2*, May 19, 2020

3. Yoohyun Jung, "[Hawaii prosecutors want COVID-19 inmate releases stopped](#)," *Honolulu Civil Beat*, May 20, 2020

4. Lynn Kawano, "[Lawmakers urge paroling authority to delay another large prisoner release](#)," *Hawaii News Now*, May 19, 2020

5. Kevin Dayton, "[Honolulu police have rearrested dozens of inmates released due to coronavirus, lawmakers told](#)," *Honolulu Star-Advertiser*, May 21, 2020



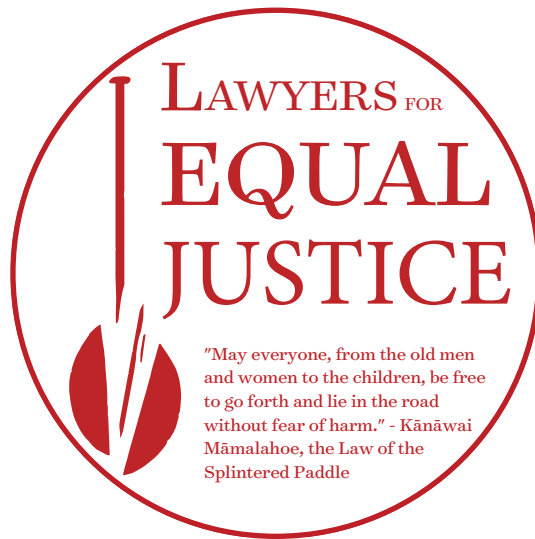
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**Re: Letter for the Hawaii'i Correctional Systems Oversight Commission's annual report to
the 31st Hawaii'i State Legislature, 2021**

Dear Chair Patterson and Commission Members:

The Office of the Public Defender, State of Hawaii'i ("OPD") respectfully submits this letter to the Hawaii'i Correctional Systems Oversight Commission ("Commission") to apprise the Commission of some of the lessons learned during the pandemic which can help Hawaii'i reshape its pretrial system into one that is both fairer and more effective.

OPDs Petition for Release of Incarcerated People and the Supreme Court's Orders

When the threat of serious illness or death posed by the COVID-19 pandemic to our incarcerated clients became a concern, the OPD responded by filing a Petition for Extraordinary Writ and/or For Writ of Mandamus on March 26, 2020 asking the Supreme Court to direct all the key stakeholders in the criminal justice system to take immediate steps to significantly reduce the

population of its community correctional centers and facilities to prevent the massive loss of life and harm that the spread of COVID-19 would cause in such facilities.

The Supreme Court, in its April 15, 2020 Interim Order, responded by ordering, *inter alia*, the following:

1. Inmates in the following categories may file motions for release:
 - a. Inmates serving a sentence (not to exceed 18 months) as a condition of felony deferral or probation except for (i) inmates serving a term of imprisonment for a sexual assault conviction or an attempted sexual assault conviction; or (ii) inmates serving a term of imprisonment for any felony offense contained in HRS chapter 707, burglary in the first or second degree (HRS §§ 708-810, 708-811), robbery in the first or second degree (HRS §§ 708-840, 708-841), abuse of family or household members (HRS § 709- 906(7)&(8)), and unauthorized entry in a dwelling in the first degree and in the second degree as a class C felony (HRS §§ 708-812.55, 708-812.6(1) & (2)), including attempt to commit these specific offenses (HRS §§ 705-500, 705-501).
 - b. Inmates serving sentences for misdemeanor or petty misdemeanor convictions except those convicted of abuse of family or household members (HRS § 709-906), violation of a temporary restraining order (HRS § 586-4), violation of an order for protection (HRS § 586-11), or violation of a restraining order or injunction (HRS § 604-10.5).
 - c. All pretrial detainees charged with a petty misdemeanor or a misdemeanor offense, except those charged with abuse of family or household members (HRS § 709-906), violation of a temporary restraining order (HRS § 586- 4), violation of an order for protection (HRS § 586-11), or violation of a restraining order or injunction (HRS § 604- 10.5).
 - d. All pretrial detainees charged with a felony, except those charged with a sexual assault or an attempted sexual assault, any felony offense contained in HRS chapter 707, burglary in the first or second degree (HRS §§ 708-810, 708-811), robbery in the first or second degree (HRS §§ 708-840, 708-841), abuse of family or household members (HRS § 709-906(7)&(8)), and unauthorized entry in a dwelling in the first degree and in the second degree as a class C felony (HRS §§ 708-812.55, 708-812.6(1) & (2)), including attempt to commit these specific offenses (HRS §§ 705-500, 705-501).
2. The Circuit, Family and District Courts, when adjudicating motions for release, (1) shall presume release unless the court finds that the release of the inmate would pose a significant risk to the safety of the inmate or the public; (2) shall take into consideration design capacity (as opposed to operational capacity) of the correctional center or facility; (3) and shall take into consideration the health risk posed by the COVID-19 pandemic.

Releases During the COVID-19 Pandemic Did Not Compromise Public Safety

Because of the need to file hundreds of motions and participate in literally hundreds of hearings, the OPD was not able to systematically collect data on all of the people who were released from the community centers due to the Supreme Court's COVID-19 Release Orders during the pandemic. That said, however, we witnessed a decrease in arraignments which suggests that those who were released pursuant to the Supreme Court Orders posed no greater public safety risk than those who were released prior to the orders. Additionally, the people who were rearrested were, by and large, not charged with new crimes, but with technical violations related to the terms and conditions of their release, or new offenses related to poverty. We are not aware of a spike in crime due to the release of people from our correctional facilities due to the pandemic.

The presumptions issued by the Supreme Court assisted the courts in their determination of release or detention. The Prosecutors were given an opportunity to object to release and present evidence that the individual posed a significant risk of danger to the community or flight risk. The court reviewing the records and files and hearing arguments by both the prosecutor and defense would then make the determination of whether the individual should be released or detained.

The concerns of the prosecutor fed to the media about violent offenders being released were not justified. Many of the examples they mentioned had nothing to do with the COVID-19 releases but rather of individual court decisions which is normally within the court's discretion.

A verified place of residence was a key point of contention during the release process. This created a bottleneck for releases. Probationers and parolees theoretically had more of the upper hand in terms of possible release over pretrial detainees because of the lack of emergency housing and moratorium on transfers from OCCC to residential treatment programs during the pandemic.

Re-entry efforts can be improved which will decrease the number of rebookings. Place to stay, means of support, access to treatment, and methods of communication (i.e., phones) are all critical pieces of the puzzle.

Recommendations for Pretrial Reform

While exposing and exacerbating longstanding challenges with pretrial release and reentry, the COVID-19 releases have also created opportunities for Hawai'i's Correctional System to improve and to use the lessons learned from the COVID-19 releases to improve and reshape our pretrial system.

With this in mind, the OPD urges the Commission to:

1. At a minimum, recommend that the legislature enact a bail reform law bill that would: (a) ensure that the categories of defendants who were released without money bail during the pandemic continue to be released without money bail in the future; and (b) create a rebuttable presumption in favor of the release of persons charged with criminal offenses other than serious crimes, and that such persons be admitted to bail under the least restrictive conditions required to

ensure the person's appearance and protect public safety, unless the prosecution demonstrates by clear and convincing evidence that the person is a flight risk or a danger to the community.

2. Following the above recommendation would significantly reduce the jail population and create an opportunity to reduce the size and cost of the jail the State is planning to build to replace that O'ahu Community Correctional Center (OCCC). Accordingly, the OPD supports the recommendation of the House Concurrent Resolution (HCR) 85 Task Force on prison reform to a build a smaller and more humane jail than the one now under consideration.

We thank you for the opportunity to submit this written testimony, and for your continued work in overseeing Hawai'i's Correctional System. If you have questions or comments, please contact Jacquie Esser at 808-586-2268 or jacquelyn.t.esser@hawaii.gov, or Willie Bagasol at 808-586-2200 or william.c.bagasol@hawaii.gov.

Respectfully submitted,

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Jacquelyn T. Esser
Deputy Public Defender

Recommendations Regarding The New Jail To Replace the Oahu Community Correctional Center (OCCC)

The House Concurrent Resolution 85 Task Force on Prison Reform (HCR Task Force) was created in 2016 to make recommendations to the Legislature on ways to improve Hawai‘i’s correctional system, including recommendations on the cost and design of future correctional facilities. The Task Force spent more than two years studying Hawaii’s correctional system and issued its 116-page Final Report in December, 2018.

Four chapters of the report are devoted to the State’s plans to replace OCCC with a 1,380- bed jail for men in Halawa Valley that will cost an estimated \$525 million, and a \$45 million jail to be built on the grounds of the Women’s Community Correctional Center in Kailua, to house women currently housed at OCCC.¹ The jail is being planned by the Departments of Public Safety (DPS) and Accounting and General Services (DAGS) along with contractors Architects Hawaii and the Louis Berger Group of New Jersey.

The HCR 85 Task Force was critical of the new jail in two important respects. First, the jail has been planned without any meaningful input or guidance from the community, and second, the planners failed to take a critical step in the planning process which is to identify the factors driving the jail population and to recommend policies that would significantly reduce that population without compromising public safety. This is critically important because, as the Task Force pointed out, jails are the gateway to prison and 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.”²

The Task Force also stressed that cities and counties across the country are actively reducing their jail populations and building smaller and less expensive jails by diverting individuals with mental health and substance abuse issues to community-based treatment facilities; reforming their bail systems to ensure the speedy release of individuals who can be safely supervised in the community while awaiting trial; expediting hearings for people charged with technical probation and parole violations; expediting indigence screening and program referrals; expanding the use of citations for low-level, non-violent offenses; and expediting case processing.

The HCR 85 Task Force was so concerned about size, cost, and design of the jail that it recommended 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.*”

¹ See HCR 85 Task Force Final Report, chapters 13-16, pp. 62-78. https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf.

² HCR 85 Final Report, p. iv.

The report warns that unless the State takes immediate action, the \$525 million-dollar jail will be out of date 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.”³

On July 9, 2020, Bettina Mehnert, Chief Executive Officer of Architects Hawaii briefed the Oversight Commission on the plans for the new jail. The Commission also heard from Robert Merce who served as Vice-Chair of the HCR 85 Task Force and wrote its Final Report to the Legislature.

The Oversight Commission shares the HCR 85 Task Force’s deep concerns about the new jail. Community stakeholders should have played a key role in the planning process from the very beginning, but better late than never. As the HCR 85 Task Force pointed out:

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.”⁴

The Commission strongly recommends that DPS immediately pause the planning for the new jail and create an Advisory Committee to review, *and if necessary revise*, the planning that has been done to date, and to actively participate in the planning process going forward. The Committee should include a wide range of community stakeholders and, as envisioned by the HCR 85 Task Force, it should be a *full partner* in the planning process along with DPS, DAGS, Architects Hawaii, and others.

The above recommendation is not based solely on the HCR 85 Task Force Report, but also on the Commission’s independent analysis and judgment. Best practices in jail planning clearly require a comprehensive analysis of ways to reduce the jail population before deciding on the capacity of a new jail, the programs it should provide, and its role in the community. This is particularly important in Hawaii where each bed in the new jail will cost taxpayers \$380,000⁵ and the cost of housing a large number of pretrial detainees statewide is over \$180,000 per day.⁶

³ HCR 85 Final Report p. 80.

⁴ HCR 85 Final Report, p. 69, quoting James R. Robertson, *Jail Planning and Expansion, Local Officials and Their Roles*, Second Edition (Washington, D.C.: National Institute of Corrections, 2010): 15, <https://info.nicic.gov/nicrp/system/files/022668.pdf>.

⁵ Estimated cost of new jail - \$525 million ÷ 1,380 beds = \$380,434 per bed.

⁶ On November 2, 2020 the total number of pretrial detainees statewide was 914. It costs \$198/day to incarcerate a person in Hawaii. 914 pretrial detainees x \$198/day = \$180,972. When state jail populations were higher, prior to the coronavirus pandemic, the State had well over 1,000 pretrial detainees that cost around \$209,00 per day.

Opportunities clearly exist to significantly reduce size of the new jail and thereby save millions of dollars in construction and operating costs while making our communities safer. This is not the place for an extended discussion on how that can be done, but, as shown below, if the State focused on two categories of prisoners—pretrial detainees and HOPE probation violators—it could reduce the jail population by **as much as 75%**.

- **Pretrial Detainees.** As of November 2, 2020, 64% of the men at OCCC were pretrial detainees.⁷ Data from DPS shows that 75 to 80 percent of pretrial detainees are charged with relatively low-level class C felonies or below (i.e. misdemeanors, petty misdemeanors, or violations). Reforming Hawaii’s bail system could reduce the jail population by as much as 50 percent without compromising public safety.⁸

- **HOPE Probation Violators.** As of November 2, 2020, 23% of the men at OCCC were probation violators⁹, most of whom were serving time in jail as a sanction for a technical violation of the HOPE probation rules. We agree with the HRC 85 Task Force that HOPE probation and select parole violators could be housed in dormitories 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. Creating alternative housing for HOPE probationers would reduce the jail population by 20% or more.

Beyond the foregoing the State should focus on reducing the jail population with robust pre-arrest diversion programs statewide, and evidence-based programs that address the root causes of homelessness in our communities.

⁷ DPS Weekly Population Report, November 2, 2020. <https://dps.hawaii.gov/wp-content/uploads/2020/11/Pop-Reports-Weekly-2020-11-02-1.pdf>

⁸ For example, in the District of Columbia 94% of defendants were released pretrial in FY 2019 without using a financial bond. A study covering the period 2012-2016 showed that 88% to 90% of pretrial releasees in D.C. were arrest-free of any crime pending trial and 97% to 99% were not arrested for a violent crime. In FY 2016, 91% of pretrial defendants made all scheduled court appearances.

⁹ November 2, 2020 Weekly Population Report.