

**INTERIM REPORT OF THE
HCR 85 TASK FORCE (ON EFFECTIVE
INCARCERATION POLICIES AND IMPROVING
HAWAII'S CORRECTIONAL SYSTEM)
TO THE LEGISLATURE FOR
THE REGULAR SESSION 2017**

**Prepared by the
HCR 85 TASK FORCE
with editorial assistance by the Legislative Reference Bureau**

STATE OF HAWAII

February 2017

FOREWORD

House Concurrent Resolution No. 85, House Draft 2, Senate Draft 1 (2016), requested the Chief Justice of the Hawaii Supreme Court to establish a task force to study effective incarceration policies and best practices used in other states and countries, and their costs, and to make recommendations to the Legislature on ways to improve Hawaii's correctional system, including recommendations for the design of future correctional facilities. The Task Force's final report, including any proposed legislation, is due twenty days prior to the convening of the Regular Session of 2018.

The HCR 85 Task Force has been meeting since June 2016. Even though the work of the Task Force is just beginning, several themes have emerged from our meetings, discussions, and hearings, the most important of which is that Hawaii's correctional system is not producing acceptable, cost-effective, and sustainable outcomes. Despite spending hundreds of millions of dollars a year on corrections, Hawaii continues to have one of the highest incarceration rates in the world and a recidivism rate of 50% or more. The Task Force believes that it is time to adopt a new correctional model that will reduce our prison population, lower our recidivism rate, rein in long-term costs, and make our communities safer.

We have also focused on what we understand is one of the Legislature's main concerns—the replacement of the Oahu Community Correctional Center with a new jail at an estimated cost of \$650 million. Studies have shown that just a few days in jail can increase a person's likelihood of a prison sentence and promote future criminal behavior—making jail a gateway to deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large. Because jails can produce many undesirable outcomes and are extremely costly to build, maintain, and operate, communities across the nation are striving to reduce their jail populations through innovative diversion programs, and the Task Force strongly recommends that Hawaii do the same. It is also essential that a broad range of community interests be engaged in the jail planning process so that the new jail reflects best practices and does not become a warehouse for the poor, the homeless, and the mentally ill.

I am honored that Chief Justice Mark E. Recktenwald asked me to chair the HCR 85 Task Force and thank him for his unwavering support and counsel. I would also like to thank Charlotte Carter-Yamauchi, Director of the Legislative Reference Bureau, and LRB staff Devin Choy, Lance Ching, and Terrence Lee for their assistance in preparing this report. Last, but not least, I wish to thank the HCR 85 Task Force members for their dedication and hard work as we search for ways to improve Hawaii's correctional system.

Justice Michael D. Wilson, Chair
HCR 85 Task Force
February 16, 2017

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EXECUTIVE SUMMARY

Hawaii has undergone many changes in the past forty years, but perhaps none have been as dramatic as the changes in its correctional system. In just four decades, Hawaii's prison population has increased 1,357% and our incarceration rate has increased 841%. Our combined jail and prison population now stands at 5,800, which is down slightly from the past few years but is still an extremely high number given Hawaii's relatively small population. By way of comparison, Hawaii has 600 more prisoners than Sweden, even though Sweden has six times the population of Hawaii. Although our incarceration rate is not particularly high for the United States, if Hawaii was a country, it would rank in the top 20 incarcerators in the world.

By the mid-1990s, Hawaii's prisons had become so overcrowded and resistance to building new facilities in the islands so entrenched that the State began sending prisoners to privately operated prisons on the U.S. mainland, a practice that continues to this day. Hawaii currently has about 1,300 prisoners on the mainland - most of them at the Saguaro Correctional Center in Eloy, Arizona, operated by Corrections Corporation of America (CCA). The State is also using space at the Federal Detention Center in Honolulu to house about 100 prisoners. However, even with all the outsourcing, Hawaii's prisons and jails are severely overcrowded. To make matters worse, for decades the State neglected much-needed repairs to its facilities, which are in very poor condition and, in some cases, may not meet minimum constitutional standards.

The high number of prisoners has naturally led to ever-increasing costs. Hawaii's corrections budget is over \$211 million per year, and it has been estimated that the cost of a new 1,200 bed jail to replace the decrepit Oahu Community Correctional Center (OCCC) would be about \$650 million, or \$541,000 per bed. If Hawaii decided to build a prison in the islands for the 1,300 prisoners now in Arizona, the cost would be about \$700 million (assuming the same per bed cost as the jail), bringing the total for a new jail and prison to around \$1.35 billion. Millions of dollars more would be needed for improvements to the Women's Community Corrections Center and the prisons on Maui, Kauai, and the Big Island.

Despite the hundreds of millions of dollars that the State spends annually, its correctional outcomes are consistently poor. Hawaii's average three-year recidivism rate is over 50%. For parolees, the rate is 47.1%, with more than 60% reoffending within the first 12 months, and more than 85% reoffending within 24 months. The recidivism rate for prisoners who serve their maximum term, and thereby avoid parole, is 61.9%. Further, on any given day there are as many as 200 probation violators locked up at OCCC.

If Hawaii continues on the path we have been on for the last forty years, we can expect the same poor outcomes and high recidivism rates we have experienced in the past, correctional costs will consume an ever-increasing share of the state budget, we will probably face federal lawsuits and possibly federally mandated remedies, and our communities will not be any safer despite the hundreds of millions of dollars, or even billions of dollars, we will spend on corrections.

To improve outcomes and bring costs under control, Hawaii must chart a new course and transition from a punitive to a rehabilitative correctional model. The new model should be based

on the spirit of good will and generosity found in the Aloha spirit. The HCR 85 Task Force refers to this as the "With Aloha" model. The Task Force also strongly endorses the proven best practices of the highly successful Norwegian/European correctional system that are consistent with treating our incarcerated citizens "With Aloha." Put simply, a rehabilitative correctional model based on "smart justice" and the humane treatment of incarcerated men and women by correctional officers trained to prepare inmates for successful release into the community will best serve the interests of Hawaii's community. Successful programs from other states that focus on reducing prison populations and costs, expanding community-based corrections, and supporting offender reentry should also be adopted.

In addition to making a paradigm shift in philosophy and approach, the task force recognizes the need to focus on the persistent problems that have plagued our correctional system for years: substance abuse (which affects an estimated 80% of our prisoners), mental illness, the absence of minimally acceptable in-prison education, the absence of therapeutic conditions of incarceration, and the challenge of developing and implementing evidenced-based rehabilitative programs and more effective reentry programs. Hawaii also needs to develop policies on how to deal with its aging prison population. Hawaii currently has more than 650 prisoners who are 50 years of age or older. Studies indicate that these inmates will soon begin developing age-related medical problems that will be costly to treat and will consume a large share of the correctional budget.

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

In 2012, the Native Hawaiian Justice Task Force (NHJTF) held hearings and issued a report with recommendations for addressing the over-representation of Native Hawaiians in the criminal justice and correctional systems. The Task Force believes that the NHJTF recommendations provide a positive and thoughtful way forward and are a sound first step toward reducing the intolerable overrepresentation of Native Hawaiians in the correctional system that has existed for far too long.

Finally, since the end of the last legislative session, the State has moved ahead with plans to replace OCCC with a new jail. The HCR 85 Task Force is concerned that the planning to date does not include strategies or policies for diverting low-level offenders and the mentally ill away from the correctional system and for otherwise reducing the jail population. The Task Force recommends that the Legislature defer action on a new jail until it has the benefit of the Task Forces's final report, due to be submitted to the Legislature in December 2017.

Chapter 1

HAWAII'S CORRECTIONAL POLICIES ARE NOT PRODUCING ACCEPTABLE, COST-EFFECTIVE, AND SUSTAINABLE OUTCOMES

The HCR 85 Task Force began its work by creating five subcommittees to provide community and professional expertise in key subject areas. The subcommittees are: (1) the Native Hawaiian subcommittee; (2) the education subcommittee; (3) the program subcommittee; (4) the design subcommittee; and (5) the faith subcommittee.

The Task Force also reviewed relevant data on Hawaii's correctional system and found that, for the last four decades, Hawaii's prison¹ population has been increasing at an alarming rate. From 1977 to 2016, it increased 1,357% (from 398 prisoners in 1977² to 5,800 today).³ During the same period, Hawaii's incarceration rate increased 841%, from 43 per 100,000 in 1977 to 405 per 100,000 today.⁴ The dramatic increase is consistent with what has happened in other states and is due primarily to the "get tough on crime" policies of the 1990s.⁵ Those policies were enacted in response to a rising crime rate, fueled in large part by drug crimes, and led to the need for more prison beds.

¹ While the Department of Public Safety uses the terms "correctional center" and "correctional facility," for simplicity, this report uses the terms "jail" and "prison." Within this report, the term "jail" generally means "correctional center," which is a place that houses pre-trial detainees and convicted individuals serving a sentence of one year or less, and the term "prison" generally means "correctional facility," which is a place that houses convicted individuals serving a sentence of more than one year.

² George Hill and Paige Harrison, *Prisoners under State or Federal jurisdiction sentenced to more than one year, Federal and State-by-State, 1977-2004: Statistical Tables*, Bureau of Justice Statistics, December 2005, <http://bjs.ojp.usdoj.gov/content/data/corpop01.csv>.

³ George King, Hawaii Department of Public Safety statistician, email to Robert Merce, July 2015.

⁴ Incarceration rates are calculated by dividing the prison population by the general population and multiplying by 100,000. In 1977, Hawaii's prison population was 398. See *supra* note 2. The 1977 Hawaii general population was 918,259. "United States Census Bureau." *Google Public Data Explorer*, December 17, 2016, https://www.google.com/?gl=us&hl=en&gws_rd=cr&pws=0#gl=us&hl=en&pws=0&q=hawaii+population+1977. Thus, $398 \div 918,229 \times 100,000 = 43.34$.

The current incarceration rate was calculated in the same manner. Hawaii's current prison population is 5,800 (see *supra* note 3), the current Hawaii general population is 1.4 million. Hawaii Department of Business, Economic Development and Tourism (DBEDT) Census, *2015 Population Estimates Summary – Table*, <http://census.hawaii.gov/home/population-estimate/>.

⁵ Jeremy Travis, Bruce Western, and Steve Redburn, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: National Academies Press, 2014), 104 ("The growth of the penal system and high rates of incarceration did not occur by accident . . . they resulted from a series of policy decisions that were intended to increase the severity of sanctions"). See also The Economic Mobility Project and The Public Safety Performance Project of The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Washington, D.C.: The Pew Charitable Trusts, 2010), 6 (the increase in the United State's prison population "flowed primarily from changes in sentencing laws, inmate release decisions, community supervision practices and other correctional policies that determine who goes to prison and for how long"); and Executive Office of the President, *Economic Perspectives on Incarceration and the Criminal Justice System*, 2016, 7 ("the surge in incarceration has been driven by changes in criminal justice policies").

By the mid-1990s, Hawaii's prisons had become so overcrowded and resistance to building new facilities in the islands so entrenched that the State began sending prisoners to privately operated prisons on the mainland and continues to do so. Hawaii currently has about 1,300 prisoners on the mainland, most of them at the Saguaro Correctional Center in Eloy, Arizona, operated by Corrections Corporation of America (CCA).⁶ Hawaii is one of only seven states that have 20% or more of its prisoners in private facilities.⁷

Hawaii's combined jail and prison population (including prisoners on the mainland) now stands at 5,800.⁸ Although that is down slightly from the 6,000 prisoners of a few years ago, it is still an extremely high number given Hawaii's relatively small population. By way of comparison, Hawaii has 600 more prisoners than Sweden, even though Sweden has six times the population of Hawaii.⁹

Hawaii's incarceration rate of 405 prisoners per 100,000 citizens is not particularly high for the United States. However, if Hawaii were a country, instead of a state, it would rank in the top 20 incarcerators in the world.¹⁰ The high incarceration rate is not because Hawaii has a higher crime rate than other countries, but because we incarcerate more types of offenders, including many non-violent and drug offenders, and keep them in prison longer. In fact, the vast majority of Hawaii's prisoners are incarcerated for relatively low-level offenses. Only 26% of the combined jail and prison population is incarcerated for a class A or B felony. The remaining 74% are incarcerated for a class C felony or below (misdemeanor, petty misdemeanor, technical offense, or violation).¹¹

The correctional system includes not only those incarcerated, but also those on probation and parole. Hawaii currently has 1,500 people on parole¹² and 21,000 people on probation,¹³ bringing the total number of people under some type of correctional supervision to 28,000. That is more than the population of Hawaii's ninth-largest city, Kahului, Maui (pop. 26,000).

⁶ King, *supra* note 3.

⁷ E. Ann Carson, *Prisoners in 2014* (Washington, D.C.: U.S. Department of Justice, September, 2015), 9.

⁸ King, *supra* note 3.

⁹ Sweden's prison population as of January 1, 2016 was 5,245. Institute for World Policy Research (IWPR), World Prison Brief, Data for Sweden, <http://www.prisonstudies.org/country/sweden>. Sweden's 2016 population was 9.90 million compared to Hawaii's population of 1.4 million. <http://countrymeters.info/en/Sweden>

¹⁰ Institute For World Criminal Policy Research (IWPR), World Prison Brief, *Prison Population Rates, Highest to Lowest*, http://www.prisonstudies.org/highesttolowest/prison_population_rate?field_region_taxonomy_tid=all. See also Peter Wagner and Alison Walsh, *States of Incarceration: The Global Context 2016*, The Prison Policy Initiative, 2016, <http://www.prisonpolicy.org/global/2016.html>

¹¹ King, *supra* note 3.

¹² Tommy Johnson, Hawaii Paroling Authority Administrator, telephone conversation with Robert Merce, July 20, 2016.

¹³ Judiciary of the State of Hawaii, *2015 Annual Report, Statistical Supplement*, http://www.courts.state.hi.us/docs/news_and_reports_docs/annual_reports/Jud_Statistical_Sup_2015.pdf. The total probation caseload for 2015 was 26,086 which included 6,385 new cases and 5,258 cases terminated.

Hawaii's correctional outcomes are consistently poor and that makes our communities less safe. The average recidivism rate is over 50%.¹⁴ The recidivism rate for parolees is 47.1%, with more than 60% reoffending within the first 12 months, and more than 85% reoffending within 24 months. The recidivism rate for prisoners who serve their maximum term, and thereby avoid parole, is 61.9%. Further, on any given day, there are as many as 200 probation violators incarcerated at the OCCC.¹⁵

The State correctional system disproportionately incarcerates citizens of Hawaiian ancestry. Hawaiians and part-Hawaiians make up approximately 27% of the general population,¹⁶ but 38.4% of the prison population.¹⁷ A landmark study by the Office of Hawaiian Affairs in 2010 reported that Hawaiians are over-represented at every stage of the criminal justice system.¹⁸ Despite numerous studies and recommendations going back at least to the 1980s, the State has not taken effective steps to address the over-representation of Native Hawaiians in the criminal justice systems.¹⁹

Hawaii's prisons are old, dilapidated, and severely overcrowded. At OCCC, for example, three prisoners are housed in cells designed for two, and in such crowded conditions that one of the prisoners must sleep on the floor with his head next to the toilet. Faced with the lack of available cells, OCCC has resorted to crowding so many prisoners into one module at OCCC that it is known as the "Thunderdome."²⁰ The State has budgeted \$8.5 million to improve correctional facilities in FY 2016 and \$12.5 million for FY 2017.²¹ However, despite these expenditures,

¹⁴ Interagency Council on Intermediate Sanctions (ICIS), *2015 Recidivism Update*, May 2016, <http://icis.hawaii.gov/wp-content/uploads/2016/05/ICIS-2015-Recidivism-Update.pdf>. In this report, recidivism is defined as any new arrest or the revocation of probation or parole, within three years of the start of supervision.

¹⁵ *Id.*

¹⁶ Lindsay Hixson, Bradford B. Hepler, and Moug Ouk Kim, *The Native Hawaiian and Other Pacific Islander Population: 2010*, 2010 Census Briefs, Table 7 - Native Hawaiians in Hawaii by Area of Residence: 2010 (Washington, D.C.: United States Census Bureau, May 2012), 19. The 27% includes Native Hawaiians alone and in any combination with other races.

¹⁷ King, *supra* note 3.

¹⁸ Justice Policy Institute, Myron B. Thompson Schools of Social Work, and Georgetown Law, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (Honolulu: Office of Hawaiian Affairs, 2010).

¹⁹ The overrepresentation of Native Hawaiians in the criminal justice system has been the subject of studies, reports, action plans, conferences and task force reports for the last 35 plus years. Among the many studies on this subject are: *Study of Native Hawaiians in the Criminal Justice System* (Honolulu: Alu Like, 1977); *Crime and Justice related to Hawaiians and part-Hawaiians in the State of Hawai'i* (Honolulu: Alu Like, 1981); *Criminal Justice and Hawaiians in the 1990's: Ethnic Differences in Imprisonment Rates in the State of Hawai'i* (Honolulu: Alu Like, 1994); *Report of the Working Conference on Native Hawaiians in the Criminal Justice System* (Honolulu: Alu Like, 1994); *Action plan regarding Native Hawaiians in the criminal justice system: Presented to the Eighteenth Legislature, State of Hawai'i/Consortium on Native Hawaiians in the Criminal Justice System* (Honolulu: Alu Like, 1995); *Hawaiian Youth in the Juvenile Justice System* (Honolulu: Alu Like, 1998); *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, Office of Hawaiian Affairs, 2010; and *Report of the Native Hawaiian Justice Task Force*, 2012, http://lrhawaii.info/reports/legrpts/oha/2013/act170_slh11.pdf.

²⁰ Nolan Espinda, Director of Public Safety, comment during tour of OCCC by House Committee on Public Safety, November 17, 2015.

²¹ Hawaii Department of Budget and Finance, *2015-2017 Executive Biennium Budget In Brief*, December 22, 2014, <http://budget.hawaii.gov/wp-content/uploads/2012/12/Budget-in-Brief-FB15-17-BIB.pdf>.

The Department of Public Safety's total operating budget for FY 2016 is \$257,000,000. For FY 2017 it is \$262,000,000.

conditions are so bad throughout the State that compliance with minimum constitutional standards is problematic.²²

The overcrowding situation is particularly acute. Hawaii Community Correctional Center is operating at 167% of capacity, Maui Community Correctional Center is operating at 155% of capacity, Kauai Community Correctional Center is operating at 150% of capacity, OCCC is operating at 128% of capacity, and the Women's Community Correctional Center is operating at 115% of capacity.²³

Hawaii currently has 673 prisoners who are 55 years of age or older.²⁴ There is a growing body of evidence that, at around age 50, prisoners start to develop health problems most often associated with people much older than 50 and that older prisoners consume a disproportionate share of the cost of prison health care.²⁵ A 2011 article in the *Annals of Internal Medicine* reported that the average cost of health care for just 21 seriously ill prisoners in California (0.01% of the state's prison population) exceeded \$1.97 million per prisoner.²⁶ The Task Force questions whether the State has the resources to provide adequate medical care to the large number of elderly prisoners, particularly in light of *Slingluff v. State of Hawaii*, which holds that the State has a legal duty to provide prisoners with the same standard of care as is provided to patients who are not in prison.²⁷ Several recent settlements and damages awards to prisoners of \$1 million or more reinforce the Task Force's concern about the State's ability to adequately care for an aging prison population.²⁸ We are also deeply concerned that the average annual suicide rate for Hawaii's combined jail and prison population for the period 2001-2014 was 29 per 100,000 – the seventh highest rate in the United States.²⁹

²² On January 6, 2017, the American Civil Liberties Union (ACLU) of Hawaii filed a Complaint with the United States Department of Justice requesting an investigation of allegedly unconstitutional conditions and overcrowding at Hawaii's prisons. See letter, Mateo Caballero, ACLU Hawaii Legal Director to Vanita Gupta and Steven Rosenbaum, United States Department of Justice, January 6, 2017. Among other things, the complaint alleges that Hawaii's correctional facilities continue to "overtax virtually every constitutionally required support system and service and creates a harmful and intolerable environment," rendering prison officials incapable of providing inmates with adequate shelter, sanitation, medical and mental health care, food services, and protection from harm. *Id.* The complaint specifically alleges that conditions at Hawaii's prisons violate the Eighth and Fourteenth Amendments to the United States Constitution and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997a. The complaint requests the Department of Justice to investigate the claims in the complaint, "order the State of Hawaii to cease its unconstitutional policies and practices, and if necessary, take appropriate legal actions." *Id.*

²³ Department of Public Safety Weekly Population Report, July 11, 2016.

²⁴ King, *supra* note 3.

²⁵ Brie A. Williams, MD; Rebecca L. Sudore, MD; Robert Greifinger, MD; R. Sean Morrison, MD, *Balancing Punishment and Compassion for Seriously Ill Prisoners*, *Annals of Internal Medicine* 155 (2011), 122-126.

²⁶ *Id.*

²⁷ 131 Hawai'i 239, 317 P.3d 683 (App. 2013).

²⁸ In 2013, former prisoner Gregory Slingluff was awarded approximately \$1 million for injuries he sustained when prison doctors failed to diagnose and treat an infection of his scrotum. *Id.* In 2016, former OCCC prisoner Aaron Person settled his claims against the state for approximately \$7.2 million. The claims stemmed from a scratch he sustained at OCCC which became infected and resulted in the loss of both hands and both feet. See Brent Remadna, *State Pays Millions in Settlement to Amputee Who Lost Limbs While In Custody*, Hawaii News Now, January 26, 2015.

²⁹ Margaret E. Noonan, *Mortality in State Prisons 2001-2014 – Statistical Tables, Table 14*, Bureau of Justice Statistics, December 2016.

The \$211 million Hawaii spends annually on corrections is barely enough to maintain the system at its current level. It has been estimated that a new 1,200 bed jail to replace OCCC would cost about \$650 million, or \$541,000 per bed.³⁰ If the State were to build a new prison to house the 1,300 Hawaii inmates on the mainland at the same per bed cost, it would need an additional \$700 million, bringing the total cost of a new 1,200 bed jail and a new 1,300 bed prison to around \$1.35 billion. Millions of dollars more are needed for repairs to the Women's Community Correctional Center and the prisons on Maui, the Big Island, and Kauai.

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

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

³⁰ According to the Hawaii Department of Accounting and General Services, the cost of building a 1,250-bed facility adjacent to the Halawa Correctional Facility, as proposed under H.B. 2388 (2016), is nearly \$650 million after adjusting the initial estimate of \$489 million for inflation and other considerations. Rui Kaneya, *What To Do About Hawaii's Crumbling Correctional Center*, Honolulu Civil Beat, October 5, 2016.

Chapter 2

CHARTING A NEW COURSE: HAWAII SHOULD ADOPT A NEW AND MORE SUSTAINABLE CORRECTIONAL MODEL THAT WILL SIGNIFICANTLY REDUCE OUR PRISON POPULATION AND RECIDIVISM RATE AND MAKE OUR COMMUNITIES SAFER

Every journey begins with a dream, a vision that can unite others. When people come together around a set of shared values, they can achieve extraordinary things.
- Nainoa Thompson³¹

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

Prison reform is bringing liberals and conservatives together to an unprecedented consensus that helping prisoners overcome the habits, thinking, impulses, and poor decision-making that landed them in prison stands a far better chance of making a good citizen than a retributive and punitive approach.³² The transformation from a punitive to a rehabilitative culture based on proven models of combined sanctions and treatment will reduce recidivism and the prison population and significantly reduce the cost of administering Hawaii's criminal justice system.

The Task Force has not completed its work. While the Task Force will submit a more detailed report in December 2017, it has already identified some principles that should guide the transformation of Hawaii's correctional system.

A. Our Prison System Should Be Based Upon and Reflect Hawaii's Core Values

Although Hawaii has a diverse, multi-cultural population, many of its core values have deep roots in the Native Hawaiian culture. The heart of Hawaiian culture is the spirit of generosity and good will embodied in the word "aloha," which means love, affection, compassion, mercy,

³¹ Nainoa Thompson, *E Ho'i Mau: Honoring the Past, Caring for the Present, Journeying to the Future*, Hūlili, Multidisciplinary Research on Hawaiian Well-Being 10 (2016), 157.

³² See Van Jones, *A Cause That Unites the Left and Right*, CNN, March 26, 2015. See also Pat Nolan, *Conservatives and Liberals Join Together on Prison Reform*, The Huffington Post, June 13, 2015.

sympathy, pity, kindness, sentiment, grace, and charity.³³ These are integral components of Hawaii's core values, and over the years, they have found their way into proverbs that reflect aloha, such as:

- *E wehe i ka umauma i ākea* - Be generous and kind to all (literally "open out the chest that it may be spacious").
- *O ka pono ke hana 'ia a iho main a lani* - Continue to do good until the heavens come down to you.
- *A 'ohe lokomaika'i i nele i ka pāma'i* - No kind deed has ever lacked its reward.
- *E 'ōpū ali'i* - Have the kindness, generosity, and even temper of a chief.
- *Ua mau ke ea o ka 'āina i ka pono* - The life of the land is preserved in righteousness.³⁴

Pu'uhonua is another important Hawaiian concept. It means a place of refuge, sanctuary, asylum, a place of peace, safety, and healing.³⁵ In 2015, a working group of Hawaiian leaders founded Holomua Pu'uhonua to explore ways that the concept of pu'uhonua could be used to build a stronger and more supportive community for prisoners. The group has recently received grants from the Office of Hawaiian Affairs and the Administration for Native Americans to explore ways that pu'uhonua could be used to help *pa'ahao* (prisoners) transition back to the community. Holomua Pu'uhonua is represented on the Task Force, and we support their outstanding efforts to develop successful re-entry programs by adapting ancient Hawaiian concepts to help 21st century *pa'ahao* and others.

Finally, Hawaii's core values are found in the Aloha Spirit – the true aloha spirit that for centuries has guided the lives of Native Hawaiians. The characteristics of the Aloha Spirit are *Akahai* (kindness expressed with tenderness), *Lokahi* (unity expressed with harmony), *Oluolu* (agreeable expressed with harmony), *Haahaa* (humility expressed with modesty), and *Ahonui* (patience expressed with perseverance).

"Aloha" means mutual regard and affection and extends warmth in caring with no obligation in return. It is the essence of relationships in which each person is important to every other person for collective existence. "Aloha" means to hear what is not said, to see what cannot be seen and to know the unknowable.³⁶

Our prison system should be founded upon the principles of the Aloha Spirit and reflect Aloha in all its manifestations.

³³ Mary Kawena Pukui and Samuel H. Elbert, *Hawaiian Dictionary* (Honolulu: University of Hawaii Press, 2003), <http://wehewehe.org>.

³⁴ All of the proverbs are from Mary Kawena Pukui, *Ōlelo no 'Eau, Hawaiian Proverbs & Poetical Sayings*, Bernice P. Bishop Museum Special Publication No. 71 (Honolulu: Bishop Museum Press, 1983).

³⁵ Pukui and Elbert, *supra* note 33.

³⁶ Section 5-7.5(a), Hawaii Revised Statutes.

B. The New Correctional Model Should Utilize Evidenced-Based "Best Practices" from Other Countries and Other States

1. Best Practices from the Norwegian/European Correctional Model

HCR 85 calls on the Task Force to identify and analyze effective incarceration policies used in other states and countries. In 2015, five of the Task Force members, including the chair, traveled to Norway and spent a week visiting Norwegian correctional facilities and meeting with Norwegian correctional experts. Norway is often regarded as the world's most successful prison system because of its humane conditions and successful outcomes, such as a 20% recidivism rate³⁷ (compared to Hawaii's 50%) and a 74 per 100,000 population incarceration rate³⁸ (compared to Hawaii's 405 per 100,000).

Although none of the Task Force members believe that the Norwegian correctional model can be transplanted in its entirety to Hawaii, we believe that Hawaii can benefit from identifying those elements of the Norwegian system that can be imported with appropriate modifications to improve our correctional system. The Task Force notes that representatives of the Colorado and North Dakota correctional systems have also studied Norwegian and other European prison systems. Both states are transitioning to what is broadly called the European model because, as Rick Raemisch, Executive Director of the Colorado Department of Corrections said: "There's a reason its called corrections and not punishment. Punishment doesn't work Understanding that there may be cultural differences that would not allow some methods to be successful here, *we always need to explore and implement methods that are proven to work.*"³⁹

Hawaii's correctional system, like those in other states, is a punitive system based on deprivation. Prisoners are confined to small cells and deprived of liberty, privacy, autonomy, possessions, relationships with family and friends, choices (about food, clothing, recreation, scheduling, and leisure activities), heterosexual relationships, and many of the comforts of everyday living, such as a reasonably peaceful, quiet, safe, and secure place to live. Life in Hawaii's prisons is highly structured, regulated, and regimented. It is fundamentally different from life on the outside, and as a result, prisoners who spend a significant amount of time in prison adjust to the structured environment and become "institutionalized." Inmates participate in rehabilitative programs, but the programs operate within a punitive rather than a supportive environment. Although Hawaii has many dedicated correctional officers, the relationship between the inmates and guards is all too often an "us" and "them" relationship characterized by suspicion, hostility, and mistrust. Violence within the prison system is common.

The Task Force members who travelled to Norway describe a fundamentally different system in which loss of freedom is viewed as a significant punishment in itself and thus is the only

³⁷ Ragnar Kristoffersen, *Relapse Study in the Correctional Services of the Nordic Countries. Key Results and Perspectives*, EuroVisa 2 (2013), 169-176.

³⁸ World Prison Brief, <http://www.prisonstudies.org/country/norway>. The incarceration rate is based on an estimated national population of 5.25 million at end of September 2016.

³⁹ Christopher Moraff, *Can Europe Offer the U.S. a Model for Prison Reform?*, Next City, June 19, 2014, (emphasis added), <https://nextcity.org/daily/entry/us-prisons-reform-european-prisons-model>. See also Doran Larson, *Why Scandinavian Prisons Are Superior*, Atlantic Monthly, September 2013; Editorial Board, *Lessons From European Prisons*, New York Times, November 7, 2013.

punishment that prisoners should experience.⁴⁰ They should not be further punished by isolation, deprivation, or harsh conditions of confinement. In fact, the Norwegian model posits that rehabilitation is most successful when conditions within the prison resemble life on the outside as closely as possible (the "normality principle"), which is why, in many European prisons, the prisoners live in rooms that have a comfortable bed, a desk, a television, and a private bathroom with a toilet, shower, and wash basin. Guards knock before entering a prisoner's room, and prisoners wear street clothes and live relatively normal lives in prison – going to work or school, shopping for food, cooking, cleaning, socializing, watching TV, reading, or listening to music. Prisoners have frequent contact with family, and those who demonstrate trustworthiness are allowed increasingly greater privileges and are eventually allowed to spend weekends at home with their families. Prison staff are graduates of a two-year academy where they study law, psychology, human rights, and ethics, and they serve as social workers, guidance counselors, mentors and role models for inmates. Security is maintained by having the staff closely interact with inmates on a daily basis. Because inmates have a close relationship with staff, fights among inmates and inmate attacks on guards are virtually unknown. Prisoners learn to trust and respect staff and staff learn to trust and respect prisoners. Inmates earn privileges and, over time, move from high to medium to low security prisons and eventually to halfway houses. When they are finally released, Norwegian prisoners are guaranteed housing, a job, health care, and, if needed, mental health or addiction treatment.

The Norwegian model is caring and humane. It reflects Hawaii's core values and can form the basis for a much more humane, successful, and sustainable prison system in Hawaii.

2. Best Practices from Other States

The Vera Institute of Justice recently reported that, in 2014 and 2015, forty-six states made 201 changes to their sentencing and corrections laws based on research showing that: (1) longer sentences have little effect in reducing recidivism and shorter sentence lengths do not have a significant negative impact on public safety; (2) many offenders can be safely and effectively supervised in the community at lower cost; and (3) post-punishment penalties and restrictions (the collateral consequences of criminal conviction) make it more difficult for those released from prison to live law-abiding lives.⁴¹ According to the report, the main areas of reform were:

- **Bail Reform** -- to reduce jail populations and jail costs, while maintaining public safety.
- **Pre-Arrest Diversion** -- to divert individuals with mental illness and those who have committed low-level, non-violent offenses, away from the criminal justice system.

⁴⁰ Norwegian Ministry of Justice and the Police, *Punishment that Works – Less Crime – A Safer Society*, English Summary, Report to the Storting on the Norwegian Correctional Services, October 2008.

⁴¹ Rebecca Silber, Ram Subramanian, Maia Spotts, *Justice In Review: New Trends in State Sentencing and Corrections 2014-2015*, Vera Institute of Justice, May 2016.

- **Expanded Use of Treatment Courts** -- to divert people from the correctional system through drug courts, mental health courts, domestic violence courts, and veterans courts.
- **Deferred adjudication.** Under deferred adjudication, a defendant must comply with judicially set terms and conditions in lieu of formal sentencing. If successful, the defendant can avoid imposition of the sentence and a criminal record of conviction.
- **Reducing the penalties for property crimes and drug offenses** -- to make the penalties for low-level drug and property crimes more proportional and to reduce jail and prison populations.
- **Creating "safety valves" for mandatory sentences** -- to reduce prison populations by allowing judges to depart from statutory mandatory minimum sentences, if deemed appropriate or if certain factual criteria are met.
- **Creating evidenced-based re-entry programming and services** -- to facilitate reentry and reduce recidivism.
- **Increasing opportunities for early release** -- to reduce prison populations by expanding the ways prisoners can shorten their sentences through participation in in-prison programming or compliance with disciplinary rules.
- **Facilitating access to public benefits** -- to reduce recidivism by helping previously incarcerated people obtain the documentation needed to receive public benefits (housing, health care, and employment).
- **Easing the harmful impact of fees and fines** -- to reduce recidivism.
- **Limiting access to criminal history information** -- to reduce the stigma of a conviction and make it easier for former prisoners to obtain employment.
- **Supporting family relationships** -- to encourage family visitation, facilitate and strengthen family relationships, and assist children with incarcerated parents.

One state that has captured the Task Force's attention is North Dakota, which in the past year has implemented an impressive array of system-wide changes to transition to the Norwegian/European correctional model and make its prison system more humane and effective. Some of the relatively inexpensive (or no cost) reforms North Dakota has implemented include:

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

CHARTING A NEW COURSE

- Limiting the use of solitary confinement, except in a few exceptional cases, to violent offenses.
- Expanding administratively segregated prisoners' access to treatment and socialization, including group therapy, increased motivational interviews with staff, increased out-of-cell time, enrichment activities, and social interaction.
- Revising the qualifications for correctional officer positions to emphasize a dual role focused on both security and positive prisoner engagement.
- Adopting new policies that eliminate many of the restrictions on community members who can tour their facilities and actively encouraging visitors.
- Re-examining food options to promote better health and increase prisoners choice.
- Hiring a new Director of Recreation to identify opportunities for prisoners and staff to exercise and recreate together.
- Adopting formal mechanisms by which correctional staff at all levels can suggest and promote specific changes to policy and practice.
- Revising each correctional facility's mission statement--with input from correctional staff and some prisoners--to reflect a more professional and rehabilitation-oriented approach to correctional practice.
- Encouraging staff to think of creative ways to increase positive prisoner/staff interaction.
- Changing the policy governing staff/prisoner interactions from historical "don't touch the inmates" to encouraging staff to shake hands with prisoners.
- Changing the prisoner disciplinary system with the goal of shifting from roughly 300 potential behavioral violations to a "Ten Commandments" approach that emphasizes treating others with dignity and respect, as one would in the community.
- Changing procedures at their minimum security facility to allow residents to ride bicycles throughout the property; walk an extensive network of trails unaccompanied by staff; shop online for groceries and prepare their own food; take escorted trips into the community to obtain job counseling services; take escorted trips into the community for social interaction (get a cup of coffee, see a movie); and earn passes to leave the facility unescorted, including for overnight home visits.

- Opening a new transitional housing unit for those who have progressed to work release. Residents in the transition housing unit get their own keys, have single-occupancy rooms at the facility, have access to a propane grill, and can request permission to leave unescorted for family activities, such as attending a child's high school graduation, attending a mother's birthday party, and having dinner with family.
- Normalizing life in their medium and maximum security prisons by, among other things, starting a prison band that will give monthly concerts for staff and other prisoners, placing potted plants throughout the facility, launching a recurring "family night" where children under 10 years of age are invited into the facility's auditorium to watch a movie and eat popcorn with their dads, and piloted seasonal "family days," in which prisoners' children, significant others, and parents are invited into the facility for an activity (e.g. pumpkin painting day, May Day).

In the coming months, the Task Force intends to look at programs and legislation in many of the areas mentioned above and identify those that might be applicable to Hawaii.

3. Improving and Expanding Treatment Courts as Part of an Overall Diversion Strategy

One of the first questions the Task Force asked was: "Do we have the right people in prison?" The answer was "probably not." As previously noted, 74% of Hawaii's prisoners are incarcerated for relatively low-level offenses (class C felonies and below), including non-violent and drug offenses. Hawaii could significantly reduce its prison population by diverting low-level offenders to treatment programs. This is already being accomplished through three treatment courts--drug court, mental health court, and veterans court--but these courts have long waiting lists. To accommodate all of those who are eligible to participate in treatment courts, the drug court would need to be expanded from 200 to 500 participants, the mental health court from 40 to 80 participants, and the veterans court from 20 to 40 participants. In the long run, the Task Force believes this expansion makes sense because treatment courts are a sensible and proven alternative to incarceration. Studies show, for example, that drug courts reduce crime, make communities safer, save money, ensure compliance, combat addiction, and reunite families.⁴²

Mental health courts are newer than drug courts, but have also been shown to be effective. A report prepared by the Council of State Governments Justice Center has concluded that mental health courts play a significant role in responding to the disproportionate number of people with mental illness in the criminal justice system and, like drug courts after which they are modeled, move beyond the traditional focus of case processing to address the root causes of the behavior

⁴² National Association of Drug Court Professionals (NADCP), *The Verdict is in*, <http://www.nadcp.org/learn/facts-and-figures>. See also Douglas Marlowe, *Need To Know, Research Update on Adult Drug Courts*, NADCP, December 10, 2010, http://www.nadcp.org/sites/default/files/nadcp/Research%20Update%20on%20Adult%20Drug%20Courts%20-%20NADCP_1.pdf.

that brings mentally ill people before the court: "They work to improve out-comes for all parties, including individuals charged with crimes, victims, and communities."⁴³

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

The Task Force supports expanding Hawaii's treatment courts and, in its final report, will provide an analysis of the savings the State could realize from expanding those courts.

4. Effective Substance Abuse Treatment

The corrections professionals on the Task Force estimate that at least 80% of Hawaii's prisoners have addiction problems. Unless *effective* substance abuse treatment programs are identified and implemented, most of those prisoners will continuously cycle through the criminal justice system, meaning that the prison population and recidivism rate will never be reduced, and correctional costs will never be brought under control.

The National Institute on Drug Abuse (a part of the National Institutes of Health) lists ten reasons why addiction is difficult to treat: (1) it is a complex disease that affects brain function as well as behavior; (2) no single treatment is appropriate for everyone; (3) to be effective, treatment needs to be readily available; (4) remaining in a treatment program for an adequate amount of time is critical; (5) medications are an important element of treatment, especially when combined with counseling and other behavioral therapies; (6) treatment plans and services must be assessed continuously and modified as necessary to ensure that they meet the patient's changing needs; (7) many drug-addicted individuals have other mental disorders; (8) treatment needs to be voluntary to be effective; (9) drug use must be continuously monitored during treatment; and (10) medically assisted detoxification is only the first stage of addiction treatment and, by itself, does little to change long-term drug abuse.⁴⁴ To this list might be added the fact that the goal of treatment is not just to stop drug use, but also to return the patient to productive functioning in the family, workplace, and community. Furthermore, we know that addiction is a chronic disease, and like other chronic diseases, relapsing is likely, with symptom recurrence rates similar to those for other well-characterized chronic medical illnesses--such as diabetes, hypertension, and asthma.⁴⁵ Relapse does not mean that treatment failed, but that it needs to be reinstated or adjusted, or that alternate treatment is needed.⁴⁶

The Task Force is committed to making evidence-based recommendations on effective substance abuse treatment in its final report.

⁴³ Council of State Governments Justice Center, *Mental Health Courts: A Primer for Policymakers and Practitioners*, Bureau of Justice Assistance, 2008.

⁴⁴ National Institute on Drug Abuse, *Principles of Drug Addiction Treatment: A Research-Based Guide* Third Edition 2012, <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/principles-effective-treatment>.

⁴⁵ *Id.*

⁴⁶ *Id.*

5. Improving Correctional Programs

The Task Force's Program Subcommittee has been discussing a wide range of issues, including the substance abuse issues mentioned above, why past programs have not worked, how to improve vocational training within the correctional system by partnering with trade unions, and the development of an academy to improve the skill level and professionalism of those working at all levels in the correctional system.⁴⁷ Evidenced-based programming recommendations will be presented in the Task Force's final report.

6. Improving Education in the Correctional System

The Task Force's Education Subcommittee has focused on two aspects of education within the correctional setting: first, supporting and expanding the role of educational programming in all correctional facilities; and second, greatly expanding the interface between the University of Hawaii at Manoa and the Department of Public Safety.

A 2014 Rand Report found that while more than 700,000 incarcerated individuals leave federal and state prisons each year, 40% will have committed new crimes or violated the terms of their release and be reincarcerated within three years of release.⁴⁸ Although a number of factors affect the ability of ex-offenders to successfully reintegrate into communities, a key factor is that many do not have the knowledge, training, and skills to support successful reentry.⁴⁹ In Hawaii, for example, prisoners typically read at the 5th or 6th grade level. Research at the national level shows that just 16.5% of state prisoners only have a high school diploma, compared with 26% of the general population, and only 14.4% have some postsecondary education, compared with 51% of the general adult population.⁵⁰ The low level of educational attainment, coupled with a lack of vocational skills, represents a significant challenge for ex-offenders returning to their communities and impedes their ability to find employment.

The Rand study found that, although there is a general consensus that education is an important component of rehabilitation, "the question remains: How effective is it in helping to reduce recidivism and improve post release employment outcomes?" To answer this question, the researchers conducted a meta-analysis and systematic review to measure the effectiveness of correctional education for incarcerated adults and juveniles and a survey of states' correctional education directors to understand concerns and emerging trends.

The results of the meta-analysis showed that correctional education for incarcerated adults reduces the risk of post-release reincarceration by 13 percentage points *and does so cost-effectively*, with a savings of five dollars on reincarceration costs for every dollar spent on correctional education.⁵¹ Researchers also found that correctional education may increase post-

⁴⁷ See Chapter 3, *infra*.

⁴⁸ Lois M. Davis, Jennifer L. Steele, Robert Bozick, Malcolm V. Williams, Susan Turner, Jeremy N. V. Miles, Jessica Saunders, Paul S. Steinberg, *How Effective Is Correctional Education And Where Do We Go From Here? The Results of A Comprehensive Evaluation*, The Rand Corporation 2014, 1.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 78. (emphasis added).

release employment, another key to successful reentry. Overall, the study showed that "the *direct costs of reincarceration were far greater than the direct costs of providing correctional education.*"⁵²

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

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

The Task Force will continue its work on ways to improve education within the correctional setting and will be making a series of evidenced-based recommendations.

C. Some Cost Considerations

HCR 85 directs the Task Force to study best practices, and their costs. In the relatively short time since the Task Force was created, it has not been able to delve deeply into the cost issue. However, a few observations are in order.

The state correctional budget of roughly \$211 million does not reflect all of the direct costs of imprisonment in Hawaii. For example, funds to pay settlements and judgments of prison lawsuits, sometimes amounting to millions of dollars, are paid from state general funds and not from the corrections budget. This year, part of the planning for a new jail was done by employees on the payroll of the Department of Accounting and General Services (DAGS) and the Department of Budget and Finance, not the Department of Public Safety. Also, because the state employees retirement system is not fully funded, the personnel budget of the Department of Public Safety does not reflect all of the costs that will ultimately have to be paid for operating the prison system. A joint study of 40 states by the Pew Center On The States and the Vera Institute of Justice found that the actual direct cost of incarceration was 13.9% higher than was reflected in state corrections budgets.⁵³

Direct costs, however, are only part of the story. Incarceration also involves significant indirect costs to individuals, families, and communities. A 2010 study by Dr. Bruce Western of the Harvard Kennedy School and Dr. Beck Pettit of the University of Washington⁵⁴ found that:

- Past incarceration reduced annual earnings by 40%;

⁵² *Id.* at 18 (emphasis in original).

⁵³ Christian Henrichson and Ruth Delany, *The Price of Prisons, What Incarceration Costs Taxpayers* (Washington, D.C.: Vera Institute of Justice, January 2012), <http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

⁵⁴ Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect On Upward Mobility* (Washington, D.C.: The Pew Charitable Trusts, 2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

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

A 2016 economic analysis by the White House⁵⁵ reported other negative economic effects from incarceration, such as:

- If a father is incarcerated, the probability that his family will fall into poverty increases by 40%;
- Because incarceration secludes individuals from their families and communities, it decreases the likelihood of marriage and increases the likelihood of divorce; and
- Parental incarceration is a strong risk factor for a number of adverse outcomes for children, including antisocial and violent behavior, mental health problems, failure to graduate from school, and unemployment.

Fixing Hawaii's correctional system will cost money, but failing to fix the system will cost a lot more.

⁵⁵ The White House, *Economic Perspectives On Incarceration and the Criminal Justice System*, April 2016, https://www.whitehouse.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf.

Chapter 3

HAWAII SHOULD ESTABLISH AN ACADEMY TO EDUCATE AND TRAIN CORRECTIONAL WORKERS AT ALL LEVELS

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

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

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

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

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

Chapter 4

THE STATE MUST ADDRESS THE OVER-REPRESENTATION OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM

In 2010, the Office of Hawaiian Affairs issued a report documenting the disparate treatment of Native Hawaiians in the criminal justice system.⁵⁶ The report was the catalyst for Act 170, Session Laws of Hawaii 2011, which created the Native Hawaiian Justice Task Force (NHJTF). The mandate of the task force was to formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in Hawaii's criminal justice system by looking at new strategies and recommending legislation and policies to reduce or prevent Native Hawaiians' involvement with the criminal justice system.

The NHJTF held public hearings throughout the State and issued its report in 2012,⁵⁷ noting that the issue of over-representation of Native Hawaiians in the criminal justice system had been studied many times before and that studies in 1981, 1994, and 2010 "independently concluded that Native Hawaiians are overrepresented in the criminal justice system."⁵⁸

The NHJTF report contains 48 findings and 38 recommendations. Our task force's Native Hawaiian subcommittee is providing guidance as to the best practices and programs to be recommended from the NHJTF report.

⁵⁶ See *The Disparate Treatment of Native Hawaiians In The Criminal Justice System*, *supra* note 18.

⁵⁷ See *Report of the Native Hawaiian Justice Task Force, Report of the Native Hawaiian Justice Task Force*, 2012, http://rbhawaii.info/reports/legprts/oha/2013/act170_slh11.pdf.

⁵⁸ *Id.* See also *supra* note 19.

Chapter 5

THE LEGISLATURE SHOULD DEFER ACTION ON A NEW JAIL UNTIL THE HCR 85 TASK FORCE ISSUES ITS FINAL REPORT IN DECEMBER 2017

As requested in HCR 85, the Task Force is developing recommendations for the design of future correctional facilities. The primary focus of the Design Subcommittee has been the State's plans to replace OCCC. We have reviewed the literature on best practices in jail planning and are studying the initiatives of 20 diverse communities that have received grants from the MacArthur Foundation to reduce their jail populations and create fairer and more effective justice systems. We are informally discussing new trends in jail planning and design with experts on the mainland, and last year, two Task Force members attended the Academy of Justice Architects Conference in Honolulu. The design subcommittee is also working with Dean Daniel Friedman and others at the University of Hawaii School of Architecture to develop recommendations based on best practices.

In our final report, we will provide recommendations on how the State can significantly reduce its jail population and ensure that the new jail does not replicate the conceptual and operational problems that have characterized OCCC and contributed to poor correctional outcomes.

We are confident that we can bring fresh ideas and insights to the jail planning and design process, and we strongly urge the Legislature to defer any further action on a new jail until December when we will publish our final report.

A. Collaboration Among a Broad Range of Stakeholders is the Hallmark of Good Jail Planning and is Essential to Creating Facilities that Truly Meet the Needs of the Communities of which They are a Part

Jails are complex institutions that affect many elements of the community, including the police, judges, prosecutors, public defenders, private attorneys, social workers, mental health and addiction specialists, parole and probation officers, local hospitals, and community organizations. Because of their broad impact, creating a new jail must involve a wide range of community interests in a collaborative process. In fact, collaboration among a broad range of "stakeholders" is the hallmark of good jail planning and is absolutely essential to creating facilities that truly meet the needs of the communities of which they are a part. That is why the National Institute of Corrections (NIC) stresses the need for a broad-based Community Advisory Committee whenever a new jail is being planned:

Community participation in planning is important because the jail belongs to the community it serves; it is not solely the concern of the sheriff or director of corrections. The type of facility a community builds and the way it is used are as much a reflection of community values as they are of local, state, and federal laws. It is common for

stakeholders such as victim advocates, business leaders, the clergy, educators, and elected officials to actively participate on the community advisory committee. Stakeholders who have overall responsibility for the jail, such as county [or state] commissioners and the sheriff should also be represented on the community advisory committee.⁵⁹

The MacArthur Foundation's *10 Steps To System Change* also emphasizes the importance of a collaborative process in jail planning:

COLLABORATE. The first step is to ensure that the local justice system is truly functioning as a system. Policymakers must step out of their silos and consider how the different elements of the system interrelate, and how each contributes to public safety outcomes. This can take time and energy but reap rewards in the form of trust and collaboration, so that organizations have a shared understanding of the system, both as it exists now and what it can be in the future.

...

Commitment from leadership is necessary for system change, but by itself it is not sufficient. Affected groups must be on board to advance the new way of doing business, and to move forward despite barriers and setbacks. Engaging the community, the workforce, and other interested groups doesn't happen on its own. As motivation for change starts to build, conversations can begin with affected parties. Transparency and genuine opportunities for input by constituents support engagement.⁶⁰

Similarly, the Justice Management Institute has found that a "culture of collaboration" is one of the shared characteristics of successful justice systems. In this context, collaboration is more than just regular meetings of stakeholders:

Collaboration is more than just regular meetings of justice stakeholders; it's more than writing a letter of support for a new grant application. Collaboration is working together toward a common purpose--sharing a vision, preparing a plan, and implementing the plan to achieve outcomes. It is standing behind that plan as a singular group when outcomes are not realized, regrouping and trying something anew. Collaboration means sharing the burden, the responsibility, and the consequences together as a system. One of the main defining characteristics that make the eight local criminal justice systems qualitatively different from many others throughout the country is their ability to collaborate at a systemic level--to put the greater good of the system and the principles of justice before all else with individual stakeholders adjusting policy and practice to support the overall vision.⁶¹

The planners at GLC/Ricci Greene Associates, one of the country's leading justice architectural firms, make the same point:

⁵⁹ James R. Robertson, *Jail Planning and Expansion, Local Officials and Their Roles, Second Edition* (Washington, D.C.: National Institute of Corrections, 2010), 15, <https://s3.amazonaws.com/static.nicic.gov/Library/022668.pdf>.

⁶⁰ Justice Systems Partners, *10 Steps To System Change*, August 2010, 1-3, http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/08/10-Steps-To-System-Change_JSP-Brief.pdf.

⁶¹ Justice Management Institute, *From Silo To System: What Makes A Justice System Operate Like A System*, April 2015, 17, http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/07/From-Silo-to-System-30-APR-2015_FINAL.pdf.

Successful jurisdictions use a collaborative approach to planning that includes representation of all actors in the criminal justice system and the community including advocates, judges, administrators, legislators, prosecutors, the defense bar, correctional officers, program operators, and community members. The "buy in" from key stakeholders is *absolutely essential*.⁶²

The state agencies and private contractors planning the jail should engage a broad sector of the community in the planning process, and work with them on a regular basis, to ensure that any new facility reflects the values and priorities of the community.

B. The State Must Develop, Adopt, and Support Programs to Divert Low-Level Offenders from the Correctional System

1. Diversion is a Critical Part of the Jail Planning Process

One of the first questions a community must ask when planning a new jail is: "who is it for?" Jails were originally intended to house only those few people deemed to be a danger to society or a pre-trial flight risk, but they have become massive warehouses primarily for those too poor to post even low bail or too sick for existing community resources to manage.⁶³ Last year, for example, the Honolulu Police Department made 16,000 arrests, of which 6,880 or 43% were homeless people.⁶⁴ The latest statistics also show that 72% of the homeless detainees that came through the Honolulu police cellblock were mentally ill or under the influence of drugs.⁶⁵ Moreover, data provided by the Department of Public Safety shows that less than one-fourth of the OCCC inmates are incarcerated for class A or B felonies; the other three-quarters are being held for a class C felony or below (misdemeanor, technical violation, petty misdemeanor, violation).⁶⁶ Further, when members of the House Public Safety Committee visited OCCC in November 2015, there were 33 men and 19 women in the mental health modules and 45 men in the combined mental health/medical module (module 2).⁶⁷

Jail is often the beginning of a long journey through the criminal justice system. A study by the Vera Institute of Justice found that "just a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter--making jail a gateway to

⁶² Ken Ricci and Laura Maiello, *A Systematic Approach to Sustainability* (New York: GLC/Ricci Greene Associates, 2007) (emphasis added), https://riccigreene.com/content/pub_attachment/article_23_Thu_2012.pdf.

⁶³ *Incarceration's Front Door: The Misuse of Jails in America* (New York: Vera Institute of Justice, 2015), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/01/incarcerations-front-door-report.pdf>.

⁶⁴ Allyson Blair, *Most Arrests Involve Drug Addictions, Mental Illness*, Hawaii News Now, November 15, 2016, <http://www.hawaiinewsnow.com/story/33719849/majority-of-oahu-arrests-involve-those-with-mental-illness-drug-addiction>.

⁶⁵ *Id.*

⁶⁶ King, *supra* note 3.

⁶⁷ Department of Public Safety handout during site visit of OCCC by members of the House Committee on Public Safety, November 17, 2015.

deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large."⁶⁸

Researchers have also found that even a few days in jail correlates with negative outcomes for defendants and for public safety when compared to those defendants released within 24 hours: "While results varied by length of detention and risk level, in virtually every category, those detained were more likely to be rearrested before trial, to receive a sentence of imprisonment, to be given a longer term of imprisonment, and to recidivate after sentence completion."⁶⁹

Because jails can produce many undesirable outcomes and are extremely costly to build, maintain, and operate, communities across the nation are striving to reduce their jail populations through innovative programs such as diverting individuals with mental health and substance abuse issues to alternative facilities; finding alternatives to bail for individuals who can be safely supervised in the community while awaiting trial; having expedited hearings for prisoners who are jailed for technical probation violations; expediting indigence screening and program referrals; issuing citations for low-level offenses, instead of arrest and jail; and offering individuals charged with low-level, non-violent offenses the option of being adjudicated in community courts instead of in the criminal justice system. A full discussion of the many ways Hawaii could reduce its jail population is beyond the scope of this report, but the Task Force would like to mention a few ideas that it believes should be considered.

2. Some Examples of Successful Diversion Programs that Hawaii Should Consider

a. Law Enforcement Assisted Diversion (LEAD) Programs

Seattle, Washington; Santa Fe, New Mexico; and Albany, New York, have implemented Law Enforcement Assisted Diversion (LEAD) programs that allow police officers to divert low-level drug and prostitution offenders into community-based treatment and support services--including housing, healthcare, job training, treatment and mental health support--instead of processing them through traditional criminal justice system avenues.⁷⁰ By diverting eligible individuals to services, LEAD is improving public safety and reducing the criminal behavior (recidivism) of people who participate in the program.

The LEAD program was developed in King County, Washington (Seattle), by bringing together a diverse group of stakeholders, including prosecutors, city attorneys, police officers, the Mayor's office, the Washington State Department of Corrections, public defenders, the ACLU of Washington, and members of the community. The development and implementation of the program cost Seattle taxpayers nothing; it was developed and implemented with funding from private foundations.

⁶⁸ *Incarceration's Front Door*, *supra* note 63.

⁶⁹ *Id.*

⁷⁰ Lynn Lyman, *Seattle's New Approach to Low-Level Drug Offenses Cuts Recidivism Nearly 60%*, Justice Not Jails, April 8, 2015. See also LEAD (Law Enforcement Assisted Diversion), <http://leadkingcounty.org>.

LEAD is not only saving on jail costs; studies have shown that, over a five-year period (October 2009 to July 2015), participants were 58% less likely than control group participants to be rearrested. Other studies have shown that LEAD participants were twice as likely to have shelter, 46% more likely to be on employment continuum (i.e., in vocational training, employed in the legitimate market), and 33% more likely to have income/benefits.⁷¹

b. Pre-Arrest Diversion of the Mentally Ill

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

Characterized by constant noise, bright lights, an ever-changing population, and an atmosphere of threat and violence, most jails are unlikely to offer any respite for people with mental illness. According to the latest available data, 83% of jail inmates with mental illness did not receive mental health care after admission. The lack of treatment in a chaotic environment contributes to a worsening state of illness and is a major reason why those with mental illness in jail are more likely to be placed in solitary confinement, either as punishment for breaking rules or for their own protection since they are also more likely to be victimized.

While most people with serious mental illness in jails, both men and women, enter jail charged with minor, nonviolent crimes, they end up staying in jail for longer periods of time. In Los Angeles, for example, Vera found that users of the Department of Mental Health's services on average spent more than twice as much time in custody than did the general custodial population--43 days and 18 days respectively.⁷²

To address these problems and save money, cities and counties across the country are diverting mentally ill persons to alternative facilities, such as shelters and hospitals where they can be cared for by mental health professionals and where, in many cases, the cost of care is paid by private insurance or Medicaid.

For example, Los Angeles County pairs law enforcement officers with mental health clinicians to respond to 911 calls involving mentally ill citizens. Team members are trained to identify, evaluate, and locate appropriate placement for the mentally ill citizen. Placements can include shelters, medical facilities, or, if necessary, jail. The teams are also trained to determine if the person has Medicaid or private insurance, enabling them to pinpoint the appropriate hospital that would accept the person's medical benefit. Of the individuals diverted, about one-third are placed in county hospitals, another one-third are placed in private hospitals, and the rest are transported to community providers. In FY 2001-2002, the law enforcement-mental health teams responded to 7,121 calls for intervention. Of these, only 107 resulted in arrest.⁷³

⁷¹ See LEAD Evaluations, <http://leadkingcounty.org>.

⁷² *Incarceration's Front Door*, *supra* note 63.

⁷³ *Ending the Cycle of Recidivism: Best Practices For Diverting Mentally Ill Individuals from County Jails*, National Association of Counties, 2003, <http://namimarin.org/wp-content/uploads/2013/09/jail-diversion-and-mentally-ill1.pdf>.

The City of Chicago recently provided mental health training to its police officers and gave them discretion to take offenders suffering from mental illness to a new mental health triage center that was opened in an unused police station on the south side of the city. The triage center, which diverts offenders from jail, is operated by the Cook County Health and Hospital System. It is open 24/7 and provides high quality mental health services to the mentally ill and those who have been released from jail.⁷⁴

c. Pre-Arrest Diversion of First-Time Misdemeanants

The MacArthur Foundation's Safety + Justice Challenge has reported on a diversion program in Tallahassee, Florida (Leon County), that gives police officers discretion to divert first-time misdemeanor offenders to a non-profit behavioral health agency, in lieu of making an arrest. According to the Foundation, here is how the program works:⁷⁵ If the offender does not have an arrest record and cooperates with the police, the officer has the discretion to offer diversion into the pre-arrest diversion program. An offender can refuse diversion and opt for their day in court, but if diversion is accepted, the offender enters an intervention program operated by a non-profit behavioral health agency. During intake each person receives a behavioral health assessment and is screened for drug use. Based on the results, an individualized intervention plan is developed. The participant then has 90 days to complete the intervention plan, as well as a mandatory 25 hours of community service. Participants pay the behavioral health company \$350 for the intervention services. This is approximately the same cost as court fines and fees if they were to be criminally prosecuted. Payment plans and waivers are available for those who cannot afford the pre-arrest diversion fee. No one is denied participation for the inability to pay. Failure in the program results in the participant being arrested and prosecuted for the original offense.

Since the program started in March of 2013, law enforcement officers with the Tallahassee Police Department and the Leon County Sheriff's Office have diverted over 1,000 offenders. Of the nearly 80% of diverted offenders who have successfully completed the program, only 6% were subsequently rearrested. While there is little formal research related to recidivism for first-time misdemeanants, prior to the diversion program the estimated recidivism rate for this category of offenders in Tallahassee/Leon County was 40%.⁷⁶

d. Adult Civil Citation System for Minor Offenses

Three large counties in Florida (Leon, Broward, and Miami-Dade) have adopted adult civil citation programs that divert low-level, non-violent offenders from jail by giving them civil citations, in lieu of arrest and jail. The system is based on a similar program for juveniles that both saved money and reduced recidivism.⁷⁷

⁷⁴ Paris Schultz, *Mental Health Triage Center Opens As Alternative To Jail*, Chicago Tonight WTTW-TV, November 1, 2016, <http://chicagotonight.wttw.com/2016/11/01/mental-health-triage-center-opens-alternative-jail>.

⁷⁵ Greg Frost, *Pre-Arrest Diversion – An Effective Model Ready For Widespread Adoption*, The MacArthur Foundation Safety + Justice Challenge, July 12, 2016, <http://www.safetyandjusticechallenge.org/2016/07/pre-arrest-diversion-effective-model-ready-widespread-adoption/>.

⁷⁶ *Id.*

⁷⁷ See Civil Citation Network, <http://civilcitationnetwork.com>.

e. Reducing the Jail Population Through Cash Bail Alternatives

The American system of cash bail has long been criticized, most recently in October 2016 by the Criminal Justice Policy Program at Harvard Law School, which said:

The core critique of money bail is that it causes individuals to be jailed simply because they lack the financial means to post a bail payment. Jailing people on the basis of what amounts to a wealth-based distinction violates well-established norms of fairness as well as constitutional principles. It can also lead to significant levels of unnecessary jailing, which imposes intensely negative consequences on individuals, communities, and the justice system.⁷⁸

A few months earlier, the Civil Rights Division of the U.S. Department of Justice referred to cash bail as "the criminalization of poverty" and, in an open letter to lawyers and judges, said that to safeguard the principles of equal protection and due process, courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.⁷⁹ The Justice Department also urged states to "consider transitioning from a system based on secured monetary bail alone to one grounded in objective risk assessments by pretrial experts."⁸⁰

Keeping presumptively innocent defendants in jail while awaiting trial is not only bad policy, it costs cities, counties, and states millions of dollars, which is why many jurisdictions are seeking alternatives. Among the most successful alternatives are: court notifications through personal respondent systems and automated call systems; individualized bail determinations and elimination of bail schedules; the use of high-functioning pretrial service agencies that facilitate pretrial release and detention decisions and provide appropriate levels of supervision and treatment for released defendants; skillful use of risk assessment tools; and electronic monitoring as a last resort.⁸¹

Eliminating cash bail could save Hawaii millions of dollars because nearly half of the OCCC prisoners are pretrial detainees.⁸² With half as many prisoners, the State could build a jail with half as many beds and at a much lower cost.

⁷⁸ *Moving Beyond Money: A Primer On Bail Reform*, Criminal Justice Policy Program, Harvard Law School, October 2016, <http://cjpp.law.harvard.edu/publications/primer-bail-reform>. See also Francesca Forrest, *Guilty Until Proven Innocent: The Problem With Money Bail*, Federal Reserve Bank Of Boston 2015 Communities and Banking Series, May 27, 2016; Jessica Morris, *Alternatives to Pretrial Incarceration: Creating A More Just Justice System Through Bail Reform in Massachusetts*, Roosevelt Institute, January 31, 2015 (noting that defendants who are incarcerated during the pretrial period are over three times more likely to be sentenced to prison than defendants who were released pretrial).

⁷⁹ Open letter from Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division, and Lisa Foster, Director, Office for Access to Justice, Civil Rights Division, United States Department of Justice, March 14, 2016, <https://www.justice.gov/crt/file/832461/download>.

⁸⁰ *Id.*

⁸¹ *Moving Beyond Money*, *supra* note 78. See also Policy Institute, *Bail Fail*, September 2012.

⁸² On November 16, 2015, the inmate population at OCCC was 1173 of which 569 (or 48%) were pretrial detainees. Email from Tessie V. Fernandez, Administrative Services Office, Department of Public Safety, to Karen Kawamoto, Office of Rep. Gregg Takayama.

f. Reducing the Jail Population Through Smart Design

Denver is reducing its jail population by releasing pretrial defendants quickly. The city found that 40% of the people admitted to their justice center left within three days, and a large percentage were bonded out without ever going into a housing unit, so they built the first floor of the jail as a reception area to hold 120 people, sitting in an open area, as if they're sitting in an airline waiting room.

There are a number of cells for those who are intoxicated or for those who are perceived to be dangerous. But there's also this large waiting room. There's medical screening, there's legal aid, the front door is on the same floor, so your attorney, your bail bondsman, your relative can come in the front door, post the papers and the bail. If you're being detained there, you never even change your clothes. You're getting bailed out; you sit there nicely for two, three, four, five, six hours, watching TV. There are bathrooms and phones. And then you walk out the front door with your dignity intact. So this is a good thing because you never go into the housing units.⁸³

There are many other strategies for reducing jail populations, but the Department of Public Safety and its consultants are not exploring them. The question should not be how large a new jail needs to be, but how small the jail can be with successful diversion programs?⁸⁴ Overbuilding would be one of the worst mistakes the State could make.

⁸³ Ken Ricci interviewed by Alice Hagen, August 26, 2008.

⁸⁴ Justice architect Ken Ricci says that "[w]hen a client comes to us and says we want you to build a jail for us because our jail is unsafe or overcrowded, we say to them, "let's figure out how small your new jail can be, not how big it can be." We ask the question "why are your facilities overcrowded?" We look at length of stay, and we discover that the peak populations are on the weekends because the courts are closed. Well, we might recommend that government officials open the courts on the weekends, find a way to promote the process, or to speed up the process." *Id.*

Chapter 6

CONCLUSION AND INTERIM RECOMMENDATIONS

A. Conclusion

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

Some people may be skeptical of the approach we are recommending or actually oppose it. We have heard many times "but Hawaii isn't Norway," and "but Norway has a homogeneous population," and "Norway's a rich country, we can't afford to have a system like theirs." In response to the skeptics, we feel we should say a few words about perpetuating the past by maintaining the status quo.

If the status quo is maintained, the State will be spending close to a quarter of a billion dollars a year to keep upwards of 28,000 of its citizens, many of them low-income Native Hawaiians, under some form of correctional supervision. Maintaining the status quo also means that Hawaii will have to face the fact that its jails and prisons have been neglected for decades and that some of them probably do not meet minimum constitutional standards, in which case there would be the risk of a federal lawsuit and the possibility of having a federal judge or special master running Hawaii's correctional system and fashioning costly remedies that may not make sense to the community and over which it will have little control. A lawsuit could perhaps be avoided if the State begins spending large amounts of money on its run-down facilities, but that is like putting a finger in the dike or, to use another cliché, throwing good money after bad.

The status quo means that the State will continue to have overcrowded facilities, and that means continuing to send Hawaii's prisoners and tax dollars to Arizona or some other state. To prevent the flow of millions of tax dollars (not to mention jobs) to Arizona the State could build a new prison in Hawaii. However, as pointed out earlier in this report, if a new prison has the same per bed cost as a new jail (\$541,000 per bed), a prison that could accommodate the 1,300 prisoners in Arizona and the roughly 100 prisoners at the federal detention center would cost around \$700 million, which would be in addition to the projected \$650,000,000 cost of a new 1,200 bed jail (total jail and prison cost: \$1.3 billion). Additional funds would also have to be appropriated to upgrade the Women's Community Correctional Center in Kailua and the prisons on Maui, Kauai, and the Big Island.

What would Hawaii get for the billions of dollars spent? A perpetually high prison population, the distinction of being one of the 20 top incarcerators in the world, a recidivism rate

of over 50%, and communities that are no safer than they are now. Hawaii would also be seen as an outlier, as other states move toward reform that really works.

B. Interim Recommendations

1. The State should begin to transition from a punitive correctional system to a rehabilitative, restorative, and therapeutic system.
2. Hawaii's core values of goodness, generosity, and Aloha should serve as the foundation for transforming the correctional system. All aspects of the new system, its vision, mission, goals, policies, procedures, rules, regulations, and activities should reflect and be measured against Hawaii's core values.
3. The Norwegian/European correctional model and best practices from other states should also guide and inform the transformation of Hawaii's correctional system.
4. The State should establish an academy to educate and train correctional workers. The academy should strive to establish the highest standards of professionalism for correctional workers at all levels.
5. The State should set numerical goals for reducing the prison population and recidivism rates through non-custodial alternatives to incarceration and focused, evidenced-based rehabilitative programs for those in prison.
6. The Legislature should defer action on a new jail until the HCR 85 Task Force issues its final report in December 2017.

APPENDIX A

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

H.C.R. NO. 85
H.D. 2
S.D. 1

HOUSE CONCURRENT
RESOLUTION

REQUESTING THE ESTABLISHMENT OF A TASK FORCE TO STUDY EFFECTIVE
INCARCERATION POLICIES TO IMPROVE HAWAII'S CORRECTIONAL
SYSTEM.

1 WHEREAS, as states grapple with fiscal challenges and tough
2 budget choices, public safety stakeholders are taking a hard
3 look at the millions of dollars spent on correctional systems;
4 and

5
6 WHEREAS, the planned relocation of the Oahu Community
7 Correctional Center provides a timely opportunity for public
8 safety stakeholders to evaluate Hawaii's correctional system;
9 and

10
11 WHEREAS, Hawaii's correctional system can benefit from the
12 implementation of effective incarceration policies, programs,
13 and best practices that aim to reduce correctional spending,
14 alleviate inmate overcrowding at correctional facilities, lower
15 recidivism, and address other challenges; and

16
17 WHEREAS, a study that identifies and analyzes the effective
18 incarceration policies used by other jurisdictions would provide
19 Hawaii with solutions to improve its correctional system; now,
20 therefore,

21
22 BE IT RESOLVED by the House of Representatives of the
23 Twenty-eighth Legislature of the State of Hawaii, Regular
24 Session of 2016, the Senate concurring, that the Chief Justice
25 is requested to establish a task force to study effective
26 incarceration policies in Hawaii and other jurisdictions, and
27 suggest improvements for Hawaii's correctional system, including
28 recommendations for designs of future correctional facilities;
29 and



1 BE IT FURTHER RESOLVED that the study include
2 identification and analysis of effective incarceration policies
3 used in other states and countries and their related costs to
4 develop and recommend methods and strategies that may be
5 employed by Hawaii to improve its correctional system; and
6

7 BE IT FURTHER RESOLVED that the task force shall consist of
8 eleven members designated as follows:
9

- 10 (1) The Chief Justice, or the Chief Justice's designee,
11 who shall serve as the chairperson of the task force;
12
- 13 (2) The Administrator of the Judiciary's Adult Client
14 Services Branch, or the Administrator's designee;
15
- 16 (3) The Chairperson of the Hawaii Paroling Authority, or
17 the Chairperson's designee;
18
- 19 (4) The Director of Public Safety, or the Director's
20 designee;
21
- 22 (5) The Chairperson of the House Committee on Public
23 Safety;
24
- 25 (6) The Chairperson of the Senate Committee on Public
26 Safety, Intergovernmental, and Military Affairs;
27
- 28 (7) The Chairperson of the Board of Trustees of the Office
29 of Hawaiian Affairs, or the Chairperson's designee;
30
- 31 (8) A representative from the Native Hawaiian Legal
32 Corporation;
33
- 34 (9) A faculty member with expertise in criminology or
35 penology appointed by the President of the University
36 of Hawaii;
37
- 38 (10) A member of the public who has knowledge and expertise
39 with the Hawaii correctional system appointed by the
40 Director of Public Safety;
41
- 42 (11) A male former prison inmate appointed by the Director
43 of Public Safety;
44



1 (12) A female former prison inmate appointed by the
2 Director of Public Safety; and

3
4 (13) The Chairperson of the Holomua Puuhonua Committee, or
5 the Chairperson's designee; and
6

7 BE IT FURTHER RESOLVED that all members of the task force
8 be appointed no later than thirty days after the last day of the
9 Regular Session of 2016, and that the task force convene its
10 initial meeting within thirty days after appointment of the last
11 member; and
12

13 BE IT FURTHER RESOLVED that no member shall be made subject
14 to chapter 84, Hawaii Revised Statutes, solely because of that
15 member's participation as a member of the task force; and
16

17 BE IT FURTHER RESOLVED that the Judiciary and the
18 Department of Public Safety shall provide administrative support
19 to the task force; and
20

21 BE IT FURTHER RESOLVED that, upon request of the task
22 force, the Legislative Reference Bureau shall assist in the
23 preparation of the report; provided that, before August 1, 2017,
24 the task force shall submit a draft to the Legislative Reference
25 Bureau, including any other information and materials deemed
26 necessary by the Bureau, for the preparation of the final
27 report; and
28

29 BE IT FURTHER RESOLVED that the task force, with the
30 assistance of the Legislative Reference Bureau, is requested to
31 submit a report of its findings and recommendations, including
32 any proposed legislation, to the Legislature no later than
33 twenty days prior to the convening of the Regular Session of
34 2018; and
35

36 BE IT FURTHER RESOLVED that certified copies of this
37 Concurrent Resolution be transmitted to the Chief Justice,
38 Administrator of the Judiciary's Adult Client Services Branch;
39 Director of Public Safety, Chairperson of the Hawaii Paroling
40 Authority, Chairperson of the Board of Trustees of the Office of
41 Hawaiian Affairs, President of the University of Hawaii System,
42 Director of the Legislative Reference Bureau, President of the
43 Board of the Native Hawaiian Legal Corporation, and Chairperson
44 of the Holomua Puuhonua Committee.



APPENDIX B

HCR 85 TASK FORCE MEMBERS

The Honorable Michael D. Wilson, Associate Justice, Hawaii Supreme Court - HCR 85 Taskforce Chair, designee of the Chief Justice

Sidney Nakamoto, Administrator, Adult Client Services Client Branch, Hawaii Judiciary

Fred Hyun, Chair, Hawaii Paroling Authority

James Hirano, Warden, Maui Community Correctional Center, Department of Public Safety, designee of the Director of Public Safety

Representative Gregg Takayama, Chair, House Committee on Public Safety

Senator Clarence Nishihara, Chair, Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Jeremy (Kama) Hopkins, Aide to Robert Lindsey, Chair, Board of Trustees, Office of Hawaiian Affairs, designee of the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs*

Robert Merce, Native Hawaiian Legal Corporation

Dr. Meda Chesney-Lind, Chair and Professor of Women's Studies, University of Hawaii at Manoa, appointed by the President of the University of Hawaii

Keith Kaneshiro, Prosecutor, Department of the Prosecuting Attorney, City and County of Honolulu, a member of the public who has knowledge and expertise with the Hawaii correctional system, appointed by the Director of Public Safety

Matthew Taufatele, founder LapFirst (Life After Prison), a male former prison inmate appointed by the Director of Public Safety

Margaret Watson, University of Hawaii at Manoa student, a female former prison inmate appointed by the Director of Public Safety**

S. Kukunaokalā Yoshimoto, MSW, Holomua Puuhonua, designee of the Chairperson of the Holomua Puuhonua Committee

*On December 8, 2016, the Office of Hawaiian Affairs elected Trustee Rowena Akana to succeed Trustee Robert Lindsey as Chair. Accordingly, Ms. Akana has succeeded Mr. Hopkins as a member of this Task Force.

**Ms. Watson participated in the Task Force until December 2016, when she resigned for personal reasons. We thank Ms. Watson for her service and wish her well.