

Correctional Task Force Minutes

Tuesday November 14, 2017

9 a.m.

Hawaii Supreme Court Conference Room
417 South King Street
Honolulu, HI 96797

Members present

Lōpaka Baptiste, Office of Hawaiian Affairs

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

Robert Merce, Vice President, Native Hawaiian Legal Corporation

Sidney Nakamoto, Probation Administrator

Matthew Taufetee, founder of First L.A.P. (Life After Prison)

The Honorable Michael Wilson, Supreme Court Justice, HCR85 Task Force Chair

Shayne Kukunaokalā Yoshimoto, Holomua Pu'uhonua

I. Call to order

Justice Wilson called the meeting to order at 9:20 a.m.

II. Introduction and opening remarks

Justice Wilson thanked all present for attending and stated that the expected release of the interim draft would be by mid-December. He noted that the final report is anticipated to be a blue-print for implementation, rather than just another “aspirational” report. Its goal will be specifically to assist the legislature in its task of implementation.

III. Approval of minutes

A motion to approve the amended minutes from the July meeting was made and passed.

IV. Subcommittee Reports

(a) The native Hawaiian subcommittee reported that it has continued drafting and revision on its vision statement.

(b) The faith subcommittee reported that it is working with various Christian, Jewish, and other denominations with a focus on the need to treat incarcerated persons with humanity and best correctional practices rather than punitive and dehumanizing practices.

(c) The program subcommittee reported that it has talked with various experts (e.g., on oversight and on bail reform) and intends to complete its deliberation process and intends to report to the full committee by the next task force meeting.

V. Release of draft interim report

Devin Choy, Legislative Reference Bureau attorney, reported on the timing of the draft interim report, and affirmed that the LRB can help finalize the draft. In connection with the topic of the

draft interim report, Bob Merce reported at length on his meeting with the Honorable Jonathan Lippman in New York City earlier in November. Judge Lippman was involved with a New York correctional report titled "A More Just New York City," authored by the "Independent Commission on New York City Criminal Justice and Incarceration Reform." The Independent Commission sought community input from various stake holders regarding the design and location of replacements for Rikers Island. Judge Lippman stated that the attitude in New York regarding location of correctional facilities is that, if it is small enough, it can be located in an urban environment and actually serve as an engine for the local economy. Based on his experience with New York efforts at correctional reform, Judge Lippman spoke also of the crucial need for adequately financing an effort such as the correctional justice task force for professional staff support, etc., in order to do the job right. Bob Merce reported that Judge Lippman observed that it would be valuable for the HRC 85 Task Force to draw on prior successful efforts such as the MacArthur Foundation's "Safety and Justice Challenge" as models. Bob Merce suggested an effort to solicit funding for professional staff for the final report of the HRC Task Force. Justice Wilson recommended the formation of a "working group on resources" to do strategic outreach to foundations, law firms, the University of Hawai'i, the Richardson School of Law, and others in connection with Judge Lippman's suggestions, especially those regarding funding a professional staff to produce the final report.

Warden Hirano commented on the need to avoid an "us or them" mentality, or a conflict mentality, with regard to corrections, which Warden Hirano had sensed in some prior discussions. Warden Hirano further suggested that such a mentality would be inimical to the overall effort of corrections reform and reform of the culture of corrections. Bob Merce noted that the New York Commission was successful in avoiding significant conflict among stakeholders. After brief discussion, Bob Merce moved that the task force establish a working group to seek funding from various private and public sources to help fund a staff to help with the final report, which in turn will assist in the major task of implementing. The motion carried.

VI. Legislative hearing for correctional justice task force.

The suggestion was made that inmate testimony be part of the anticipated legislative hearing. One possible way to get testimony is to let the inmates know about the opportunity to testify, and to give them contact information (by internet or mail) where they can send their testimony, making sure that the legislature receives input from former or present inmates, thus opening it up to people who are currently at OCCC, but doing it in a way that allows them to communicate freely. If at all possible to get the word directly from them to the task force, then they wouldn't fear retaliation. Warden Hirano added that it would also be good to get input from neighbor islands. Various possible ways of obtaining and encouraging inmate input were discussed, but the basic need is for an organized way to allow for inmate testimony. Justice Wilson commented that as part of the task force's mandate to recommend best practices, it would be helpful to have past or present inmate testimony, including live testimony, from prisoners who can say what works and what does not.

Justice Wilson opened public discussion on agenda topics that had been addressed so far. A member of the public stated that the obtaining resources to get the job done is a very important issue. Still, the working group on resources should not just look at the financial aspect, but also at enlisting volunteer groups that would be willing to solicit input from the community, talking

to different neighborhoods, have meetings on topics such as integrating prisoners into the community. The working group should be thinking about the journalistic community and how they can help.

Demonte Conner and his wife recommended a film titled “Out of State,” that everyone involved in the criminal justice system should watch, especially including legislators. It covers Hawai‘i prisoners in Arizona and tells a very important story. One of the prisoners who was paroled and he went straight to the street, in other words, he became homeless. Another prisoner went through work furlough, and he seemed to fare better after release. Legislators should ask: how many people do we want to process through work furlough as opposed to prison time? Demonte also announced a meeting at the legislature on Jan. 16, room 224, which will involve a presentation to the legislature of the native Hawaiian community’s priorities.

Kat Brady remarked on the importance of getting the community’s comments or input on the second interim report. Bob Merce noted that the task force is happy to share the draft interim report with anyone who is interested.

On the question of framing the interim and final reports in a non-adversarial rather than a conflict-based way, Raelyn Reyno Yeomans commented that the approach already taken by Department of Public Safety means the process is already adversarial. No serious community input was solicited; instead, Louis & Berger and others have been driving the process without community input. No information or context is provided about how this is going to affect our community. No one asked for experts to provide input on where the jail should be. So the process and the situation is already political and adversarial. Bob Merce largely agreed, stating that part of the problem is that they decided at the start of the process that a new facility had to have 1255 beds. It would have been better to start with the community and ask, How many beds do we really need? We should be looking at models in other cities. Justice Wilson added that the task force is headed in a different direction than the one currently being taken on the new jail.

On considering models from other cities, Henry Curtis stated he had done some research on location of jails in urban areas. Denver, Chicago, Boston, San Diego, all located correctional facilities near downtown. In Hawaii we seem to want to put the jail in a quarantined area. Stephen Rosenberg stated that he had just visited Bridgewater in the Boston area, and that Massachusetts moving towards Swedish and Norway model. Mr Rosenberg stated, “We don’t want to be in a position of catching up to mediocrity. We want to lead. So we need a change of mentality all along the line.” Mr Rosenberg stated that we should be concerned with sentencing and bail reform as well. The monetary threshold in Hawai‘i for putting someone in jail is an inability to make \$300 bail. In addition, we should be thinking about a restorative justice model, and a therapeutic justice model, rather than the antiquated punitive justice model. Justice Wilson noted that OHA is putting together a training curriculum for correctional officers to address the need for a change of mentality and culture. Justice Wilson stated that these are all important considerations, although restructuring sentencing statutes may fall outside the task force’s charge.

Niko Leverenz, who is from Hawaii, spent a decade in Sacramento in legislative staffing. “We in Hawaii need to find a way to have more directed and informed public policy. The State of

Washington has an Institute for Public Policy that has a steady stream of funding. When we think about corrections reform, we need to be also thinking about sentencing reform, bail reform, and related issues. We have 300 people going back to jail every year on technical violations on furlough.” Another member of the public agreed, noting that the Washington public policy institute has a reputation for doing thorough, non-partisan policy work. Justice Wilson agreed that we need an institutionalized process for data gathering so that we can keep track of what’s going on in the process.

With regard to the need for bail reform in Hawaii, Jim Lindblad, a Honolulu bail bondsman, has been involved in pre-trial prison population management for decades. He recently had a client where it took 13 months to get the bail reduced to an amount that his family could pay. There’s an urgency to this issue of bail reform. The client had a new baby, and he was not able even to touch his child. Changes in administrative protocols can be done without major structural change. Whenever the ultimate content of the final report, it has to be oriented towards implementation of feasible solutions, therefore something that will be persuasive to the legislature. Find common ground and then get something done. Justice Wilson responded that we need strategies for creating change, strategies for implementation. We are so very far away from the mark of having an acceptable correctional system that it is daunting, on the one hand, but it’s also exciting, because there is so much room for real reform.

Jeannie Lum asked, where does this task force stand with regard to the prison location and the rest of the process already under way? Will this task force’s final report in 2019 come out in time to affect the process that’s already taking place? Justice Wilson responded that, briefly, the task force report is going to make recommendations that are inconsistent with the present Department of Public Safety recommendations. DPS’s model is based on past practices. We want to put together an institution that reflects informed best practices, not past practices. The currently proposed building will not be built until perhaps 2026, so it’s not too late to intervene in the process. As a result of our task force’s work, we want to end up with a set of well-informed, relevant, best practices that will allow us to modify the current set-up in a way that serves the community in terms of alleviating the human suffering that results from a corrections system that is basically a human trauma machine. But well-informed, relevant best practices will also contribute to an effective corrections system, one that will reduce recidivism and save large amounts of money from being spent to perpetuate an ineffective and broken system.

VII. Adjourn

Justice Wilson adjourned the meeting at 11:07 a.m.

Appendix

Written comments submitted by the public not able to attend the task force meeting

From Carrie Ann Shirota, JD dated November 14, 2017:

“At the last Task Force meeting, Justice Michael Wilson assured community members that oral testimony, as well as written comments, would be incorporated into the Task Force minutes and Report. I am unable to attend today’s meeting, but would like to share some comments and articles related to the scope of this Task Force.

Please find attached a few articles highlighting the successful outcomes of a handful of jurisdictions that have engaged in comprehensive evidence-based criminal justice reform policies. As a result of implementing these policies, New York, California and New Jersey have significantly reduced its incarcerated population. Simultaneously, crime rates, including violent crimes, decreased in this states. (Note: These jurisdictions initiated these policies for different reasons i.e. federal consent, strong bipartisan leadership, etc.)

Other jurisdictions have successfully reduced its jail and prison population by working in partnership with Council of State Government's Justice Center (Justice Reinvestment Initiatives). See attached JRI Hawai'i Report, and North Dakota Passes Legislation to Reduce Prison Growth. As you are aware, in June 2011, Hawai'i Governor Neil Abercrombie, Supreme Court Chief Justice Mark E. Recktenwald, and legislative leaders requested technical assistance from the Justice Center to employ a data-driven 'justice reinvestment' approach to improve public safety, reduce corrections spending, and reinvest savings in strategies that can decrease crime and reduce recidivism in Hawai'i.

Between June 2011 and January 2012, the Justice Center staff conducted extensive data analyses of Hawaii's criminal justice system to identify criminal justice population and cost drivers in the state. As a result of this process, the Justice Center proposed policy options to the Hawaii State Legislature that was projected to help reduce the state's inmate population by more than 900 inmates by the end of fiscal year 2016 — and by 1,010 inmates by fiscal year 2018.

The Justice Center estimated then that the recommendations — if adopted in full — would lead to a savings of more than \$150 million by the end of fiscal year 2018 and allow the state to reinvest \$42 million into strategies that promote rehabilitation and reduce recidivism.

Unfortunately, Hawaii's policy makers have not fully implemented the JRI recommendations. And despite the fact that the work and recommendations from this Task Force, as well as the Pre-Trial Task Force, have not been finalized, Hawaii's administration is moving ahead with the EIS process to build a new jail to replace OCCC. In other words, their intention is clear - let's continue the status quo and focus on jail construction instead of tackling the drivers of mass criminalization and incarceration that fuel overcrowding.

My hope is that the Task Force will follow the visionary lead of other jurisdictions that have paved the way for Smart Justice policies, and commit to charting a new course for our criminal justice system in Hawai'i. Until the work of the Task Force has been completed, the EIS process for the proposed replacement of OCCC should cease.

Attachments:

Fewer-Prisoners-Less-Crime-ATale- of-Three-States.pdf

JR-in-HI-Analyses-and-Policy-Options.pdf

North Dakota Leg. Reduce Prison Growth 4-24-17.pdf"

From Carrie Ann Shirota, JD dated November 27, 2017:

“Given this body's recommendation asking the Governor to hold off on plans to build a new jail to replace OCCC until the Task Force's recommendations are finalized, I am forwarding info about this important Public Meeting.

Please find attached PSD's Public Meeting Notice, as well as PSD's latest Newsletter announcing the release of the Draft EIS.

Given the enormous costs associated with this proposed project, and the likelihood that the proposed construction costs will pale in comparison to the actual costs (think rail!), it behooves concerned community members to attend this meeting and provide feedback.

For those interested in reading the Draft EIS, please visit <http://dps.hawaii.gov/occc-future-plans/>. Although the Draft EIS is voluminous, it does nothing to address state policies and practices that drive jail (and prison) overcrowding.

Hawai`i has access to technical assistance from the Council of State Governments Justice Center to reduce jail and prison overcrowding, save money, and decrease recidivism rates. Yet, Hawai`i, in its response to the EIS Notice released on October 26, 2017, has admitted that “The State has not contacted the Council of State Governments Justice Center since it issued its last report in 2013.”

The State has also admitted that they have not consulted with jurisdictions like New Jersey, New York and California that have decreased their imprisoned populations by the thousands! (See attached article highlighting NJ's continuing successful outcomes as result of criminal justice reform efforts).

What does this tell us? State actors pushing a new jail are not interested in criminal justice reform; nor do they truly care about the inhumane conditions resulting from overcrowding.

Assuming arguendo that a new jail is built, this project will do absolutely nothing to address overcrowding now! Nor will it prevent overcrowding in the future - as the Draft EIS acknowledges that the preferred site provides “room for expansion.”

Let that phrase sink in - “room for expansion.” While other states, through bipartisan efforts, are reducing its incarcerated population, and downsizing its jails and prisons, Hawai`i wants to build a new jail and allow room for expansion.

Until cost-proven criminal justice reform alternatives are implemented in Hawai`i, a moratorium should be enacted to halt all jail and jail construction.”

From Ronsan2224@aol.com

“What should be included in the HCR 85 Task Force report?

In the Executive Summary of the report on page 7, the report includes:
The goals for the re-envisioned correctional system include: (1) reducing the over-reliance on incarceration as a response to social, economic, and public health issues; (2) **eliminating the**

overrepresentation of native Hawaiians in the criminal justice system; (3) breaking the cycle of intergenerational incarceration; (4) **creating a system of rehabilitation grounded in the culture and values of Hawaii;** (5) improving community safety by reducing recidivism; and (6) establishing strong and independent oversight to ensure a just and humane correctional system, and effective implementation of legislative initiatives.

On page 11 of the report is a heading: B. The New Vision Must Take Account of Hawaii's Colonial History

On page 13 of the report is: 'The OHA study cites several probable causes for the overrepresentation of Hawaiians in the criminal justice system, beginning with their marginalization **through colonialism and racism** and continuing to the present where Hawaiians have disproportionately high levels of childhood trauma and abuse, high unemployment, high underemployment, low educational attainment levels, low income status, and significant involvement in the juvenile justice system.'

To deal with the **bolded** parts of this report, namely: 1) eliminating the overrepresentation of native Hawaiians in the criminal justice system, 2) taking account of Hawaii's colonial history, and 3) dealing with racism, Ohana Ho`opakele humbly suggests the following to be added to the HCR 85 report:

A. Continue the steps that have been taken to deal with the disproportionate number of Hawaiians in prison:

1. Experiments in building a model Pu`uhonua as an alternative to prison:

Ohana Ho`opakele, Wade Lee on Molokai, Uncle Joe Tassill, Warden Neil Wagatsuna, Kahu Hanalei Collead, Bumpy Kanahale,

2. Development of Makahiki programs in Correctional Centers:

Kahu Kaleo Patterson, Andre Perez, Kini Burke, Kalehau Kamau, Ohana Ho`opakele,

3. Research how the criminal justice system is unjustly targeting Native Hawaiians:

Kamanao Crabbe, Kamaile Maldonado, Dr. RaeDeen Karasuda, Dr. Naleen Andrade, Dr. Lynette Cruz,

4. Develop a curriculum that explains the colonial past:

Act 117, Dr. Noelani Goodyear-Kaopua, Dr. RaeDeen Karasuda, Dr. Ron Williams Jr., Dr. Jon Osorio, Holomua Pu`uhonua, OHA, Pu`a Foundation

5. Fund training of Ho`oponopono for rehabilitation:

Lynette Paglinawan, Howard Pea, Liliuokalani Trust, Earl Kawa`a

B. Fund ongoing education, research, and experiment with Pu`uhonua models: (% of their budget)

Native Hawaiian Trusts, OHA, Department of Public Safety,

Holomua Pu`uhonua, Legislature, Soros Foundation

C. Educational Hearings held on every island to share research, get input from ex-pa`ahao, family of pa`ahao.

HCR Task Force, Liliuokalani Trust

D. Bring well-renown speakers to raise awareness in the public:

Michelle Alexander, author of The New Jim Crow

Eric Holder, ex-Attorney General of the United States of America.”