



The Judiciary, State of Hawai'i

**Testimony to the House Committee on Public Safety,
Veterans, and Military Affairs**

Representative Gregg Takayama , Chair
Representative Cedric Asuega Gates, Vice Chair

Friday, February 1, 2019, 10:00 a.m.
State Capitol, Conference Room 430

By

WRITTEN TESTIMONY ONLY

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Administrative Director of the Courts

Bill No. and Title: House Bill No. 634, Relating to Restorative Justice.

Purpose: The bill requires the Judiciary to establish a 5-year pilot program for restorative justice. It also requires the judiciary to inform various criminal attorneys of the existence of the pilot program. Appropriates funds.

Judiciary's Position:

The Judiciary respectfully supports the intent of this bill to bring the victim and defendant together in a safe environment that allows the victim to express him/herself and provide the offender an opportunity to learn the impact his/her actions has had on the victim/community. However, the Judiciary has identified several concerns with this bill that can be addressed by a task force or working group.

The bill proposes that the defendant will have the "right" to request to participate in a restorative justice program with the court and victim(s) consent. Considering defendants' constitutional right to a speedy trial, these "rights" may conflict. Upon successful completion of the restorative justice process, the bill provides that the court may dismiss the charges with approval from the court and the victim. This may place a victim in a difficult situation as a



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defendant's case dismissal may rest with the victim agreeing to participate and get the charge(s) dismissed. This may cause additional harm to the victim.

Pursuant to this bill, a defendant who has been charged with a class A or B felony or that is a violent crime shall not be eligible to participate in the pilot program. Thus, defendants charged with a Class C felony, misdemeanor, or petty misdemeanors that are not violent crimes pursuant to HRS §351-32 may be eligible. This means that defendants charged with Terroristic Threatening I & II, as well as Violation of an Order for Protection/Temporary Restraining Order will be eligible to participate. Although these charges are not classified violent crimes according to HRS §351-32, the victims may feel afraid of repercussions regardless of their choice to participate in restorative justice or not.

Perhaps clarifying that the presiding judge could determine whether a restorative justice approach is appropriate in a given case would be helpful.

Also, the bill requires the court to inform each eligible defendant of the right to request restorative justice during or prior to a pretrial conference. It appears that participation in a restorative justice program is pre-adjudication and if the defendant participates in restorative justice and the victim and prosecuting attorney agree, the court may dismiss the charges. The judiciary does not have jurisdiction in the cases until adjudication and as such the judiciary may not be the appropriate entity to implement a restorative justice program.

The Judiciary is willing to convene a task force, pursuant to this measure, and offers the Judiciary's Center for Alternative Dispute Resolution's assistance in facilitating the task force. The task force would include a core group of community partners (Judiciary, prosecutor, defense attorney, attorney general, public safety, etc.) to serve as a working group tasked to research and identify existing restorative justice models; identify goals and objectives specific to Hawai'i's needs; research resources available on each island; develop policies and procedures; develop findings and recommendations for potential pilot programs and/or services, including the procurement of services, reporting requirements to track outcomes and evaluate programmatic issues and strengths; and the attendant costs and personnel required to implement a sustainable restorative justice program.

Thank you for the opportunity to comment on this measure.