



**DEPARTMENT OF PUBLIC SAFETY  
REPORT TO THE 2012 LEGISLATURE**

**In Response to House Concurrent Resolution 126**

**Sessions Law of Hawaii 2011**

**FEASIBILITY OF ESTABLISHING AN  
EARNED-TIME PROGRAM FOR HAWAII'S  
NON-VIOLENT AND LOW-LEVEL DRUG OFFENDERS**

**December 2011**

**FEASIBILITY OF ESTABLISHING AN EARNED-TIME PROGRAM  
FOR HAWAII'S NON-VIOLENT AND LOW-LEVEL  
DRUG OFFENDERS House Concurrent Resolution (HCR) 126 (2011)**

HCR 126 directs the Department of Public Safety (PSD) to assess the feasibility of establishing an earned-time credit program for Hawaii's non-violent and low-level drug offenders incarcerated in Hawaii and on the mainland.

Hawaii's sentencing code dictates that an offender sentenced for a year or less is for a definite term as imposed by the courts. An offender sentenced to more than a year has a determinate maximum sentence set by the courts and an indeterminate or discretionary minimum sentence determined by the Hawaii Paroling Authority (HPA). During the 2011 Legislature, PSD testified that there were several factors that would not be conducive to developing an earned-time credit program in Hawaii.

One of the factors involved the expansion of the Offender Management Office to staff this office. The staffing requirements in other States with a similar inmate population averaged about 40 positions to deal with sentencing computations and earned-time credits. Due to budget constraints, PSD currently has three professional staff members assigned to audit and review pre-sentence calculations. The present staff ratio to inmate population significantly impacts the efficiency of the operations and restricts the quantitative output for pre-sentence audits. PSD's pre-sentence credit audit timeline is about one year from an inmate's maximum sentence expiring. PSD's current staffing situation will not be able to support the implementation of an earned-time credit program. Based on prior estimates, the creation of an office to manage earned-time credits would require renting office space, establishment of new positions, with funding for salaries and benefits, and the purchase of equipment and supplies, which were previously estimated at about \$1 Million for the 1<sup>st</sup> year and \$800,000 for subsequent years.

The second major cost factor with the establishment of an earned-time credit program would be the purchase and yearly maintenance costs for a new "offender management information system" as the Offendertrak system cannot incorporate all the variables that would be considered. The variables that will impact an earned-time credit program are the inmate's completion of recommended programs such as education, vocation, substance abuse and the negative ramification on earned-time credits for any type of disciplinary action. The cost to purchase, develop and annually maintain this type of offender management information system would need to be evaluated in further detail. In addition, the hidden cost with any new system deals with the training of staff and the possible need for new computer equipment. A conservative financial estimate incorporating all variables could exceed \$1 Million.

The other concerns with establishing an earned-time credit program deal with the creation of a new liberty interest for offenders that could lead to drastic increases in litigation for PSD and the State of Hawaii. This is best illustrated in the hypothetical below:

The State's budgetary restrictions impacts the staffing availability at a correctional facility, which then limits an inmate's ability to complete his/her recommended programs and impacts the inmate's potential for earned-time credit. Is the State deemed liable? Is this cruel and unusual punishment?

The concept of developing an earned-time credit program to reduce the length of stay for non-violent and low-level drug offenders is not a viable option in Hawaii.

The same variables considered in an earned-time credit program are utilized by HPA to determine an offender's release from custody. The offender also has the option through HPA to request a reduction in the minimum term, if 1) HPA has not set the minimum term within six months of the request; 2) The offender has completed one-third of their longest minimum sentence; 3) HPA has not considered a prior request within the preceding twelve month period; 4) The offender is not currently serving a mandatory minimum sentence; 5) HPA has not held a parole hearing in the preceding twelve months; and 6) The offender is not scheduled for a parole hearing or administrative review within six months of the request.

Although it may not be a feasible option at this time, PSD is not adverse to monitoring our population to assess the feasibility of establishing an earned-time credit program for non-violent and low-level drug offenders in the future.