



BY FAX 586-8504

Committee: Committee on Public Safety and Military Affairs (45 copies)
Hearing Date/Time: Thursday, January 31, 2008, 8:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Support of H.B. 2148, Relating to the Auditor

Dear Chair Evans and Members of the Committee on Public Safety and Military Affairs:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B. 2148, which seeks require the auditor to conduct performance audits of private prisons on the mainland that house Hawaii prisoners.

The ACLU of Hawaii has received numerous complaints about the treatment inmates receive at the mainland facilities. With this bill, the inmates from Hawaii are given another tool with which to address and resolve grievances with the mainland correctional institutions. Requiring the auditor to conduct performance audits of these private prisons will help to ensure that the inmates' legal rights, as well as their health and safety, are maintained.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawai'i

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Suite 203, Honolulu, Hawai'i 96817
Phone/E-mail: (808) 533-3454/communityallianceonprisons@hotmail.com



COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Cindy Evans, Chair

Rep. Sharon Har, Vice Chair

Thursday, January 31, 2008

8:30 AM

Room 309

STRONG SUPPORT - HB 2148 - PERFORMANCE AUDIT OF PRIVATE PRISONS HOUSING HAWAII PRISONERS

Aloha Chair Evans, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai'i for a decade. I respectfully offer our testimony being always being mindful that Hawai'i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 2148 requires the auditor to conduct performance audits of private prisons on the mainland that house Hawai'i prisoners. Makes appropriation.

Community Alliance on Prisons strongly supports this bill. This audit is long overdue. We started shipping people out - the first 300 - in 1996. Twelve years later, Hawai'i still has no exit strategy for this 'temporary situation'. In 2006, that number of inmates exported rose to 1,844 Hawai'i inmates serving their sentences in prisons across the U.S. continent. As of January 7, 2008, we had 2,022 Hawai'i people serving their sentences abroad - more than one-third of Hawai'i's entire incarcerated population of 6,010.

What has shipping out - the exportation of the bulk of our prison population brought us? Sadly, it has delivered multiple gangs, individuals returning from U.S. prisons more hardened, and an increasing number of devastated families trying to survive back home. Hawai'i needs to train a more critical eye on what is happening in these contract prisons. Are we getting the programs and services for which we are paying more than \$50 million a year?

This bill would give us an independent view of how our contracts are being enforced and how private prisons are complying with contract provisions. The glaring facts are that our people have died in these prisons, several of our people have been hospitalized for serious medical conditions, and now we find out that an employee at Otter Creek smuggled in a loaded 22 in the prison with no one noticing anything. This is more than a breach of security. This is a clear indication that something is wrong. Something is very wrong. The state is still responsible for the care of individuals sentenced by our courts regardless of where that individual is housed.

In November 2007, I traveled with this committee to Eloy, Arizona to visit the two prisons housing the majority of our male prisoners. Saguaro Correctional Facility was built by Corrections Corporation of America in the Sonoran desert exclusively for Hawai'i's prisoners and 'sold' to Hawai'i as a program-intensive prison.

The staff at the prisons is young and inexperienced in corrections best practices. This has been illustrated with the problems of cell doors opening 'by mistake' at several CCA prisons. When this happened in Tallahatchie in Mississippi, one of our inmates was beaten to within an inch of his life. It's interesting that these events occurred in the administrative segregation unit, called SHIP.

Sadly, the most constant program in Saguaro is SHIP – Special Holding Intensive Program. SHIP is described as a behavior-modification program for people who are violent and cannot live in the general population because they are 'always violating the rules'. The individual does discipline time and gets a due process hearing, we were told. He can appeal the decision to the warden. SHIP has six month levels:

- SHIP I: 1 – 16 people – locked down 23 hours a day with 1 hour out for recreation
 - SHIP II: 11 - 13 people – locked down 22 hours a day with 2 hours out for recreation
 - SHIP III: 11 – 16 people – locked down 20-21 hours a day with 3-4 hours out for recreation
- (CCA mentioned that these numbers are from October 25, 2007)

Does this sound like a program? What could someone learn being locked down for 20-23 hours a day? Community Alliance on Prisons has received numerous letters from our men in Saguaro and from their families advising us that 'write-ups' are increasing for minor infractions. In other words, men are being put in lockdown (aka SHIP I program) for taking an extra 8 ounce cup of juice with meals, for not lining up correctly, or for not displaying their ID badges prominently. We have been advised that the SHIP program is full. Is this the 'intensive programming' that we are paying for?

On August 12, 2007, the Honolulu Star Bulletin, in an article entitled "Mainland prison slammed" (<http://starbulletin.com/2007/08/12/news/story03.html>) reported that:

"The heads of the education and addiction-treatment programs at a private Arizona prison holding Hawaii inmates abruptly quit their jobs complaining of poor management, inadequate facilities and lack of staffing.

Their resignations came just days before an Aug. 3 incident in which the staff at Saguaro Correctional Facility inadvertently opened security doors, releasing Hawaii inmates from their cells. Seven inmates left their cells when the doors opened, one was injured in a fight with another inmate and a third inmate had to be subdued for refusing to return to his cell, Hawaii Department of Public Safety officials said.

Rich Stokes was the principal at Saguaro Correctional Facility in Eloy. Michael VanSlyke was the facility's addiction treatment manager.

"They essentially walked out," said Steve Owen, spokesman for the Tennessee-based Corrections Corporation of America, which runs the Saguaro facility. "Their leaving was not expected."

Stokes and VanSlyke did not explain their departures to CCA officials but instead sent e-mails to Shari Kimoto, state Department of Public Safety mainland branch administrator. In the e-mails, Stokes said upper management at the facility spies on staff, controls all communication with the outside, and devalues and degrades inmates and programs for them. He said water runs into cells when inmates take showers because the drains are higher than the surrounding floors, the air-conditioning system experiences frequent failure and staff are often locked in or out of their units because doors cannot be opened."

In a briefing earlier this month, the department of public safety reported that the Electrical Engineering teacher had also quit. Community Alliance on Prisons has also heard that there is little to no programming taking place at Saguaro since the Hawai'i delegation's trip in November. Something is very wrong.

At Otter Creek Correctional Center in Wheelwright, KY, there has been and continues to be many problems for our women banished there.

In December 2005, three of our women were rushed to the hospital after repeatedly asking for medical care. One had pneumonia, one had triple by-pass surgery, and Sarah Ah Mau died on December 31, 2005 after being threatened with lockdown if she continued to ask for help.

A Kentucky inmate died in August of 2007. When we questioned public safety about the death, they told us that it was a Kentucky inmate, so they had no reason to question anything. Why would we not be concerned if someone died in a facility holding our women? Isn't any death a serious situation?

The health care at Otter Creek leaves a lot to be desired. Women have reported to us that their physician-prescribed medications are denied or changed by the facility, nurses who have left the facility confided to me that they were asked to perform procedures outside their scope of practice, and that Otter Creek is 'a mess'.

Of course, the latest incident involving the warden's secretary who smuggled a loaded 22 into Otter Creek is of great concern and is indicative of much more than a 'security breach'. Something is very wrong.

There also appear to be some shenanigans going on with the money that families and loved ones send to prisoners' accounts. The system recently changed so that all money sent to inmate accounts goes to a company in Georgia. I know of families who sent money to be placed in inmates' accounts in early December. By mid-January that money had not been deposited in the inmate's account. Why? Who is keeping track of these funds? Is this just another scam to make money off the backs of some of Hawai'i's most economically-challenged families?

Again, we reiterate that the state bears the responsibility for the health and safety of our people in prisons thousands of miles away. Corrections Corporation of America is a private company listed on the NYSE. Where do you think their first responsibility lies? Correct...their first responsibility is to their shareholders.

We're sure that it is very convenient to house states' prisoners thousands of miles away – CCA is enjoying relative autonomy as evidenced by this statement that was overheard recently by a family member. "If it was up to me, you'd get nothing," said Assistant Warden Ben Griego, who is now Acting Warden at Saguaro – the program-intensive prison built for Hawai'i's inmates.

Community Alliance on Prisons respectfully urges the committee to pass this bill with appropriate funding so that a full and independent audit of these contract prisons can be done. Hawai'i is in its twelfth year of exporting prisoners. It is about time that we thoroughly and independently analyze the wisdom of that policy decision, the rigor of contract compliance from the vendor, and the level of scrutiny that Hawai'i applies to monitoring these contracts.

An independent audit is the only way we will discover what is really going on in these private prisons.

Our trip in November revealed that the department of public safety has been making excuses for CCA's non-compliance. When Senators questioned the lack of programming in Saguaro, the program-intensive prison, the department repeatedly jumped in to answer for CCA saying they are 'ramping up'. Our question is simple, "Why did they open the prison if they were not ready to provide the services we have been paying for?"

We need answers, not more hardened criminals.

Community Alliance on Prisons urges you to pass HB 2148 onto the Legislative Management Committee with a strong recommendation for passage. An audit will provide the data you need to make necessary and important policy changes.

Mahalo for this opportunity to testify.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON HOUSE BILL 2148
RELATING TO THE AUDITOR**

by
Clayton A. Frank, Director
Department of Public Safety

Committee on Public Safety and Military Affairs
Representative Cindy Evans, Chair
Representative Sharon E. Har, Vice Chair

Thursday, January 31 2008
8:30 a.m.
State Capitol, Conference Room 309

Representative Evans and Members of the Committee:

The Department of Public Safety (PSD) opposes House Bill 2148. The measure requires performance audits of private prisons on the mainland housing Hawaii prisoners with regard to the issues of delivery of services, visitation, and the Department of Public Safety's monitoring of these contracts. Currently, the Department contracts with Corrections Corporation of America (CCA) on its current out-of-state population. All CCA facilities nationwide are accredited and audited under the American Correctional Association (ACA). ACA has a comprehensive audit of all facility operations, its policies and procedures on mandatory standards. The Department's contractual terms and conditions require all private prisons to meet ACA standards and be accredited within eighteen (18) months of activation.

This measure is unnecessary and repetitive as the Department already conducts quarterly contractual audits of its private prison facilities using its subject matter experts from various divisions and branches (i.e. Health Care Division, Substance Abuse, Education, Security, etc.). Further, a detailed deficiency notice on

all non-compliant contractual items is issued to the respective facility and a plan of corrective action are provided to the Department within thirty (30) days of the deficiency notice. The contract also allows the Department to access liquidated damages for staffing requirements and substance abuse programs. To date, no liquidated damages have been accessed as all deficiencies have been corrected within the required thirty (30) response period. Also, the Department's contracts and monitoring reports are public record and is made available to the Legislature and the public.

Lastly, this measure is based on the premise that performance audits should be applied to a very specific type of contractor (private prisons) under contract with the Department. If it is the intent to implement the process of performance audits to provide accountability and transparency to the public regarding the services provided by any vendor for any contract made with the State as a legal requirement, then it should apply to all State contracts and not be limited to just the Department of Public Safety.

Therefore, for the reasons listed above and on the preceding page, the PSD does not support House Bill 2148.

Thank you for the opportunity to provide testimony on this matter.