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**TESTIMONY ON SENATE BILL 2341 SD1
RELATING TO PUBLIC SAFETY**

by
Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Friday, February 22, 2008, 10:45 a.m.
State Capitol, Conference Room 016

Senator Taniguchi, Senator Hee, and Members of the Committee:

The Department of Public Safety (PSD) opposes Senate Bill 2341 SD1. The measure is an unnecessary and inequitable procedure that will discourage any contractor from bidding with PSD. Further, this measure only applies to PSD, and if the intent is to implement this process as a legal requirement, it should apply to all state contracts. Also,, since this measure applies to a non-governmental entity, there is no guidance on how to enforce this measure.

This measure requires a private corrections contractor who contracts to house Hawaii state inmates to submit to procedures required of state agencies under Hawaii Revised Statutes Chapter 92F simply because they contract with PSD. However, no other type of contractor is held to this same standard, neither those contracting with PSD or with any other state agency. Further, any

document or record that is material to the state's interest regarding a correctional contract can be requested by the Legislature. PSD will supply the documents to the Legislature after obtaining them from the contractor pursuant to existing contracting terms. The same procedure applies for any private citizen requesting documents that can be released pursuant to Hawaii Revised Statutes Chapter 92F, in that PSD will provide the documents they receive from the contractor.

There are over 2,000 State inmates currently in mainland contract prisons simply because there is no adequate space in the State to safely and securely house these inmates. While there are a number of companies that contract to operate private prisons, there are few private contractors, if any, that would bid on PSD contracts if they are required to release information directly to the public upon request in the same way State agencies are required to. Implementing this requirement would discourage many contractors from bidding, effectively forcing the State to return inmates to existing State facilities. This would create a situation that would clearly violate the Constitutional rights of inmates.

Therefore, the overall effect of this measure would greatly increase costs for the State, either by paying much more for a contractor to perform these tasks, or by paying the adverse judgments upon the return of all Hawaii inmates due to a lack of contractors that would agree to house them under these circumstances.

PSD opposes this measure based on the premises that this procedure applies only to a very specific type of contractor, the measure would be very difficult to enforce, and that under the current circumstances, the same results can be achieved by a simple request from the Legislature or pursuant to Hawaii

Revised Statutes Chapter 92F. This bill is repetitive and inequitable, and will have an unnecessary chilling effect on any bidding process pursued by PSD for the housing of state prisoners.

Thank you for the opportunity to testify.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary and Labor

From: Paul T. Tsukiyama, Director

Date: February 22, 2008, 10:00 a.m.
State Capitol, Room 016

Re: Testimony on S.B. 2341, S.D. 1
Relating to Public Safety

Thank you for the opportunity to submit testimony on S.B. 2341, S.D. 1.

The Office of Information Practices ("OIP") supports the intent of this bill, which would require nongovernmental entities contracting with the State to incarcerate state prisoners to release information about prison operations in the same way that a state agency operating such a facility would be required to under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes.

It is often uncertain whether a nongovernmental entity performing a government function is subject to accountability laws such as the UIPA, and OIP welcomes legislative action to clarify the issue. This bill would make clear that although a private prison operator housing state prisoners is not itself a state agency, it must respond to UIPA requests in the same way as an agency.

OIP notes that the provision addressing the remedy available to a person requesting records from a private prison operator in the event a request is denied contains superfluous and confusing language. Specifically, at page 2, lines 13-16, the qualification “unless the information is entitled to protection pursuant to section 92F-13, Hawaii Revised Statutes, or is a trade secret pursuant to the definition provided in section 482B-2, Hawaii Revised Statutes” is superfluous because in such a case the record requester would not be entitled to the records under the UIPA to begin with. Additionally, since the purpose of an appeal of a denial is generally to determine whether a record was, in fact, entitled to protection under section 92F-13, the qualification is confusing since it seems to contradict the first part of the provision, i.e. that a requester has a right to appeal a denial as provided for in the UIPA.

In addition, OIP is aware that the Department of Public Safety has concerns regarding the enforceability of the measure against private entities located out of state, as well as the administrative burden that would be placed on such entities. On these issues, which are beyond OIP’s jurisdiction, OIP defers to PSD’s concerns.

Thank you for the opportunity to testify.



the
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Forum**
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February 22, 2008

To: Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair
And Members of the Committee on Judiciary and Labor

From: Jeanne Y. Ohta
Executive Director

Re: SB2341 SD1 Relating to Public Safety
Hearing: February 22, 2008, 10:00 a.m., Room 016

Position: Support

The Drug Policy Forum of Hawaii supports this measure which would require prisons holding Hawaii prisoners under a contract with the State of Hawaii to make information about the operation of the prison public.

The contracts with private prisons are some of the most expensive contracts that the state enters into. These contracts also involve persons whose care is under the responsibility of the state. How the prisons operate and whether they are providing services as contracted should be available for the public's review.

Private prisons have different objectives than those run by government entities. They are for-profit operations; whose goal is to keep as many beds occupied as possible while keeping expenses low. Making information public assists in setting accountability and keeping the process transparent.

Please pass this bill so that we can know how the prisons are operating and whether they are living up to their contractual responsibilities.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair

Sen. Clayton Hee, Vice Chair

Friday, February 22, 2008

10:00 AM

Room 016

STRONG SUPPORT - SB 2341 SD1 - ACCOUNTABILITY & TRANSPARENCY BY PRISONS HOLDING HAWAI'I INMATES

Aloha Chair Taniguchi, Vice Chair Hee 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, 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.

SB 2341 SD1 requires out-of-state detention facilities holding Hawaii prisoners under a contract with the State to make public information about the operation of the prison; provides exemptions pursuant to chapter 92, HRS. (SD1)

Community Alliance on Prisons strongly supports this measure. We assert that when public funds are expended, the public has a right to know how that money is being spent.

There currently appears to be little to no accountability on the part of the contract prisons and no transparency since any information that is requested is not easily accommodated, if accommodated at all. With more than 2,000 Hawai'i individuals serving their sentences in prisons across the continental U.S., accountability and transparency should be very important factors when deciding upon vendors.

This bill is important since we have received much conflicting information about the new 'program-intensive' prison - Saguaro Correctional Facility.

A February 1, 2008 article entitled, "New rules urged for private prisons" in The Arizona Republic stated: "*Arizona Gov. Janet Napolitano wants to tighten up rules for the state's growing private-prison industry, which is virtually unregulated by the state.*"

A Saturday, February 2, 2008 Honolulu Advertiser story entitled, "Arizona bill target private jails" by Kevin Dayton stated, "*...Of the 15 states that expressly authorize private prisons, Arizona is one of the least restrictive, said Dora Schriro, director of the state prison system.*"

In the interest of democracy, accountability, and transparency we urge the committee to pass SB 2341 SD1. Mahalo for this opportunity to testify.

COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair

Sen. Clayton Hee, Vice Chair

Friday, February 22, 2008

10:00 AM

Room 016

STRONG SUPPORT - SB 2341 SD1 - ACCOUNTABILITY & TRANSPARENCY BY PRISONS HOLDING HAWAII INMATES

Aloha Chair Taniguchi, Vice Chair Hee and Members of the Committee,

My name is Karin Hokoana and I am a prisoner's advocate as well as a fourth generation Hawaii State resident, born when Hawaii was but a mere territory of the United States.

Often, one wonders what can be done to help those that are silenced and unable to help themselves. As we all know and have experienced, in trying to gather information, many factors become "road blocks". In both the private and public sectors across the nation, the growing trend all comes down to the single word "transparency".

The prisons our State utilize, are far too comfortable in our ability to "turn a blind eye". To operate, these prisons all utilize public funding. In essence, we are their employers and as employers, we have the RIGHT to any information we request from our employees, without any smoke screens or delays.

Our common sense shows the need and importance of attaining this "transparency", and "begging" should not be the way of obtaining what is needed to help improve the system. I'm sure you all understand that the lack of transparency actually hinders public safety. That lack of transparency also produces cover-ups which then also hinders accountability.

Each of the prisons that house our people, both in Hawaii and on the continent, fail to provide what has been promised in contracts, policies and procedures. Each needs to open their doors, their services and their records. They need to be held accountable for all their actions. People that could actually help improve the system, help create a safer Hawaii, help bring Hawaii up to date so that we can be again thought of as paradise, could initiate positive changes and improve the lives of not only the incarcerated but that of the community.

In the past, one man alone stood up against an Empire and made a change. His name was Mahatma Gandhi and he said, "We must be the change we want to see in the world".

To make a change, we need you to pass this bill.

Mahalo for moving this bill forward.

COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair

Sen. Clayton Hee, Vice Chair

Friday, February 22, 2008

10:00 AM

Room 016

**SUPPORT: SB 2341 SD 1 RELATING TO PUBLIC SAFETY
Freedom Of Information Act Applicable To Out-of-State Entities Housing Prisoners**

Aloha Chair Espero, Vice Chair Nishihara and Members of the Committee:

My name is Carrie Ann Shirota, and I am writing in strong support of SB 2341 SD1. My experiences as a former Public Defender and Civil Rights Enforcement Attorney, current staff member of a reentry program on Maui and member of Community Alliance on Prisons have shaped my advocacy efforts to promote accountability and transparency within our correctional system.

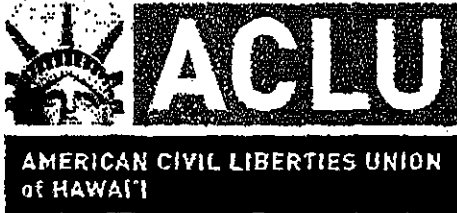
Presently, our FOIA laws do not apply to private prisons operated by Corrections Corporation of America or State correctional agencies that confine Hawai'i prisoners under the Interstate Compact Act. This legislation would require private prisons and out of state correctional agencies that incarcerate Hawaii prisoners to release information about the operation of the prison in accordance with the Freedom of Information Act under chapter 92F, Hawaii Revised Statutes.

As of December 31, 2007, PSD was responsible for a total of 5,995 inmates. Of the total number, 2,080 prison inmates were housed on the mainland in contracted facilities. With the increasing number of Hawai'i prisoners in private out-of-state facilities, and small but steady number of prisoners transferred under the Interstate Compact Act, it is important that these privately owned and operated facilities be held to the same standards and have the same responsibilities as the state government to promptly process requests for information and release information concerning prisoners and detainees under the FOIA laws.

Each of us has kuleana to ensure that the Department of Public Safety and any entity that PSD contracts with to house Hawai'i prisoners, operates safe and humane prisons that adheres to federal and state constitutional requirements. In addition, our community has a vested interest in ensuring that prisons both at home and on the American continent provides rehabilitation opportunities proven effective in helping individuals acquire the training and support to become law-abiding, contributing members of their `ohana and our community. **This legislation would help to achieve the twin objections of accountability and transparency by requiring private prisons and out of state prisons where our people are housed to adhere to the freedom of information standards under chapter 92F, Hawaii Revised Statutes.**

Mahalo for this opportunity to submit testimony in support of SB 2342 SD1.

Sincerely,
Carrie Ann Shirota, Esq.
Kahului, Hawai'i
(808) 269-3858



BY FAX: 586-6659

Committee: Committee on Judiciary and Labor
Hearing Date/Time: Friday, February 22, 2008, 10:00 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii in Support of SB2341, SD1, Relating to Public Safety

Dear Chair Taniguchi and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of SB 2341, SD1.

This bill will increase government accountability and transparency in a system that currently offers almost none. The ACLU of Hawaii receives many requests for assistance each year from Hawaii inmates on the mainland claiming that contracted prisons are failing to provide them with fair and adequate treatment. It appears that there is little to no accountability on the part of the contract prisons and no transparency, since these private prisons are notorious for denying requests for information about their policies and procedures. With more than 2,000 Hawaii individuals serving their sentences in prisons across the continental U.S. and millions of state tax dollars paid to these private contractors, Hawaii residents have a right to know how their money is being spent.

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,

Lois K. Perrin
Legal Director
ACLU of Hawai'i

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