



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 2341 RELATING TO PUBLIC SAFETY

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY

DATE: Tuesday, January 29, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol, Room 225

Deliver to: Committee Clerk, Room 207, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General

Lisa M. Itomura, Deputy Attorney General

LATE

Chair Espero and Members of the Committee:

The Department of the Attorney General opposes this measure.

This bill requires that all nongovernmental entities contracting with the State of Hawaii, either directly or indirectly through an interstate compact, to house state inmates "have the same duty to release information about the operation of that prison or detention facility that a state agency operating such a facility in Hawaii would have under chapter 92F, Hawaii Revised Statutes." Any state agency contracting or entering into an agreement with a nongovernmental entity to house state inmates in another state is required to adopt rules under chapter 91, Hawaii Revised Statutes (HRS), to "ensure compliance" by the nongovernmental entity. Normally, "compliance" expected of a contracting entity is specified in the contract and enforced through the contract. This bill also establishes that "any party aggrieved by a violation of the duty" imposed on the nongovernmental entity under chapter 92F may obtain "appropriate relief in a civil action" against either the nongovernmental entity or the government agency operating the out-of-state facility or "against any other proper party."

This bill imposes governmental responsibilities on nongovernmental entities and broadens the scope of remedies against them. For example, while chapter 92F allows for civil actions against state agencies for violations of its provisions, plaintiffs have very specific requirements and limited remedies. An individual challenging denial of access to a government record must bring suit within two years of the denial and, if he or she prevails, is only entitled to reasonable attorney's fees and expenses pursuant to, section 92F-15(e), HRS. Plaintiffs challenging a state agency's decision on a personal record are required to exhaust administrative remedies before filing suit pursuant to section 92F-27(a), HRS. In comparison, this bill attempts to create civil liability for a nongovernmental entity without limits. It is vague and ambiguous and lacks definition.

Further, the portion of the bill which requires nongovernmental entities to disclose all aspects of the operation of its facilities is flawed. There is no definition of the word "operation," which will generate considerable confusion and litigation.

The bill also does not have any statutory reference as to where this law is to be codified.

We respectfully request that this measure be held.

COMMITTEE ON PUBLIC SAFETY
Sen. Will Espero, Chair
Sen. Clarence Nishihara, Vice Chair
Tuesday, January 29, 2008
Room 225 at 2:45pm

SUPPORT: SB 2341 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. 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.

Sincerely,
Carrie Ann Shirota, Esq.
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