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No. _____

TESTIMONY ON SENATE BILL 2341, SD1
RELATING TO PUBLIC SAFETY

by
Clayton A. Frank, Director
Department of Public Safety

House Committee on Judiciary
Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair

Tuesday, April 1, 2008 2:00 p.m.
State Capitol, Conference Room 325

Representative Waters, Representative Oshiro, and Members of the Committee:

The Department of Public Safety (PSD) opposes Senate Bill 2341, SD1, which requires out-of-state detention facilities holding Hawaii prisoners under contract with the state to make public information about the operation of the prison. This 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 in all branches of government.

This measure requires a private corrections contractor who contracts to house Hawaii state inmates to submit to procedures required by state agencies under HRS §92F simply because they contract with PSD. However, any other type of contractor is not held to the same standard, either 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 already be requested by the Legislature and will be supplied by PSD. The same applies for any private citizen that requests a document, which could be released under HRS §92F. Additionally,

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PSD has posted all private prison contracts on our website and we have begun the process of posting all quarterly audit reports of private prisons as well. It should be noted that prior to posting of the contracts on PSD's website, any person that asked for a copy of the contracts was provided with a copy. Further, information regarding the contracts and/or information regarding enforcement of the contracts has always been available in hard copy form and will continue to be made available to the public both in hard copy and electronic form from PSD's website.

There are over 2,000 state inmates currently in contract prisons in the mainland 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 if any that would bid on any contract with this constraint in the contract. Implementing this requirement would discourage contractors from bidding, effectively forcing the state to return the inmates to the existing state facilities, creating a situation that would clearly be violative of the inmates constitutional rights. The overall effect of this measure would greatly increase costs to 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 the inmates due to a lack of contractors to house the inmates. Again, this measure is unnecessary and inequitable.

PSD opposes this measure based on the reasons stated above and that under the current circumstances, the same results can be achieved by a simple request for information submitted to PSD or by visiting our website. Thus, this measure is unnecessary and inequitable.

Thank you for the opportunity to testify on this measure.

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OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary
From: Paul T. Tsukiyama, Director
Date: Tuesday, April 1, 2008, 2:00 p.m.
State Capitol, Room 325
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.

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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.

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BY FAX: 586-9456

Committee: Committee on Judiciary
 Hearing Date/Time: Tuesday, April 1, 2008, 2:00 p.m.
 Place: Room 325
 Re: Testimony of the ACLU of Hawaii in Support of SB2341, SD1, Relating to Public Safety

Dear Chair Waters and Members of the Committee on Judiciary:

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 in mainland correctional facilities and their families claiming that these contracted prisons are failing to provide the inmates 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 being paid to these private contractors, Hawaii residents should have the ability to find out whether their money is being used appropriately.

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 Hawaii

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COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair

Rep. Blake Oshiro, Vice Chair

Tuesday, April 1, 2008

2:00 PM

Room 325

STRONG SUPPORT - SB 2341 SD1 – Accountability & Transparency: Out-of-State Prisons

Aloha Chair Waters, Vice Chair Oshiro 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.

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. Furthermore, the public has a right as well as a civic duty to demand accountability in this area since the state has paid out millions of taxpayer dollars in claims for deaths, rapes, and assaults that have happened in some of these contacted prisons.

There currently is little to no accountability on the part of the contract prisons and any information that is requested is not easily accommodated, if at all. Now we find that CCA has been keeping two sets of books and their clients (the taxpayers of Hawai'i) are getting the sanitized version of what's really going on inside their facilities, where Hawai'i individuals have died, been raped, and assaulted. 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.

Governor Napolitano of Arizona – the state with the least oversight of private prisons and the state where the majority of Hawai'i's overseas incarcerated population lives – is currently pushing a bill demanding more accountability and transparency from the for-profit prisons.

Sadly, our Department of Public Safety has been testifying against any bills relating to accountability and transparency this session. They have repeatedly asserted that CCA regularly reports to them and when incidents occur, they report immediately.

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We now know that the version we are getting is not the real story. When CCA reports 'facility schedule altered due to inmate action', they actually mean there was a riot. 'Facility schedule altered due to inmate action' doesn't quite capture the magnitude of the situation does it?

As the Oklahoma Corrections Director Justin Jones said on October 12, 2006, *"You're dealing with a private business here, and they are in to make money and answer to shareholders. Our mission is public safety, and the ideologies don't always line up."*

Alex Friedmann, Associate Editor of Prison Legal News testified before the Pennsylvania House Labor and Justice Committee on October 25, 2007:

"Several months ago I spoke with a former CCA insider, who stated that when CCA does internal quality assurance audits, two reports are produced. One is for internal use only, and the other, with all negative references removed, is provided to the government contracting agency.

Private prison companies claim they can save money. But prisons are prisons, and there are only so many costs that can be cut without endangering public safety. 70-80% of prison operational costs are due to staff expenses: the number of employees and their wages, benefits and training. Private prison companies cut prisoner-related costs, too – from less spent on food and fewer blankets to rationing rolls of toilet paper. But the largest corners cut are in staffing: hiring fewer employees, at lower wages than in the public sector, with fewer benefits and less training, and keeping vacant staff positions vacant as long as possible.

That is the business model of the private prison industry, and it results in high staff turnover – of up to 50%, according to the industry's own numbers. I recall one private prison in Florida where, over a time period of 8 to 10 months, the turnover rate was 100%. The comparable average rate at public prisons is around 15%."

"The (high turnover rate) generally means that tenured staff is generally low, and when tenured staff is very low, sometimes they have difficulties dealing with situations that are not typical of everyday operations" -- Colorado DOC's director of prisons, Nolin Renfrow. September 22, 2004

This quote from Upton Sinclair is painfully appropriate:

"It is difficult to get a man to understand something when his salary depends upon his not understanding it".

Hawai'i must demand the same accountability from CCA that we demand of our incarcerated people. Bills like this are being heard across the country – there is a movement taking hold. As CCA's second largest customer and in light of the horrors that our people have been subjected to, we have an obligation to demand accountability.

In the interest of accountability and transparency, we urge you to pass SB 2341 SD1.

Mahalo for this opportunity to testify.

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TO: HOUSE COMMITTEE ON JUDICIARY

FROM: PAMELA LICHTY, PRESIDENT

RE: SB 2341, SD 1 RELATING TO PUBLIC SAFETY – IN STRONG SUPPORT

DATE: APRIL 1, 2008

The Drug Policy Action Group is in strong support of this bill which would go far to insure transparency and accountability from the out of state facilities that are holding Hawai'i prisoners under contract with the state.

This bill is especially timely because of recent exposes in the *New Yorker* magazine as well as in *Time* about Corrections Corporation of America's corporate counsel and one of their detention centers in Texas.

I was unaware until recently that Hawai'i is CCA's second largest customer. We have known for years that there are many legitimate systemic concerns about private for-profit prisons. If we wrench our inmates away from their families and aina, the very least we can do is carefully monitor the conditions in which they are held.

This bill is based on one moving through Congress and echoes the call of the Governor of Arizona for more information about these private prisons to be made public. We taxpayers have a right to know and we owe it to our prisoners to be informed citizens.

We urge the Committee on Judiciary to pass out this extremely important measure so that the taxpayers of Hawai'i can get an assessment of just what we are paying for. We appreciate the Committee hearing this bill today and we thank you for the opportunity to testify.

The Drug Policy Action Group is a sister organization to the Drug Policy Forum of Hawai'i. Since 1993 DPFH has been Hawaii's leading organization dedicated to promoting responsible, effective, and research-based drug policies.

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the
**Drug Policy
Forum**
of hawaii

April 1, 2008

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To: Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice Chair
And Members of the Committee on Judiciary

From: Jeanne Y. Ohta
Executive Director

Re: SB2341 SD1 Relating to Public Safety
Hearing: April 1, 2008, 2:00 p.m., Room 325

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 public information about the operation of the prison.

The contracts with private prisons are some of the most expensive contracts that the state enters into, amounting to \$50 million. 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.

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary

Testimony by
Hawaii Government Employees Association
April 1, 2008

S.B. 2341, S.D. 1 – RELATING
TO PUBLIC SAFETY

The Hawaii Government Employees Association supports this bill. S.B. 2341, S.D. 1 will provide much needed accountability and transparency to the public regarding the services provided under any contract made between a private contractor and the state to house Hawaii prisoners. Hawaii has housed prisoners on the Mainland since 1996 and it now costs the state more than \$50 million annually.

Each company contracting with the State to incarcerate or detain state prisoners or detainees in a privately owned prison or detention facility must release the same information about the operation of that facility that a state agency operating such a facility in Hawaii would have under the Uniform Information Practices Act (Chapter 92F, Hawaii Revised Statutes.) Thank you for the opportunity to testify in support of S.B. 2341, S.D. 1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

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CARRIE ANN SHIROTA, ESQ.

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Wailuku, Hawaii 96793
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COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair
Rep. Blake Oshiro, Vice Chair
Tuesday, April 1, 2008
2:00 PM in Room 325

**STRONG SUPPORT: SB 2341 SD 1 RELATING TO PUBLIC SAFETY
Requires out of State Detention Centers Holding Hawaii Prisoners
to Comply with HRS Chapter 92**

Aloha Chair Waters, Vice Chair Oshiro and Members of the Committee:

My name is Carrie Ann Shiota, and I am writing in strong support of SB 2341 SD1. My experiences as a former Public Defender and Civil Rights Enforcement Attorney, and current staff member of a reentry have shaped my advocacy efforts to promote accountability and transparency within our correctional system, and better prepare incarcerated persons for their return home as law-abiding, contributing members of their `ohana and our community.

Presently, HRS Chapter 92 does not apply to private prisons operated by Corrections Corporation of America and other private prisons that confine Hawai`i prisoner. 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 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.

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