



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2341, S.D. 1, RELATING TO PUBLIC SAFETY.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, April 1, 2008 **TIME:** 2:00 PM

LOCATION: State Capitol, Room 325

Deliver to: Committee Clerk, Room 302, 5 Copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lisa M. Itomura, Deputy Attorney General

Chair Waters and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill.

The stated purpose of this bill is to provide accountability and transparency to the public regarding the services provided by any vendor for any contract made with the State to house Hawaii prisoners. This bill requires that all nongovernmental entities contracting with the State of Hawaii to house state inmates, either directly or indirectly through an interstate compact, have the same duty to release information "as is required of the department of public safety under chapter 92F, Hawaii Revised Statutes." This bill also establishes civil actions for "any party aggrieved by a violation of the duty" imposed on the nongovernmental entity under chapter 92F, Hawaii Revised Statutes.

First, it should be noted that, if this bill is passed, it may affect only those contracts signed after the bill is adopted. A contracting party could claim that attempting to apply the provisions of the bill to previously signed contracts is improper or illegal, and could defend a chapter 92F lawsuit on that basis.

If the intent of this bill is to impose additional duties on contractors, the better method of addressing the legislature's stated concerns is to require these duties and remedies through contract. Thus, section 2(a) could be modified to read as follows: "Contracts that provide for the incarceration or detention of state prisoners or detainees in a privately owned prison or other out-of-state detention facility shall require the contractor to provide access to the same information as is required of the department of public safety under chapter 92F, Hawaii Revised Statutes."

Section 2(b) of the bill could likewise be modified to read as follows: "Remedies for the failure of contractors to provide information required under 92F, Hawaii Revised Statutes, shall be provided for by contract and may include the same remedies against the nongovernmental entity as provided for against government agencies in chapter 92F, Hawaii Revised Statutes."

A further concern is that the bill does not have a reference as to where this law is to be codified. If this bill is to be passed, we recommend that the substantive provisions be codified in chapter 353, Hawaii Revised Statutes, relating to Corrections.