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TESTIMONY ON SENATE BILL 2341 SD1
RELATING TO PUBLIC SAFETY

by

Clayton A. Frank, Director
Department of Public Safety

House Committee on Public Safety and Military Affairs
Representative Cindy Evans, Chair

Thursday, March 13, 2008, 8:30 a.m.
State Capitol, Room 309

Representative Evans, Representative Har, and Members of the Committee:

The Department of Public Safety (PSD) appreciates the Legislature's interest in this matter. However, PSD opposes Senate Bill 2341 SD1. This measure is an unnecessary and inequitable procedure that will discourage any correctional 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.

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, no 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 be requested by the Legislature and will be supplied by PSD after obtaining the document from the contractor pursuant to the existing contract. The same applies for any private citizen that requests a document, which could be released under HRS §92F.

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 place. Implementing this requirement could discourage any contractor from bidding, effectively forcing the state to return the inmates to existing state facilities, creating a situation that would clearly be violative of the inmates' constitutional rights. In that, 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 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 premises that this procedure applies only to a very specific type of contractor, and that under the current circumstances, the same results sought by this measure can be achieved by a simple request from the Legislature or under HRS §92F. Thus, the measure is repetitive and inequitable, as well as having an unnecessary chilling effect on any bidding process pursued by PSD.

Thank you for the opportunity to testify on this measure.

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To: House Committee on Public Safety and Military Affairs

From: Paul T. Tsukiyama, Director

Date: March 13, 2008, 8:30 a.m.
State Capitol, Room 309

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.

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COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Cindy Evans, Chair

Rep. Sharon Har, Vice Chair

Thursday, March 13, 2008

8:30 AM

Room 309

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

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 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 appears to be little to no accountability on the part of the contract prisons and any information that is requested is not easily accommodated, if 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.

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.

In the interest of accountability and transparency, we urge you to pass SB 2341 SD1 onto the Judiciary Committee with a recommendation for passage.

Mahalo for this opportunity to testify.



the
**Drug Policy
Forum**
of hawaii

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March 13, 2008

To: Representative Cindy Evans, Chair
Representative Sharon Har, Vice Chair
And Members of the Committee on Public Safety and Military Affairs

From: Jeanne Y. Ohta
Executive Director

Re: SB2341 SD1 Relating to Public Safety
Hearing: March 13, 2008, 8:30 a.m., Room 309

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.

COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Rep. Cindy Evans, Chair

Rep. Sharon E. Har, Vice Chair

Thursday, March 13, 2008

8:30 a.m.

Conference Room 309

Hawaii State Capitol

SUPPORT - SB 2341, SD1

Relating to Public Safety

My name is Andy Botts, author of Nightmare In Bangkok. I strongly support this bill, as accountability of tax dollars should be treated in the same manner as any investor in a corporation or any business. In this case, considering where and how much of the taxpayer's money is being invested, it would be scandalous not to disclose this info to the public. We are the investors, and we have a right to know where our hard earned dollars are going.

Aloha, Andy Botts

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