



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2524, RELATING TO PRISONS.

LATE TESTIMONY

BEFORE THE:

SENATE COMMITTEES ON PUBLIC SAFETY and ON HEALTH

DATE: Tuesday, February 12, 2008 **TIME:** 3:45 PM

LOCATION: State Capitol, Room 225
Deliver to: Committee Clerk, Room 207, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Diane K. Taira, Deputy Attorney General

Chairs Espero and Ige and Members of the Committees:

The Department of the Attorney General opposes this bill.

The bill amends section 353-72, Hawaii Revised Statutes (HRS), by requiring the Department of Public Safety (PSD) to: (1) create a separate mental-health treatment facility in every prison, complete with the appropriate medical staff to ensure that all inmates suffering from mental illness "receive proper and adequate treatment for their psychiatric conditions"; (2) "house" all inmates suffering from mental illness in such separate mental-health treatment facilities created pursuant to the bill; and (3) ensure that inmates suffering from mental illness are never housed in "solitary confinement."

Although the intent of the bill is commendable, the bill presents significant concerns.

There are no funds set aside to create a separate mental-health treatment facility in every prison. This ambitious endeavor will require significant funding. Without funding PSD will not have the resources necessary to succeed.

Second, the bill's prohibition against solitary confinement as defined presents an unacceptable safety risk to inmates and prison staff, especially in light of the bill's definition of

"mental illness." The bill provides that "mental illness" has the same definition as provided in section 335-1, Hawaii Revised Statutes: "[M]ental disease to such an extent that a person so afflicted requires care and treatment for the person's own welfare, or the welfare of others, or of the community."

(Emphasis added.) Given that the bill covers those inmates who may be a danger to themselves or others, it is inconsistent to forbid completely the use of "solitary confinement," which the bill itself defines only as "confinement of a prisoner in isolation from all other prisoners." If a mentally ill inmate indeed poses a safety risk to the inmate's self or others, it makes sense to at least consider isolating the inmate from other inmates, if only temporarily. This option allows facility staff to stabilize an unsafe situation and properly assess and treat mental health issues. Taking away that option would unnecessarily place prison inmates and staff in danger, potentially making the State liable to costly lawsuits.

Third, PSD has made significant strides in its delivery of mental health services. Further progress is being pursued and is possible with the budgetary proposal PSD will be pursuing this legislative session.