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No. _____

**TESTIMONY ON SENATE BILL 3263
RELATING TO CIVIL ACTIONS**

by

Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Public Safety
Senator Will Espero, Chair

Thursday, January 31, 2008; 2:45 PM
State Capitol, Room 225

Senator Espero, Senator Nishihara, and Members of the Committee:

The Department of Public Safety (PSD) opposes Senate Bill 3263 because the measure is unnecessary and would cause undue difficulties with increased court dockets for the state courts and PSD. This bill would extend the jurisdiction of the state courts to acts occurring outside the state boundaries and beyond the normal parameters of the court's jurisdiction. The bill empowers the courts to hear litigation based on tortious acts between an independent contractor and state inmates that occur in another state. This measure is also inequitable as it only applies to independent contractors with PSD that house inmates outside the State of Hawaii, and not to other contractors doing business with the state.

The cases that this measure seeks to enable the state courts to hear, are now properly heard in the state courts of the state in which the act occurred, a long-standing principle of jurisdiction and venue. This bill would only create a duplication

of services, as the inmates are already afforded the due process guaranteed in any court in the country. Further, the cost and difficulty in obtaining the basic information and evidence for any of these cases would be complicated by the distance between the state courts and the records and evidence of the act giving rise to the litigation. In addition, the cost of travel for court staff, PSD staff, Attorney General staff, and of transporting the inmates back and forth between the states is not addressed in this measure, and would be a significant cost, which is not funded.

Based on the foregoing reasons, PSD strongly opposes this bill. Thank you for the opportunity to testify on this important matter.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3263, RELATING TO CIVIL ACTIONS.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, January 31, 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
or Lisa M. Itomura, Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General has some concerns regarding this bill in its present form.

This bill amends section 634-35 and chapter 355D of the Hawaii Revised Statutes (HRS) to extend the jurisdiction of the courts of Hawaii for tortious actions against a Hawaii inmate to any state where Hawaii inmates have been transferred pursuant to section 355D-2.

Constitutionality under the due process clause of all long-arm statutes is generally judged by International Shoe v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and its progeny. See, also, McGee v. International Life Insurance Co., 255 U.S. 220 (1957), Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed.2d 528, 540-41 (1985). Regardless of the extension of jurisdiction, a court in each case is required to judge whether or not, under the facts of that case, Hawaii courts could legitimately take jurisdiction. In a circumstance under which a private individual committed a tort against a Hawaii inmate in another state and has no other connection to the State of Hawaii, a court is unlikely to allow a Hawaii court to accept jurisdiction. Thus, the bill, in its current form, creates an expectation of jurisdiction that cannot constitutionally be met. A more narrowly worded statute would be more likely to survive constitutional scrutiny.

LATE TESTIMONY

Dear Chair Espero and Members of the Committee,

I am writing in support of S.B. 3263. I am a trial attorney and former deputy prosecutor for the City and County of Honolulu. My law practice is concentrated in the areas of personal injury, criminal defense, civil rights and prisoner litigation. I have practiced law in the State of Hawaii for over two decades, and have successfully litigated matters broadly pertaining to prisoner civil rights, sexual assaults, discrimination, and denial of medical care and treatment.

When a Hawaii inmate is convicted of a crime and sentenced to confinement, that sentence is pursuant to a judgment issued by a Hawaii court under Hawaii law. Yet, when Hawaii inmates are injured at a contract mainland facility, such as CCA Red Rock or Saguaro, they will most likely have to litigate in a foreign jurisdiction. Since Hawaii's taxpayers are picking up the tab to pay for these private mainland prisons, Hawaii citizens should be able to sit on juries and determine whether or not a Hawaii inmate's rights were violated. Hawaii has a greater interest in ensuring the safety and well-being of these inmates, since these inmates, when released will return to Hawaii.

S.B. 3263 is an important step forward in securing the rights of all Hawaii state citizens to equal and fair treatment and access to the legal system in Hawaii under State of Hawaii law.

According to the Department of Public Safety approximately 60% of Hawaii's prison population will serve their time outside the State of Hawaii in privately administered penal institutions. As we are all aware, the State of Hawaii has determined that it is more cost-effective to transport our rapidly increasing prison population to the Mainland. In an effort to further reduce the increasing cost of housing this growing population, the State of Hawaii has contracted with private corporate entities. By far the largest provider of these penal services is CCA or the Corrections Corporation of America. According to published reports, other than the Federal Government, Corrections Corporation of America is the largest incarcerator of prisoners in the United States. As the largest private provider of penal facilities in the United States litigation is not unexpected.

Under the present contract with the State of Hawaii, Corrections Corporation of America is required to litigate all matters pertaining to and arising from interpretations of the contract here in Honolulu in the First Circuit Court. Currently, that right to litigate in Hawaii under Hawaii State law is not applied to prisoner civil litigation. Consequently, if a Hawaii inmate, for example, is injured or their civil rights are violated in a CCA run facility on the mainland in say Mississippi, Oklahoma, or Arizona, the inmate must litigate the matter in that foreign jurisdiction under laws not necessarily applicable in the State of Hawaii, and arguably in violation of the State Constitution and laws governing civil litigation in the State of Hawaii. This is a terrible disadvantage and undermines the civil and constitutional rights of State of Hawaii citizens involuntarily compelled to live outside Hawaii because of economic and fiscal decisions beyond their control.

S.B. 3263 helps remedies this disparity and guarantees Hawaii citizens access to Hawaii courts under Hawaii law.

Thank you for the opportunity to submit testimony.

Myles S. Breiner
Attorney at Law