

HCR 199

Measure Title:

Requesting the Auditor to Conduct a Private Prison Performance
Audit of Saguaro Correctional Center

Report Title:

Private Prison Performance Audit

April 24, 2009
Honorable Will Espero, Chair
Honorable Robert Bunda, Vice Chair
Senate Committee on Public Safety & Military Affairs

Via Email: PSMTestimony@Capitol.hawaii.gov

**Re: HCR 199: Support of Prison Performance Audit, Saguaro Correctional Ctr.
Hearing 4/27/09 at 9:30 a.m.**

Chairman Espero, Vice Chair Bunda, and Members of the Committee,

My day job is as a deputy public defender for the State of Hawai'i, but I write today in an individual capacity, as a concerned taxpayer and as an attorney committed to fairness and justice. I have represented hundreds of clients before the Hawai'i Paroling Authority (HPA), including many clients incarcerated at Saguaro Correctional Facility (Saguaro). I strongly support this bill based on a recent experience in one of my cases, and what I learned from that.

A few months ago I represented a Saguaro inmate before multiple hearings before the HPA, whose case I found very troubling. Senator Will Espero and his staff are familiar with this case, and tried to provide assistance to both myself and my client's family during the course of the proceedings. I felt that this client was the target of what appeared to be a disturbing pattern of retaliation and harassment by Saguaro staff. After a herculean effort to obtain records from Saguaro, which were used to substantiate this claim to HPA -- that the client's parole had been unfairly sabotaged, we were able to restore the client to his original parole status.

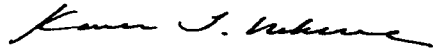
This client's case was resolved, but from what I learned during my representation of this client, a number of other inmates apparently are experiencing similar treatment, namely with the prison not following its own regulations, or selectively/arbitrarily applying these regulations. When our local, in-state prisons violate their own rules, there is swift review and accountability, and on occasion, the Office of the Ombudsman needs to intervene. But for out-of-state prisons, there appears to be insufficient review and accountability, and the Ombudsman cannot intervene; Saguaro inmates have no agency to provide oversight over their situation. The lack of recourse for Saguaro inmates, and the lack of agency accountability, are both extremely troubling on a moral level.

On a practical level, turning a blind eye to what is going on there would be fiscally imprudent given the potential future financial risk involved. It should not take a wave of lawsuits to force a critical, unbiased assessment of what is going on there. With the skyrocketing cost of incarceration, at \$50,000 + per year, per inmate, excluding the additional airfare and security costs for air transportation of such inmates between Hawai'i and the Mainland, -- a performance review of Saguaro is a prudent business decision.

Both of these moral and economic grounds provide compelling justification for the Legislature to take good, hard look at the Saguaro situation, through an audit as this Bill authorizes.

Thank you for your time and consideration of my comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen J. Nakasone".

Karen Tooko Nakasone, Esq.
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Public Safety and Military Affairs

Testimony by
Hawaii Government Employees Association
April 27, 2009

H.C.R. 199 – REQUESTING THE
AUDITOR TO CONDUCT A
PRIVATE PRISON
PERFORMANCE AUDIT OF
SAGUARO CORRECTIONAL
CENTER

The Hawaii Government Employees Association supports H.C.R. 199, which calls for the Auditor to conduct a performance audit of Saguaro Correctional Center in Arizona. There have been reports of problems with the Corrections Corporation of America (CCA), the operator of this private prison. It is apparent that serious problems exist at this facility, including a lack of programming, poor medical care and two deaths since August 2008.

It is fiscally responsible to conduct an audit of any prison that houses Hawaii inmates to ensure that CCA is providing the required services of the contract. The performance audit of Saguaro Correctional Center will focus on the treatment and services provided to Hawaii inmates, the facilitation of family and community connections, and Hawaii's Department of Public Safety's monitoring and enforcement of those contracts.

It is disturbing there has never been an audit of any private Mainland prisons that Hawaii has contracted with to house the state's inmates. The state spent more than \$50 million in 2007 to transfer inmates from Hawaii to private prisons on the Mainland. We believe that an independent audit would be helpful in determining how cost-effective it is to transfer prisoners out-of-state.

Thank you for the opportunity to testify in support of H.C.R. 199.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Monday, April 27, 2009

9:30 AM

Room 312

STRONG SUPPORT

HCR 199 - Audit of Private Prisons

PSMTestimony@capitol.hawaii.gov

Aloha Chair Espero, Vice Chair Bunda and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HCR 199 requests the auditor to conduct a private prison performance audit of Saguaro Correctional Center.

Mahalo nui for scheduling this important resolution. Community Alliance on Prisons (CAP) strongly supports this measure. Conditions at Saguaro appear to be breaking down. CAP is a member of many national listserves regarding justice issues where we have been able to ask questions of individuals with intimate knowledge of CCA and its operations in general and Saguaro in particular. Our national contacts have been able to confirm many of the issues raised by the men.

Hawai'i has been banishing individuals to prison profiteers since 1995 as a temporary solution to overcrowding. Fourteen years later Hawai'i still has no exit strategy.

Audit Is Long Overdue:

This audit is long overdue. In 14 years there has never been an independent audit of the contracted prisons to which we banish our people. Make no mistake about it, private prisons are in business to make money. They are accountable first and foremost to their shareholders. Why would they have an incentive to rehabilitate individuals when their profits come from keeping the beds filled?

The Department of Public Safety will tell the Legislature that they do audits of the CCA facilities. In our experience, it appears that the Department actually provides 'cover' for CCA. We have received hundreds of letters from incarcerated individuals, families and others who tell quite a different story about CCA's operations. PSD has also testified that the American Correctional Association (ACA) does audits. This is not true - ACA does facility accreditation, not regular audits.

A visit to Saguaro and Red Rock in November 2007 was incredibly revealing and it appears that things have gotten worse over the past years. When the Department was asked how much CCA has paid in fines for violating the contract, the replied that CCA has thirty days to address the violation and they always do. Imagine that – and no one will ever know what those ‘violations’ were. How convenient!

CCA’s hired lobbyists, who never testify in the committee hearings, roam the back halls of the Legislature pushing CCA’s agenda. This is one of the reasons that CCA actually calls Three Strikes Laws a home run. It sure is for them...guaranteed beds. There is a plethora of evidence that CCA and other prison privateers have been pushing for more mandatory minimums and other punitive sentencing laws. Several books cite the private prison lobby including The Perpetual Prisoner Machine: How American Profits from Crime by Joel Dyer and Going Up the River: Travels in a Prison Nation by Joseph T. Hallinan. Both authors were long-time reporters on the criminal justice beat, so their knowledge of the issue is expansive.

Some Interesting Facts About the Arizona Contract:

The Honolulu Advertiser published an article on January 21, 2007 entitled, *State’s Prison deal ‘unusual’* - <http://the.honoluluadvertiser.com/article/2007/Jan/21/ln/FP701210379.html> which states:

An Arizona mayor who signed off on part of a multi-million dollar government contract to house Hawai'i inmates in prisons on the Mainland also is an employee of Corrections Corp. of America, the company that holds Hawai'i inmates at the privately owned Arizona prisons.

The contract was not let out for bid because it was a government-to-government transaction between the state of Hawai'i and Eloy, Ariz., that is exempt from competitive bidding.

Hawai'i officials say the "highly unusual" situation involving Eloy Mayor Byron K. Jackson isn't covered by the Hawai'i state procurement law, but does raise questions about the contract.

"I think on the surface, the appearance is poor," said Hawai'i Chief Procurement Officer Aaron Fujioka.

Jackson works as a corrections officer at the Red Rock Correctional Center, where the Hawai'i inmates are housed. He said he discussed his employment with the Eloy city attorney, who concluded Jackson has no conflict of interest because Jackson does not gain anything personally through the government-to-government contract.

Doesn't this raise questions? Why isn't the state contracting with CCA directly? Why wasn't the contract put out to bid?

Some of the Problems at Saguaro:

Shoddy construction of the prison:

A good example from Saguaro, the ‘program-intensive’ prison built in the Sonoran Desert for Hawai'i individuals, is the numerous complaints received about shower water running into the dorms because of poor construction. I personally spoke to the Department about this in 2007 because of the public health implications and was told that it was a minor fix and not a construction problem. However, earlier this year I received information from Saguaro that the showers in some of the dorms were being ripped up because of the problem of water running into the dorms.

Contract violations:

Section 1-5(a) **Clothing and Supplies.** The contract calls for CCA to provide a minimum of 2 sets of clothes, including underwear, including warmer clothes for colder weather and lighter clothes for warmer weather.

CAP has received numerous complaints about the lack of warm clothing. When the men need to go to the medical unit, they must wait outside – some have had to wait with no coat in cold weather. Many have had to purchase

warm clothing from an authorized catalogue. Should individuals have to purchase their own warm clothing? This seems so wrong.

It also states that CCA will provide personal hygiene items including soap, toothbrush and toothpaste, and deodorant.

CAP has been told that the men must purchase these items at the commissary.

Inmate Property:

Section 1 – 5(c) **Inmate Property.** Inmate property lost or damaged when in control of the PA (provider = CCA) shall be the sole responsibility of the PA.

Many men and families who were transferred from other CCA prisons (even Red Rock, which is across the street from Saguaro) have reported that their property was missing when they were transferred. The cases of individuals who have been incarcerated for a long time and have personal property such as televisions, radios, etc. purchased many years ago have said that because they didn't have receipts, their property was confiscated.

There are also different rules at each facility for what personal property an individual can possess. In some cases, men at Red Rock purchased items – generally with funds provided by their `ohana – and then were not allowed to take it to Saguaro when they were transferred.

In November 2007, when CCA was questioned about personal property, they replied that when property is confiscated it is donated to a nonprofit. This is where notification of transfer would be helpful, so individuals would not order anything if they knew they would be transferred to another facility.

There have been several cases of individuals whose cells have been 'shaken down' and their legal materials confiscated, including Black's Law Dictionary, which has never been returned. Why?

Grievance Procedures:

Section 1 – 5 (j) **Grievance Procedures.** Inmates shall be provided access to an impartial and non-discriminatory grievance procedure in accordance with CCA policy. ACA standards and federal guidelines established under Section 42 U.S.C. Section 1997. The grievance process shall include:

i) An encouragement that the inmate seek informal resolution of the grievance or complaint before using the formal grievance procedure;

Why, you might ask? No paper trail!

ii) Ready access to forms necessary for filing grievances;

If only this were true. Several Hawai`i inmates have been told that they cannot file grievances if they have their own attorney and some Hawai`i inmates have been put in administrative segregation (the hole) for asking for a grievance form. Also, the grievance officer at Saguaro has a history of cursing at and verbally abusing inmates who ask for the proper forms. The grievance forms at Saguaro are not numbered – so there is no way to track those that are 'lost'.

iii) Consideration of the grievance by an impartial party;

It has been reported to CAP that the hearings at Saguaro are patently unprofessional. Many Hawai`i inmates who have received write-ups and then sent to administrative segregation go to the hearing and the 'charges' are dismissed – after they have spent time in the hole.

iv) Means to ensure that grievances are kept confidential;

We have many reports confirming that this is not true.

v) Avenues for appeal of decisions; and

According to reports, this is a bogus procedure that CCA uses to cover their okoles.

vi) Time limits for filing a formal grievance, responding to a grievance and appealing a decision.

There is a seven day window in which an individual may file a grievance, which must be obtained from the grievance officer. Access to the grievance officer must be granted and in some cases it is granted on the eighth day where the individual is then informed that they missed the seven-day window.

Section 1 -5(k) Access to Courts. The PA (provider) shall make all legal material provided by the State accessible to the inmate population.

CAP has received reports of individuals being denied access to the law library. This appears to be happening when inmates successfully pursue legal action as well as to those inmates who know their legal and constitutional rights.

Section 1 -5 (n) Discipline. This section talks about due process:

i) The disciplinary action is reasonable and proportionate in relation to the violation;

CAP knows of several cases where individuals are put in the hole for no reason, despite the rule that they must be served with a written notice of the violation

ii) The action taken is impartial and non-discriminatory;

This is definitely not true. CAP has received reports from inmates that they have been sent to the hole for asking for grievance forms, filing grievances, asking too many questions about the rules that CCA appears to be willing to ignore.

iii) The action is neither arbitrary nor retaliatory;

What would you call a situation where an individual is in the hole and the Warden is outside the cell cursing and yelling at the individual that he will keep them there forever? This has happened in many, many cases.

PROGRAMS AND SERVICES

The PA shall provide inmates with care, education, training, programming, employment and treatment as provided in this Contract...

Section 1 - 10 The PA sufficient, meaningful program opportunities to eligible inmates that include the following...

(c) SCF (Saguaro Correctional Facility)

(i) Education services. Services include Basic Literacy Skills, Adult Basic Education and General Education Development leading to a General Education Diploma...

Many of our men need to achieve their GED's as a condition of parole, yet we have been advised that there has been no GED test for five months.

(ii) Vocational Training Programs.

Sounds good? Ask how many inmates are actually in each class, where we have been told that teachers have been leaving. It is important for the Legislature to ask not only for the list of programs – but how many individuals actually complete the program. How many slots are available? How does a person gain entry into the program?

(iii) Hawaiian Cultural Programs.

Settlement of a lawsuit allows Makahiki to be celebrated. We have been advised that there have been many problems surrounding the Makahiki program.

(v) Special Housing Incentive Program.

This seems to be the one 'program' at Saguaro that is constantly running. It is ostensibly for gang members or security threats, but appears to be used as a way to keep individuals from being granted parole. We have heard numerous stories of individuals who have been placed in SHIP when their parole hearing is imminent.

11. SCF Treatment Program.

(c) Residential Drug Abuse Program (RDAP) (Level III)

It has been reported that since Washington inmates were brought to Saguaro, the Level III treatment program has been split between Washington and Hawai`i inmates. So where it was originally 232 beds for Level III treatment for Hawai`i – there are now only 120 beds for Hawai`i. There is a humongous waiting list for the program, which many need to take to meet their parole requirements.

16. Routine Medical Care.

There have been many problems with medical care at Saguaro. A Hawai`i inmate who broke his finger was denied medical care for months and when he finally was seen by a doctor, he needed surgery to repair the damage. Other inmates have been denied wheelchairs when they were unable to walk, and even disciplined for holding the handrails when wheelchairs were denied.

Two inmates died at Saguaro in the past year – one who was on his way to the medical unit but sent back to his cell for head count where he subsequently died.

CAP has also been told that the emergency buttons in the cells are not working – or didn't work for the inmate who died in October. Other inmates have confirmed this.

Since 2000, the State Has Paid Over \$5.5 Million in Claims Against the Department of Public Safety:

The state is still responsible for the care of individuals sentenced by our courts regardless of where those individuals are housed. What liability does the state/taxpayer bear since now we know we are not getting the real story of what is happening to Hawai'i individuals entrusted to their care? Here is a listing of Claims Against the Department of Public Safety since 2000:

<u>Year</u>	<u>Amount</u>
2009 (to date)	\$ 145,685
2008	\$ 548,794
2007	\$ 295,246
2006	\$ 341,487
2005	\$ 87,500
2004	\$2,000,000
2003	\$ 126,085
2002	\$ 120,239
2001	\$ 727,652
2000	<u>\$1,298,455</u>
	\$5,671,098

With two deaths since August 2008 and at least one sexual assault happening at Saguaro in the last several months, taking an independent look at how Saguaro is performing its contractual obligations is crucial since the state will probably be paying out more taxpayer money to settle any claims brought on these shameful incidents.

HCR 199 would give taxpayers an independent view – and un-doctored look, if you will – at how our contracts are being enforced and how private contracted prisons are complying with its provisions. It is obvious that something is very wrong. And we know it. The nation knows it. How will Hawai'i respond? Other state including Colorado, New Mexico and the GAO have audited private prisons. Since we spend in excess of \$66 million a year of taxpayer money on the CCA contract, we deserve transparency and accountability NOW! We need answers, not more hardened criminals.

We urge the Committees to pass HCR 199. Mahalo for this opportunity to testify.

Richard S. Miller, Professor of Law, Emeritus

E-mail: rmiller@aya.yale.edu

Phone: (808) 254-1796

April 14, 2009

TESTIMONY IN STRONG SUPPORT OF HCR 199

Bill: HCR 199

Measure Title: REQUESTING THE AUDITOR TO CONDUCT A PRIVATE PRISON
PERFORMANCE AUDIT OF SAGUARO CORRECTIONAL CENTER.

Hearing Date: April 15, 2009

Time: 10:30 AM

Room: 309

Time: 11:30

Room: 308

To: Committee on Public Safety, Committee on Legislative Management, and Committee
on Finance

It is shameful, in light of information which has surfaced regarding the treatment and
care of Hawaii residents in prison, that the State of Hawaii has not kept a close watch
on, and has yet to conduct a thorough audit of, Saguaro Correctional Center.

I urge you most strongly to pass HCR 199.

With much Aloha,



TO: COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS
Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

FROM: Carmael Kamealoha Stagner, private citizen & spouse of inmate
incarcerated
at Saguaro Correctional Facility

SUBJECT: IN FAVOR OF HCR 1999
REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF
SAGUARO
CORRECTIONAL FACILITY

DATE: Monday, April 27, 2009
TIME: 9:30 a.m.
PLACE: Conference Room 312
State Capitol
415 South Beretania Street

Honorable Chairpersons and committee members,

This testimony is in favor of House Concurrent Resolution 199 in its entirety.

At an average of 2,000 inmates with a monthly deposit of \$500 dollars per body to spend on Correctional Corporation of America (CCA) store order items, Hawaii tax payers stimulate CCA and its holdings to the tune of \$1 million dollars per month. Using the legislature's own equation, that for every consumer dollar spent on housing inmates in out-of-state prisons, it is THREE DOLLARS, we could use to stimulate the economy in Hawaii.

\$36 million Hawaii consumer dollars are spent per annum by inmate families to provide for basic necessities like hygiene, thermal underwear, phone time and food.

PSD's \$50 million dollars per annum for housing inmates is actually a \$150 million dollar loss to the state economy.

\$186 million dollar loss to the state's economy per annum hardly sounds like huge savings to the taxpayer.

\$500,000 for an audit is an investment in re constructing Hawaii's future.

Respectfully Yours.

Carmael Kamealoha Stagner

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Monday, April 27, 2009

9:30 AM Room 312

PSM@capitol.hawaii.gov

SUPPORT: HCR 199 Audit of Saguaro Correctional Center

Dear Chair Espero, Vice Chair Bunda and Members of the Committee:

My name is Carina Shirota, and I am writing to ask for your support of HCR 199 Audit of Saguaro Correctional Center.

Over the years, I have heard many heartbreaking stories of families affected by incarceration. When individuals commit a crime, they need to accept the consequences of their actions. In some cases, imprisonment is appropriate. But in many cases, prison is not the answer. Too often, men and women get locked up and do not receive treatment, training, education and support to address the issues that sent them to prison in the first place.

To make matters worse, half of the prison population is shipped out to private prisons on the Mainland. Common sense dictates that family support is critical to making positive changes in one's life. So, why are we sending our people so far away and breaking up families? Why are we punishing prisoners' families, especially their children, who are innocent?

As a mother, grandmother and taxpaying citizen of Hawai'i, I am appalled that our state continues to spend so much money on incarceration and shipping men and women away from their families. While our teachers hold fundraisers and take money from their own pockets to provide for our children's educational needs, our state is paying millions of dollars to a private corporation who is making money off of the prison business. That money would be better spent in Hawai'i, on alternatives to prison, substance abuse treatment and most of all, education.

Even in this economic crisis, it behooves the state to spend some money on an independent audit of Saguaro prison. If this contract with CCA is truly such a bargain for the state, then CCA and the Department of Public Safety should be in full support of this audit.

I hope that the State legislature will recognize that the costs associated with transfers outweighs the so-called benefits. Please conduct an audit of Saguaro prison as a start, and then conduct an audit of the prison where the women are housed too- so, we, as taxpayers, can get the truth. Thank you for your consideration.

Sincerely,

Carina Shirota

Haiku, Maui

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Monday, April 27, 2009

9:30 AM

Room 312

STRONG SUPPORT

HCR 199 – Audit of Saguaro Correctional Center

PSM@capitol.hawaii.gov

Aloha Chair Espero, Vice Chair Bunda, and Committee Members:

I am writing in strong support for HCR 199, which provides for an audit of Saguaro Correctional Center, because it is evident that the Correctional Corporation of America (CCA) is not fulfilling its contractual responsibilities to the state of Hawaii.

The fate of more than 2000 Hawaii inmates must not be left to a private, for-profit prison company which has been accused of keeping two sets of books, failing to provide promised programs, and using the SHIP program and administrative segregation as retaliation against inmates who report grievances.

Auditing private prison performance is extremely necessary, especially since the Hawaii state ombudsman refuses to investigate claims of mistreatment and abuse of Hawaii inmates and the Department of Public Safety seems to unconditionally support CCA.

We the taxpayers of Hawaii suffer the consequences of CCA's neglect and brutalization of our Hawaii inmates. Not only do inmates' prison experiences impact our lives when they return to Hawaii communities, but also we pay more than 50 million dollars a year to CCA for a "treatment-intensive program" which has not materialized, and we also pay millions of dollars in claims (five million dollars since 2000) for poor management, training of personnel, and operation of the CCA prisons.

The state of Hawaii has never conducted an independent audit of the prisons to which we send Hawaii inmates, even though other states and even the federal government have audited private prisons as part of their fiduciary responsibility to the taxpayers. Not only should the prisons be audited, the audit reports should be publicly posted (with prisoners' names redacted). We need to know that our money is being used wisely and that justice is being served.

Thank you for this opportunity to express my thoughts on this important issue. Please support HCR 199.

Mahalo,

Diana Bethel
1441 Victoria St.
Honolulu, HI 96822

April 26, 2009
Support of HCR 199

Dear Chair Espero and Members of the PSM Committee,

I strongly support this concurrent resolution. For too many years Hawaii has been sending inmates to private prisons on the mainland where, when it comes to knowing how they are being housed and treated, they may as well have been sent into a black hole. For a few sessions I was the committee clerk for the House public safety committee, and *even then* I wasn't as informed as I needed to be concerning the status of the mainland inmates. It is long past time for an independent audit to examine and to report what exactly is being provided in return for the ever-increasing expense. □ □ □ Please pass HCR 199.

If not for the obvious health and safety issues, then do it for fiscal responsibility. □ □ □

Sincerely,

Doug White

Waipahu, HI
Poinography.com