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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON H.C.R. NO. 200 AND H.R. NO. 162,
URGING THE DEPARTMENT OF PUBLIC SAFETY TO INCLUDE PROVISIONS
IN NEW CONTRACTS WITH PRIVATE OR OUT-OF-STATE PRISON FACILITIES
THAT INMATE COMPLAINTS ARE SUBJECT TO INVESTIGATION BY
THE OMBUDSMAN AND TO RENEGOTIATE EXISTING CONTRACTS TO ALLOW
THE OMBUDSMAN TO INVESTIGATE INMATE COMPLAINTS**

**HOUSE COMMITTEE ON PUBLIC SAFETY
HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT
APRIL 2, 2009**

Chair Hanohano, Chair Tokioka and Members:

Thank you for the opportunity to present comments on H.C.R. No. 200 and H.R. No. 162, which urge the Department of Public Safety (PSD) to include provisions in its contracts with private or out-of-state prison facilities to allow investigation of inmate complaints against those facilities by the Hawaii Ombudsman. The resolutions also encourage the Ombudsman, in collaboration with the PSD and private or out-of-state prison facilities, to use video conferencing equipment to help address inmate complaints.

Because private correctional facilities located outside of Hawaii that are contracted by the PSD will likely claim that they are not subject to Hawaii law, specifically Chapter 96, Hawaii Revised Statutes (HRS), titled "The Ombudsman," specific provisions will need to be included in the PSD's contracts with these facilities in order to ensure cooperation with any lawful investigation of the Hawaii Ombudsman of a complaint against the out-of-state private correctional facility. In this regard, the actions requested of the PSD by H.C.R. No. 200 and H.R. No. 162 would address one of the barriers that currently prevent the Ombudsman from investigating complaints against the contracted out-of-state correctional facilities.

However, I believe the inclusion of provisions in the PSD's contracts alone will not provide the Ombudsman the necessary authorization to investigate complaints against contracted out-of-state correctional facilities. This is because private entities like the out-of-state correctional facilities contracted by the PSD are not Hawaii State or County governmental entities.

Section 96-5, HRS, entitled "Jurisdiction" provides:

The ombudsman has jurisdiction to investigate the administrative acts of agencies and the ombudsman may exercise the ombudsman's powers without regard to the finality of any administrative act.

Section 96-1(a), HRS, defines "Agency" as follows:

(a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of the officer's, employee's, or member's official duties, except:

- (1) The judiciary and its staff;
- (2) The legislature, its committees, and its staff;
- (3) An entity of the federal government;
- (4) A multistate governmental entity;
- (5) The governor and the governor's personal staff;
- (6) The lieutenant governor and the lieutenant governor's personal staff;
- (7) The mayors of the various counties; and
- (8) The councils of the various counties.

It is my opinion that the definition of "agency" does not include private entities, even if those private entities are contracted to deliver services on behalf of an agency that is jurisdictional to the Ombudsman. Therefore, I believe an amendment to Chapter 96, HRS, to specifically authorize the Ombudsman to investigate complaints against contracted private correctional facilities will be required before the Ombudsman can investigate complaints against those facilities.

With regard to the Ombudsman using the PSD's video conferencing equipment to help address inmate complaints against out-of-state correctional facilities, if this mechanism is being encouraged in order to level the playing field between inmates housed at out-of-state facilities and those housed in Hawaii, it is not necessary since we generally do not find it necessary to conduct face-to-face in-person interviews with inmates held in Hawaii facilities. Utilizing the PSD's video conferencing facilities also raises concerns regarding the independence of the Ombudsman, the confidentiality of the Ombudsman's communications, and the effective use of the Ombudsman's limited staff resources. Thus, except for an exceptional case where video conferencing may be particularly beneficial, I do not believe that using the PSD's video conferencing facility would be a viable option for our office.

Testimony of Robin K. Matsunaga, Ombudsman
H.C.R. No. 200 and H.R. No. 162
April 2, 2009
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Finally, as I noted in previous public hearings on bills that would expand the jurisdiction of the Ombudsman to include contracted private correctional facilities, we do not have sufficient staff to handle the increase in our caseload that can be expected with the expanded jurisdiction. Therefore, in order to take on the expanded jurisdiction without adversely impacting the thousands of citizens who complain about the other state and county executive branch agencies, funding for additional investigative staff, office space and equipment, telephone costs, out-of-state travel, etc., will be required.

Thank you, again, for the opportunity to submit these comments on H.C.R. No. 200 and H.R. No. 162. If you have any questions, I would be happy to answer them.

LINDA LINGLE
GOVERNOR



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No. _

COMMENTS ON HOUSE CONCURRENT RESOLUTION 200

By

Clayton A. Frank, Director
Department of Public Safety

House Committee Public Safety
Representative Faye P. Hanohano, Chair
Representative Henry J. C. Aquino, Vice Chair

AND

House Committee on Legislative Management
Representative James K. Tokioka, Chair
Representative Blake K. Oshiro, Vice Chair

Thursday, April 2, 2009; 10:30AM
State Capitol, Conference Room 309

Representative Hanohano, Representative Tokioka, and Members of both Committee:

The Department of Public Safety (PSD) provides **comments** regarding House Concurrent Resolution (HCR) 200, which requests the Department of Public Safety to include provisions in new contracts with private or out-of-state prison facilities that inmate complaints are subject to investigation by the Ombudsman and to renegotiate existing contracts to allow the Ombudsman to investigate inmate complaints.

The PSD has and will continue to fully cooperate with the Office of the Ombudsman to resolve inmate complaints whenever necessary. However, it should be noted that the vast majority of inmate complaints are addressed and resolved either informally and/or using the formal grievance process our in-state correctional facilities and those that house inmates from Hawaii under contract with the PSD.

The current contract with Corrections Corporation of America (CCA) for both, the Saguaro and Red Rock facilities located in Arizona expires on June 30, 2009, and the contract for the Ottercreek facility in KY expires October 30, 2009. PSD will consider the legislatures request to include provisions that inmate complaints are subject to investigation by the Office of the Ombudsman in the new contracts for these facilities.

In addition, the Office of the Ombudsman is free to utilize the department's video conferencing capabilities to assist them in resolving inmate complaints. An offer to the Office of the Ombudsman to utilize the department's video conference capabilities was previously extended that agency.

With respect to inmate complaints, the department will require inmates to utilize and exhaust both, the informal and formal grievance processes that already exist prior to involvement of the Office of the Ombudsman. This will provide the department with opportunity to address and resolve inmate complaints at the lowest level possible, while simultaneously ensuring that both, the department and the Office of the Ombudsman are not duplicating their efforts to resolve the same complaint.

Further, the provisions of this measure could be accomplished with a Memorandum of Agreement (MOA) or a Memorandum of Understanding (MOU) between the department and the Office of the Ombudsman. An MOA or MOU would also provide much more clarity regarding roles and responsibilities in this matter to both agencies.

Finally, thank you for the opportunity to provide comments on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. James Tokioka, Chair

Rep. Blake Oshiro, Vice Chair

Thursday, April 2, 2009

10:30 AM

Room 309

STRONG SUPPORT

HCR 200 - PSD to Include Ombudsman Investigation in Out-of-State Contracts

PBSTestimony@capitol.hawaii.gov

Aloha Chairs Hanohano and Tokioka and Members of the Committees!

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 200 urges the Department of Public Safety to include provisions in new contracts with private or out-of-state prison facilities that inmate complaints are subject to investigation by the ombudsman and to renegotiate existing contracts to allow the ombudsman to investigate inmate complaints.

Mahalo for introducing and hearing this important resolution. Community Alliance on Prisons stands in strong support of this measure. Every person sentenced by Hawai'i courts and who is under the custody and care of the Department of Public Safety is entitled to the same protection. Hawai'i is still liable for individuals transferred out of Hawai'i, therefore, the Ombudsman should be encouraged to investigate all legitimate claims made by Hawai'i individuals serving their sentenced abroad.

One caveat is that there must be a secure phone line/videoconferencing facility where the inmate could speak with the Ombudsman's office confidentially and without fear of retaliation. In other words, the secure phone lines where inmates can make/receive attorney calls should be used for this purpose.

Mahalo for this opportunity to testify.

TO: COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. James Kunane Tokioka, Chair

Rep. Blake Oshiro, Vice Chair

Thursday, April 2, 2009 10:30 A.M. Room 309, Hawaii State Capitol

RE: **HCR 199 and HCR 200** – Testimony in Support Private Prison Audit and to Authorize the Hawaii Ombudsman to Investigate Complaints

FROM: Atty Daphne Barbee-Wooten

1188 Bishop Street, Suite 1909, Honolulu, Hawaii 96813, (808) 533-0275

Dear Chairs Hanohano and Tokioka, and Vice Chairs Aquino and Oshiro, and Members of the Committees on Public Safety and Legislative Management:

I am attorney Daphne Barbee and I represent inmates who have been transferred to Saguaro Correction Facility in Elroy, Arizona. I have received many complaints from inmates that legal mail is being intercepted by the guards and they are being written up when they send complaints to their attorneys as having "contraband". In one specific case, my client was charged with having contraband, which included possessing grievances which he was authorized to have by other inmates showing the retaliatory pattern by the guards of taking away legal documents from them. My client also informed me that when I send case law pertinent to his case and his ongoing appeal, the case law is taken away from him as contraband. When I wrote to the State Ombudsman, I was told it was not within their jurisdiction. When I wrote to Mr. Tommy Johnson and wrote to Saguaro Correctional Facility's warden, I was told that the prison was within its rights to confiscate legal mail. I even wrote to the Attorney General who provided an erroneous case law stating that it was in the prison's right to confiscate legal mail. I enclosed copies of the correct case law and I still receive reports that Saguaro correctional facility is confiscating legal mail, intercepting legal mail, and prosecuting inmates as having contraband, case law and/or grievances. I requested copies of the definition of contraband from the State, Mr. Tommy Johnson, and from Saguaro Correctional Facility. I have not received any definition. My client was placed in a hole, segregation for 30 days for allegedly having this contraband grievance concerning being wrongfully punished and retaliated for filing complaints against the

prison. He was recently placed in the "hole" again for requesting grievance forms and requesting his law dictionary be returned.

One inmate had his wheelchair taken away from him at Saguaro and has no where to complain. This is why Hawaii Ombudsman jurisdiction for Saguaro is needed.

I believe Saguaro Correctional Facility is violating Constitution of inmates' First and Sixth Amendment rights to correspond with their attorneys and to review case law which is relevant to their cases. There needs to be oversight of Saguaro as the State appears to wash its hands and appears to support whatever Saguaro's warden wants. Attached to my testimony are correspondence to Saguaro and State Public Safety and their response. I am also attaching case law which clearly states "Several courts have held that mail relating to a prisoner's legal matters may not be read and may only be opened in the prisoner's presence". See Parish v. Johnson, 800 F.2d 600 (6th Cir. 1986), Clement v. California Department of Corrections, 364 F.3d 1148 (9th Cir. 2004). To ensure constitutional requirements are met. Remember that one of the important purposes of correctional facilities is rehabilitation and correction. Encouraging inmates to follow the law is important and people learn by examples. If the "correctional facilities" do not follow the law and do not even allow inmates to read the law or to file complaints that their legal rights are being violated, it is not a correctional facility worthy of financial support from the United States.

Dated: Honolulu,
Hawaii

Daphne Barbee-Wooten

Attorney at Law



COMMITTEE ON PUBLIC SAFETY

Rep. Faye P. Hanohano, Chair
Rep. Henry J.C. Aquino, Vice Chair

COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. James Kunane Tokioka, Chair
Rep. Blake K. Oshiro, Vice Chair

Thursday, April 2, 2009
10:30 a.m.
Conference Room 309

SUPPORT: HCR 200/HR152

URGING THE DEPARTMENT OF PUBLIC SAFETY TO INCLUDE PROVISIONS IN NEW CONTRACTS WITH PRIVATE OR OUT-OF-STATE PRISON FACILITIES THAT INMATE COMPLAINTS ARE SUBJECT TO INVESTIGATION BY THE OMBUDSMAN AND TO RENEGOTIATE EXISTING CONTRACTS TO ALLOW THE OMBUDSMAN TO INVESTIGATE INMATE COMPLAINTS.

Aloha Chairs Hanohano and Tokioka and Members of the Committees:

My name is Carrie Ann Shirota, and I am writing in support of HCR 200/HR 152. My experiences as a former Public Defender and Civil Rights Enforcement Attorney, past staff member of a reentry program on Maui and member of Community Alliance on Prisons have shaped my advocacy efforts to promote rehabilitation, accountability and transparency within our correctional system, and focus on alternatives to prisons.

HCR 200/HR 152 urges the Department of Public Safety to Include prisons in new contracts with private or out of state facilities that inmate complaints are subject to investigation by the Office of the Ombudsman.. I support this bill because it would strengthen oversight of prisons wherever Hawai'i inmates are housed. As you are aware, Hawai'i's incarcerated population increased by 153 percent from 1980 to 2007. In 1980, Hawai'i's inmate population totaled 926 persons. By 2007, the incarcerated population increased to 6,045 persons. See, *Department of Public Safety Annual Report 2007*.

I believe that the Legislature shares a growing concern among taxpayers about increased public expenditures on prison and whether this money is effective in maintaining safe facilities and assisting adult offenders with their successful reintegration back into the community. Despite the massive expenditure of taxes and the Department of Public Safety's mandate to operate humane and safe prisons, there is little oversight of prisons where Hawai'i inmates are housed.

Significantly, a growing number of United States jurisdictions have established independent Oversight Committees to ensure public and private facilities that confine individuals for alleged or adjudicated crimes meet their legal obligation to ensure constitutional conditions of confinement. See, "Opening Up a Closed World: What Constitutes Effective Prison Oversight" Conference sponsored by the Lyndon B. Johnson School of Public Policy at the University of Texas-Austin, <http://www.utexas.edu/lbj/prisonconference/index.php>. In August 2008, the American Bar Association approved a policy recommendation requesting federal and state governments to establish public entities independent of any correctional agency to regularly monitor and report publicly on the conditions in all correctional facilities.

Since Hawai'i does not have an Independent Oversight Prison Committee, at minimum, we must

have an Office of the Ombudsman that will help the State to fulfill its mandate to ensure constitutional conditions of confinement for incarcerated persons whether they are housed in-state or transferred to private prisons on the U.S. continent. Otherwise, Hawai'i is creating a class of citizens that are exported from their home and without any recourse to remedy violations of their rights, except through PSD's internal grievance process and the courts. In many instances, the fairness of the grievance process is questionable. And filing a lawsuit in court is expensive and challenging given the hurdles that prisoners on the American continent encounter in terms of legal and court access.

Respectfully submitted,

Carrie Ann Shirota, Esq.
Wailuku, Hawai'i
(808) 269-3858

COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, April 2, 2009

10:30 AM

Room 309

STRONG SUPPORT

HCR 200 – Provisions in new contracts with private or out-of-state prisons and renegotiation of existing contracts to enable the ombudsman to investigate inmate complaints

PBSTestimony@capitol.hawaii.gov

Aloha Chair Hanohano, Vice Chair Aquino and Committee Members,

I am writing in strong support of HCR 200, which provides that provisions be added to new and existing prison contracts to enable the state ombudsman to investigate inmate complaints.

It is unbelievable to me that the state ombudsman refuses to investigate complaints of Hawaii inmates. Given the Correctional Corporation of America's (CCA) record of incurring major lawsuits, it should be clear that someone needs to stand up for Hawaii inmates. Where is our sense of justice?

Because it has been reported that CCA officials use the SHIP program and administrative segregation as retaliation against inmates who report grievances, I think it would be essential that communications between inmates and the state ombudsman be confidential and conducted on a secure phone line or video connection.

Mahalo for this opportunity to express my views on this issue of basic fairness. Please support HCR 200.

Sincerely,

Diana Bethel

1441 Victoria St.

Honolulu, HI 96822

HCR 200/HR 162

HELLO, I AM THE MOTHER OF AN INNOCENT, CRITICAL CARE INMATE WHO IS CURRENTLY SERVING A SENTENCE OF 120 YRS. BEFORE HE CAN APPLY FOR PAROLE. THE PROSECUTORIAL AND POLICE MISCONDUCT THAT RESULTED IN MY SON'S ERRONEOUS CONVICTION, WILL BE MADE PUBLIC VERY SHORTLY.

I AM WRITING TODAY TO ASK THAT THE PSD AND CCA BE INVESTIGATED THOROUGHLY IN THE VERY NEAR FUTURE. THEIR COLUSION IN PREVENTING THE PRISONER ABUSES FROM COMING TO THE LIGHT NEEDS TO BE EXPOSED AND STOPPED. I HAVE BOXES OF DOCUMENTATION REGARDING PERSONAL INJURIES, MEDICAL NEGLECT/INDIFFERENCE, AS WELL AS HARASSMENT AND RETALIATION UPON MY SON AT CCA AND HALAWA. THE CONDITIONS THAT MY SON AND OTHERS EXPERIENCE IN 2008, AT HALAWA HIGH FACILITY , WERE BEYOND CRUEL. NO AIR-CONDITIONING FOR OVER 47 DAYS, NO ACCESS TO FRESH AIR, AND THEN RETALIATION FOR MENTIONING IT. IT WAS MY LETTERS TO THE GOVERNOR, AND CALLS TO THE OMBUDSMAN (WHO SEEMED RELUCTANT TO GET INVOLVED), AND THE ACLU, FINALLY GOT RESULTS FOR THE MEN AND GUARDS IN MODULE B AT HSNF. ADDITIONALLY, WE HAD TO BEG PSD MEDICAL FOR MY SON TO HAVE HIS TEETH CLEANED. IT HAD BEEN 4 YEARS SINCE HE HAD HIS TEETH CLEANED. A PERSON WITH HIS CONDITIONS IS SUPPOSED TO HAVE HIS TEETH CLEANED EVERY 6 MONTHS. HALAWA MEDICAL UNIT FINALLY CALLED HIM IN TO HAVE A "TEETH SCRAPING". THE TECHNICIAN USED TAINTED, FOUL SMELLING WATER TO RINSE MY SON'S MOUTH WITH. IT RESULTED IN MY SON BECOMING VERY ILL AND HAVING TO TAKE ANTIBIOTICS FOR 8 DAYS TO KILL THE GERMS THAT HE CONTRACTED FROM THE FILTHY WATER. HIS GUMS, THROAT, AND GLANDS WERE SWOLEN AND PAINFUL. THIS IS THE LACK OF "QUALITY CONTROL" THAT NEEDS TO BE ADDRESSED. CCA IS NOT MUCH BETTER. WE ARE STILL BEGGING THEM AND PSD MEDICAL FOR MY SON TO RECEIVE THE DIET, TESTS AND TREATMENTS THAT A WELL PAID SPECIALIST IN TUCSON HAS ORDERED. MONTHS HAVE GONE BY AND NO CHANGES HAVE BEEN MADE. WHEN IT COMES TO MEDICALLY CHALLENGED INMATES, THEY ARE ON THEIR OWN. THEY ARE SCARED TO FILE REQUESTS OR GRIEVANCES. THEY ARE CHARGED FOR GOING TO SICK CALL. THEY STAND OUTSIDE IN THE PILL LINE DAILY, REGARDLESS OF THE CONDITIONS. THERE IS NO AWNING FOR SHELTER.

I KNOW FOR A FACT THAT THE SAGUARO WARDEN IS A SADISTIC BULLY, A DETRIMENTAL INFLUENCE ON THE HAWAII INMATES. HE KNOWS THAT SHARI KIMOTO AND TOMMY JOHNSON ARE NOT A THREAT TO HIS ILLEGAL BEHAVIORS. HE PUTS THE MEN INTO SEGREGATION, HE ENCOURAGES HIS STAFF TO HARRASS AND RETALIATE AGAINST MEN WHO WRITE GRIEVANCES OR CONTACT PSD OR ACLU. PROPERTY IS TAKEN AWAY, CELLS ARE TRASHED ETC. A GROUP OF GUARDS WERE OVERHEARD SAYING "WE'VE GOT THE GO AHEAD TO F___ WITH SERRANO ANY CHANCE WE GET". MY SON'S LEGAL AND MEDICAL DOCUMENTS ARE ROUTINELY GONE THROUGH BY GUARDS. 16

LARGE ENVELOPES CONTAINING HIS APPEAL INFORMATION, WERE "LOST" BY THE PROPERTY ROOM. THE WARDENS PASS THE BUCK TO RED ROCK.

WHERE ARE THE CONTRACT MONITORS? THEY AREN'T THERE DOING WHAT THEY ARE SUPPOSED TO BE DOING FOR THE INMATES AND TAXPAYERS, THAT'S FOR SURE. I THINK IT IS UNCONSCIONABLE THAT YOUR IMPRISONED CITIZENS ARE BEING ILLEGALLY DAMAGED YET NO ONE IS THERE TO LISTEN AND ACT ON THEIR BEHALF. PLEASE MAKE THE APPROPRIATE CHANGES SO THAT THE RETURNING INMATES ARE NOT ARRIVING MORE ANGRY AND HATEFUL WHEN THEY RETURN HOME TO THEIR FAMILIES AND COMMUNITY.

THANK YOU FOR YOUR ATTENTION,

DIANE DIMARIA, MOTHER OF A WRONGFULLY CONVICTED MAN AT SAGUARO.
SANTA CRUZ COUNTY, CALIFORNIA