

**CORRECTION CORPORATION OF AMERICA'S
OTTER CREEK CORRECTIONALCTR.
WHEELWRIGHT, KENTUCKY**

More than a decade ago, Hawai'i began exporting inmates to Mainland prisons in what was supposed to be a **temporary measure** to save money and relieve overcrowding in state prisons.

Now, the state doesn't seem to be able to stop.

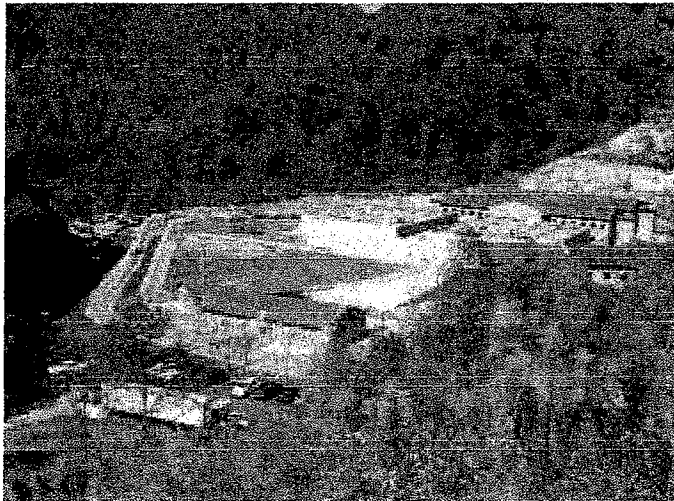
With little public debate or study, the practice of sending prisoners away has become a predominant feature of Hawai'i's corrections policy.

*Honolulu Advertiser
October 2, 2005*

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**CORRECTION CORPORATION OF AMERICA'S (CCA's)
OTTER CREEK CORRECTIONAL CENTER
WHEELWRIGHT, KENTUCKY**

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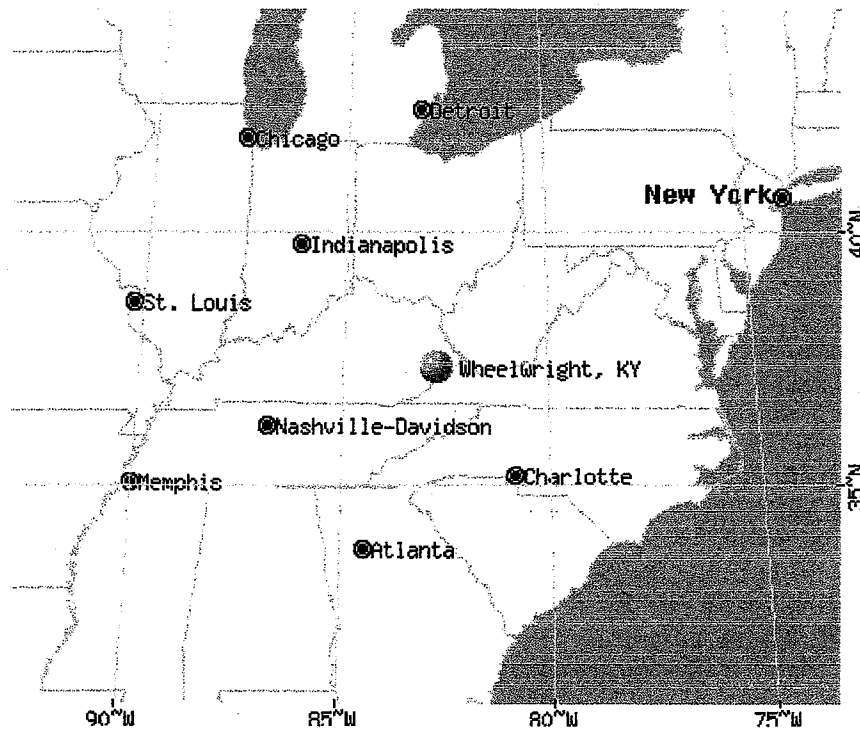
WHAT IS THE HISTORY OTTER CREEK CORRECTIONAL CENTER?

- Otter Creek Correctional Center (OCCC) was designed as a 656-bed minimum security prison, but switched to medium security in 2000
- OCCC housed more than 550 male prisoners from Indiana until there was a 9-hour riot on July 5, 2001
- July 18, 2001 AP reported: William Wolford was fired last week as warden at Otter Creek Correctional Complex in Floyd County because of policy violations and his top assistant, David Carroll, was fired a couple of days later for the same reasons
- February 28, 2005 CCA received notice from Indiana of their intent to return all inmates to Indiana
- May 2005, CCA announces OCCC will have no more inmates by the end of the month
- July 12, 2005 Kentucky signs deal with CCA to house 400 women at OCCC
- August 16, 2005 OCCC officially opens again
- September 12, 2005 AP reports that Mayor considering suing CCA for withholding 'incentive' payment - CCA had agreed to pay Wheelwright 50 cents a day per inmate.

WHERE IS OTTER CREEK CORRECTIONAL CENTER?

- Otter Creek Correctional Center (OCCC) is tucked deep within the hills of Appalachia located in the town of Wheelwright in southeastern Kentucky
- Wheelwright, built in a narrow hollow along Otter Creek at the base of Abner Mountain, was once perhaps the state's most prosperous and modern coal camp, many of its residents are on fixed incomes, except for those who work at a private women's prison
- Wheelwright is one of the state's smallest towns, and has just one police officer. It has a population of about 1,000, including the inmates at the prison
- The population of Wheelwright is 1,048 (as of the 2000 census)

- Wheelwright is a historic coal mining camp town, characterized by coal camp town "row houses."
- Wheelwright's rural beauty is offset by its remoteness, the nearest large city being an hour's drive from Wheelwright.
- After the consolidation of two local high schools, the CCA facility is now by far the largest employer in the town.



For population 25 years and over in Wheelwright

- High school or higher: 60.8%
- Bachelor's degree or higher: 3.8%
- Graduate or professional degree: 1.3%
- Unemployed: 5.4%
- Mean travel time to work: 34.8 minutes

For population 15 years and over in Wheelwright city

- Never married: 39.2%
- Now married: 38.1%
- Separated: 2.0%
- Widowed: 4.6%
- Divorced: 16.0%

2.6% Foreign born (2.6% Latin America).

- Population change in the 1990s: +322 (+44.7%).

Median household income **significantly below** state average.

Median house value **significantly below** state average.

Black race population percentage **significantly above** state average.

Hispanic race population percentage **significantly below** state average.

Median age **below** state average.

Foreign-born population percentage **significantly below** state average.

Renting percentage **below** state average.

Institutionalized population percentage **significantly above** state average.

Number of college students **below** state average.

Percentage of population with a bachelor's degree or higher **significantly below** state average.

Population density **below** state average for cities.

WHEN DID HAWAII START SENDING OUR WOMEN TO OTTER CREEK?

- September 29, 2005, 80 Hawai'i women were shipped from Brush Colorado's GRW Prison, to Otter Creek
- November 3, 2005, the Honolulu Advertiser reported that "Hawai'i prison officials signed a new contract with a private prison operator this week that for the **first time allows the state to financially penalize the company if the prison operator fails to deliver** on promised drug treatment or other programs for inmates held on the Mainland..."
- The new contract covers only the 120 women inmates at Otter Creek and it as a model for new contracts the state will negotiate with CCA next year covering male inmates held out of state.

LETTERS SENT BY CAP TO PSD RE OTTER CREEK (attached):

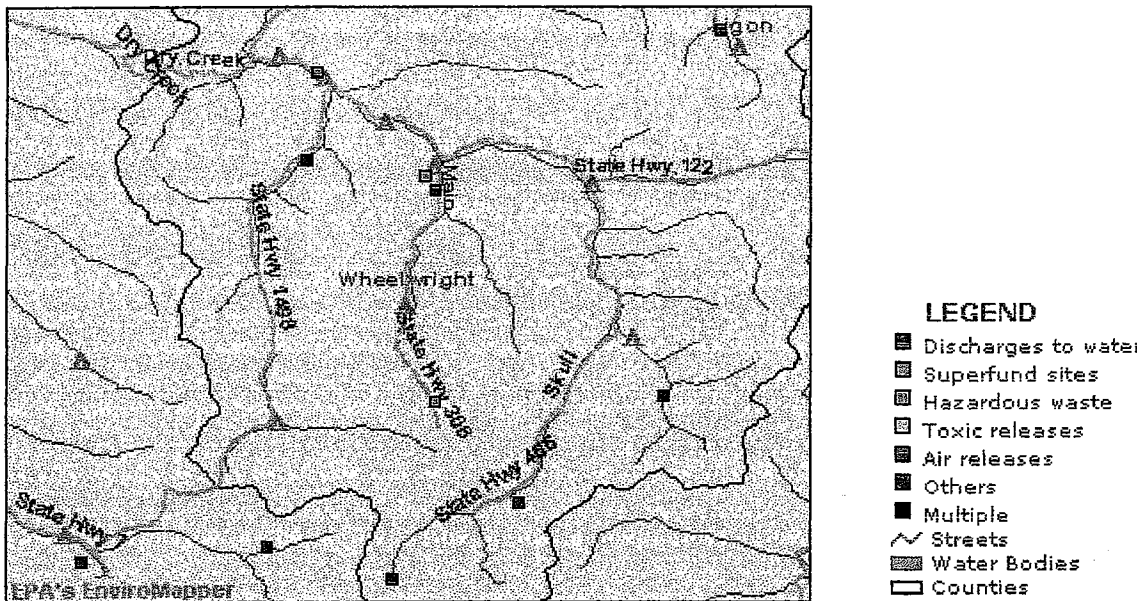
- August 22, 2005 regarding and e-coli breakout and complaints from a former employee of Gadsden Prison in Tallahassee, FL about Warden Joyce Arnold ignoring sexual harassment complaints rather than investigating them
- October 17, 2005 letter outlining health problems, lost property, contract confusion, and civil rights violations

SOME INCIDENTS AT OTTER CREEK:

October 2005

- Women are processed into Otter Creek.
- Diarrhea and vomiting widespread and persisted for the first several months.*
- Women advised by nurse not to drink the water – nurse later sanctioned.

* I did a search of the KY Department of the Environment and found that the water is not groundwater (from an aquifer), but surface water. Remember that Wheelwright is an abandoned mining town. I have been told by KY residents that the prison was getting its water from an abandoned mine shaft, but have not been able to verify this claim.



NOTE: As you can see, there are two Hazardous Waste sites and discharges to water along Highway 306.

October 28, 2005

- From the Lexington Herald-Leader: "Angry Wheelwright residents are calling it a sign of things to come in the winter of 2005-06 -- a record leap in natural gas prices that should send shivers across Kentucky. **For one day this month, a Pittsburgh-based gas company shut off service to the entire city -- including a private prison for women -- because the city was behind on its bills.** These Hawaiian women apparently have to be kept warm," he said ruefully. "Meanwhile, we have one of the poorest communities in the state being forced to pay one the highest utility rates in the state."

December 1, 2005

- Hawai'i woman, RR, rushed to the hospital with pneumonia after being denied help at the medical unit.
- Subsequently, she was denied follow-up doctor's visit.*

* I have a letter from the doctor advising RR that she missed her follow-up appointment

December 18, 2005

- Hawai'i woman, WK, rushed to the hospital after many pleas for medical help because of persistent arm and leg pain. It took security seven minutes to open her door to give her nebulizer and 2 hours to get to Hazard Medical Center.
- WK underwent triple by-pass surgery.

December 31, 2005

- **Sarah Ah Mau, Hawai'i inmate, died** after being repeatedly threatened with lockdown if she continued to ask for medical help for severe stomach pains, as she had been doing for several months (OCCC contends it was a heart attack)

January 4, 2006 – Honolulu Advertiser

- Otter Creek staff notified Hawai'i officials that Ah Mau had been hospitalized, and later that she had been placed on life support, but **Hawai'i officials didn't know she died until hearing the news from her sister**, he said. "There's some sort of chink in the communications there," Gaede said.

January 15, 2006

- The Louisville Courier-Journal reported that Hawai'i was sending investigative team to Otter Creek January 23
- A phone call from Otter Creek reported that women with diabetes were made to take medicine at inappropriate times
- Several Kentucky inmates are in the hospital

January 19, 2006 – phone call from women

- WK up and walking in yard for the first time. Still no follow-up surgical visit
- Women still denied their asthma and physician-prescribed medication
- Women being told they are not Kentucky prisoners, but Hawai'i tells them they are under Kentucky's control – mass confusion and conflicting rules

January 27, 2006 – WK rushed to hospital at 2:30 AM

February 19, 2006

- A Louisville Courier-Journal reporter was allowed to interview 10 of the Hawaiians but barred from asking any questions about Ah Mau's death; Warden Joyce Arnold also insisted that the prison's security director monitor the interviews.

April 8, 2006

- A guard at Otter Creek Correctional Center has been charged with sexual abuse after he allegedly gave food and candy to a female inmate for oral sex, Kentucky State Police say. Eldon Tackett, 43, of Melvin, who no longer works at the prison, was arrested Monday and released from the Floyd County jail that night after posting a \$1,000 bond,

April 12, 2006

- Criminal activity continued to plague Otter Creek Correctional Center this week with **the arrest of their drug counselor on charges of drug trafficking**. Tanya J. Crum, 32, of Martin, was arraigned in circuit court Monday after being served with an indictment warrant that morning at Otter Creek.

May 10, 2006

- An excerpt from *In These Times*: "...What was Hawaiian resident Ah Mau doing in Kentucky in the first place? She was a commodity in an increasingly common practice: interstate prison transfers. Prison transfers, while not unusual, have a profound effect on inmates and family members alike. Children and spouses of "shipped" prisoners have little, if any, opportunity to see their loved ones. And due to special contracts with phone companies, telephone calls are prohibitively expensive. **Prisoners themselves are sent to culturally unfamiliar facilities where they are supposed to be treated according to the laws and regulations granted by their home states—but rarely are.** Home state law and prison regulation books are rarely available, making the prisoners' appeals or grievance requests even more difficult to file..."

February 8, 2007 – Lights on 24/7*

- Fluorescent tube lights on ceiling are 'night lights'
- Enough light so they can lay on bunk and read
- Walls are curved so there is no relief from light – even on bottom bunk
- *Women not sleeping – walking around like zombies*
- Day room has brightest light, these are dimmer but still prevent sleeping
- If women sleep with blankets over their heads to keep out light they are woken up every hour
- KY inmates have same problem and are complaining
- KY inmates' grievances have been sent up to Frankfort

* A lawsuit filed by the ACLU on conditions, mentions nocturnal lighting, "...**Nocturnal lighting will be reduced 60 percent...**" The lawsuit, Jones' El v. Litscher, was filed as a class action in June, 2001 in U.S. District Court for the Western District of Wisconsin.

February 2007 – letter from a Mom:

- "...I need your help. Otter Creek is like a "concentration camp". The lights are on 24 hours a day and there is never any enforcement to keep the women from talking 24 hours a day. My daughter is cracking up. I can't get any help. I think there might have been another death in the last few weeks there that was covered up. The way XXX described what happened, the woman needed medical help for headache, was told to go lie down. Next morning she was blue and they took her out on a stretcher. Don't know if she was alive or not..."

February 10, 2007

- From the Honolulu Advertiser: "House and Senate lawmakers who say it's time to rethink the state's practice of sending Hawai'i inmates to the Mainland are advancing a bill aimed at bringing 175 Hawai'i women prison inmates back from a privately run Kentucky prison... "I feel that looking at the re-entry and the reintegration of prisoners eventually into our society, we need to have them close to their families here in Hawai'i, where I think that they'd be better served," said Sen. Will Espero, chairman of the Public Safety Committee. House Public Safety Chairwoman Cindy Evans said some of the women were the sole caregivers for their children before they were sent to prison, and it is important for the women to maintain their family ties. "By removing her, that removes her access to the family, and we don't think that's a good idea," Evans said. "We're also finding that most female prisoners are not the real violent ... types; they're in there maybe for drug abuse, and the types of crimes they committed were to feed their habits." "These women are going to go back into our community and go back home, and we feel it's better to have them here instead of on the Mainland," she said.

August 27, 2007 – Latasha Glover, Kentucky inmate, died

October 17, 2007

- From the Honolulu Advertiser: "State prison officials say it's possible all of Hawai'i's women inmates on the Mainland — 175 convicts now held in a private prison in Kentucky — could be brought back and housed at the Federal Detention Center on O'ahu. Tommy Johnson, deputy director for corrections of the state Department of Public Safety, said negotiations could begin with the federal Bureau of Prisons to house the women at the federal center near the Honolulu airport, provided state lawmakers approve extra money for their care. Housing the women in Hawai'i would double the cost of holding them in Kentucky, Johnson said..."

January 2, 2008

- From the Honolulu Advertiser: The family of a Hawai'i woman prison inmate who died at a privately run prison on the Mainland in late 2005 has sued the state and the prison operator, alleging the facility failed to give their relative proper medical treatment in the month before she died. Sarah Ah Mau, 43, had been complaining of severe abdominal pain and respiratory problems — probably caused by a heart condition that caused fluid to accumulate in her lungs and resulted in a condition called passive congestion of the liver, said lawyer Michael Green, who is representing the family. The suit alleges the prison showed "deliberate indifference" to Ah Mau's health problems, and Ah Mau filed an inmate grievance complaining about the poor care. Instead of helping her, prison officials "ignored her, insisted she was faking and threatened to put her in segregation if she continued to complain," according to the suit.

January 22, 2008

- Carla J. Meade, Warden Joyce Arnold's secretary smuggles a loaded 22 caliber gun into the prison and commits suicide in the Warden's office.

January 26, 2008

- From the Honolulu Advertiser: Director Clayton Frank said of the suicide — "What I emphasized to them is what occurred is a security breach," he said. "Once I got word of the suicide and how it occurred, my initial reaction was, how did a gun get in there?"

October 2, 2008

- From the Honolulu Advertiser: "A male corrections officer has been fired and a privately run Kentucky prison has changed some of its housing unit procedures after a Hawai'i female prison inmate accused the officer of sexually assaulting her in her cell last fall. According to a written statement by the 34-year-old inmate that was provided by a family member, the inmate alleges the corrections officer came to her room in the Otter Creek Correctional Center in Wheelwright, Ky., between 4:15 and 4:45 a.m. on Oct. 16, 2007, and demanded that she perform sex acts..."

July 5, 2009

- From the Honolulu Advertiser: "Two female inmates from Hawai'i allege they were sexually assaulted by one or more corrections officers at a Kentucky prison, and police are investigating one of the incidents. Honolulu attorney Myles Breiner said he is representing the two women, who allege the sexual assaults occurred while they were in isolation in a medical unit at the Otter Creek Correctional Center in Wheelwright, Ky. One of the assaults was reported June 23 and allegedly involved a male corrections officer, Kentucky police said..."

August 16, 2009

- From the Louisville Courier-Journal: "FRANKFORT, Ky. — A private women's prison in Eastern Kentucky that has been plagued by allegations of sexual assaults by corrections officers is chronically understaffed, leading to poor employee morale and security concerns, according to a state monitor's reports. ... "The facility continues to experience staff shortage(s), and (officers) have struggled," state monitor Darrell Neace said in July's report. "Overtime is substantial for the facility and very difficult for staff..."

Hawai'i's out-of-state inmate transfers are a strange throwback to corrections policies of two or three centuries ago, when felons were banished to penal colonies in Australia or the New World. - Marilyn Brown, Assistant Professor of Sociology at UH-Hilo

ONGOING PROBLEMS:

Medical Care:

- Even women who want to stay at Otter Creek have complained of the awful medical care there
- CAP has also received communication from nurses who formerly worked at Otter Creek and subsequently quit because they were asked to perform outside their scope of practice and didn't want to lose their licenses.
- Three women being rushed to the hospital in the first three months of our women being sent there should trigger closer monitoring, but that doesn't seem to be happening
- Women's medication has been changed with no consultation with the prescribing physician
- The nearest large town is 1 hour away from the prison, so adequate medical care is not readily available

QUESTIONS TO CONSIDER:

- Reports of sexual abuse have plagued Otter Creek since at least 2006. When did PSD first learn of the sexual assault problems at Otter Creek?
- What has Hawai'i done to ensure the safety of our women there?
- Has Hawai'i sent a rape counselor or other professional in the area of sex assault to assist the women who were raped or otherwise assaulted?
- What kind of psychological help is being provided to the women?
- What experts has PSD called in to assist with the ongoing counseling of our women?
- What is Hawai'i PSD's protocol for dealing with sex assault in prison?
- What due diligence does Hawai'i perform to ensure that any facility where we send women is safe – reviewing staff background checks, a literature search on the facility being considered, etc?
- How is this reported to the legislature and the public?
- Did Hawai'i know that KY laws classify sex assault a misdemeanor?
- Why did Hawai'i sign a contract with a jurisdiction that does not classify sex assault a felony?
- Did Hawai'i assess the surrounding area for services that our women might need before signing the Otter Creek Contract?
- Why hasn't PSD posted the COMPLETE Otter Creek contract (and any private prison contract, for that matter) on the PSD website?
- PSD was proud that "...for the first time allows the state to financially penalize the company if the prison operator fails to deliver on promised drug treatment or other programs for inmates held on the Mainland..." How much has CCA been fined for non-compliance with the contract? PSD should provide a list from October 2005 – present of each violation, the fine assessed, and a spreadsheet listing monies received by PSD as fines/penalties for CCA violations.
- Did PSD or CCA have anything to do with the petitions that have come out of Otter Creek in 2008 and 2009?
- How were petitions allowed in a prison, when it is common knowledge that petitions by inmates are not permitted?
- What is the TOTAL cost of banishing women to KY? These costs should include:
 - daily bed rate
 - extraordinary medical expenses
 - quarterly transport costs
 - extraordinary transport (court, parole, etc)
 - cost of PSD's Mainland branch (salaries, benefits, travel, hotel, per diem re monitoring trips)

THE RECLASSIFICATION OF HAWAII'S INMATES:

The Department of Public Safety hired Criminal Justice Institute to re-classify Hawai'i's inmate population. In January 2008 the consultants gave a preliminary presentation to the Legislature. At that time there were 6,010 incarcerated individuals. The consultants went through 2400 files of Hawai'i individuals who are in jails, prisons both in Hawai'i and outside of Hawai'i, and those who are held in Interstate Compact

prisons. As a long-time member of the UH Institutional Review Board reviewing social science research as Hawai'i's Prisoner Advocate, a 2400 sample is HUGE! The findings of the preliminary study presented a snapshot of our incarcerated population.

- Hawai'i has been over-classifying inmates. Research has shown that over-classification actually increases recidivism. (Source: Cowles Foundation for Research in Economics at Yale University, January 2004 - DOES PRISON HARDEN INMATES? A DISCONTINUITY-BASED APPROACH M. Keith Chen and Jesse M. Shapiro)
- PSD's own policies state, "each inmate should be classified at the least restrictive capacity consistent with security needs."
- Approximately 84% of Hawai'i's female incarcerated population is composed of NONVIOLENT offenders
- **Prison Population: 18.2% women = minimum custody; 47.8% women = community custody THAT MEANS THAT 66% OF HAWAI'I'S INCARCERATED WOMEN (mostly Moms) ARE MINIMUM OR COMMUNITY CUSTODY!**

Sadly, it appears that the final report of the consultants has not been made available to either the Legislature or the public, despite the public money used to produce it. What the preliminary report shows is that Hawai'i has, as one criminologist called it, a cream puff prison population, meaning that most individuals incarcerated are convicted of nonviolent property crimes and/or drug use.

Hawai'i has one of the fastest rising female prison populations in the nation.

1972	Hawai'i had 1 woman in prison
1982	43
1992	164
1996**	249
2000	500
2008	760

WHY HAS FEMALE PRISON POPULATION RISEN?

- **1996 MANDATORY MINIMUM LAW TAKES EFFECT**
- Dual diagnosis/Co-occurring disorders is major problem with 24% of women having mental illness and substance abuse disorder (According to DPS stats)
- Not enough community-based programs/services for female offenders
- Based on 1998 DPS WCCC Population Analysis:
 - 18.9% women incarcerated for violent crimes
 - 37.1% for property crimes
 - 34.9% for drug related offenses
- Women have a lower rate of violent crime convictions and a higher rate of drug-related convictions when compared to male inmates
- 56.5% were sentenced to 5 years (Mandatory Minimum Law)
- Substance Abuse: Of 274 women studied in 1998 report documented history of substance abuse was found in 239 cases
- 1998 Report concludes: "The women who end up in Hawai'i's prison system are basically non-violent offenders with serious substance abuse and mental health problems"

SOLUTIONS:

Hawai'i must adopt the smart on crime initiatives being safely implemented in other jurisdictions, especially since the majority of our women are NONVIOLENT AND COMMUNITY OR MINIMUM CUSTODY:

- Early release for individuals who have completed their programming and pose no threats to public safety Experts agree: Freeing inmates early doesn't necessarily increase crime rates, nor does it affect recidivism. It does save money, experts agree.
- Implementing Good Time/Earned Time credits
- Reforming sentencing laws to reduce the time individuals convicted of drug and property offenses spend in prison
- Hiring more parole officers to increase community supervision
- Partnering with community organizations to establish education and job programs
- Home detention

States are not moral agents, people are,
and can impose moral standards on powerful institutions.

Noam Chomsky

Community Alliance on Prisons would like to thank Senator Espero and Representative Hanohano for holding this important meeting to inform the Legislature and the public about the illegal and persistent problems at Otter Creek including sex assault, substandard medical care, and poorly trained staff.

COMMUNITY ALLIANCE ON PRISONS

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August 22, 2005

Frank Lopez, Interim Director
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawai`i 96817

Aloha Frank!

Enclosed please find your copy of the letter I wrote today to Warden Sequeira asking permission for the Women's Legislative Caucus to go to WCCC on Tuesday, August 30th to present their information on cervical cancer to the women.

I am also enclosing a copy of an anonymous letter I received today from Brush. I generally don't give credence to anonymous letters, but this is not not the first time I've heard about problems with the water at Otter Creek. I've heard from a few sources now that there was an e-coli outbreak there. A bacterial outbreak of e-coli is very serious and would affect everything in the prison including laundry, dishes, food preparation, etc.

I have also enclosed some information I have downloaded from the Kentucky Department of Corrections website and an article from Kentucky.com about Otter Creek being refitted to house women. On page 3 of the Kentucky DOC printout there is information and a picture of Joyce Arnold, the Warden of Otter Creek. As I mentioned to you on the phone last week, I am concerned because of information I have received from a former employee of Gadsden Prison in Tallahassee, Florida. Joyce Arnold was apparently aware of sexual assaults going on at Gadsden and chose to ignore them rather than investigate. This gives me great cause for concern since our women have been through so much already. They have been moved around like chess pieces and have suffered retaliation for the misdoings of the staff at Brush.

I share this with you, Frank, because these issues are serious and since we are in the final round of negotiations, I want to make sure that these issues are addressed and resolved up front. I will continue to share what I know from my numerous national contacts. Mahalo nui loa.

Me ke aloha,

Kat Brady
Coordinator

COMMUNITY ALLIANCE ON PRISONS

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October 17, 2005

Frank Lopez, Interim Director
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawai`i 96814

Dear Frank,

It seems that we have sent our women from the frying pan in Colorado to the fire in Kentucky.

I have been receiving calls almost daily from our women inmates at Otter Creek, Kentucky and from their families and friends, who are worried about the treatment that our women are receiving, or not receiving, at this private prison so far away.

I have been advised by the women that since Hawai`i has not yet signed a final contract, our women are considered prisoners of the Kentucky Department of Corrections. What protections do our women have, if they are not under Hawai`i state jurisdiction?

Before leaving Brush Prison, the women were told that they could not bring certain items with them. One inmate has over \$800 in legal books that she purchased herself to research her case and was told that she must ship the books because she couldn't take them with her. This was a huge problem since books can only be sent to inmates from the publisher, so her family could not re-send them to her at Otter Creek. I called public safety and spoke with Ed Shimoda several times and he listened, but never got back to me with any resolution.

I have also heard that the restrictions on what the women could bring have come from Hawai`i, because families have called Otter Creek to ask about what the inmates could take with them and were told that there was no restriction. Many of the hygiene products and personal items the women bought with their own money had to be left behind.

Sadly, it appears that PSD ascribes to the 'out of sight, out of mind' philosophy and our inmates thousands of miles away from home are at the mercy of people who don't care and feel that they can do whatever they please because no one is watching. Quarterly visits are not sufficient to protect the health and safety of our people so far away. The state has a moral and fiscal obligation to ensure that the rights of our inmates are protected, that they receive the health care necessary, and that if they must be transferred out of state, they be sent to a safe environment with appropriate programming to address their needs.

Below are a list of problems that I have been told about to date:

Health Problems:

- **Hawai'i women have been sick at Otter Creek** - As I noted in my August 22nd letter to you (copy attached), there appears to be an *unresolved* problem with the water at Otter Creek Prison. In that letter I mentioned that there was E-coli found in the water there and that this is a serious problem that must be addressed before our women are shipped there. I have now heard from three separate sources that our women have been sick with diarrhea and vomiting from the water. In fact, they told me that if the water stands in a cup, after a while it turns black and has an oily film on top. The nurses are telling the inmates not to drink the water. Does this sound like the water problem has been resolved? We think not.
- **Hawai'i women have been denied their approved medication** - I have been told by several sources that our women have been unable to access their approved medication for high blood pressure, etc., which is generally part of the negotiated contract. I have heard from several inmates that their blood pressure was skyrocketing, with one inmate's at 192/120. This is a problem, since our women appear to be considered Kentucky Department of Corrections inmates who are now at the mercy of the staff at Otter Creek. They must now buy aspirin for \$.64, which is only dispensed in the morning, and their pay is a mere \$.14 per day.
- **There is hardly any recreation time** - Hawai'i inmates are in the same pod as Kentucky inmates, but do not share cells. I have received many reports saying that there is very little recreation, as most of our people are in lockdown. I have even been told that the Kentucky inmates are shocked at the way the Hawai'i women are being treated.
- **No liquids allowed at recreation** - Hawai'i inmates have been told that they cannot carry bottled water or juice to recreation. Some of the women play basketball, and water is vital to replace the fluids lost during this strenuous exercise. Hawai'i must immediately ensure that our inmates get bottled water during meals and recreation or exercise time.
- **No warm clothes have been issued to our women** - One inmate told me that her jacket was taken away for no reason and no other was issued to her, hence when she is allowed to go outside, she has no jacket to protect her from the cold. The weather there has been in the 40's in the evenings and mornings, so a jacket is a necessity to a Hawai'i inmate.
- **No hot water** - There was no hot water at Otter Creek, so the women were forced to eat cold food and take cold showers. The hot water just was restored Monday evening.

Lost Property:

- **Some women's property never got to Kentucky** - I have been told that some inmates' personal property never arrived in Kentucky. When they asked about it, they were told that it was Brush's problem. No one is taking responsibility for the transfer of inmates' belongings. Who is liable for this and how will the state reimburse those inmates who lost their property in the 'transfer'?

Confusion on Rules/Contract:

- **Who is in charge?** Before leaving Brush, the women were told about the provisions of the contract that Hawai'i was negotiating with Otter Creek. They were assured that that Otter Creek would comply with the provisions. Sadly, once they arrived at Otter Creek these provisions have been ignored and the inmates are told that they are Kentucky inmates and they 'don't have to comply' with a contract that is not finalized.
- **Confusion over who is making rules** - The woman are told that many of the punitive restrictions relating to the transfer and since their arrival at Otter Creek are coming from Hawai'i. They get the runaround when they question the origin of the 'rule'. This of course leads to rumors and innuendo and a sense of uncertainty among the women.

Civil Rights Violations:

- **Women denied legal calls** - Our women have been told that they cannot call or receive calls from their attorneys. This is a violation on their civil rights.
- **Mail is either being held up or unusually slow** - Although families are telling inmates that they have written to them, they report that they have no received any correspondence from their loved ones since they arrived at Otter Creek.
- **Mail being returned to senders** - Although the women were assured that their mail from Brush would be forwarded to them at Otter Creek, mail is being stamped 'return to sender' and sent back to originator.
- **Asking a question could get one a 'write-up' or put in lockdown** - When the women question a rule or ask about provisions of the contract, they are threatened with lockdown and told that 'today there is a new rule' or 'we don't follow that.' This leads to an atmosphere of fear, confusion, and insecurity.
- **Threats and Intimidation appear to be the operational philosophy at Otter Creek** - The management appears to espouse the 'management by fear' model, which does little to lead by example and does nothing to model good behavior. When women ask questions, they are targeted and given no explanations for the sanctions that are levied against them.
- **Staff disrespectful to Hawai'i inmates** - Since their arrival, our women have been repeatedly told by Otter Creek staff that they don't want them there. They have been subjected to name-calling and derision by correctional officers there.

Other Strange Things:

- **There appears to be no established meal times** - The dinner meal is sometimes served as late as 8:05 PM, inmates have told me. It apparently varies.
- **Commissary Hours** - Women have reported to me that at times the commissary, where they must purchase their hygiene products and aspirin, has been only open at 2:00 AM.

Community Alliance on Prisons
Monday, October 17, 2005
Page Four...

It appears, from all the reports I have received from numerous inmates and family members, that our women have been transferred to a prison that not only doesn't want them, but has imposed rules at whim and then tells the women that the administration can do as it pleases since they are under the Kentucky Department of Corrections now. Rules are made and then broken by the staff routinely, leaving the women in a state of confusion as to what is allowed and what isn't allowed.

Community Alliance on Prisons is very concerned about the health and safety and civil rights of our women at Otter Creek. E-coli in the water system is nothing to fool with, as I mentioned to you during several of our phone conversations. Many of the women have existing medical problems, and they certainly don't need contaminated water to exacerbate their medical conditions.

Community Alliance on Prisons asserts that no Hawai'i inmate should be transferred to any prison where they are afraid for their safety. Inmates have told me that they are scared and their families tell me that they worry constantly about the safety of their loved ones. This is shameful.

The concerns I have outlined put the state at great liability, and I look forward to hearing how the department plans to address these problems. I look forward to receiving the contract between the state and CCA's Otter Creek Correctional facility, as we discussed previously. Also, I know you mentioned that I could find all the contracts Hawai'i has with prisons on the U.S. continent on the PSD website, but I have never seen them there. Can you please check to make sure that these important documents are posted on line so that families know just what services are being funded by the state of Hawai'i for their loved ones being incarcerated so far away from home.

I am sending a copy of this letter to the legislature as well, since public money is used to render services to our inmates. I appreciate your attention to this matter and will await your response.

Sincerely,

Kat Brady
Coordinator

enclosures

cc: Hawai'i State Legislature

August 16, 2009

Private prison plagued by problems, reports show

[http://www.courier-](http://www.courier-journal.com/article/20090816/NEWS01/908160338/1008/NEWS01/Private+prison+plagued+by+problems++reports+show)

[journal.com/article/20090816/NEWS01/908160338/1008/NEWS01/Private+prison+plagued+by+problems++reports+show](http://www.courier-journal.com/article/20090816/NEWS01/908160338/1008/NEWS01/Private+prison+plagued+by+problems++reports+show)

By Stephenie Steitzer
ssteitzer@courier-journal.com

FRANKFORT, Ky. — A private women's prison in Eastern Kentucky that has been plagued by allegations of sexual assaults by corrections officers is chronically understaffed, leading to poor employee morale and security concerns, according to a state monitor's reports.

The monthly reports provide a glimpse into life inside the Otter Creek Correctional Center, where at least five workers have been charged with having sex with inmates in the past three years. Kentucky State Police are expected to present another case to a Floyd County grand jury this month.

"The facility continues to experience staff shortage(s), and (officers) have struggled," state monitor Darrell Neace said in July's report. "Overtime is substantial for the facility and very difficult for staff."

Despite the recurring problems outlined in the reports, the state has not imposed staffing-level sanctions as allowed under its contract with Corrections Corporation of America, a for-profit, Nashville, Tenn.-based company.

The state can fine the company up to \$5,000 a day for violating terms of the contract, which include maintaining certain staffing levels and filling vacant positions within 60 days.

In fact — despite the sexual assault investigation — the state has agreed to extend for 60 days its contract with CCA to house up to 476 inmates at the facility while it negotiates a new two-year agreement. Otter Creek housed 429 Kentucky inmates as of Friday.

In response to questions about staffing at the prison, state Corrections Commissioner LaDonna Thompson noted that staff turnover is an issue at all prisons.

"Corrections is a difficult and stressful profession," she said in an e-mailed statement.

CCA spokesman Steve Owen said it takes recruiting and retaining staff very seriously and noted that turnover costs money. "Anyone who contends that the facility operates with vacancies by design (for cost savings or profit) does not understand sound business practice," he said in an e-mail.

Reports cite staffing

It is unclear how many workers the prison is required to have. The state has been unable to produce a written staffing-level document, despite a request by The Courier-Journal under the state open records law.

However, in 11 of the last 19 monthly monitoring reports obtained by the newspaper, staffing has been cited as a problem. Of particular concern is the number of people trained to handle emergencies at the prison.

Neace, in a report dated July 8, cited a major concern about inadequate security staffing in June, adding, "OCCC is on 12-hour shifts and (workers) are struggling."

He wrote that the facility was operating with 168 workers and had 28 vacancies at the end of the month. Five of those positions had been open for more than 60 days, which is a violation of the state's contract with CCA.

Many previous monthly reports do not specify how many positions were vacant, or for how long. Thus, it is impossible for the department to know how severe the staffing problem is at a given time and whether the company is in violation of the contract.

Many reports, however, include vague references to understaffing and low staff morale because of forced double shifts.

"They (officers) are exhausted, and several have expressed their concern to me," former state monitor Deborah Patrick said in the August 2008 report.

Other prisons pay more

The reports reflect a pattern in which a flurry of hiring is typically followed several months later by a drop in staffing, indicating retention problems. Owen, the CCA spokesman, said many people hired in prisons soon realize it isn't the type of work they want to do.

Department of Corrections spokeswoman Lisa Lamb said recently that her agency has begun sending inspectors to the prison without giving CCA advance notice and has sent two corrections experts there to help the state's on-site monitor.

The state's only other women's prison — the state-run Kentucky Correctional Institution for Women in Shelby County — is nearly full most of the time.

"Our assessment is that it is more effective to rectify the situation there at Otter Creek than find alternative forms of incarceration for our inmate population housed there," Lamb said.

She partly blamed problems with attracting and retaining staff on the fact that a federal prison employing roughly 400 people in nearby Inez pays more.

Starting pay there is \$18.18 an hour for workers with no corrections experience, and \$19.17 an hour for those with experience.

Starting pay at Otter Creek is \$8.25 an hour.

In addition, the state pays corrections workers at two nearby state-run prisons \$2.97 more an hour than Otter Creek employees receive.

The state's contract with CCA for Otter Creek does not specify minimum pay, because, Thompson said, such internal business decisions could affect the company's competitiveness.

Owen said CCA raised starting pay at Otter Creek by 5 percent last year and "we will continue to monitor their situation as we do with all our other facilities."

Kentucky pays CCA \$53.77 a day to house each inmate, a total of more than \$8million last year.

Most employees are male

Tommy Johnson, a spokesman for the Hawaii Department of Public Safety, which contracts with Otter Creek to house 175 inmates from that state, said CCA might need to consider paying more to attract and retain workers at Otter Creek, particularly female officers.

He said a recent review found 81 percent of the workers were male, and 19 percent were female.

"The ratio really should be almost the opposite," he said.

Johnson said his department has asked CCA to hire more women and consider making certain jobs at the prison female-only.

Owen said the company instituted a bonus referral and retention program in June in an effort to hire more female employees.

Neace also noted in his May report that the facility had only 24 staff members trained and certified to respond to incidents such as riots. The contract requires Otter Creek to have 30 workers with that training.

CCA loses open-records case brought

by Alex Friedman of Prison Legal News

Private prison company loses open-records case

<http://www.firstamendmentcenter.org/news.aspx?id=21950>

By The Associated Press

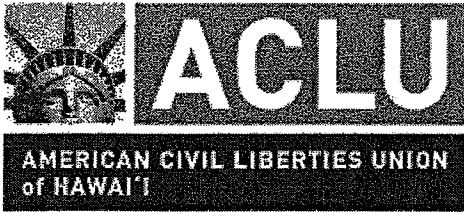
08.14.09

NASHVILLE — The Tennessee Court of Appeals has ruled that private prison company Corrections Corporation of America is subject to the state's open-records law.

The Nashville-based company falls under the act because it performs the equivalent functions of a government agency by running state prisons, the unanimous three-judge panel said in its Aug. 5 opinion, *Friedmann v. CCA*.

The appeals panel's opinion affirmed a July 2008 ruling by Davidson County Chancellor Claudia Bonnyman, which also found that CCA must provide documents to Alex Friedman, an editor of a national prison magazine who sued seeking records on the company.

Friedman, a former prisoner who is now an editor at Prison Legal News, sent a letter to CCA in April 2007 asking for information on settlements, judgments and complaints against the company. He sued CCA when the company refused to turn over the information, claiming it wasn't subject to the open-records law.



Via E-mail: PSMTestimony@Capitol.hawaii.gov
Committee: Committee on Public Safety and Military Affairs
Committee on Public Safety
Date/Time/Place: Tuesday, August 19, 2009, 1:30 p.m., Room 229
Re: Testimony of the ACLU of Hawaii Regarding Allegations of Sexual Assault at Otter Creek Correctional Center and Hawaii's Reliance on Private Prisons Generally

Dear Chairs Espero and Hanohano and Members of the Committee on Public Safety & Military Affairs and the Committee on Public Safety:

The recent allegations of sexual assault at the Otter Creek Correctional Center, operated by the Corrections Corporation of America ("CCA"), are symptomatic of a much larger problem: the lack of transparency, accountability, and oversight of the State's contract with CCA, which in turn has led to inmate abuse and other unconstitutional conditions. Although Hawaii's taxpayers have spent roughly a half a billion dollars to incarcerate inmates in CCA prisons, and although Hawaii is CCA's largest customer, we – as a State – have very little insight into the services we are receiving in return.

The Department of Public Safety ("PSD") has fought every attempt to increase transparency and accountability within the prison system and has claimed that its own internal procedures provide sufficient oversight. Recent events, however, demonstrate that PSD's internal reviews are at best indifferent and at worst deliberately misleading.

At a minimum, we recommend that the Legislature take several steps to address the current crisis:

1. Provide funding to the State Auditor to conduct an independent audit of CCA facilities, including unannounced inspections;
2. Vest the Hawaii Ombudsman with express authority to review complaints from Hawaii inmates at CCA facilities;
3. Implement the findings and recommendations of the National Prison Rape Elimination Commission; and
4. Amend Hawaii's Information Practices Act (HRS chapter 92F) to require CCA to respond to open records requests.

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Hon. Rep. Hanohano, Chair, PBS Committee and Members Thereof
Hon. Sen. Espero, Chair, PSM Committee and Members Thereof
August 18, 2009
Page 2 of 6

A. Reports from Other Government Officials Demonstrate that the Department of Public Safety's Reports Are Inaccurate, Misleading, and/or Incomplete.

PSD claims that additional oversight is unnecessary because it performs its own internal reviews. Simply put, these internal reviews are inaccurate and/or incomplete.

PSD's quarterly report from CCA's Otter Creek facility in October 2008,¹ for example, claims that CCA was compliant in every single category of review. Yet the Kentucky State Monitor found staffing inadequate in 11 of the last 19 monthly reports, and found that officers were "exhausted" (according to an August 2008 Kentucky State Monitor report) and "struggling" (according to a July 2009 Kentucky State Monitor report).²

Similarly, a former prison guard was convicted of second-degree sexual abuse for a July 3, 2008 attack on an Otter Creek inmate.³ This sexual assault was not reported in PSD's October 2008 report (the first quarterly report issued after the July 3, 2008 attack).

Furthermore, Deputy Director Tommy Johnson admits that the ratio of female to male guards at Otter Creek – about one female guard for every four male guards – should be reversed in a women's facility (with one male guard for every four female guards).⁴ This deficiency, however, appears nowhere in the October 2008 report on Otter Creek.

¹ Although PSD purports to conduct quarterly monitoring reports of both Otter Creek and Saguaro Correctional Center (CCA's facility in Eloy, Arizona, where Hawaii's male inmates are housed), the only reports available online are those from October 2008.

² Stephenie Steitzer, *Private Prison Plagued by Problems, Reports Show*, LOUISVILLE COURIER-JOURNAL, Aug. 16, 2009, available at <http://www.courier-journal.com/article/20090816/NEWS01/908160338/Private+prison+plagued+by+problems++reports+show> (last accessed August 17, 2009).

³ Valarie Honeycutt Spears, *Monitor Named for Troubled Prison Complex*, LEXINGTON HERALD-LEADER, Aug. 11, 2009, available at <http://www.kentucky.com/210/story/891493.html> (last accessed August 17, 2009).

⁴ Steitzer, *Private Prison Plagued by Problems, Reports Show*, *supra* note 2.

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The Kentucky State Monitor also found that inmates were routinely placed in segregation when the inmates posed no safety threat. He further found that staff commonly threatened inmates with segregation for the slightest misdeeds.⁵ Placing inmates in segregation without adequate justification may pose substantial due process concerns and amount to cruel and unusual punishment, thus subjecting the State to potential liability.

These practices are not unique to Otter Creek. During my own visit to CCA's Saguaro Correctional Center in February of 2009, I heard nearly identical complaints from dozens of inmates: inmates being placed in segregation and/or threatened with segregation (*i.e.*, being confined to their cells for 23 hours a day) for reasons that were, at times, blatantly illegal.⁶ Yet these practices are not discussed anywhere in PSD's internal reviews.

In short, PSD's internal reviews ignore blatant problems, fail to address the staffing shortages and corporate culture that cause inmate abuse, and/or deliberately mislead the Legislature into believing that the \$50 million annual contract needs no independent oversight. Clearly, change is long overdue.

B. The Status Quo is Unacceptable, Yet The Department of Public Safety Vehemently Opposes Any Change.

The Department of Public Safety continues to fight every legislative initiative to improve accountability. During the 2009 Legislative Session alone, PSD:

1. Opposed an independent audit of CCA facilities (H.B. 969; S.B. 83, H.C.R. 199);⁷
2. Opposed a measure that would have subjected CCA to Hawaii's Open Records Law (H.B. 232, S.B. 212);

⁵ *Id.*

⁶ For example, I heard consistent reports that inmates have been threatened with segregation for filing grievances and for requesting religious accommodations.

⁷ Although the Legislature passed H.C.R. 199, calling for an independent audit of the Saguaro Correctional Center, Auditor Higa has declined to conduct the audit at this time because of funding constraints.

3. Opposed a measure that would have clarified that the Hawaii Ombudsman has authority to investigate complaints from mainland facilities (H.B. 409, S.B. 211);
4. Opposed a measure that would have provided a list of factors to be considered in transferring inmates between facilities – rather than leaving all decisions to PSD’s unfettered discretion (H.B. 408, S.B. 210);⁸
5. Opposed a measure that would have required PSD to establish performance indicators and report to the Legislature on those indicators (H.B. 414, S.B. 213); and
6. Opposed a measure that would have required PSD to notify the Legislature of an inmate’s death within twenty-four hours (S.B. 207).

The Department’s standard response is that oversight is not necessary because the Department performs its own internal reviews. As discussed above, these reviews are incomplete, ineffective, and misleading. This excuse is neither plausible nor acceptable.

C. The Legislature Should Require PSD to Implement the Recommendations of The Prison Rape Elimination Commission.

In 2003, Congress unanimously passed the Prison Rape Elimination Act, which “called for the creation of a national Commission to study the causes and consequences of sexual abuse in confinement and to develop standards for correctional facilities nationwide that would set in motion a process once considered impossible: the elimination of prison rape.”⁹ On June 23, 2009, the Commission released its report, including “select policies and practices that must be mandatory everywhere to remedy these problems.”¹⁰

⁸ This bill would not have mandated that any particular inmate(s) be transferred. It required only that PSD establish a set of criteria to make transfer criteria less subjective (and thus reduce the risk that transfers can be used to retaliate against inmates for filing complaints over things like sexual assault, for example).

⁹ National Prison Rape Elimination Commission Executive Summary, June 23, 2009, available at http://nprec.us/publication/report/executive_summary.php (last accessed August 17, 2009).

¹⁰ *Id.*

The Commission found, among other things, that “[r]eporting procedures must be improved to instill confidence and protect individuals from retaliation without relying on isolation. Investigations must be thorough and competent.”¹¹ Likewise, the Commission found that “any report of sexual abuse in a correctional facility must also trigger an immediate response from security staff; forensic, medical, and mental health care practitioners.”¹²

PSD’s response to repeated allegations of sexual assault at Otter Creek are at odds with the Commission’s findings. As the Kentucky’s State Monitor found, inmates are routinely placed in segregation and threatened with segregation without justification. This is hardly the type of culture that facilitates a thorough review of rape allegations, inasmuch as inmates fear retaliation for reporting sexual abuse. Furthermore, PSD’s response – sending Deputy Director Johnson to “investigate” – is not enough, because (to our knowledge) Deputy Director Johnson has no special medical, mental health, or forensics training that would allow him to decide, on his own, how to respond to these very serious allegations.

Indeed, to our knowledge, PSD has done virtually nothing to educate inmates or staff about the Prison Rape Elimination Act. Whereas other states provide inmates (both male and female) with brochures containing information on the Prison Rape Elimination Act, PSD does not routinely provide inmates with access to information or a clear understanding of the remedies/resources available to them if a sexual assault occurs.

D. The Legislature Ought to Reconsider Whether to Contract With For-Profit Prisons, Whose Goal is to Profit From Keeping People in Prison

The ACLU of Hawaii does not believe that involuntarily transferring prisoners to CCA’s for-profit prisons is an appropriate solution to the prison over-crowding problem. We believe that the rehabilitation process requires that inmates stay connected to their family members and communities. We also believe that goals of the State and CCA are so divergent that private prisons should not be used at all: whereas the State has an interest in rehabilitating inmates and returning them to the community at the lowest cost to Hawaii’s taxpayers, CCA’s goal is to keep inmates as long as possible to increase their profits.

¹¹ *Id.*

¹² *Id.*

Hon. Rep. Hanohano, Chair, PBS Committee and Members Thereof
Hon. Sen. Espero, Chair, PSM Committee and Members Thereof
August 18, 2009
Page 6 of 6

Furthermore, we have received hundreds of complaints about conditions at CCA Saguaro and Otter Creek, suggesting that CCA is not meeting its most basic of constitutional obligations in housing inmates. To take just one example, the Warden of Saguaro Correctional Center informed me that he did not believe there was such a thing as a Hawaiian religion – such that inmates have no right to dance or chant for Makahiki – despite the clear benefits of providing inmates with access to religious services.

In sum, we urge your Committees to treat the allegations of sexual assault at Otter Creek as a crisis, but to use this crisis as an opportunity to revisit the status quo: provide the necessary layer of accountability and oversight to ensure that Hawaii's inmates receive the services they need to re-enter society successfully and that Hawaii's taxpayers receive the services for which they are paying.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,



Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

COMMITTEE ON PUBLIC SAFETY

Representative Faye Hanohano, Chair
Representative Henry Aquino, Vice Chair
Tuesday, August 18, 2009
1:30pm Room 229

Aloha Chairs Espero and Hanohano, and Members of the Committees:

My name is Carrie Ann Shirota, and I am providing written comments on the sexual abuse/assault allegations at Otter Creek Facility in Kentucky, and to express my opposition for the removal of Kulani Correctional Facility from the State Correctional System. These comments are shaped by my experiences as a former Public Defender, Civil Rights Enforcement Attorney, and Director of a reentry program on Maui. Currently, I am a Soros Justice Fellow focusing on the practice of out-of-state prisoner transfers, and a member of Community Alliance on Prisons.

I. Sexual Abuse/assault allegations at Otter Creek Correctional Center, Kentucky

Although Hawai'i has earned the dubious distinction of having the highest percentage of out of state prisoner transfers in the United States, Hawai'i has never conducted an independent performance audit of the private prisons where prisoners are exported - to determine the efficacy of this policy decision. The Department of Public Safety has consistently opposed an independent audit, and the appointment of independent monitors based on its claim that internal reports and audits conducted by the Mainland Division Branch are sufficient in monitoring private prison contracts and resolving problems reported at private prisons. However, the string of sexual abuse allegations at Otter Creek, as well as past sexual abuse assaults at Colorado's GRW prison, illustrate the depth of systemic problems at private prisons when there is no effective prison monitoring system in place.

A. Effective Prison Monitoring System is Needed

As outlined by Michele Deitch, Adjunct Professor of Public Policy at the University of Texas, and Soros Senior Justice Fellow, the essential elements of an effective prison monitoring system would include the following:

- They must be independent of the correctional agency and able to do their work without interference or pressure from the agency or any other body;
- Monitors must have unfettered and confidential access to facilities, prisoners, staff, documents, and materials, and they should have the ability to visit at any time of the day without prior notice;
- They must be adequately resourced, with sufficient staffing, office space and funding to carry out their monitoring responsibilities, and the budget must be controlled by the monitoring entity;

- They must have the power and the duty to report their findings and recommendations, in order to fulfill the objective of transparency, and they should control the release of their reports and
- They must taken a holistic approach to evaluating the treatment of prisoners, relying on observations, interviews, surveys, and other methods of gathering information from prisoners as well as on statistics and performance based outcome measures.

See Effective Prison Oversight, Michele Deitch, Prepared for the Commission on Safety and Abuse in America's Prisons, 4th Hearing, Los Angeles, February 8, 2006.

Our current monitoring system of CCA contracts does not contain the essential elements of an effective prison monitoring system. Most notable is the fact that the Contract Monitors are not independent of the Department of Public Safety. Creating a mechanism for effective prison monitoring would help to achieve the twin objectives of transparency of public institutions, private prisons, and accountability for the safe and human operation of prisons and jails.

B. PSD Must Implement Standards to Prevent, Detect, Respond and Monitor Sexual Abuse of Incarcerated Persons that are Consistent with the final report released by the National Prison Rape Elimination Commission

The Eighth Amendment of the U.S. Constitution forbids cruel and unusual punishment—a ban that requires corrections staff to take reasonable steps to protect individuals in their custody from sexual abuse whenever the threat is known or should have been apparent. The U.S. Supreme Court ruled unanimously in Farmer v. Brennan that deliberate indifference to the substantial risk of sexual abuse violates an incarcerated individuals rights under the Eighth Amendment. As the Court so aptly stated, sexual abuse is “not part of the penalty that criminal offenders pay for their offenses against society.”

Under the Prison Rape Elimination Act of 2003, Congress affirmed the duty to protect incarcerated individuals from sexual abuse. The Act called for the creation of a national Commission to study the causes and consequences of sexual abuse in confinement and to develop standards for correctional facilities nationwide that would set in motion a process to eliminate prison rape.

Since the passage of the PREA, correctional leaders and their staff at the federal and state level have developed and implemented policies and practices to begin to prevent sexual abuse, to better respond to victims, and hold perpetrators accountable when prevention fails. In some agencies, training curriculum includes information about sexual abuse in confinement, whereas other facilities have created sexual assault response teams to change their responses to sexual abuse. Despite these positive developments, the NPREC affirmed that much remains to be done and that ***“Protection from sexual abuse should not depend on where someone is incarcerated or supervised; it should be the baseline everywhere.”***

To my knowledge, PSD has lagged behind other correctional agencies in developing and implementing policies to prevent prison rape and to adequately respond to sexual abuse. Fortunately, there are resources for PSD to address this void.

In June 2009, the National Prison Rape Elimination Commission released its final Report and proposed standards to prevent, detect, respond to and monitor sexual abuse of incarcerated or detained individuals throughout the United States. See <http://nprec.us/publication/>. PSD should adopt

and implement the standards developed by the National Rape Elimination Commission. In addition, PSD staff should receive training about these standards, and incarcerated persons under their jurisdiction, both in Hawai'i and the Mainland, should have information about the NPRE and the processes for easily and privately reporting sexual abuse, retaliation by other inmates or staff for reporting sexual abuse and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse.

Finally, the NPRE Report highlights the importance of publicly available audits to allow agencies, legislative bodies and the public to learn whether facilities are complying with the PREA standards:

Audits can also be a resource for the Attorney General in determining whether States are meeting their statutory responsibilities. Public audits help focus an agency's efforts and can serve as the basis upon which an agency can formulate a plan to correct any identified deficiencies. These corrective action plans should be made public as well so that the public is fully informed as to whether the agency is taking appropriate steps to prevent sexual abuse. If the agency has a Web site, the audit should be published on it; otherwise, the agency may choose other feasible means to ensure the public has ready and easy access.

The State Legislature has an obligation to ensure that Hawai'i prisoners are protected from sexual abuse whether confined to public prisons in the islands, or private prisons on the Mainland. By continuing to fund out of state transfers without independent prison oversight and monitoring and failing to fund audits, our Legislature is effectively turning a blind eye to the human rights and civil rights violations occurring in these private prisons.

II. Closure of Kulani Prison is a Step Backward for those Incarcerated and the Community

Prior to closing Kulani Correctional Facility or any prisons in Hawai'i, the State should end its \$60 million dollar contracts with Corrections Corporation of America (CCA), that operates private for profit prisons where Hawai'i inmates are exported to in Kentucky and Arizona.

Numerous studies have shown that maintaining family ties through visitation is critical in helping individuals successfully transition from prison into the community. So, why are we transferring over 2,000 incarcerated men and women to the Mainland where family ties are severed and visitation is virtually non-existent?

The Department of Public Safety's own policies state that "each inmate should be classified at the least restrictive capacity consistent with security needs." Kulani is one of only two minimum-security prisons in Hawai'i that offers a broad spectrum of rehabilitation programs, including vocational training, counseling and treatment services, for male inmates nearing the end of their sentence.

In his press release, Director Clayton Frank, assured the community that "the 123 men at Kulani will be moved to other correctional facilities within Hawai'i or the Federal Detention Center." However, he failed to address the ill-conceived consequences of that move.

Many individuals at Kulani have completed, or are near completion of their required programming. Coupled with good behavior, these men have earned the opportunity to prepare for the next step into the community – either through work furlough, or legal supervision (i.e. electronic monitoring, parole, probation). Thus, a transfer from Kulani to Halawa or FDC would be a step backwards for those incarcerated and for the community.

Halawa is a Medium Security and Special Needs Facility, housing closed and protective custody inmates, as well as inmates with severe and chronic mental illness. It is overcrowded and offers limited programming. Since FDC is designed for individuals awaiting trial on federal charges, community reintegration programs are not offered to state prisoners.

So, what does this mean? Individuals, who are productively serving their time at Kulani, will now be “warehoused” at higher security prisons. Those currently participating in classes, even if close to completion, will have their programming interrupted and have to start over. Consequently, many will remain idle while waiting for program openings, and will ultimately serve even longer prison sentences - all at taxpayers’ expense.

In addition, the closure of Kulani will result in the loss of jobs, and negatively impact state employees and their `ohana – many of whom are already struggling to make ends meet. The closure of Halawa will also have a negative financial impact on Hawai`i’s local economy.

If Governor Lingle is truly concerned about our economy and the people of Hawai`i, she would keep Kulani open. She would not eliminate Hawai`i jobs and export those jobs to the Mainland through private prison contracts.

Sincerely,

Carrie Ann Shirota

LORENN WALKER, J.D., M.P.H.

COMMITTEES ON PUBLIC SAFETY AND MILITARY AFFAIRS &
COMMITTEE ON PUBLIC SAFETY

Honorable, Representative Faye P. Hanohano, Chair
Honorable, Representative Henry J.C. Aquino, Vice Chair
Honorable, Senator Will Espero, Chair
Honorable Senator Robert Bunda, Vice Chair

Tuesday, August 18, 2009
1:30 PM
Room 229

**STRONG SUPPORT FOR RETURNING MAJORITY OF INCARCERATED WOMEN TO
KULANI PRISON**

Sent to: PSMTestimony@capitol.hawaii.gov

I STRONGLY support returning incarcerated women in Kentucky back to Hawai'i and Kulani prison, which the Department of Public Safety (PSD) plans to close.

For the last 15 years I have been studying and applying public health approaches to improving the justice system. Prior to that I was a deputy attorney general who represented state agencies including the department of public safety (PSD) in lawsuits.

Research by internationally respected corrections experts including Shadd Maruna, Ph.D., on criminal recidivism, shows that one of the most important variables for incarcerated people to increase their desistance from drug use and crime is having a relationship with a law abiding person. If we want to reduce recidivism we must increase the opportunities for incarcerated people to develop these relationships. Obviously people from Hawai'i are not going to have the same opportunity to develop relationships with law abiding people in a Kentucky prison as they would in a Hawai'i prison. Clean and healthy friends and relatives are unlikely to visit their loved ones thousands of miles away. It is unlikely that damaged relationships will be repaired and renewed when great distances separate people.

Most people in prison are eventually released and those who have not been rehabilitated create a danger for the community where they return. PSD has had many years of opportunities to institute best practices and evidence based supported programs in its prisons to decrease recidivism. It has failed to rehabilitate most people and instead has focused almost exclusively on punishment, seemingly missing the point of the term "corrections." The legislature must do what PSD has not done to decrease recidivism by instituting policies and programs that promote desistance and ensure that the safety of the public is guarded.

Finally in my experience providing services at the Hawai'i women's prison, becoming a "shipment," which is how the women being sent to mainland prisons were referred to, was unwelcome and feared, especially for women with young children. I believe skepticism should be exercised in considering any "petitions" sent from a private prison that were purportedly generated voluntarily and submitted by incarcerated women.

1/20/09

Aloha Mr. Clayton Frank,

My daughter wrote this letter to me. It is very disturbing. Will you please help my daughter, Totie N. Tawala, to come back to Hawaii (Oahu). I fear for her safety. I am in poor health and disabled. Worrying about my daughter makes me even sicker because of stress. PLEASE help us. From the bottom of my heart Mahalo!

Aloha,
Regine B. Dies Tawala

To Whom It may concern:

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My name is Totie Tauala, I am a female prisoner housed at (occc) Otter Creek Correctional Center located in Wheelwright, Kentucky.

I am writing to you in regard to my well being and sanity.

In October of 2007 an incident of a sexual assault happened to me involving a male officer.

I reported it to the Chief of Security, along with the warden(s).

I also filed a report with the State Troopers here in Floyd County, Kentucky. Since reporting the incident, I've been harassed numerous amounts of times.

Prior to our warden #1 leaving this facility to transfer to a facility in Florida, she Ms. Joyce Arnold told me in her office (with the Chief of Security present) that what had happened to me "I deserved it!"

Time and Time again I've been made degrading comments to.

I've been put into segregation on a few occasions for no reason or write up. On this recent "fraudulent" trip to segregation (dated: 11/04/08), I asked for a grievance on Saturday of that week 11/08 and got the "run around" until the following week, when the grievance was finally brought to me. I submitted it in that week and at the end of that week an inmate was allowed into segregation with my grievance to my cell and told me that "my grievance has been rejected!" I asked her who was she? being that she had an inmate tag on, and she had my grievance. She said she was on the "Grievance Committee". I asked her who was her boss and she relayed Mrs. Newsome then she turned and left. She took my grievance and never returned. I was released out of segregation the following week because apparently my misconduct was misplaced. (I personally feel there was none.) Upon coming out of segregation I was taken to Dwight Crowell's office (one of the people

who was present when I filed with the state trooper). Mr. Crowell directly told me that "He will get me", and had me leave his office.

A couple of weeks of being out of segregation, our unit manager Nolan Newsome called me from work (kitchen) and had me go into his office along with our c/c (correctional counselor) Mrs. Henegar. He then proceeded to accuse me of trying to make a bed move. I asked him "what was he talking about"? I was clueless to what he was saying. He then got very authoritative (almost in an abusive way) and told me that he heard it through "the grapevine" that I was trying to move out of my room, and if I think I was going to manipulate his staff members that I was going right back where I came from "seg!". He said "I know you and I'm going to get you"! I asked my roommate later on that day if Mr. Newsome questioned her about it too. She said "No!". I asked practically the whole compound if Mr. Newsome ever

questioned anyone regarding "the grapevine", everyone has the same answer... No!

It was brought to my attention that his wife is Mrs. Newsome who is apparently over the grievance.

The week of Thanksgiving on Saturday I was speaking to my mother on the phone and she told me she was getting evicted the following day. The sheriff's were going to come to lock up the house. My mother was crying and distraught say that she would have to live in her car until she could get this injustice that's being done to her - undone. My mother walks with a cane and has severe arthritis. The following morning (Sunday) I asked the sergeant, who was running the shift? He told me captain Amy Tackett. I explained that I have money on my account and if I was to do a family emergency phone call. I also said to him that the only reason I was there asking them is because (we) this facility does not have a chaplin. Our chaplin was fired and charged with (7) seven

counts of sexual assaults. my request for a phone call was then forward from capt. Amy Tackett to a/c Henegar who then denied it. I can't even Grieve the situation for fear of my Grievance getting rejected or worse Retaliated and Harassed! I've been retaliated on for a year now and it's to the point where I don't feel safe here and im losing my mind. I am on medication as of Feburary for depression and anxiety. Please, hear my cry for help. I'm turning to the only people I know ... Hawaii. I'm asking for help to return to our island, I don't feel safe no longer.

Thank you, all.

Sincerely,
Totie Tauala

7/19/09 4:20 pm HOUSE, TIME

MR CLAYTON FRAWK 5871251

TALKED TO SECRETARY AND TOLD HER
ABOUT THE RELATIONSHIP ON MY DAUGHTER
TOTIE. I TOLD HER I WROTE A LETTER
TO HIM (FRAWK) AND SENT TOTIE'S LETTER
TO HIM SAYING SHE IS BEING RETIRED
ON.

Michael Hoffmann ~~XXXXXXXXXX~~

July 13, 2009

TO: MICHAEL HOFFMAN
CC: CLAYTON FRANK - Tommy Johnson - Governor Lingbe
SUBJECT - PRISON RULES AND PROCEDURES

DEAR SIR:

Thank you for your call on Friday, July 10, 2009,
on behalf of Director Frank.

I called regarding my daughter, Totie Tausla,
who had just finished a three week lockdown.
Why was she in a admin lockdown last week?
Where the proper procedures followed according
to the CCA contract? They certainly do not
follow grievance procedures which violates
the few rights that prisoners have.
PLEASE BRING OUR WOMEN HOME, THEY ARE
UNSAFE IN OTTER CREEK.

Sincerely,

Regina Dias Tausla
808 488 2114