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GOVERNOR



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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1073, SD1, HD1 (HSCR 1176)  
RELATING TO CORRECTIONAL FACILITIES  
Clayton A. Frank, Director  
Department of Public Safety

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

Thursday, April 2, 2009; 9:30 AM  
State Capitol, Conference Room 309

Chair Hanohano, Vice Chair Aquino, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** Senate Bill 1073, SD1, HD1 (HSCR 1176), which seeks to prohibit smoking by inmates in all correctional facilities statewide. As you know, the purpose of this measure is to repeal the exemption from the ban on smoking for State correctional facilities, which will provide a healthier environment for those incarcerated, staff, and visitors to the facilities.

PSD requests the following two amendments to this measure:

- Section 1(7) (Page 2, Line 16 through Line 21) **Currently Reads** "provided that smoking shall only be authorized for employees and volunteers of a correctional facility in an area outside of a correctional facility restricted from access by inmates or detainees that has been designated by the warden of a correctional facility."  
**Requested Amendment** - "...in an area outside of the secure confines of a correctional facility restricted from access by inmates or detainees ..."

- Section 3 (Page 3, Line 3) Currently reads "This act shall take effect on July 1, 2050."

**Requested Amendment** – "This act shall take effect on July 1, 2009."

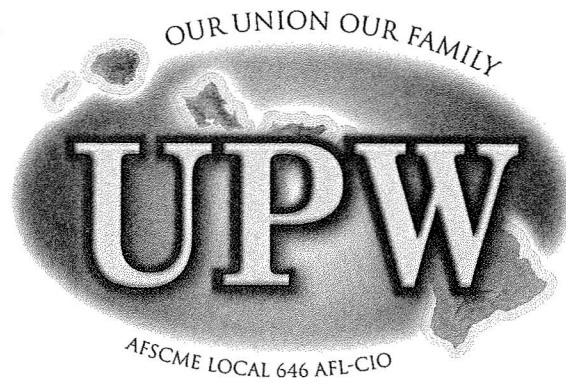
PSD is responsible for the maintenance and improvement of the inmates' health; inmates in our custody have been prohibited from smoking as of February 1, 2009. This will significantly improve the health of the inmates, while simultaneously decreases the long-term health care costs for those incarcerated.

If enacted, this measure would also eliminate staff smoking within the facility, which would decrease the possibility of second hand smoke inhalation and the potential lawsuits attributed to second hand smoke. In addition, this measure would assist the PSD in the enforcement of the smoking ban, as it would eliminate all tobacco products from entering the secure perimeter of the facility.

It is important to protect the rights of nonsmoking inmates and staff by providing an environment free from the exposure of harmful secondary smoke, which contains several carcinogens, all of which are extremely harmful to the human body.

PSD strongly supports the passage of this measure with the requested amendments as it provides for a healthier environment for inmates, staff, volunteers, and visitors that do not smoke, while simultaneously addressing the concerns raised by the United Public Workers' Union for those of their members that do smoke by providing designated smoking areas outside of the secure confines of a correctional facility restricted from access by inmates or detainees.

Thank you for the opportunity to provide testimony on this matter.



House of Representatives  
The Twenty-Fifth Legislature  
Regular Session of 2009

Committee on Public Safety  
Rep. Faye P. Hanohano, Chair  
Rep. J.C. Aquino, Vice Chair

DATE: Thursday, April 2, 2009  
TIME 9:30 a.m.  
PLACE: Conference Room 309

**TESTIMONY OF THE UNITED PUBLIC WORKERS UNION, AFSCME, LOCAL 646,  
AFL-CIO ON SB 1073, SD1, HD1, RELATING TO CORRECTIONAL FACILITIES**

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). UPW represents approximately 2,000 correctional officers and blue collar employees from bargaining units 1 and 10 who work in our correctional facilities.

We have concerns with HD1. The current language authorizes smoking for employees and volunteers of a correctional facility in an area outside of the correctional facility designated by the warden. First, I do not believe wardens have any authority to designate smoking areas outside a facility. Second, as written, the provision could be read as designating an area outside the facility that is restricted from access by inmates or detainees. Are there really areas outside the facility that are regularly accessed by inmates or detainees?

We believe the intent of the provision is to allow smoking for employees and volunteers

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within the facility grounds. The warden of each facility is to designate the smoking area which would be inaccessible to inmates or detainees. (See attachment.) This intent can be simply accomplished with the deletion of the word "outside" contained in the proviso.

With this amendment, we support the measure and urge its passage.

**HOUSE OF REPRESENTATIVES**STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

March 25, 2009

**MEMORANDUM**

TO: REPRESENTATIVE FAYE HANOHANO, CHAIR, Public Safety Committee

FROM: REPRESENTATIVE RYAN I. YAMANE *RY*

RE: SB 1073: RELATING TO CORRECTIONAL FACILITIES

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Aloha Chair Hanohano,

As SB 1073, SD 1, HD 1 passed the committee on Health and Second Reading in the House Session today; I would like to clarify my amendment (SB 1073, SD 1, HD 1) to you as you may be reviewing this bill for a potential hearing in your committee.

The Amended version states:

(7) State correctional facilities[-]; provided that smoking shall only be authorized for employees and volunteers of a correctional facility in an area outside of a correctional facility restricted from access by inmates or detainees that has been designated by the warden of a correctional facility."

I would like to clarify this concern of mine, in the committee on Health I expressed my concerns to allow only facility employees and volunteers to be able to smoke at a designated smoking area within the facility grounds but outside of the correctional buildings. I clarified this exemption to only pertain to correctional facility employees and volunteers.

As you review SB 1073, I trust that you will take this explanation of my concerns into consideration and note the vagueness of the committee report of my amendment. Should you have any questions regarding this bill or its respective committee report, please feel free to contact me at my office at 586-6150. Mahalo for your time and consideration in this matter.

**Representative Ryan Yamane**  
*District 37 – Mililani, Waipio Gentry*  
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**Improving Life**

**One Breath at a Time**

Founded in 1904, the American Lung Association includes affiliated associations throughout the U.S.

**TO: House Committee on Public Safety**

**FOR: Hearing Scheduled for 9:30 am, Thursday, March April 2, 2009**

**RE: TESTIMONY IN SUPPORT (WITH SUGGESTIONS) OF SB 1073, SD1, HD1 RELATING TO CORRECTIONAL FACILITIES**

Chair Hanohano, Vice Chair Aquino, and Committee Members:

The American Lung Association in Hawaii (ALA in Hawaii) supports SB 1073, SD1, HD1 that repeals the exception that allows smoking in correctional facilities. However we do have some concerns about the implementation of this measure.

While the prisons in Hawaii voluntarily went smoke-free on February 1, 2009, we would like to see the exception removed from the smoke-free law. We propose that all correctional facility property (indoors and outside) be nonsmoking areas, as is the case in several other states including Illinois, Michigan and California. These total smoking bans for visitors, volunteers, inmates and employees have proven to be successful and include prohibiting all tobacco products from correctional facility property. The current version of SB 1073 allows a smoking area on the premises and does not prohibit tobacco products from being carried into the facilities or on the grounds. This makes it much more difficult for those in the correctional facilities to have a positive attitude about quitting, which is necessary if they are to succeed.

The ALA in Hawaii recently provided cessation services at two correctional facilities. Kicking the smoking addiction is not easy. Everyone, including those incarcerated, should have all the tools available to assist them in this difficult task, including cessation medications and programs. Currently medications are not being made available and programs are very limited.

We are also concerned that cigarettes continue to be readily available on the black market.

**We support this measure, but for the health of all we strongly recommend that the smoking ban be for everyone and cover all indoor and outside areas in correctional facilities. Tobacco products must also be prohibited from being carried onto the property by employees, volunteers and visitors. In addition, comprehensive cessation services including all recommended medications must be made available and contraband cigarettes must be controlled. These measures have been successful in other states.**

Respectfully submitted,

Jean Evans, MPH, Executive Director, ALA in Hawaii



To: Representative Faye P. Hanohano, Chair, House Committee on Public Safety  
Representative Henry J.C. Aquino, Vice Chair, House Committee on Public Safety  
Members, House Committee on Public Safety  
Fr: Trisha Y. Nakamura, Policy and Advocacy Director  
Date: March 31, 2009  
Hrg: House Committee on Public Safety; April 2, 2009 at 9:30 a.m.; Rm 309  
Re: SB 1073, SD 1, HD 1 Relating to Correctional Facilities  
Supporting the Intent and Comments

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Thank you for the opportunity to testify in support of the intent of SB 1073, SD 1, HD 1 which would make correctional facilities in Hawaii smoke-free—and healthy for all.

The Coalition for a Tobacco Free Hawaii (Coalition) is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy. Our organization is a small nonprofit organization of over 3,000 organizations and advocates that works to create a healthy Hawaii through comprehensive tobacco prevention and control efforts.

The Coalition has testified in support of prior drafts of this measure because it added State correctional facilities to the list of smoke-free workplaces. The current draft remains a viable vehicle to provide adult correctional officers with the same protections that are extended to the majority of our state's employees—a work environment free of dangerous second-hand smoke. It would also create a healthier prisoner population by eliminating dangerous second-hand smoke and by preventing inmates from smoking. Most correctional facilities and prisons in our state are already smoke-free and there have been no problems that the Coalition knows of.

We have one concern regarding the language in the HD 1 which does not explicitly provide that the “area outside of a correctional facility restricted from access by inmates or detainees that has been designated by the warden of a correctional facility” must be outside—or not enclosed or partially-enclosed. The Committee Report from the House Health Committee noted the language was amended to allow each warden “to designate an area for smoking *outside* of the facility for employees and volunteers only.” (HSCR 1175, 25<sup>th</sup> Legislature, Reg. Sess. (Haw. 2009), emphasis added). The Coalition offers that SB 1073, SD 1, HD 1, section 1 referring to HRS § 328J-7(7) should read “State correctional facilities, provided that smoking shall only be authorized for employees and volunteers of a correctional facility in an area: (a) not enclosed or partially enclosed; (b) outside a presumptively reasonable minimum distance of twenty feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area; (c) outside of a correctional facility restricted from access by inmates or detainees; and (d) that been designated by the warden of a correctional facility.” This will ensure the area designated by the warden is 1) not in an enclosed or partially enclosed area; and 2) safely away from areas in which dangerous second-hand smoke could impact another's breathing, lung disease, and other health-related issues.

We urge you to pass this measure with our recommendations. Thank you for the opportunity to testify on this matter.



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Thursday, April 2, 2009, 9:30am, CR 303

To: COMMITTEE ON PUBLIC SAFETY  
Rep. Faye P. Hanohano, Chair  
Rep. Henry J.C. Aquino, Vice Chair

From: Hawaii Medical Association  
Gary A. Okamoto, MD, President  
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Lauren Zirbel, Government Affairs

Re: SB 1073 RELATING TO CORRECTIONAL FACILITIES  
*Repeals the exception that allows smoking in correctional facilities.  
Effective 7/1/50.*

Chairs & Committee Members:

Hawaii Medical Association supports this measure.

While it could be argued that nicotine-addicted prisoners would be deprived of their ability to feed their addiction to nicotine, it could just as equally be argued by smokers, non-smoking inmates and prison employees that the prison failed in its duty to provide a safe place for each of these populations to spend time.

Furthermore, the prison physician could prescribe nicotine replacement treatments, such as nicotine transdermal patches, oral nicotine ("Commit") tablets, or inhaled nicotine ("Nicotrol").

Smoking kills. Nicotine is the only product, made in America, that, when used as directed, kills the user. There is no safe level of exposure to second-hand tobacco smoke. It is as dangerous as Radon.

The state has an obligation to provide a safe residential facility for the prisoners and a safe workplace for prison employees.

Thank you for the opportunity to provide this testimony.

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Testimony for PBS 4/2/2009 9:30:00 AM SB1073

Conference room: 309  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Michael Zehner  
Organization: Individual  
Address: Honolulu, HI  
Phone: 9520275  
E-mail: [mz9995@hotmail.com](mailto:mz9995@hotmail.com)  
Submitted on: 3/31/2009

Comments:

Isn't the prison system doing this already. So is the point of this bill just to waste legislative time?