

# HB 2266 HD1

**Measure Title:**

RELATING TO CORRECTIONS.

**Report Title:**

Requires the Department of Public Safety to address sexual assault in prison. Requires the department to provide annual data regarding acts of sexual assault and sexual misconduct. Requires the department to report to the Legislature on any implementation of the federal Prison Rape Elimination Act. Effective July 1, 2020.

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
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TESTIMONY ON HOUSE BILL 2266, HD1  
RELATING TO CORRECTIONS

by

Clayton A. Frank, Director  
Department of Public Safety

Senate Committee on Public Safety and Military Affairs  
Senator Will Espero, Chair  
Senator Robert Bunda, Vice Chair

Tuesday, March 16, 2010; 1:25 p.m.  
State Capitol, Conference Room 229

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

The Department of Public Safety (PSD) does not support House Bill 2266, HD1 that encourages PSD to provide appropriate counseling for victims of sexual assaults and to develop policies to achieve a zero-tolerance policy on sexual assault.

PSD currently has policy and practices in effect that follow the intent of this measure and the federal Prison Rape Elimination Act (PREA). The standards developed by the commission established under PREA were submitted to the Attorney General of the United States in June of 2009. Under PREA, the Attorney General is to develop federal regulations regarding prison sex assaults. The earliest date the federal regulations would be published would be June of 2010, with indications that the regulations will actually take longer to publish. All states have one year following the date the regulations are published to comply with the regulations. PSD staff have consistently attended seminars and meetings regarding PSD's compliance with the federal regulations once they are promulgated. PSD will

endeavor to comply with all state laws as well as the federal regulations once they are published.

PSD already complies with the intent of this measure and the standards established under PREA, and any sexual assault victim is currently offered counseling services. In addition, PSD is currently assessing the PREA standards and awaiting the federal regulations before it amends its policies any further to avoid unnecessary change and expense. PSD also provides statistics on sexual assaults within the system annually to the federal government, and can provide the same statistics to the Legislature upon request.

The Department believes HB 2266, HD1 is unnecessary as the actions required by the measure are already in place and will be appropriately amended when federal PREA regulations have been published. Any action taken now by the legislature on this matter would be premature.

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

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Tuesday, March 16, 2010

1:15 p.m.

Room 229

**STRONG SUPPORT with Suggestion for HB 2266 HD1 - Prison Rape**

**[PSMTestimony@capitol.hawaii.gov](mailto:PSMTestimony@capitol.hawaii.gov)**

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

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

HB 2266 HD1 requires the department of public safety to address sexual assault in prison. Requires the department to provide annual data regarding acts of sexual assault and sexual misconduct. Requires the department to report to the legislature on any implementation of the federal Prison Rape Elimination Act.

Community Alliance on Prisons is in strong support of this measure. The psychological effects of sexual abuse can re-traumatize victims for years following an assault, and studies show that victims have more physical health problems than non-abused individuals. Although sexual abuse typically leaves few visible scars, most victims report persistent, if not lifelong, mental and physical repercussions. Being violently assaulted in a correctional facility is simply not part of the sentences levied by the courts.

The Supreme Court ruled unanimously that deliberate indifference to the substantial risk of sexual abuse violates incarcerated individuals' rights under the Eighth Amendment and that courts have an active, supervisory role in ensuring prisoners' safety. Officials have a duty to protect prisoners because, as the Supreme Court said, "having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course."

Allowing any level of sexual abuse in a correctional setting creates a security breach that jeopardizes the safety of staff and incarcerated persons.

1. Every facility in Hawai'i at least one or two staff members be trained immediately as sex assault victimization counselors and available on call 24/7
2. Every facility in Hawai'i have a rapid response team whose training includes responding to sexual assault victimization
3. Every facility hand out educational materials on sex assault as a matter of course to staff, contractors, and incarcerated individuals
4. Protocols for dealing with sexual assault are posted on the department's website
5. Every contract for prison beds include clauses calling for facilities holding Hawai'i's incarcerated persons to have sex assault victimizations professional and rapid response teams as well as educational training and materials for staff and incarcerated persons.

Since 2000, Hawai'i taxpayers have shelled out more than \$5.6 million to settle claims against the Department of Public Safety - THIS IS BEFORE MANY DEATH AND SEX ASSAULT CLAIMS HAVE EVEN BEEN FILED.

Hawai'i taxpayers will end up spending millions of dollars more because of the lack of oversight of the Department of Public Safety's contracts with private prison vendors where several deaths and sex assaults have taken place.

Community Alliance on Prisons supports the Department of Public Safety's development of a department-wide strategy and specific policies and programs for inmate education as well as investigation, prosecution, provision of victim services, and accurate documentation of sexual assaults. This is crucial in light of recent events at Otter Creek, Saguaro, and OCCC.

The administration must cultivate management, staff and inmate buy-in to the strategy and develop staff in-service training programs that specifically address rape ensures that staff will be protected from false allegations.

The department should also develop inmate education programs that explain prison policies and practices regarding rape, inmate rights, and how to avoid assault and distribute educational materials in the Inmate Handbook that every incarcerated person must receive.

#### **SUGGESTION:**

In light of the economic crisis, the department should seek the assistance of community experts to present information on sexual assault to staff and incarcerated persons. Perhaps mandating that PSD set up a collaborative relationship with community sex assault experts could start formalizing the process.

PSD has testified in opposition to this bill saying that they already have procedures in place. We know that sex assault is continuing in both state and contract prisons. This must STOP now.

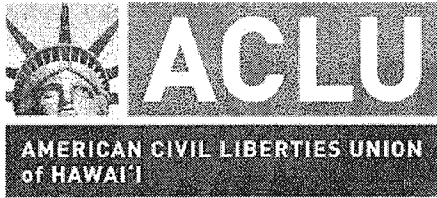
Leadership matters because corrections administrators can create a culture within facilities that promotes safety instead of one that tolerates abuse.

Good leaders not only have a policy on paper, they ensure that the policy is reflected in practice by carefully assessing and responding to attitudes, beliefs, and values that support or conflict with a culture of zero tolerance.

Prison rape and sexual assault is an unaddressed problem at Hawai'i and contract prisons that must be addressed immediately.

We urge the committee to pass this important measure.

Mahalo for this opportunity to testify.



Committee: Committee on Public Safety and Military Affairs  
Hearing Date/Time: Tuesday, March 16, 2010, 1:25 p.m.  
Place: Room 229  
Re: Testimony of the ACLU of Hawaii in Strong Support of H.B. 2266, H.D. 1,  
Relating to Corrections

Dear Chair Espero and Members of the Committee on Public Safety and Military Affairs:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in strong support of H.B. 2266, H.D. 1, which seeks to require the Department of Public Safety (“DPS”) to address sexual assault in prison, provide annual data regarding acts of sexual assault and sexual misconduct and report to the legislature on any implementation of the federal Prison Rape Elimination Act.

The ACLU of Hawaii receives numerous requests for assistance from Hawaii inmates each year alleging sexual assaults by other inmates and correctional facility staff. We have particular concerns about the private prisons on the mainland, because of their distance and lack of oversight. As this Committee is certainly aware, Hawaii *and* Kentucky recently removed their prisoners from the Otter Creek correctional facility after numerous sexual assaults on inmates were alleged and proven. It is imperative that DPS develop policies and procedures to address sexual assault so as to prevent future sexual assaults and the resulting lawsuits.

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,

Laurie A. Temple  
Staff Attorney

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Honolulu, Hawai'i 96801  
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the  
**Drug Policy  
Forum**  
of hawai'i

March 16, 2010

To: Senator Will Espero, Chair  
Senator Robert Bunda, Vice Chair and  
Members of the Committee on Public Safety and Military Affairs

From: Jeanne Y. Ohta, Executive Director

RE: HB 2266 HD1 Relating to Corrections  
Tuesday, March 16, 2010, 1:25 p.m., Room 229

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of HB 2266 HD1 Relating to Corrections. This measure proposes to establish policies and standards to provide appropriate treatment to victims of sexual assault in prison and to prevent the occurrence of sexual assaults in prisons.

State and prison officials have a duty to protect inmates from sexual assault and to provide the necessary care should an assault occur. Sexual assault can have persistent, long-lasting psychological effects on victims. Since those effects will likely last even after release from prison, they cannot and should not be ignored by the responsible agencies. Proper treatment must be given in a timely manner.

This measure proposes the bare minimum of policies regarding sexual assault. Among other policies that should be considered: requiring one or two staff members in each facility to be trained sexual assault counselors; a trained rapid response team; and that staff and inmates are all acquainted with the department's protocols dealing with sexual assault. These policies should also be required of contracted prisons housing inmates from Hawai'i.

The Department of Public Safety must create a culture within its facilities that does not tolerate sexual assault. Staff should not be allowed to be indifferent to the sexual violence that occurs within the walls of prisons.

Please pass this bill as a starting point to preventing sexual assault in our prisons and in contracted prisons. Thank you for this opportunity to provide testimony.

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March 15, 2010

### **Testimony in Support: HB 2266 HD1 Relating to Corrections**

**To:** Senator Will Espero, Chair, Senator Robert Bunda, Vice Chair, and Members of the Senate Committee on Public Safety and Military Affairs

**From:** Katie Reardon, Vice President of Government & Public Affairs

**Re:** Testimony in Support of HB 2266 HD1, Relating to Corrections

Planned Parenthood of Hawaii supports HB 2266 HD1, Relating to Corrections. This bill establishes procedures to be followed by the department of public safety to provide better treatment to victims of rape and sexual assault in prison and to prevent sexual assaults in Hawaii prisons.

Sexual assault in prisons occurs at an alarming rate. In 2007, the National Inmate Survey found that approximately 60,500, or 4.5% of inmates became victims of rape or sexual assault in a one-year period.<sup>1</sup> Men, women, and juveniles in state and federal prisons face a higher rate of sexual violence than the general population. That survey also found that perpetrators of these assaults are often prison staff, rendering victims less likely to report to authorities and receive needed services.<sup>2</sup>

The prison environment exacerbates the myriad physical and mental health consequences of sexual assault. Victims are at risk for unwanted pregnancy and sexually transmitted infections, including HIV/AIDS. The risk of STI infection is significantly higher among incarcerated populations. Studies suggest that the rate of HIV/AIDS infection among prison populations is anywhere between 3 and ½ times to 10 times the infection rate in the general US population and other sexually transmitted diseases, including syphilis and Hepatitis are similarly common.<sup>3</sup> Most victims suffer some mental health effects, Post Traumatic Stress Disorder being the most common. Symptoms of PTSD include depression, sleeplessness, isolation, difficulty concentrating, anxiety and hypervigilance, and flashback episodes.<sup>4</sup> Without counseling or care, sexual assault victims may develop serious and lifelong mental health issues.

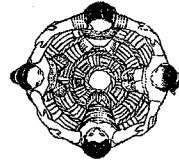
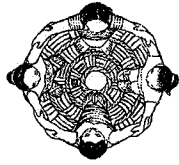
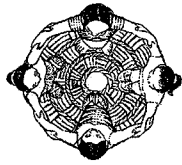
No matter what circumstances have led to an individual's incarceration, no inmate should be exposed to sexual violence. And when sexual assaults do occur, every victim has the right to proper and timely medical care and services. Planned Parenthood of Hawaii believes that all people have the right to sexual and reproductive self-determination, free from violence, coercion, and exploitation. We urge you to pass HB 2266 HD1 as a means to provide better care for inmates who become victims of sexual violence and to work towards the elimination of prison rape in our state.

<sup>1</sup> *Sexual Victimization In State and Federal Prisons as Reported by Inmates*, National Inmate Survey, Bureau of Justice Statistics, 2007

<sup>2</sup> Id.

<sup>3</sup> *The Impact of Prison Rape on Public Health*, D.M. McGuire, California Journal of Health Promotion, Vol.3 Issue 2, 2005

<sup>4</sup> *Diagnostic and Statistical Manual of Mental Disorders*, Vol. IV, American Psychiatric Association.



# Hawai`i Women's Coalition

March 15, 2010

To: Senator Will Espero, Chair  
Senator Robert Bunda, Vice Chair and  
Members of the Senate Committee on Public Safety and Military Affairs

From: Ann S. Freed, Co-Chair of the Hawai`i Women's Coalition

Re: HB2266 HD1 relating to prison reform in regards to rape.  
Hearing: Friday February 19, 2010 at 9:15 a.m., Conference Room 229

Position: **STRONG SUPPORT**

Thank you for allowing me to testify today, in strong support of HB 2266. This important piece of legislation would address the abuse of power and consequent victimization of those incarcerated in our prison system and would do much to redress the injustice in our justice system.

Requiring the department of public safety to be accountable by providing annual data regarding acts of sexual assault and sexual misconduct and also requiring the department to report to the Legislature on any implementation of the federal Prison Rape Elimination Act could go a long way towards inserting **needed checks and balances within the prison system.**

The Hawai'i Women's Coalition finds that redressing this crime that is used as a form of terror inside and outside of prison walls will at least remove it as a source of further dehumanization of incarcerated women and men.

Women are not the only victims of rape in prison, but as women we are often vulnerable targets of predators inside and outside of prison walls. Rape as a threat is something that every woman in every nation lives with on a daily basis. Rape as a tool of domination and demoralization is used to break the spirit inside prison walls, in worldwide sex trafficking and on international battlefields.

We do not trust in the statements of those in the criminal justice system that this legislation is unnecessary and redundant. The proof is in the existence and prevalence of rape within prison walls. If prisons are to be sources of rehabilitation and redemption then we should no longer turn a blind eye to the dehumanization of prisoners through the bestiality of rape. No man, woman or child deserves to be the victim of this heinous crime.

Mahalo nui loa for your consideration of this legislation.

FROM: MAILINGLIST@CAPITOL.HAWAII.GOV [MAILTO:MAILINGLIST@CAPITOL.HAWAII.GOV]  
SENT: FRIDAY, MARCH 12, 2010 6:05 PM  
TO: PSM TESTIMONY  
CC: ERINANN815@AOL.COM  
SUBJECT: TESTIMONY FOR HB2266 ON 3/16/2010 1:25:00 PM

TESTIMONY FOR PSM 3/16/2010 1:25:00 PM HB2266

CONFERENCE ROOM: 229  
TESTIFIER POSITION: SUPPORT  
TESTIFIER WILL BE PRESENT: No  
SUBMITTED BY: ERIN RUTHERFORD  
ORGANIZATION: INDIVIDUAL  
ADDRESS:  
PHONE:  
E-MAIL: ERINANN815@AOL.COM  
SUBMITTED ON: 3/12/2010

COMMENTS:

THIS BILL COULD GREATLY BENEFIT INMATES WHO HAVE EXPERIENCED AND STRUGGLED WITH SEXUAL ASSAULT. ALTHOUGH THE PSD SAYS THEY HAVE PLICIES SET IN PLACE TO HANDLE THIS PROBLEM, IT IS CLEAR THAT THEY ARE NOT BEING IMPLEMENTED CORRECTLY. THIS NEW BILL WOULD BE A GREAT ASSEST TO HAWAII'S INMATES.