



Committee: Committee on Finance  
Hearing Date/Time: Friday, February 19, 2010, 2:00 p.m.  
Place: Room 308  
Re: Testimony of the ACLU of Hawaii in Strong Support of H.B. 2266,  
Relating to Corrections

Dear Chair Oshiro and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in strong support of H.B. 2266, 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.

Further, DPS should be required to report comprehensive sexual assault data to the Legislature to ensure DPS' accountability and transparency.

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

American Civil Liberties Union of Hawaii  
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the  
**Drug Policy  
Forum**  
of hawai'i

February 19, 2010

To: Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair and  
Members of the Committee on Finance

From: Jeanne Y. Ohta, Executive Director

RE: HB 2266 Relating to Corrections  
Hearing: February 19, 2010, 2:00 p.m., Agenda #4

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of HB 2266 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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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn Lee, Vice Chair

Friday, February 19, 2010

2:00 p.m.

Room 308

**STRONG SUPPORT** of HB 2266 – Prison Rape

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

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety 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 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.

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, Saguro, 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.

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.

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 a 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.

## **FINTestimony**

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**From:** diasohana1@hawaiiantel.net  
**Sent:** Thursday, February 18, 2010 2:06 PM  
**To:** FINTestimony  
**Subject:** Support of HB 2266

COMMITTEE ON FINANCE

Rep. Marcus Oshiro,  
CHAIR  
Vice Chair

Rep. Marilyn Lee,

Friday, February 19,

2010  
Agenda #4

2:00 p.m. –  
Room 308

**STRONG SUPPORT of HB 2266**

Those of us listed below are registered voters and we strongly support

### **HB 2266 - Prison Rape**

Our family member was raped in Otter Creek Kentucky and **nothing** was done to support her or to properly and adequately help her to heal. She will carry it with her for the rest of her life. The federal Prison Rape Elimination Act was totally ignored and the DPS was NOT reprimanded for their lack of action and/or implementation of the PRE Act.

The Department of Public Safety must be held responsible in addressing sexual assault in prison.

We appreciate Rep. Evans' submission of this bill.

Sincerely,

The family of Totie Tauala, the whistleblower and only Hawaiian inmate who did NOT return home from Otter creek:

Lela  
Hubbard  
Mary K.  
Dias  
Kekoa A.K.  
Dias  
Keoki A.W.  
Dias  
Margaret Dias  
Pilago  
Regina Dias  
Tauala  
Earl Peahi

Jr.

W. Sterling Reid