

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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No. \_

TESTIMONY ON SENATE BILL 210, SD2  
RELATING TO CORRECTIONS

By

Clayton A. Frank, Director  
Department of Public Safety

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

Thursday, March 19, 2009; 10:00AM  
State Capitol, Conference Room 309

Representative Hanohano, Representative Aquino, and Members of the Committee:

The Department of Public Safety (PSD) **strongly opposes** Senate Bill 210, SD2 which seeks to codify in statute standards governing the transfer of inmates between in state correctional facilities and those that house inmates from Hawaii under contract with the Department on the mainland. The measure is unnecessary as the PSD previously established sound standards used to assist in identifying and determining the transfer of inmates using a "sequential phasing" process. This process initially provides for the assessment and classification determination of inmates and their program/rehabilitative needs and the degree of danger they may pose to the community, other inmates/staff, and themselves.

This is accomplished using valid assessment and associated trailer instruments such as the Level of Service Inventor - Revised (LSI-R), Adult Substance Use Survey (ASUS), Static 99 and Acute (Sex Offender Assessment Instruments), Domestic Violence (DV) trailer and others. These instruments are nationally recognized assessment tools that assist PSD and other correctional jurisdictions around the county in determining the level of risk an offender may pose (classification / security level) and the rehabilitative programs needs that specifically addresses the criminogenic factors that led to the criminal behavior for inmates that qualify to be transferred to mainland facilities.

The sequential phasing process allows for the orderly scheduling of inmates that wish to participate in identified program within their respective custody level, which also facilitates timely transfers between in state correctional. This process allows those incarcerated to participate in recommended programs prior to the end of their longest minimum sentence, which helps facilitate their transition back into the community. At times, in order for inmates to complete all of the recommended programs and/or to ensure they are housed at a correctional facility commensurate with their classification level, transfers are necessary.

As written, SB 210, SD2 seeks to require the PSD to consider non-traditional and clearly unsound correctional management practices when determining which inmates should be transferred. This measure will severely affect PSD's ability to effectively and efficiently manage the inmate population. It is already very difficult to manage the inmate population and address protective custody, separate issues, inmate gangs, and other valid security threat groups. For these reasons and others, no jurisdiction in the country operates under a "voluntary" transfer system in which one offender replaces another by volunteering to be relocated. To do so would in affect place the wishes of the offender above the operational, security, and safety of the facility, staff, and the general public.

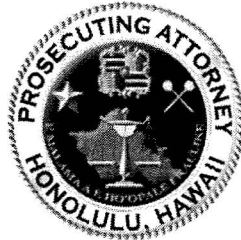
If enacted, this measure would frustrates legitimate government operations, places staff and the public at risk, and add to the already over burdensome administrative requirements and responsibilities of institutional case managers and correctional supervisors, and correctional managers. In addition, as written this measure opens up the state to almost limitless liability as overcrowding in our state facilities will become unbearable and create cruel and usual punishment conditions that will trigger Department of Justice oversight, which will cost the state millions of dollars.

Further, the United States Supreme Court has ruled that inmates **do not** have a con-stitutional right to determine the location of their incarceration. The PSD recommends this measure be held. Thank you for the opportunity to provide testimony on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE FAYE HANOHANO, CHAIR**  
**HOUSE COMMITTEE ON PUBLIC SAFETY**  
Twenty-fifth State Legislature  
Regular Session of 2009  
State of Hawai'i

March 19, 2009

**RE: S.B. 210, S.D. 2; RELATING TO CORRECTIONS.**

Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney submits the following testimony in opposition to SB 210, SD 2.

The purpose of this bill is to create statutory criteria in Hawaii Revised Statutes chapter 353 which regulate the transfer of inmates between correctional facilities. In addition, SB 210, SD 2 provides that felons who volunteer to be transferred shall be given preference in the department's decision on transferring inmates.

We oppose this bill as we believe it will hamper the department's effort to safely and effectively manage inmate populations, programs and correctional facilities. The department already has multiple issues it considers in housing inmates; it must consider issues such as inmate gangs, inmates who need protective custody, appropriate levels of security and facility overcrowding. To permit the individual desire of the inmate to be the overriding factor in determining where an inmate is held, will make effective population management unachievable. We suspect that instead of saving the state money, this bill might actually increase costs because some facilities may not have sufficient resources while other facilities which have more resources may be underutilized.

For these reasons, we oppose the passage of SB 210, SD 2 and thank you for this opportunity to testify.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, March 19, 2009

10:00 AM

Room 309

**SB 210 SD2 - ESTABLISHING CRITERIA FOR TRANSFERS**

**SUPPORT WITH AMENDMENTS**

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

Aloha Chair Hanohano, Vice Chair Aquino 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 the quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

SB 210 SD2 specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawai'i and correctional facilities located abroad.

Community Alliance on Prisons respectfully asks the committee to consider the following amendments:

1. **Hanai:** Because of Hawai'i's unique family structure, we believe that the inclusion of '**hanai**' - where an ongoing relationship exists (i.e. visits, phone calls, correspondence, etc) - must be respected and included. It's the relationship that counts, not just biology!

2. **Notice:** Removing human beings from Hawai'i (some who have never before left the islands) and away from their home and the people they love can be traumatic for the inmate and his/her loved ones, especially for the children. PSD doesn't have to give an exact date - they could notify that inmate that his/her name is on a transfer list within the next few months. That would at least help the inmate and his/her loved ones prepare for the separation and give the family time to make whatever arrangements are necessary, especially those concerning the children.

Other states that transfer inmates have established criteria for the transfer of inmates, but the Hawai'i Department of Public Safety has opposed any accountability or transparency in the transfer of inmates. Washington, California, and Alaska not only have criteria for the transfer of their inmates, they post it on their websites. Why can't Hawai'i do the same?

Please pass SB 210 SD2. It is humane and respectful. PSD should be modeling the behavior we want to see our inmates follow. Mahalo for this opportunity to testify.



the  
**Drug Policy  
Forum**

March 19, 2009

To: Representative Faye Hanohano, Chair  
Representative Henry Aquino, Vice Chair  
And Members of the Committee on Public Safety

From: Jeanne Ohta, Executive Director

RE: SB 210 SD2 Relating to Corrections  
Hearing: March 19, 2009, 10:00 a.m., Room 309

Position: Support

I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii testifying in support of SB 210 SD2 which clarifies the circumstances that an inmate may be transferred between facilities in Hawai'i and those outside of Hawai'i.

The bill amends Chapter 353 to create a statute that the director shall consider various factors when transferring inmates. Among the considerations are the individual's current programming and if it could be continued at another facility.

Transfers should be systematically planned; they should not be haphazard nor should they give the impression that they are retaliatory. Good business practices and common sense mandate a plan establishing criteria for transfer inside and outside of Hawai'i.

Families should know if there are plans to transfer their family member. Maintaining contact and relationships with their families can motivate successful transition from prison back into the community. Transferring inmates and disrupting those important relationships can make maintaining those ties more difficult. It is also not fair that appropriate programs are unavailable when those programs are required for parole consideration.

In my role with DPFH, I have had inquiries from family members as to how the decision to transfer inmates is made. It would be beneficial to those family members to have clear criteria so that they understand what is happening. Transparency would help everyone.

Please pass SB110 SD2 as it would be good public policy for the operations of the department, for those incarcerated and for their families.

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**COMMITTEE ON PUBLIC SAFETY**

Rep. Faye Hanohano, Chair  
Rep. Henry Aquino, Vice Chair  
Thursday, March 19, 2009  
10:00am  
Room 309

**SUPPORT: SB 210, SD2 RELATING TO CORRECTIONS (Criteria for Out of State Transfers)**

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

My name is Carrie Ann Shirota, and I am writing in strong support of SB 210, SD2. My experiences as a former Public Defender and staff member of a reentry program on Maui and member of Community Alliance on Prisons have shaped my advocacy efforts to promote accountability and transparency within our correctional system, and increase opportunities for individuals to better release for their release as law-abiding, contributing members of their `ohana and community.

SB 210 SD2 clarifies the circumstances under which inmates may be transferred between Hawai'i facilities and facilities outside of Hawai'i. The bill amends Chapter 353 to create a statute that the director shall consider the individual's 1) current programming and if it could be continued at another facility, 2) family and whether transfer would interrupt contact, and 3) willingness to be transferred. It also gives the individual 14 days notice so they can contact their loved ones and make any arrangements necessary for their families as well as the right to appeal the transfer.

***For too long, the Department of Public Safety has transferred men and women to out of state prisons without regard to any standards that take into consideration the rehabilitation needs of the incarcerated individual, as well as the impact that such a transfer will have on the incarcerated person's `ohana.***

Many years ago, Hawai'i provided individuals with a hearing prior to making transfer decisions to prisons on the Mainland. And while other states provide opportunities for incarcerated persons to have a hearing prior to taking the drastic measure of transferring them to another state, our incarcerated brothers and sisters are not provided with any means of due process. The manner in which we currently transfer individuals to Mainland prisons has changed for the worst. The practice of ACOs showing up at one's cell and directing the individual to pack their bags without having an opportunity to challenge whether the transfer promotes rehabilitation and visit with their loved ones before being exported thousands of miles away is cruel and inhumane. Its effect is to not only to punish the prisoner, but to further punish their families. Where is the aloha spirit in that practice?

I pray that our elected representatives will enact this bill that will mandate the Department of Public Safety to adhere to established criteria regarding transfers, particularly when transferring to out of state prisons. As it stands, the lack of transfer criteria leads to abuse of power and retaliatory transfers. Furthermore, since CCA has the ability to accept or reject "management problem" prisoners, the lack of transfer criteria has the perverse effect of making it more likely that prisoners with no institutional misconduct will be accepted by CCA and transferred from their homeland. Accordingly, I strongly urge you to support SB 210 SB2!

Sincerely,

Carrie Ann Shirota, Esq.  
Wailuku, Hawaii  
(808) 269-3858

**COMMITTEE ON PUBLIC SAFETY**

Rep. Faye Hanohano, Chair  
Rep. Henry Aquino, Vice Chair  
Thursday, March 19, 2009  
Room 309  
8:30 AM  
SB210, SD2  
STRONGLY SUPPORT

Dear Chair Hanohano and members of the committee,

I am the Assistant Director of the BEST program on Maui. The BEST program is a re-entry program for incarcerated men and women. We work closely with inmates and their families to assist with their transition into the community in order to prevent recidivism and protect the safety of the public.

I support SB 210 because of principle and experience. I have had to listen to distraught, angry and confused family members whose loved ones were transferred off island or to the mainland with no notice or warning.

I understand that issues of safety prevent the PSD from being specific or exact about the movements of prisoners. However it is impractical and immoral not to give the families some idea that the visit they are on could be their last one for awhile. Punishment for an individual should not include the destruction of their entire family. Prisoners could be notified that they will be moved sometime in the near future thereby both ensuring public safety and allowing the families adequate notice. This is especially crucial when there are children involved.

I would also like to express my support for the "hanai" amendment. HRS 515-3 (The Fair Housing Law) includes hanai children in its definition of "family" which indicates that there is precedent for the legislature to adopt a culturally sensitive and expansive interpretation to its definitions.

Thank you for taking the time to consider my testimony.

KEVIN BLOCK, J.D.  
ASSISTANT DIRECTOR  
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PHONE: 808-249-2990 EXT. 320  
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*"FOR TO BE FREE IS NOT MERELY TO CAST OFF ONE'S CHAINS, BUT TO LIVE IN A WAY THAT RESPECTS AND ENHANCES THE FREEDOM OF OTHERS."*

*~NELSON MANDELA*

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COMMITTEE ON PUBLIC SAFETY

Rep. Faye P. Hanohano, Chair

Rep. Henry J. C. Aquino, Vice Chair

Thursday, March 19, 2009

0830 AM

Conference Room 309

**SB 210 SD2 — ESTABLISHING CRITERIA FOR INMATE TRANSFER**

**STRONG SUPPORT**

Dear Chair, Vice Chair and Members of the committee:

Thank you for the opportunity to submit my testimony.

I strongly support this bill because it is a family issue. For a family or marriage to sustain, there must be contact with the inmates and their families. Moving them out of state creates a situation that works against building on a relationship. How can we expect an inmate to have hope in seeing his family and giving him the strength to conduct himself according to our rules and regulations if there is nothing for him outside the prison walls.

The matter of voluntary transfers should be included in the bill because there are inmates who prefer the conditions in the mainland versus Halawa. And, there are those who would give up their space here to make room for others to be able to come home. Many of these inmates have been abandoned by their families and would not mind moving to the mainland

It would also be "nice" if the department's policy on transfers were known to the inmates as well as the general public.

Thank you,

Elaine Funakoshi