

SB 2540

Measure Title:
Relating To Public Safety.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

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Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 2540
RELATING TO PUBLIC SAFETY

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, February 2, 2010; 1:25PM
State Capitol, Conference Room 229

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

The Department of Public Safety (PSD) **strongly opposes** Senate Bill 2540. This measure seeks to require the Department to work with Ohana'opakele and other restorative justice groups to plan for the creation of a pu'uhonua or wellness center on lands owned by the State, giving preference to the grounds of the former Kulani Correctional Facility (KCF).

While the State continues to own the land where the former KCF was located, including the buildings, infrastructure, and surrounding lands, the PSD has entered into a memorandum of agreement (MOA) with the Department of Defense (see attached MOA), which authorizes their use of the former KCF, buildings, infrastructure, and surrounding lands for a Youth Challenge Academy. Therefore, PSD does not currently have operational control of the former KCF, the buildings, infrastructure, nor the surrounding lands.

Since the Youth Challenge Academy is solely for juveniles, and because there is an inherent risk to juveniles if programmed along side adult offenders, PSD strongly advises the legislature against any attempt to co-mingle these two populations at the same location.

In addition, at present there is no funding available to develop, staff, and operate a wellness center. The funds required to do so would be in addition to funding required to provide security to prevent thefts, vandalism, and hunters from accessing the property.

Further, when reviewing programs for possible implementation, among other requirements, PSD requires the programs to have evidenced based curriculum that have measurable outcomes, and provide relevant knowledge and/or skills to the offenders serviced. Programs cannot exclude any offender regardless of race, religion, sex, ethnicity, sexual orientation, economic status, etc. As written, SB 2540 could be seen as prejudicial or discriminatory as other ethics groups would not be provided with the same and/or similar programs. Therefore, this measure exposes the State to potentially costly federal litigation.

Finally, given the current unprecedented economic realities facing the state coupled with the inherent federal legal challenges of implementing this measure, PSD respectfully requests SB 2540 be held.

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

Attachments

MOA – Department of Public Safety/Department of Defense for Kulani

MEMORANDUM OF AGREEMENT
(COOPERATIVE AGREEMENT)

BETWEEN

DEPARTMENT OF PUBLIC SAFETY

AND

DEPARTMENT OF DEFENSE

FOR A

YOUTH CHALLENGE ACADEMY PROGRAM

AT

KULANI PRISON FACILITIES

I. Background

- A. The Department of Public Safety (PSD) has determined that at the present time, it will close its corrections operations at Kulani Prison Facility (Kulani) located on the Island of Hawaii. PSD, however, does not intend to transfer the property out of its inventory. It will instead hold the property for future use.
- B. The Department of Defense (DOD) is in need of space to use, occupy and operate its Youth Challenge Academy program.

II. Parties' Purpose and Scope

- A. This Memorandum of Agreement (Cooperative Agreement), hereafter "MOA," implements the negotiations between PSD and DOD for the use, occupancy and maintenance of the Kulani property denoted as TMK (3)2-4-008-009 (Kulani) by DOD for its Youth Challenge Academy program. PSD and DOD enter into this MOA in consideration of the many benefits to PSD, DOD, the children of this State, and their communities that would result from the operation of this program at Kulani.
- B. DOD will use, occupy, be responsible for and fully maintain Kulani, which description is more fully set forth in Attachment 1, DESCRIPTION OF KULANI PRISON FACILITY, which is made a part of this MOA by reference.

III. Terms and Conditions

- A. Term of Agreement: The MOA expires twenty-five (25) years from its effective date or, within this period, after thirty (30) days written notice by either party is given to terminate the MOA with 12 months from the date of the written notice to implement the termination.
- B. Responsibility for Obligations related to the use and occupancy of Kulani: DOD shall be responsible for maintenance of Kulani in its entirety after November 20, 2009. Further, DOD shall be responsible for all performance and obligations under those agreements set forth in Attachment 2, LIST OF CONTRACTED OBLIGATIONS, in place of PSD.
- C. Responsibility and Obligations related to use of PSD property: Certain property on the premises incidental to its use will remain at Kulani. A list of the Kulani inventory which PSD will allow DOD to use, subject to DOD maintenance and repair, is currently being developed and will be signed by both agencies and attached to the MOA in the future.
- D. DOD will be responsible for the coordination and cost associated with the preparation of an Environmental Baseline Study (EBS) for the Kulani property. The areas that will be covered under the EBS are the main camp site, the wastewater treatment plant, the nursery/piggery, the reservoir system, the pump house, the quarry, and the solid waste transfer area. PSD will be responsible for all remediation cost associated with the clean

up, if any, of any hazardous materials identified in the EBS which existed before November 20, 2009. DOD shall be responsible for all remediation cost associated with the clean up, if any, of any hazardous materials identified in the EBS after November 20, 2009. Priority for remediation will be given to areas that require access by students and staff for operational purposes of the YCA program.

- E. PSD Access to Kulani: With twenty-four (24) hours notice to DOD, PSD is entitled to access all portions of Kulani, from time to time, for the purpose of determining compliance with this MOA and monitoring same.
- F. The terms of the MOA may be modified only in writing and the written agreement to modify must be signed by both PSD and DOD.
- G. Nothing in this MOA shall be construed as an indemnification of one party or another for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this MOA. DOD is responsible for any and all claims, suits, and demands arising out of or resulting from the acts or omissions of DOD's employees, officers, agents, and others under their supervision. PSD is responsible for any and all claims, suits, and demands arising out of or resulting from the acts or omissions of PSD's employees, officers, agents, and others under their supervision. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of the MOA.
- H. Any written notice required to be given by any party to this MOA shall be (a) delivered personally, or (b) by United States certified mail, postage prepaid.

Notice to PSD shall be sent to:

Director
Department of Public Safety
919 Ala Moana Blvd., 4th Floor
Honolulu, Hawaii 96814

Notice to DOD shall be sent to:

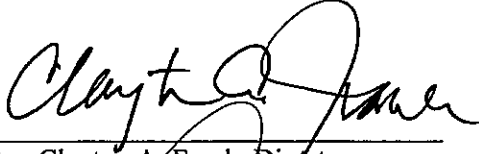
Adjutant General
Department of Defense
3949 Diamond Head Road
Honolulu, Hawaii 96816

A notice shall be deemed to have been received three (3) days after mailing or emailing or at the time of actual receipt, whichever is earlier.

- I. Effective Date: This MOA is effective upon its signing by all parties AND receipt by PSD of all of the following from DOD.

MOA – Department of Public Safety/Department of Defense for Kulani

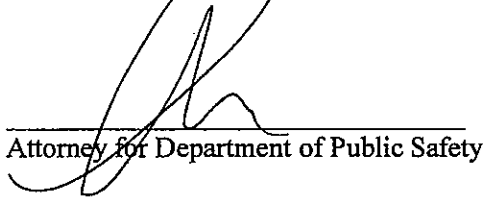
DEPARTMENT OF PUBLIC SAFETY



By: Clayton A. Frank, Director

1/6/2010

Date



Attorney for Department of Public Safety

January 6, 2010

Date

DEPARTMENT OF DEFENSE



By: Major General Robert G.F. Lee
Adjutant General

Jan 11, 2010

Date



Attorney for Department of Defense

1/10/10

Date

DESCRIPTION OF KULANI PRISON FACILITY

By this MOA DOD agrees to be responsible for that portion of Kulani Prison Facility (“Kulani”) consisting of the real property and all buildings and appurtenances currently existing thereon in TMK (3) 2-4-008-009.

A Survey Map showing the property is also attached to aid in boundary identification.

The buildings and other structures on the premises are as follows:

- A. 2 Guard Shacks
- B. Visiting/Crafts Building
- C. Administration Building
- D. Control Station/Security
- E. Business Office
- F. Mess Hall and Kitchen Building
- G. Gymnasium
- H. Program Building
- I. Camp Building—Mauna Loa Forestry Camp
- J. Parking Area Building
- K. Service Station
- L. Quonset Hut/Storage Structure
- M. Garage and Office/Tool Room
- N. Vocational Training Building
- O. Laundry Building
- P. Hobby Shop
- Q. Old Piggery Site fencing
- R. Kulani Pump House
- S. Frame Storage Building
- T. Dormitory Buildings 1 thru 7
- U. Residency Building
- V. Treatment Plant
- W. Farm and Ranch Area
- X. Piggery
- Y. Reservoir System
- Z. Wastewater Treatment Plant
- AA. Boy’s School

LIST OF CONTRACTED OBLIGATIONS

The following is a list of the duties and obligations PSD currently has for the operation of Kulani.

- A. D. L. Downing General Contractor, Inc—for Fuel monitoring system, contract in place and to be provided.
- B. Aqua Engineers—for Wastewater treatment, contract in place and to be provided.
- C. Pure-all-for water purification, contract in place and to be provided.
- D. THREE MOUNTAIN ALLIANCE MEMORANDUM OF UNDERSTANDING—for cooperative watershed/land management effort, copy to be provided.
- E. Maintenance of Stainback Highway to Kulani Correctional Facility —Refer to Executive Order 3678 and Act 91 (1999) as amended by Act 281 (2000), section 148.3, Session Laws of Hawaii.
- F. Precautions necessitated by volcanic emissions—We attach for your use and consideration PSD's Policies and Procedures implemented with the assistance of the State of Hawaii Department of Health.
- G. Electricity and Water (trucked) and other utilities as needed.

Setting aside Paragraphs D and E, which DOD agrees to continue, the only private contract which PSD currently has and which DOD agrees to continue beyond November 20, 2009, is with Aqua Engineers. PSD agrees that after November 20, 2009, it will transfer its contract with Aqua Engineers to DOD for DOD to perform.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Tuesday, February 2, 2010

1:25 PM

Room 229

SUPPORT - SB 2540 - Kulani Lands, Wellness Center

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 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.

SB 2540 requires the department of public safety to plan for a model wellness center to be built in East Hawai'i and report to legislature in 2011.

CAP is in strong support of culturally competent programs

MEO's BEST Reintegration program has proven that culturally competent programs reduce recidivism - their rate is 40% compared with the more than 50-60% recidivism rate experienced by the state.

The effectiveness of restorative practices (like restorative circles included in Act 8, The Community Safety Act, Hawai'i's reentry law) is illustrated in the following studies by the University of Cambridge, showing a 27% reduction in recidivism. Restorative practices hold lawbreakers accountable and allows for the healing of the spirit, something that is not generally not included as part of rehabilitation.

A University of Sheffield report evaluating seven Cambridge University-led experiments in restorative justice found, *"The experience of "restorative justice", in which offenders confront their crime victims, reduces the frequency of reconviction by an average of 27%, the independent evaluators of the scheme have found."*

"The experiments compared almost 400 cases where offenders had attended restorative justice conferences to some 400 cases where they had not. During the conferences offenders listened to victims describe the harm the crimes had caused. Each conference lasted from one to three hours, often in prison settings. Victims found the process helpful and positive, while some offenders have described the meetings as "traumatic", as well as life-changing."

The news release from the University of Cambridge states, *"The Sheffield report estimates that £9 of costs to victims and the criminal justice system was saved for every £1 spent on delivering these conferences. The study examined whether offenders within the restorative justice group were reconvicted within a two-year period. It also shows the percentage by which the rate of reconviction within that period fell among different types of criminal in different parts of the country following the restorative justice programme.*

The rate of reconviction for violent offenders sentenced to supervision by the Probation Service under a community sentence in Thames Valley, for example, fell by 55%. The rate of reconviction among career burglars in London fell by 15.5%.

"These results leave little doubt that restorative justice is both effective and cost-effective at preventing crime," Sir Charles Pollard said. "Since 75% of all convictions in England and Wales are reconvictions of repeat offenders, in principle we could see restorative justice reduce crime substantially across the country."

(Source: <http://www.admin.cam.ac.uk/news/dp/2008070103>)

Directly addressing an individual's pathway to crime is the best way to rebuild lives, restore families and revitalize communities. Ignoring the spiritual side of human beings has not been successful. Hawai'i must look to our host culture and their practices to heal our communities and bring people together. Marginalizing individuals only promotes crime. **We are Hawai'i. We care for each other and we care about each other.**

PSD's own study on reclassification showed that we are over-classifying individuals, which is against correctional best practices. Lawbreakers who are ready to be placed in the community could be sent to a pu'uhonua to assist their reentry and successful reintegration. These are the things that have been shown to help individuals exiting incarceration. Let's pursue what works.

Hawai'i is lucky to have practitioners who are ready, willing, and able to step up to help our community. Let's use our wonderful community resources to build safe and healthy communities.

Community Alliance on Prisons supports SB 2540 and urges the committee to pass this bill.

Mahalo for this opportunity to share our thoughts.



the
**Drug Policy
Forum**
of hawai'i

February 2, 2010

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

From: Jeanne Ohta, Executive Director

RE: SB 2540 Relating to Public Safety
Hearing: February 2, 2010, 1:25 p.m., Room 229

Position: Support

The Drug Policy Forum of Hawai'i writes in support of SB 2540 Relating to Public Safety which would require the department to plan for a model wellness center to be built in East Hawaii.

DPFH supports the use of culturally competent programs and the establishment of a wellness center based on the concepts of pu'uhonua where people can go to heal. This proposal provides for a holistic approach including cultural identity, spirituality, and strength to get to the core, the reason for drug addiction or drug abuse.

DPFH also supports the use of the site of the Kulani Correctional facility for the wellness center.

This measure has great merit. We urge the committee to pass this measure so that Hawai'i will start treating drug use, drug addiction, and drug abuse using health and wellness measures. Thank you for this opportunity to provide testimony.

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Will Espero, Chair

Senator Robert Bunda, Vice Chair

Tuesday, February 2, 2010; 1:25 PM; Room 229, State Capitol

SUPPORT SB 2540

RELATING TO PUBLIC SAFETY

Requires the department of public safety to plan for a model wellness center to be built in East Hawaii. Report to legislature in 2011.

Aloha Senators Espero and Bunda and members of the Committee on Public Safety and Military Affairs! My name is Samuel Kaleleiki, Jr., President of Ohana Hoopakele, an organization dedicated to rescuing our *pa`ahao* or incarcerated brothers and sisters in prisons. Our vision is to build a *pu`uhonua* or a Wellness Center that heals rather than punishes. We have been sending spiritual advisors to lead our *paahao* in the Makahiki ceremonies at both Diamondback prison in Watonga, Oklahoma and Suguaro prison in Eloy, Arizona.

We first want to commend Senators Will Espero and Brickwood Galuteria for introducing this bill to the session of the State legislature. Our members began by opposing the building of new prisons on Hawaii island because it was incarcerating mainly Kanaka Maoli. However, we realized that we couldn't just be opposed to something but had to find the solutions. After research on what would heal of Kanaka Maoli, we realized that the solution lay in what the Kanaka Maoli did a long time ago. The model for healing was the Pu`uhonua or wellness center where Ho`oponopono and Aloha Aina were the principal values. Our research led to some funding from the Office of Hawaiian Affairs which has resulted in a Feasibility Study of a Pu`uhonua written by consultant Ms. Chelle Shand. We also completed with the help of a fund from the Office of Hawaiian Affairs, a complete needs assessment complete with a survey conducted among our paahao, ex-paahao, families of paahao, cultural practitioners and the general public. It is time to test this model. It cannot be done without the support of the Department of Public Safety of the State of Hawaii. Even within the State of Hawaii Public Prosecutors office, there has been a long task force on restorative justice. A prison system built upon the philosophy of punishment is NOT a solution.

The premises at Kulani Correctional Facility is almost perfect for a Puuhonua or a wellness center. There is adequate land there for a model Puuhonua even while continuing the correctional facility. The infrastructure is more than adequate. The staff have been involved in healing for many years. Notable among this was the program initiated by Warden Peter McDonald modeled after the Life Strand program of Neal Wagatsuma at the Kauai Correctional Center. ACOs like Mr. Ikaika Dombrignes are trained by Kupuna Sam Lono in the cultural and spiritual practices of the ancient Kanaka Maoli traditions. Our organization has been developing the curriculum for the Puuhonua by

sending spiritual leaders to lead our paahao in the opening and closing Makahiki ceremonies every years since 2004 at Diamondback Correctional Facility in Watonga, OK and continuing to the present when the men were transferred to Suguaro Correctional Facility in Eloy, AZ.

I did not have enough time to prepare for this testimony. I am willing to gather others to support this bill. I am willing to gather petitions supporting your effort.

Again, congratulations for introducing this bill. Please make the necessary amendments to this bill to make it amendable to the Department of Public Safety so that it will raise the consciousness of other legislators to truly find a solution for our overcrowded prisons, and sending our *pa`ahao* up to Arizona and Tennessee, far from family and to a country where they do not belong.

Thank you for this opportunity to testify on behalf of our members of Ohana Hoopakele and on behalf of our *pa`ahao* who have been and are presently incarcerated both here in Hawaii and in Arizona and Tennessee. You can contact me by my cell at 808-937-7193. I would be glad to come and meet the members of you committee to answer questions. Mahalo!