

LATE

SB 2805

COMMUNITY ALLIANCE ON PRISONS

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LATE

COMMITTEE ON HUMAN SERVICES

Sen. Suzanne Chun-Oakland, Chair

Sen. Les Ihara, Jr., Vice Chair

Tuesday, February 9, 2010

4:30 p.m.

Room 016

STRONG OPPOSITION to SB 2805 - Regulating Clean & Sober and Halfway Homes

HUSTestimony@capitol.hawaii.gov

Aloha Chair Chun-Oakland, Vice Chair Ihara 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 2805 establishes a licensing requirement for all clean and sober homes and halfway houses and requires DOH to establish rules to oversee them.

Community Alliance on Prisons is in strong opposition to this measure, which presents quite a quagmire to policymakers.

Below is a summary of Specific Fair Housing and Disability Laws from **FAIR HOUSING FOR PEOPLE WITH DISABILITIES - A guidance manual for emergency shelter and transitional housing providers, February 2007, Mental Health Advocacy Services, Inc., www.mhas-la.org:**

Federal Fair Housing and Other Laws Protecting Housing Opportunities for People With Disabilities

The Rehabilitation Act of 1973 - Section 504

Any housing program that receives federal funds is subject to Section 504 of the Rehabilitation Act of 1973. (29 USC § 794) This law prohibits discrimination against people with disabilities and is intended to ensure that people with disabilities are not excluded from participation in, or denied benefits of, any program or activity receiving federal financial assistance. Pursuant to Section 504, housing providers, including emergency shelters and transitional housing programs, that receive federal funds are responsible for ensuring that their programs are both physically and programmatically accessible for people with disabilities.

The Fair Housing Amendments Act of 1988

In 1968 Congress passed the Fair Housing Act, which offered protection against discrimination in housing based on race, color, religion, sex, or national origin. (42 U.S.C.A. §§ 3601 et.seq.) In 1988 Congress acted to add people with disabilities and families with minor children to these protected classes by passing the Fair Housing Amendments Act of 1988 (FHAA). The FHAA prohibits discrimination on the basis of all these characteristics in the sale or rental of all housing, regardless of whether the housing provider receives federal funding. Therefore, it applies to transitional housing programs. It has also been interpreted broadly to frequently apply in the context of emergency shelters, depending on the expectations and intentions of those staying at the shelter, the length of stay, and whether the guests/residents consider it their residence. (*Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996) (homeless shelter); *Woods v. Foster*, 884 F. Supp. 1169, 1174 (D. Ill. 1995); *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, 134 (D. Conn. 2001)

Furthermore, the FHAA prohibits any discrimination with respect to the terms, conditions, or privileges of any sale or rental of a dwelling, or in the provision of any services or facilities in connection with the dwelling (*Samuelson v. Mid-Atlantic Realty Co., Inc.*, 947 F. Supp. 756. (D. Del. 1996) This includes a prohibition against any practice or policy in the tenant selection process that would have a discriminatory effect on people with disabilities (or families with small children).

The FHAA prohibits not only discrimination due to a buyer's or renter's disability, but also discrimination based on the disability of a buyer's or renter's family member who would be expected to live in the dwelling.

The Americans with Disabilities Act (ADA) - Titles II and III

The Americans with Disabilities Act (ADA) was signed into law in 1990. Like the federal Fair Housing Amendment Act and Section 504, the ADA is intended to provide further opportunities for people with disabilities by eliminating discrimination and mandating access. This law does not apply to residential housing in general, but it does pertain to certain types of housing and shelter.

Title II

Title II of the ADA extends the mandates of Section 504 to all state and local government entities. It states that, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. § 12132) Title II applies to any transitional housing or emergency shelter that is operated by or receives funding from a state or local government, and it prohibits discrimination in the form of excluding a qualified person with a disability (i.e., a person who would qualify for the program or activity but for their disability) from participating in programs or activities. To this end, title II mandates that housing providers make reasonable accommodations in policies and practices and reasonable modifications in building structures to ensure that such discrimination does not take place. Title II also mandates that housing providers who receive state or local funding pay for certain reasonable physical modifications (28 C.F.R. Part 35.150(c)).

The ADA requires that a person with a disability be allowed access to programs and housing in the most integrated setting possible. (*Olmstead v. L.C.*, 527 US 581(1999)). The Supreme Court's decision in *Olmstead* interpreted the ADA to mandate that states are required to place persons with disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with disabilities.). It states that, "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."(28 C.F.R. §130(d)). The most integrated setting is defined as ". . . a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."(28 C.F.R. pt. 35, App. A, p. 450).

Title III

Title III of the ADA prohibits discrimination against people with disabilities or those who are affiliated with people with disabilities in any privately owned "public accommodations," including homeless shelters. Public accommodations also include libraries, medical care offices, museums, day care centers, public transportation stations, offices of any service provider, and rental offices or program headquarter offices that are open to the public. This list is not exhaustive.

In addition to requiring housing programs to provide reasonable accommodations to people with disabilities, Title III also requires that a public accommodation, such as an emergency shelter or the offices or public spaces of a transitional housing program, remove all physical barriers in every building to the extent such removal is readily achievable and not an undue burden.(28 C.F.R. part 36)

We know the legislature understands the need for transitional housing in our community for those exiting incarceration and those in various treatment programs. This bill, however, presents another barrier to reintegration for individuals working to change their lives and address their problems in addition to the legal problems it presents.

Fair housing is a right. We are Hawai'i. We care for and about each other. Let's work together to build an inclusive community.

Mahalo for this opportunity to share our thoughts.

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