

SB 48

RELATING TO CORRECTIONS

Specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawaii and correctional facilities located outside of Hawaii.

NEIL ABERCROMBIE
GOVERNOR



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

JODIE F. MAESAKA-HIRATA
INTERIM DIRECTOR

MARTHA TORNEY
Deputy Director
Administration

Deputy Director
Corrections

KEITH KAMITA
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 48
RELATING TO CORRECTIONS**

by

Jodie F. Maesaka-Hirata, Interim Director
Department of Public Safety

Senate Committee on Public Safety, Government Operations, and Military Affairs
Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair

Tuesday, February 15, 2011; 2:45PM
State Capitol, Conference Room 224

Chair Espero, Vice Chair Kidani, and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of Senate Bill 48, relating to standards governing the transfer of inmates to mainland prisons or between correctional facilities in Hawaii. However, the measure is unnecessary as PSD has established sound standards used to assist in identifying and determining those inmates that qualify to be transferred to mainland facilities. This includes: assessing the inmates' overall programmatic needs such as education, treatment and/or reentry services, which may include transfer between correctional facilities.

PSD practices retaining inmates in Hawaii, in which programs and/or services are not readily available on the mainland (e.g. sex offender treatment). Moreover, PSD is unclear of how Senate Bill 48 defines extended family leave visitations. It is already very difficult to manage the inmate population and address protective custody,

separate issues, inmate gangs, and other groups that threaten security. For these reasons and others, no jurisdiction in the country has a provision that allows inmates to appeal a decision regarding the location of incarceration. The United States Supreme Court has ruled that inmates **do not** have a constitutional right to determine the location of their incarceration. However, PSD will consider court ordered family visitation with minors, prior to an inmates' transfer to the mainland.

The provision of this measure that requires that a committed person be notified not less than fourteen days prior to their transfer, and that they have the right to appeal the decision to transfer is simply bad corrections management. If enacted, this measure would frustrate legitimate government operations, place staff and the public at risk, and add to the already overly burdensome administrative requirements and responsibilities of institutional case managers, correctional supervisors, and correctional managers.

Therefore, for the reasons listed above, PSD supports the intent of Senate Bill 48, and we strongly urge the committee to amend this measure as suggested above.

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

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPS & MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Tuesday February 15, 2011

Room 224

2:45 p.m.

STRONG SUPPORT - SB 48 - CRITERIA FOR TRANSFERS

<http://www.capitol.hawaii.gov/emailtestimony>

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

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on justice issues in Hawai'i for more than a decade. We respectfully offer our testimony always being mindful that Hawai'i has some 6,000 people behind bars including approximately 1,800 individuals serving their sentences abroad, thousands of miles away from their loved ones and homes - the ancestral homes for a disproportionate Native Hawaiians.

SB 48 specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawaii and correctional facilities located outside of Hawai'i.

Community Alliance on Prisons strongly supports this measure. 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.

We did a web search to see what other states are doing regarding transfers and found that other states are much more transparent about their criteria and process for transfer of inmates. California has a 5-page memo regarding transfers that is on their website, Arizona has information and Frequently Asked Questions about transfers on their website, Alaska also posts criteria for transfers, just to name a few. This kind of information is important for families and loved ones of the incarcerated. To access the Arizona Department of Corrections website go to: www.azcorrections.gov/adcc/inmate/transfer.asp. California has issued a Briefing Memo - Out-Of-State Inmate Transfers, which can be accessed at: http://www.cdcr.ca.gov/News/docs/CDCR_Out_of_State_Briefing_Memo.pdf. Other states have done the same. Why can't Hawai'i when we banish more than half of our prison population to the hands of private prison profiteers?

Isn't it interesting that Arizona, the state with a plethora of Corrections Corporation of America prisons couldn't negotiate a contract with CCA so they are sending their inmates out of state? This was stated by Dr. Rick Seider of CCA.

An article from the October 2, 2007 Honolulu Advertiser entitled 'Prison System Failure Leaves Lasting Scars' states: *"The incarceration of inmates on the Mainland, at first a stopgap measure to deal with crowded prisons, has become a disgracefully dominant feature of the state's corrections policy. Prison conditions don't rise very high on the scale of voter concerns, and so policymakers have not felt pressed to find long-term solutions.*

Elected officials have never confronted the true social costs of crowding in Hawai'i prisons, the effects on families of constant transfers to Mainland prisons and the inadequate preparations for their return. It's time to face up to those costs, and find some sensible solutions"

We constantly hear stories from families going to Halawa only to find their loved one is no longer in Hawai'i and then are unable to get any information as to the whereabouts of the individual they were to visit. There is no aloha in this practice. Any transfers should be systematically planned; that is good business. This would also relieve the stress on the incarcerated individuals and their families.

Transfers should not be haphazard or retaliatory. Stories of people with under a year left on their sentences being sent out of Hawai'i are not unusual, as are stories of individuals sent who then have to be returned to Hawai'i for a court case, causing the state to send two Adult Corrections Offices (ACOs) to the continent to pick up the individual, incurring unnecessary travel expenses that could have been avoided if there was a system for transfers, if there have to be transfer at all.

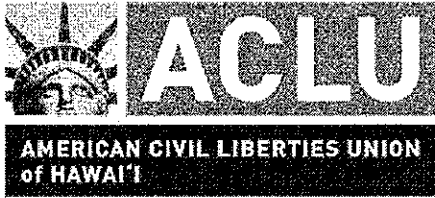
The Department asserts they never send anyone with less than two years on their sentence. We have heard from men and women, families, and others that this is not true.

Good business practices mandate a plan establishing criteria for transfer inside and outside of Hawai'i. We are lucky to live in a place where families are celebrated and deemed important. This bill acknowledges that each incarcerated individual comes from a family; therefore, consideration must be given to the impacts of a transfer on the family.

From the October 2, 2007 Honolulu Advertiser article entitled 'Prison System Failure Leaves Lasting Scars': *"By default – and without the authorization of taxpayers – the state essentially has turned over wardship of its inmates to private Mainland institutions. Private prisons provide a less stable environment during tough economic times because of constant staff turnover and profit-driven cutbacks."*

Community Alliance on Prisons urges passage of SB 48 because it calls for accountability and transparency. It is time to professionalize the Department of Public Safety's haphazard transfers, which are costly, and in some cases retaliatory. We applaud Governor Abercrombie's plan to bring all our incarcerated people home.

Mahalo for this opportunity to testify.



Committee: Committee on Public Safety, Government Operations and Military Affairs
Hearing Date/Time: Tuesday, February 15, 2011, 2:45 p.m.
Place: Room 224
Re: Testimony of the ACLU of Hawaii in Support of S.B. 48, Relating to Corrections

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

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in strong support of S.B. 48, which specifies the criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawaii and correctional facilities located outside of Hawaii.

Although the ACLU of Hawaii does not believe that involuntarily transferring prisoners to out-of-state institutions is an appropriate solution to the prison over-crowding problem, we do support instituting criteria that will provide better guidance for determining which inmates are subject to involuntary transfer. We believe that maintaining families whenever possible, and giving inmates reasonable notice before transfer, are necessary steps in the rehabilitation process.

The ACLU of Hawaii is frequently contacted by individuals who have been transferred between facilities (particularly those being transferred to the mainland). The majority of these inmates do not want to be separated from their families any more than they have to be. Clarifying the circumstances under which inmates may be transferred will further the goals of maintaining family and community connections and preparing inmates for successful release and rehabilitation.

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

February 15, 2011

To: Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair and
Members of the Committee on Public Safety, Government Operations, and
Military Affairs

From: Jeanne Y. Ohta, Executive Director

RE: SB 48 Relating to Corrections
Hearing: Tuesday, February 15, 2011, 2:45 p.m., Room 224

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of SB 48 Relating to Corrections. The bill amends Chapter 353 to clarify that certain criteria should be used in considering the transfer of an inmate.

Transfers should be systematically planned, they should be transparent, 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.

Maintaining contact and relationships with family members can motivate successful transition from prison back into the community. Transferring inmates and disrupting those important relationships can make maintaining those ties more difficult.

Transfers should further the individual's rehabilitation and reentry plan. Other jurisdictions, including Arizona, Washington, California, and Alaska have established transfer criteria.

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 this measure as it would be good public policy for the operations of the department, for those incarcerated and for their families. Thank you for this opportunity to provide testimony.

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PUBLIC SAFETY, GOVT OPERATIONS, & MILITARY AFFAIRS COMMITTEE

Senator Will Espero, Chair

Senator Michelle Kidani, Vice Chair

Tuesday, Feb. 15, 2011

Room 224 at 2:45pm

PGMTestimony@Capitol.hawaii.gov

SUPPORT WITH AMENDMENT: SB 48 Criteria for Transferring Inmates

Aloha Chair Espero and Members of the Committee:

I am writing in support of SB 48 that requires the Department of Public Safety to specify criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawaii and correctional facilities located outside of Hawaii.

I speak from my experience as a former Deputy Public Defender and Director of MEO's Being Empowered and Safe Together (BEST) Reintegration Program, and as a member of Community Alliance on Prisons. In 2009, I was awarded a Soros Justice Advocacy Fellowship that examined interstate prisoner transfer policies throughout the United States, with a special focus on the problems associated with Hawai'i's policy of out-of-state prisoner exportation.

Based on my research and work experience, I oppose Hawai'i's out-of-state prisoner transfers, unless an individual consents to the transfer, or safety risks require a transfer to an out-of-state facility. However, until Hawai'i ends this ill-conceived correctional practice of mass out-of-state transfers, I support this bill for the following reasons:

- Currently, there is no established criteria under Hawai'i statutes or PSD's policies and procedures that require PSD to consider the impact of family ties and visitation when making decisions about out-of-state prisoner transfers.
- The proposed bill would require PSD to consider whether the transfer is in the best interest of the State, as well as the "welfare of the committed felon" Studies show that family connections are integral to successful reintegration. Accordingly, PSD staff should consider family visits prior to making out-of-state transfer decisions.

- Currently, many incarcerated men (and in the past women), were moved around like chattel across the continental United States, without any regard to their progress in vocational, educational, treatment, re-entry, or other programming in Hawai'i. This bill seeks to address the issue of interference with correctional programming, and require PSD to determine whether an incarcerated person is enrolled in a vocational, educational, treatment, reentry, or other program that cannot reasonably be resumed at the correctional facility in another state contemplated for the transfer.

AMENDMENT

As part of the criteria for transfer, Hawai'i should prohibit Hawai'i from transferring incarcerated persons with serious medical, dental and mental health conditions, and those who have attempted suicide within the past year. Individuals with serious medical, dental, and mental health conditions require more health care related services – services that private prison operators have proven incapable of providing given their interest in the bottom-line, increased profits.

California's regulations prohibit persons with serious medical, dental and mental illness from being transferred to out-of-state prisons. As of October 30, 2008, the CDCR adopted emergency regulations regarding out-of-state transfer procedures, eligibility and priorities. The regulations are found in 15 CCR §§ 3379(a)(9) and its subdivisions.¹²

"All male prisoners will be reviewed for transfer eligibility upon arrival in the reception center and at periodic classification reviews.¹³ Transfer eligibility depends upon the prisoner's security and custody level and the length of time left to serve.¹⁴

Under the regulations, prisoners with serious medical or dental conditions or who are receiving mental health care at the Enhanced Outpatient Program (EOP) level of care or higher cannot be transferred involuntarily. The regulations state that such prisoners can volunteer for out-of-state placement and be transferred if the transfer will not have a detrimental impact on the prisoner's health and appropriate health care is available at an out-of-state facility.¹⁵

Although the regulations in theory allow prisoners with serious medical conditions to volunteer for out-of-state transfer, the Prison Health Care Receiver appointed by the federal court to run the California prison medical system has adopted a policy that prohibits some prisoners from being transferred out of state. **A prisoner is absolutely ineligible for out-of-state transfer if he has a medical condition that is not likely to resolve in six months, dental problems, specific serious conditions (including cancer, HIV/AIDS, active seizure disorder, blood pressure at or above 160/100, certain types of diabetes, kidney problems requiring dialysis, etc.) or a history of mental health treatment at the EOP level or in a Psychiatric Services Unit (PSU), Mental Health Crisis Bed (MHCB) or the Department of Mental Health (DMH). A prisoner is temporarily ineligible for out-of-state transfer if he has a pending mental health, dental, or medical diagnostic/treatment appointment, has a current acute injury, has been hospitalized in the past year, has attempted suicide in the past year, is in the Correctional Clinical Case Management System (CCCMS) or has been in the CCMS in the past year...¹⁶**

“CDCR also has set priorities regarding which eligible prisoners will be transferred out-of-state first. Highest priority for transfer is assigned to prisoners who are not U.S. citizens and who are likely to be deported at the end of their prison terms. Prisoners who are paroling outside of California also are deemed high priority for transfer. **For other prisoners, lack of a job assignment and lack of regular visits from family members will increase the likelihood of involuntary out-of-state transfer.**¹⁸

The new regulations also re-state the statutory rule that a prisoner shall be provided with an opportunity to consult with an attorney prior to transfer. A prisoner may waive the right to an attorney consultation.¹⁹ The consultations are carried out by attorneys who contract with the state to provide services to prisoners and parolees. The attorneys meet with prisoners who are facing out-of-state transfer, sometimes in groups, to advise them about the laws and regulations and to answer questions. The attorneys also explain the process for filing administrative appeals to protest a transfer, but it appears that they will not actually represent prisoners in legal challenges.

Notification of eligibility for transfer, the right to an attorney consultation, the fact of the attorney consultation itself, and any agreement to a voluntary transfer are to be documented on particular CDCR forms.²⁰

THE PRISON LAW OFFICE

Information Concerning Transfers to Out-of-State Prisons – Updated December 2008

¹⁸ 15 CCR § 3379(a)(9)(H).

¹⁹ 15 CCR § 3379(a)(9)(C).

²⁰ 15 CCR § 3379(a)(9)(D) through (F).

Thank you for the opportunity to submit testimony in support of this bill.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota

Erin Welsh
73-1142 Oluolu Street
Kailua-Kona, Hawaii 96740
(808) 325-5322

February 14, 2011

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPS & MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Room 229 Via: Email

STRONG SUPPORT for SB 48 - CRITERIA FOR TRANSFERS

Good Morning Chair Espero, Vice-Chair Kidani and Committee Members:

I am the mother of a prisoner who is currently being held at Saguaro in Arizona. He is a non-violent drug addict who got involved with ice. Michael has been in prison for almost three years, having been transferred around from Hilo to Halawa to Saguaro and around and around.

His little daughter, Shelby, was 2 years old when he went to prison. He was originally serving his time in Hilo, where I was able to drive Shelby every Saturday to see him. He was then sent to Halawa, where I was able to afford to fly her about once a month to see him. When he was sent to Saguaro, I couldn't afford to take her there, but I was able to go there once myself. Only once, as it is very expensive and very far away. It tears my heart out to have him so far away.

If we have to banish our prisoners to the mainland, can we please not send people with very little children. Michael's daughter was so little when he left. He was a great father and she adored him. Now she hardly knows him. Phone calls and letters are not enough. It's very hard on her, and it's hard on him and the entire family. We are a very close family and I believe family support can only help Michael get through this experience and keep him from going back to drugs. Please pass this bill and consider family circumstances in your criteria for transfers.

Thank you,
Erin Welsh

TUESDAY, FEBRUARY 15, 2011

**COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND
MILITARY AFFAIRS**

**Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair**

**2:45 p.m.
Room 224**

**SB 48– Regarding transfers of Hawaii inmates to mainland
facilities**

SUPPORT

**Please stop the trafficking of Hawaii inmates via chattel contract
from Hawaii institutions to ANY institution outside of Hawaii.**

**I do not believe ANY inmate can re enter society under the
current model of incarceration, and especially not from a facility
on the continental united states.**

**My name is Carmael Kamealoha Stagner. I am a former
employee of the Department of Public Safety's (PSD)
Correctional Programs Services Substance Abuse division from
2006-2010. I served as a clinical supervisor in a men's residential
level substance abuse treatment program at Waiawa
Correctional Facility on Oahu.**

**I was also a contract monitor with the mainland branch and
audited the Tallahatchie and Otter Creek facilities run by the
Corrections Corporation of America (CCA).**

At Halawa Correctional Facility (HCF), and Maui Community Correctional Center (MCCC), I administered to inmates evidence-based instruments to assess appropriateness and eligibility for participation in outpatient level, intensive outpatient level, residential, and no substance abuse treatment.

As a temporary Substance Abuse Programs Manager, I reviewed substance abuse vendor contracts with service providers in the state of Hawaii.

Also within the PSD I have assisted the Reception, Admissions and Diagnostics Unit , known as the RAD unit, whose staff members evaluate newly-incarcerated male inmates to determine educational, vocational, treatment and other programs as identified on page 1 lines 7, 8 and 9, “that are integral to the successful rehabilitation and re entry to society.”

My work at HCF focused on evaluating the inmate’s RAD assessments, which included but was not limited to: pre sentence reports; inmate classification according to severity of offense, to determine open, closed, low, medium, high or community custody levels, results of the Level of Service Inventory-Revised (LSI-R), and its trailer instrument, the Adult Substance Use Survey (ASUS). In a face-to-face interview with the inmate I would administer the SASSI to identify the appropriate level, if any of substance abuse treatment.

These results were reported to the HCF Residency Section Programs Control Administrator, the HCF assistant warden, the PSD Inmate Classification Office, and also the Hawaii Paroling Authority.

The information I provided was used to determine the least restrictive level of custody for an inmate, specified what kind of

substance abuse treatment he was appropriate to participate in, and at which facility he would be eligible to receive the assigned level of substance abuse treatment.

I ask the language of this bill in section 353-16.2 be amended on page 1 lines 15, 16 and 17. Instead of

“The purpose of this act is to establish standards for the transfer of Hawaii incarcerated persons to mainland prisons . . .”

Please delete the word ‘transfer,’ and replace it with the word ‘return.’

And also delete the phrases ‘mainland prisons or between’ and ‘correctional facilities.’

The new language of lines 15-17 on page 1 shall read:

“The purpose of this Act is to establish standards for the return of Hawaii incarcerated persons to in-state re-entry programs and facilities.”

With these amendments, lines 20 & 21 on page 2, pages 3 and four are no longer necessary.

Sincerely Yours,

Carmael Kamealoha Stagner, private citizen

45 563 Kukane Street

Kaneohe, Hawaii 96744

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 11, 2011 1:59 PM
To: PGM Testimony
Cc: HawaiiVotingProject@gmail.com
Subject: Testimony for SB48 on 2/15/2011 2:45:00 PM

Testimony for PGM 2/15/2011 2:45:00 PM SB48

Conference room: 224
Testifier position: support
Testifier will be present: No
Submitted by: Dorothy Cornell
Organization: Individual
Address:
Phone:
E-mail: HawaiiVotingProject@gmail.com
Submitted on: 2/11/2011

Comments:

Testimony in support of SB 48

Committee PGM

Room: 224

Hearing date: 2/15/2011 2:45 pm

Testimony in Support of SB 48 Relating to Corrections-Inmate Transfers

Dear Senator Espero and Committee Members;

I wish to submit testimony in strong support of SB 48. I believe Hawaii Prison inmates do better in prison when they have access to their families and their children. I am against sending those inmates with children thousands of miles away from their children. Especially incarcerated mothers and their children. There are a number of studies which show that when the mother-child bond is allowed to continue during incarceration, the mother experiences less misconduct incidents and less depression and anxiety, there is also evidence that the mother's chances of successful reintegration back into her family and the community is improved. The studies also show that the same is true for her children who are at a much higher risk for behavioral issues, mental health issues, and risky behaviors such as substance abuse and teen pregnancies due to separation from their parents who are incarcerated.

We must think of the effect of incarceration and visitation policies on inmates and their children on the future generations of the inmates we incarcerate or the cost to society will be greater than ever. Thank you for your time in reading this and for your consideration.

Respectfully Submitted,

Jolene Molinaro

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 14, 2011 4:20 PM
To: PGM Testimony
Cc: dancercat3@hotmail.com
Subject: Testimony for SB48 on 2/15/2011 2:45:00 PM

Testimony for PGM 2/15/2011 2:45:00 PM SB48

Conference room: 224
Testifier position: support
Testifier will be present: No
Submitted by: Kalei Jaramillo
Organization: Individual
Address:
Phone:
E-mail: dancercat3@hotmail.com
Submitted on: 2/14/2011

Comments:

1.

From: Emy Furusaki [maukalani78@hotmail.com]
Sent: Monday, February 14, 2011 7:54 PM
To: PGM Testimony
Subject: SB 48, Criteria for Transfers

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT Operations and MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Michelle Kidani, Vice Chair

Tuesday, February 15, 2011

Room 229

2:45 p.m.

STRONG SUPPORT

SB 48, CRITERIA FOR TRANSFERS

Dear Chair Espero, Vice Chair Kidani and Members of the Committee:

I am sorry for this late submittal of my testimony of SB 48. To keep it short, I strongly support this measure because the criteria is very fair and give the inmate an opportunity to remain here. Presently, they have no choice.

The notification of their departure is also emotionally hard on families. The inmates are restricted from calling so families are unaware of their departure. It is difficult for someone else to notify their families because all calls made are collect calls and their names have to be on the inmates' visitation list.

With warm aloha,

E. Funakoshi