

**NEIL ABERCROMBIE**  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

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No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 1459  
RELATING TO CORRECTIONAL FACILITIES**

By  
**Jodie Maesaka-Hirata, Interim Director  
Department of Public Safety**

House Committee on Public Safety and Military Affairs  
Representative Henry J.C. Aquino, Chair  
Representative Ty Cullen, Vice Chair

Thursday, February 17, 2011; 9:00 AM  
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Cullen, and Members of the Committee:

The Department of Public Safety (PSD) strongly supports House Bill 1459. The measure will require the consent of anyone coming on state correctional facility grounds to allow the search of their vehicle or person. This will provide access for correctional staff to search persons and vehicles that might be carrying weapons or contraband when they enter onto State correctional facility grounds.

Currently, correctional staff in PSD are not law enforcement personnel. Therefore, they do not have the authority to search any person or vehicle that may bring weapons or contraband on correctional facility grounds as do law enforcement personnel. There has been a history of contraband being introduced into correctional facilities in PSD, all of which were transported either by vehicle or by person. This bill will assist staff in combating the introduction of contraband and/or weapons, and more importantly assist staff in making the

facilities safer and more secure for both staff and inmates.

PSD will promulgate administrative policy that will govern the search of vehicles and persons coming on grounds that will clarify the factors to be considered before a search is conducted, similar to probable cause. In addition, anyone that does not wish to consent to the search will be offered the opportunity to leave without search. Further, if a search of a person is necessary, the search would be conducted by a correctional officer who is the same gender as the person(s) being searched. PSD does not anticipate, nor would the department be able to search every person or vehicle that enters facility grounds.

The measure would also assist in the prosecution of anyone attempting to smuggle contraband into the facilities by clarifying that the person or vehicle consented to the search by entering on the grounds by statutory means.

Based on all the foregoing reasons, PSD strongly supports HB1459.

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

National Association of Reformed Criminals  
Andy Botts & Franklin Jackson  
1765 Ala Moana Blvd. #1388  
Honolulu, Hawaii, 96815  
February 17, 2011

**COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

Rep. Henry J.C. Aquino, Chair

Rep. Ty Cullen, Vice Chair

Thursday February 17, 2011

9:00 AM

Room 309

**HB 1459 - RELATING TO CORRECTIONAL FACILITIES**

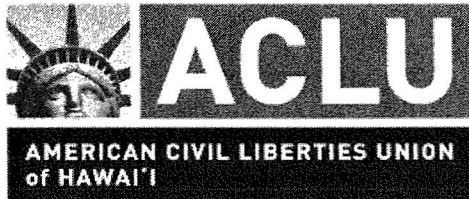
**STRONGLY OPPOSE**

This bill aims to give police-powers to prison guards. Scary thought with the track record of our ACOs, as they prefer to be called. We have no objection to any person who enters a facility through a security-check, but to be shaking-down anybody and anything that steps on their property is Nazi-like.

For these reasons, but not limited to, we strongly object to this bill.

Mahalo,

Andy Botts



Committee: Committee on Public Safety and Military Affairs  
Hearing Date/Time: Thursday, February 17, 2011, 9:00 a.m.  
Place: Room 309  
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1459, Relating to Correctional Facilities

Dear Chair Aquino and Members of the Committee on Public Safety and Military Affairs:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1459.

**H.B. 1459 violates the Fourth Amendment rights of visitors and employees**

The ACLU of Hawaii does not dispute that corrections officers may conduct *limited* searches of prospective visitors to correctional institutions. Our concern with H.B. 1459 is simply with the overbreadth and vagueness of the proposed language, because the bill does not define the scope of the searches or the circumstances under which different kinds of searches may be allowed. While corrections officers may be able to condition prison visits on passing through a metal detector, for example, they may not require visitors to “consent” to strip searches without reasonable suspicion that the prospective visitor possesses weapons and/or contraband. *See, e.g., Deserly v. Dep’t of Corrections*, 995 P.2d 972 (Mont. 2000) (collecting cases on prison visitation searches).

Furthermore, to avoid against arbitrary enforcement of visitor search rules (that is, to ensure that searches take place without regard to race, sex, or other protected classification), the Legislature should ensure that searches of prison visitors are consistent and that more invasive searches are based on objective criteria.

With regard to vehicle searches, corrections officers should have reasonable suspicion that visitors’ and employees’ vehicles contain contraband before searching them so as maintain a balance between the Fourth Amendment rights of the individuals and the facility’s need to maintain safety. “Contraband” should be defined and limited so as not to include innocuous items like pencils and paper that are almost certainly found inside every vehicle.

It is also unclear from the bill whether visitors and employees have the right to refuse the search and leave the facility grounds without being charged with a misdemeanor.

**Extensive, arbitrary and unnecessary searches deter visits from family and friends and hamper rehabilitation.**

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Hon. Rep. Hanohano, Chair, PBS Committee  
and Members Thereof  
February 19, 2009  
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Visits have a positive impact on inmates and we should reject efforts to discourage visitation that do little to address the problem of contraband or increase security.

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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