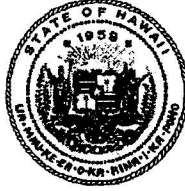


NEIL ABERCROMBIE
GOVERNOR



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

JODIE F. MAESAKA-HIRATA
DIRECTOR

MARTHA TORNEY
Deputy Director
Administration

JOE W. BOOKER, JR.
Deputy Director
Corrections

KEITH KAMITA
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 48 SD1
RELATING TO CORRECTIONS**

by
Jodie F. Maesaka-Hirata, 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, March 17, 2011, 8:30 AM
State Capitol, Conference Room 309

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

The Department of Public Safety (PSD) opposes Senate Bill 48 SD1, relating to standards governing the transfer of inmates to mainland prisons or between correctional facilities in Hawaii. 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 strives to keep inmates in local correctional facilities. Programs and/or services are not readily available on the mainland (e.g. sex offender treatment). Moreover, PSD is unclear as to what is meant by 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 incongruent with best correctional practices. 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 SD1, and we strongly urge the committee to hold this measure as suggested above.

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



SB 48 SD1
RELATING TO CORRECTIONS
House Committee on Public Safety & Military Affairs

March 17, 2011

8:30 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB 48 SD1, which specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawai'i and whether to transfer inmates from Hawai'i to mainland facilities. The bill would also prohibit the transfer of inmates to the mainland who have 12 months or less to serve before being eligible to be paroled.

OHA's recent report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," shows that Native Hawaiians constitute a disproportionate population in Hawai'i's prison system and represent approximately 40 percent of all inmates incarcerated in Hawai'i and in private facilities on the continent.

A number of Native Hawaiians are incarcerated in Arizona in private prisons contracted by the state Public Safety Division. These prisoners are cut off from contact with their families. When transferred out of state, they might not be able to complete programs that are available in Hawai'i and can no longer have effective access to practitioners for religious and cultural needs.

This bill creates a much-needed transparent and reasonable system for the transfer of prisoners between facilities.

OHA urges the committee to PASS SB 48 SD1. Mahalo for the opportunity to testify on this important measure.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
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Mike White



Director of Council Services
Ken Fukuoka

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March 16, 2011

TO: Honorable Henry Aquino, Chair
House Committee on Public Safety & Military Affairs

FROM: Gladys C. Baisa
Council Member

**SUBJECT: HEARING OF MARCH 17, 2011; TESTIMONY IN SUPPORT OF SB 48, S.D. 1,
RELATING TO CORRECTIONS**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawai'i and to transfer inmates from Hawai'i to mainland facilities and prohibits transfer of inmates to mainland with 12 months or less to serve before being eligible to be paroled.

I strongly support 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 constantly hear stories from families going to visit their loved ones only to find that they are no longer in that prison or in Hawaii 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.

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.

I appreciate the opportunity to present supporting testimony on the proposed measure.

GCB:amm

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

Thursday, March 17, 2011

8:30 a.m.

Room 309

SB 48 SD1 - PSD to Establish Criteria for the Transfer of Inmates

STRONG SUPPORT

www.capitol.hawaii.gov/emailtestimony

Aloha Chair Aquino, Vice Chair Cullen 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 by supporting smart justice policies. We testify today always mindful of the 6,000 individuals whose voices have been silenced by incarceration, always that almost 1,800 of those individuals are serving their sentences thousands of miles from their homes and loved ones - and for the majority of those shipped abroad - far from their ancestral lands.

SB 48 SD1 specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawai'i and correctional facilities located outside of Hawai'i and prohibits the transfer to U.S. facilities of inmates with 12 months or less for serve.

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/adc/inmate/transfer.asp. California has issued a [Briefing Memo - Out-Of-State Inmate Transfers](http://www.cdcr.ca.gov/News/docs/CDCR_Out_of_State_Briefing_Memo.pdf), 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 when I was in Arizona with the Senate Public Safety Committee in 2007.

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.

In the past the Department asserted 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."*

The last year for our men in CCA's Saguaro prison has been horrendous. Since 2007 there have been numerous deaths, rapes, fights, beatings by ACOs that have triggered numerous lawsuits about this mis-managed facility. Hawai'i has knowingly placed our people in harm's way, which will reap unpleasant circumstances for these men, their families and, eventually, our communities.

Community Alliance on Prisons urges passage of SB 48 SD1 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 and Military Affairs
Hearing Date/Time: Thursday, March 17, 2011, 8:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Support of S.B. 48, SD1, Relating to Corrections

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 strong support of S.B. 48, SD1, 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,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawai'i
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T: 808.522-5900
F: 808.522-5909
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www.acluhawaii.org



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

March 17, 2011

To: Rep. Henry Aquino, Chair
Rep. Ty Cullen, Vice Chair and
Members of the Committee on Public Safety and Military Affairs

From: Jeanne Ohta, Executive Director

Re: SB 48 SD1 Relating to Corrections
Hearing: March 17, 2011, 8:30 a.m., Conf. Room 309

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of SB 48 SD1 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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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Rep. Henry Aquino, Chair
Rep. Ty Cullen, Vice Chair
Thursday, March 17, 2011
8:30 a.m.
Room 309

SUPPORT: SB 48 SD1 – PSD to Establish Criteria for the Transfer of Inmates

www.capitol.hawaii.gov/emailtestimony

Aloha Chair Aquino, Vice Chair Cullen 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.

- 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** Page 3

“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

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2011 7:43 AM
To: PBMtestimony
Cc: maukalani78@hotmail.com
Subject: Testimony for SB48 on 3/17/2011 8:30:00 AM

Testimony for PBM 3/17/2011 8:30:00 AM SB48

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: E. Funakoshi
Organization: Individual
Address:
Phone:
E-mail: maukalani78@hotmail.com
Submitted on: 3/15/2011

Comments:

I submitted testimony on this bill on 2/15/11 to the PGM committee.

I strongly support this bill and stand on my previous testimony.

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2011 1:52 PM
To: PBMtestimony
Cc: maucrowe@gmail.com
Subject: Testimony for SB48 on 3/17/2011 8:30:00 AM

Testimony for PBM 3/17/2011 8:30:00 AM SB48

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: James Crowe
Organization: Individual
Address:
Phone:
E-mail: maucrowe@gmail.com
Submitted on: 3/16/2011

Comments:

Having meaningful criteria for transfers will make the effect of the transfers better. This will save money and in the long run will help increase public safety.