



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2388, H.D. 3, S.D. 1, RELATING TO CORRECTIONAL FACILITIES.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, April 4, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information call Diane K. Taira, Deputy Attorney General, at 587-2978.

Chair Tokuda and Members of the Committee:

The Department of the Attorney General supports this bill, with one suggested amendment.

The purpose of this bill is to provide the Department of Public Safety (PSD) with a wide range of options in pursuing development of new correctional facilities or increasing the capacity of existing facilities, and to provide funding for its current development needs with regard to the Oahu Community Correctional Center. New facilities and/or increased capacity at its existing facilities are needed to better enable PSD to serve the interests of the inmates, the employees and the community-at-large.

We suggest that the word "turnkey" on page 4, line 20, be deleted. This will allow PSD more flexibility in the procurement method to be employed for a new or expanded correctional facility.

Thank you for the opportunity to testify on this measure.



**Testimony to the Senate Committee on Ways & Means
Monday, April 4, 2016 at 2:00 P.M.
Conference Room 211, State Capitol**

RE: HOUSE BILL 2388 HD 3 SD 1 RELATING TO CORRECTIONAL FACILITIES

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber **supports the intent** of H.B. 2388 HD 3, SD 1, which clarifies the Governor's authority to negotiate for the construction of correctional facilities and aligns environmental impact statement and assessment requirements as generally applicable requirements. It also would appropriate funds for a new Oahu Community Correctional Center and relocating Maui Community Correctional Center. And finally, it would require a feasibility report on development of Oahu Community Correctional Center land.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The bill is attempting to provide certainty and predictability to the public disclosure process known as Chapter 343 HRS, while also providing for maximum flexibility in planning and designing a new 1,250 bed facility at one or more sites. If the site or sites have not been selected it would be difficult to prepare a public disclosure document that meets the requirements of Chapter 343 HRS.

The existing OCCC site is 16.46 acres and currently zoned Industrial. Prisons require an approved "Plan Review Use" or PRU in any of the City and County of Honolulu's zoning districts. The bill states that redevelopment opportunities to be considered for the current OCCC site include housing, retail, restaurants, government buildings, and parks. We believe that most of these new uses would not be allowed under the existing Industrial zoning of the property.

Perhaps the legislature should focus on that portion of the OCCC lot that will not be used for the proposed vertically constructed prison. This area would probably need to be rezoned out of Industrial into one of the BMX zoning districts to allow for the uses proposed in the bill.

We believe the Legislature should consider one of the following options:

1. Fund an EA/EIS and construction of the relocated OCCC facility to the Halawa Correction Facility; or,

2. Fund an EA/EIS to rezone the lands surplus to the OCCC facilities needs when the new 1,250 bed facility is built multi-story;
 - a. Fund an RFP process and construction process to select a developer to:
 - i. Construct the new 1,250 bed multi-story facility on a smaller foot print at the existing OCCC site; and,
 - ii. Lease the surplus OCCC property based on the maximum allowable uses under the BMX zoning.

Under this approach, the legislature could specific minimum or maximum limits for specific uses in the BMX zoning (i.e. affordable housing) or weight the selection criteria based on desired outcomes for the redevelopment of the site.

With the overcrowding of the existing Oahu Community Correctional Center (OCCC), and the site being located near a proposed transit station, the opportunity to not only relocate the existing OCCC facilities to a new, modern facility but also capture the value of redeveloping the existing OCCC site with higher densities and mixed uses that would be consistent with Transit Oriented Development (TOD).

We support the intent of H.B. 2388 H.D. 3 S.D. 1, and appreciate the opportunity to express our views on this matter.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/email: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON WAYS AND MEANS

Sen. Jill Tokuda, Chair

Sen. Donovan Dela Cruz, Vice Chair

Monday, April 4, 2016

2:00 p.m.

Room 211

STRONG OPPOSITION TO HB 2388 HD3 SD1 - JAILING OUR SOCIAL "PROBLEMS"

Aloha Chair Tokuda, Vice Chair Dela Cruz and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far, far from their ancestral lands.

HB 2388 HD3 SD1 clarifies the Governor's authority to negotiate for the construction of correctional facilities and aligns environmental impact statement and assessment requirements as generally applicable requirements. Appropriates funds for a new Oahu Community Correctional Center and relocating Maui Community Correctional Center. Requires a feasibility report on development of Oahu Community Correctional Center land.

Community Alliance on Prisons continues to oppose this measure as it is confusing and, in some parts, contradictory. It is also constructed on the false promise that Hawai'i can address our social problems by jailing people suffering from mental illness, houselessness, substance abuse, illiteracy, unemployment, etc. WE CANNOT! Relegating suffering people to cages only exacerbates the problems...it doesn't disappear them.

Reforming social policy and carefully thinking about who we incarcerate and how, developing the software before the hardware, and realizing that we are discussing the lives of human beings is a start. We are rushing headlong into a HUGE public works projects with little to no consideration of these issues.

Our concerns stem from the total focus on the building and not on the people who will live and work there. You do not develop the hardware first...you always design the software first to

address problems, improve quality, advance knowledge, etc. and then you build the appropriate hardware. We are deeply concerned that the state is building first and thinking later. Generally this strategy is expensive and becomes “yesterday” pretty quickly.

Some of CAP’s problems with this bill:

Page 1, lines 12-17: *“There is adequate space to move the Oahu community correctional center to the grounds of the Halawa correctional facility. Such use would be consistent with the current use of the site and also provide cost efficiencies through shared use of common services, such as food preparation, laundry, and medical clinics.”*

Why couldn’t those services be consolidated now to “provide cost efficiencies through shared use of common services, such as food preparation, laundry, and medical clinics.” The OCCC site is centrally located to provide these common services to WCCC, Halawa, Waiawa and OCCC.

The current OCCC site is perfect for a right-sized jail: near public transportation and job centers! The Halawa site is too remote for a transient jail population. It is unfair to the community who have loved ones inside.

Page 2, lines 1-10: *“The legislature finds that the new, 1,250-bed Oahu community correctional facility will be a secure, minimum- to medium-security community correctional facility designed to include in-house rehabilitation programs for the treatment of chemical dependency and abuse and other mental health programs, as well as to prepare inmates for re-entry into society. In addition, the design of the new facility will incorporate the separation of low-risk offenders and high-risk offenders and be orientated toward recovery models for inmates with substance abuse and mental health issues.”*

One of the things that policymakers should receive, and this should also be made publicly available, is a report of who exactly is in OCCC. This analysis should include custody level and numbers of people in each level, the number of people at each risk level, the number of people with mental illnesses (separate out those who are severely mentally ill-SMI-and those who do not quite make the SMI diagnosis), people with substance abuse disorders, and people who were living unsheltered at the time of arrest.

The questions that this committee and our communities must ask:

- Are we satisfied that our jails have become the de facto mental health and shelter facilities?
- How many people in OCCC and MCCC have mental health problems?
- How many people in OCCC and MCCC were living unsheltered on the streets?
- The figure of \$489.3 million was projected for OCCC; only \$60 million allocated in the budget - what happens now?
- \$200 million for MCCC - What happened to the almost \$14 million of taxpayer money that was already spent on MCCC?
- Was the \$5 million for OCCC that the Governor provided in 2015 mid-session that stopped the bill for OCCC ever spent? By whom and for what?

Page 3, lines 9-11: *“...of a jail, such as that needed on Maui, and aligns environmental impact statement and assessment requirements for such a jail with generally applicable requirements.”*

This language is confusing. What does it mean? Will the state follow the EIS law (Chapter 343) or are they trying to invent something else? Sounds like you want environmental requirements and not our environmental impact statement law and we are deeply concerned about this.

Page 3, lines 14-16: *“The legislature finds that this Act and the funds appropriated by it will enable the State to pursue the relocation of Maui’s correctional facility.”*

Where? The Pu`unene site has no water (the 6.5 inch pipe to serve the National Guard is inadequate and `Iao aquifer has been over-pumped for decades), no public transportation, and the area is so hot, the community has referred to it as “hell”. Better dig up those old site surveys.

Page 3, lines 20-21; Page 4 lines 1-5: *“(1) Clarifying the governor’s authority to negotiate for the construction of a correctional facility to include the authority to negotiate for construction of a jail, such as that needed on Maui, and aligning environmental impact statement and assessment requirements for such a jail with generally applicable requirements.”*

What does this mean? Does it mean that a corporate prison company could be contracted to build and operate new facilities in Hawai`i? The community has been repeatedly told that the state would operate all of our facilities. Community Alliance on Prisons has deep concerns about any further contracting with Corrections Corporation of America (CCA). This “temporary solution” to overcrowding has led to 20 years of the banishment of our people to the hands of corporate profiteers. Over the years we have seen many contract violations that have not and are NOT enforced. The 2010 audit made clear that the Department of Public Safety has a cozy relationship with CCA; sadly at the expense of the health and safety of our people held in their prisons and taxpayers who have borne the costs of litigation and/or settlements of claims.

Page 4 lines 6 -13: *“(2) Requiring the governor to commission a feasibility study that includes reconstructing the Oahu community correctional center with a smaller footprint on the land that it currently occupies and redeveloping the remainder of the site; and (3) Appropriating funds for reconstruction of the Oahu community correctional center and the relocation of the Maui community correctional center.”*

This is confusing because the bill first talks about how Halawa is the perfect site and now there is a requirement for a feasibility study of building a new LARGE OCCC high-rise on a smaller footprint of the current OCCC. What is going on?

Page 5, lines 9 - 21: *“(b) Any development or expansion proposal [shall] may address the construction of the facility separate from the operation of the facility ...and shall consider and include: (1) The percentage of low, medium, and high security inmates and the number of prison or jail beds needed to incarcerate each of the foregoing classes of inmates[t] or detainees; (2) The facility’s impact on existing infrastructure, and an assessment of improvements and additions that will be necessary; (3) The facility’s impact on available modes of transportation, including airports, roads, and highways; and ...”*

Why was “shall” changed to “may” if that is truly the intent? We find it concerning that “shall” was changed to “may”, thereby making it optional to consider (1), (2), and (3).

And, as mentioned before, it is concerning that there has been no attention paid to who actually lives and works at OCCC and at MCCC. Again we ask,

- *Are we satisfied that our jails have become the de facto mental health and shelter facilities?*
- *Are there more effective ways to spend our resources than imprisoning people struggling with various ailments?*
- *Are there more effective ways to spend our resources that would help people struggling with mental illness, homelessness, and substance disorders rather than imprisonment?*
- *Have we explored the alternatives or other strategies that will achieve the outcomes that we all desire... safe, healthy, and just communities?*

All these questions are part of due diligence and no public funds should be spent before they are adequately answered.

Page 6, lines 7-10: *"partnering process to be incorporated into [the request for proposal;] the planning of any new prison or jail; this partnering process shall include a community hearing for the purpose of soliciting community input.*

Please don't insult the community in this way. We have been to hundreds of "public hearings" over the decades and they could never be honestly construed as "partnering".

How else will the community be a partner (besides picking up the tab)?

Excessive incarceration is tearing apart the social fabric of Hawai'i families and now this bill promises a DPS dog and pony show without even consulting the community/taxpayers on the best strategies for addressing Hawai'i's social problems? THIS IS INSULTING and diminishes the intent of the 1998 law that addresses consulting the community early in the process. Incarceration affects everyone and the community – who end up paying – have a right to know how their hard-earned dollars are spent. Without transparency how do not know what we have given up without our prior and informed consent?

Page 9, lines 17-19: *"In financing the new facility, the State shall examine all possible financing options, including private-public partnerships, to make the most effective use of state funds.*

Again we implore the state to not contract with a private prison corporation for any facility. Please do not open the door to them. CCA was granted a REIT (real estate investment trust) by the federal government in February 2013. As a REIT, corporations can avoid paying federal taxes on their earnings as long as at least 90% of those earnings are paid out to shareholders in the form of dividends. As a New York Times article explained: *"One of the bedrock principles – and the reason for tax exemption – was that the trusts do not do any business other than owning real estate. But bit by bit, especially in recent years, that has changed as the IRS, in a number of low profile decisions, has broadened the definition of real estate, and allowed companies to split off parts of their business that are unrelated to real estate."*¹

There are many studies about some pitfalls in public-private partnerships. When the state takes a partner, they are giving up some of our rights in order to finance public projects. Just what have

¹ **CCA gets feds' nod for REIT move, by Geert De Lombaerde, Published February 8, 2013**

<http://www.nashvillepost.com/home/article/20468372/cca-gets-feds-nod-for-reit-move>

we given up with no prior informed consent? The problem for Community Alliance on Prisons is the lack of transparency that seems to be inherent in public-private partnerships.

- **The rush to build:**

This proposal is one of the largest public works projects in Hawai'i outside of the ill-conceived rail debacle. Why is Hawai'i rushing into building buildings rather than building communities when the research and data show that providing community-based programming is a far better and less expensive option? Incarceration should be the LAST RESORT.

- **Implement Justice Reinvestment BEFORE building:**

Criminal justice reform is happening all around the nation. Hawai'i has a golden opportunity to implement Justice Reinvestment (JRI), yet this administration has decided to build facilities first and then implement JRI. This is completely backwards from the goals of this Department of Justice initiative, which is to REDUCE THE INCARCERATED POPULATION. As Jeremy Travis, president of the John Jay College of Criminal Justice at the City University of New York and one of the authors of the National Academies Press report on the Growth of Incarceration in the US has said, *"As a society we've become more and more punitive even though crime is at its lowest rate ever. We put people in prison for offenses that would have received a light sanction in former times."*

- **Address social problems; DON'T HIDE THEM!**

Incarceration only serves to hide our community's challenges by warehousing people suffering from mental illness, houselessness, illiteracy, drug addiction in jails, prisons, and storage facilities. This does nothing to assist those needing help; rather it exacerbates their problems; costs the taxpayers millions of dollars; and destroys communities. As Professor Angela Davis has said, *"Prisons do not disappear social problems, they disappear human beings. Homelessness, unemployment, drug addiction, mental illness, and illiteracy are only a few of the problems that disappear from public view when the human beings contending with them are relegated to cages."*

- **Develop the "software" first; then the hardware:**

There are many factors that must be considered before any new facility is even considered. It is akin to developing software to fix a problem - this is the part that takes the most THOUGHT and PLANNING - and then you figure out the hardware to implement the software. We are doing this backwards. We are developing a building without first thinking about the people who live and work there.

Mahalo for the opportunity to offer this testimony.



COMMITTEE ON WAYS AND MEANS

Senator Jill Tokuda, Chair

Senator Donovan Dela Cruz, Vice Chair

Hearing: Monday April 4, 2016
2:00 p.m., Room 211

STRONG OPPOSITION TO HB 2388 HD1 SD1 – RELATING TO CORRECTIONAL FACILITIES

Dear Honorable Committee Members,

Mahalo for your public service. I am the executive director of Hawaii Friends of Restorative Justice a 30+ year old non-profit dedicated to improving the justice system. For over 10 years we have worked with Hawai'i prisons developing and researching reentry and rehabilitation programs. Our work is published and widely disseminated in the United States and abroad. Through July 2018, the US State department sponsors me as a Fulbright Specialist to train foreign countries on our prison work. Serbia and Spain had the training in 2015; Queens University in New Zealand applied for it for 2016; and a Brazilian group will likely apply in 2017. Applications for Fulbright Specialist training is competitive and submitted through the American Embassy in each country.

Our state currently imprisons about 6000 people for about \$200 million a year. New prison construction will cost between **\$1.5 to \$2 BILLION** (http://www.capitol.hawaii.gov/session2016/bills/HCR31_.HTM), but worse it will further entrench the prison industry in Hawai'i.

Instead of working to prevent and reduce imprisonment, the state wants to build new prisons and continue incarcerating at its current level. Spending on imprisonment takes away needed educational and social resources, and it seriously damages our community. Proper rehabilitation, reentry, educational, and social programs could reduce the number of people imprisoned.

The average grade level for an imprisoned person in Hawai'i is the only sixth grade; many of the incarcerated suffer mental health problems; and a disproportionate number of Native Hawaiians are in prison. Educational and social issues are contributing to imprisonment, which the state has the means to control, e.g. ensuring all people coming out of prison have legal identification, a place to live, job skills or participation in some meaningful activity, repaired and restored family relationships, etc.

Our high rate of incarceration makes our communities unsafe, damages families, and diminishes the potential for individuals with social disadvantage to do well.

Until there are concrete plans to reduce the number of people in prison, no new prison plans should be considered. Further, the state should explain why it has not increased the number of beds rented from the federal detention center in Honolulu, which has hundreds of empty beds.

The state has spent \$14 million dollars for "planning" a new Maui prison. This bill is bad policy. Please contact me (808) 218-3712 or lorenn@hawaiifriends.org for further information about our opposition to this bill. Mahalo again for your public service.

Aloha, Lorenn Walker, JD, MPH

Hawai'i Friends of Restorative Justice Board of Directors

Rich Turbin, Esq., President • Roger Epstein, Esq., Vice Pres. • Svitlana Pronina Campbell, JD, LLM, Secretary • Madonna Castro Perez, Treasurer
Cheri Tarutani, MSW • Amphan "Amphay" Champathong, JD, MSW • Kellen Kashiwa, OD • Elizabeth Naholowa'a Murph

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: wchungster@hotmail.com
Subject: Submitted testimony for HB2388 on Apr 4, 2016 14:00PM
Date: Saturday, April 02, 2016 7:28:24 PM

HB2388

Submitted on: 4/2/2016

Testimony for WAM on Apr 4, 2016 14:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
wini chung	Individual	Oppose	No

Comments: I OPPOSE HB2388 HD3 SD1. ITS TOO VAGUE AND MORE COMMUNITY INPUT NEEDED.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov