

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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No. _____

TESTIMONY ON HOUSE BILL 440
RELATING TO GOVERNMENT CONTRACTS;
OUT-OF-STATE PRIVATE CORRECTIONAL FACILITIES

by

Nolan P. Espinda, Director
Department of Public Safety

House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Matthew LoPresti, Vice Chair

Thursday, February 2, 2017; 11:00 a.m.
State Capitol, Conference Room 312

Chair Takayama, Vice Chair LoPresti, and Members of the Committee:

The Department of Public Safety (PSD) respectfully **opposes** House Bill (HB) 440, which concerns government contracts for out-of-state private correctional facilities. In removing PSD's option to contract with private, out-of-state facilities, the Legislature would significantly increase costs to house our inmates both in and out of State.

The cost to house Hawaii's inmates in a federally-operated institution is much higher than in a privately-operated correctional institution. For example, the cost per day at the Honolulu Federal Detention Center is \$122.98 compared to the Saguaro Correctional Center's daily cost of \$70.49. The difference in costs would leave the Department of Public Safety in dire financial straits and severely impact the Department's ability to provide programs necessary to address the transitional needs of inmates reentering our communities.

Thank you for the opportunity to present this testimony.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Public Safety

Testimony by
Hawaii Government Employees Association

February 2, 2017

H.B. 440 - RELATING TO PUBLIC SAFETY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 440 which prohibits government contracts from developing or housing inmates in out-of-state private correctional facilities. Additionally, this measure also adds clarifying language that the state may contract with federal, state, and municipal governments to house inmates.

Citing safety concerns and questions surrounding their effectiveness, the Federal Justice Department recently announced its plans to end the use of private, for-profit prisons. In a December 2016 Department of Public Safety inmate population report, it was reported that over 1,300 Hawaii inmates are housed in Corrections Corporation of America's for-profit Saguaro Correctional Center in Arizona. Although we can all agree that it would be ideal to house and rehabilitate Hawaii's inmate population locally, it may not be immediately feasible due to severe overcrowding and shortage of beds. While the State deliberates its plans for a future location and construction of a new corrections facility, the expedient passage of H.B. 440 will ensure that we do not continue to allow a private company to profit off of our inmate population.

We appreciate the opportunity to submit testimony in support of H.B. 440.

Respectfully submitted,

Randy Perreira
Executive Director



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING
ADDRESS				
John Bickel, President 23404	Guy Archer	Jan Lubin	Cameron Sato	PO. Box
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Karin Gill, Secretary	Chuck Huxel			

January 31 , 2017

TO: Honorable Chair Takayama and Members of the Public Safety Committee

RE: HB 440 Relating to Public Safety
Support for hearing on Feb. 2

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 440 as would prohibit government contracts to develop or house inmates in out-of-state private correctional facilities. It clarifies that the State may contract with federal, state, and municipal governments to house inmates and develop correctional facilities. Private prisons give an incentive to over-incarcerate. Mainland incarceration separates inmates from the network of family and friends necessary for reintegration into society once they get out. It is time to end the bad policy of sending inmates to make profit for mainland correctional companies.

Thank you for your consideration.

Sincerely,

John Bickel
President

Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 8:16 PM
To: pbstestimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for HB440 on Feb 2, 2017 11:00AM

HB440

Submitted on: 1/31/2017

Testimony for PBS on Feb 2, 2017 11:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We FULLY SUPPORT this bill that in effect will or should REPEAL §353-16.2 Transfer of inmates to out-of-state institutions. As a formerly confined person with personal experience in being "pimped out" by this State to the PRIVATE PRISON INDUSTRIAL COMPLEX, I have long felt that this practice was wrong & may actually be illegal! It is common knowledge that only the United States Congress has the AUTHORITY to enact laws that specifically relate to commerce & trafficking over State lines. States have no power to enact laws that supersede or encroach upon the power & authority of the United States Congress. This, if Hawaii or any State seeks to transfer prisoners to another State, I believe that they must do so using the Interstate Corrections Compact, which was created by the United States Congress to permit the transfer of prisoners ("human cargo"), across State lines. This bill would effectively REPEAL §353-16.2 Transfer of inmates to out-of-state institutions, as well as bring Hawaii back into compliance with the Interstate Corrections Compact.

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.

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Community Alliance on Prisons
P.O. Box 37158
Honolulu, HI 96837-0158

LATE

COMMITTEE ON PUBLIC SAFETY
Rep. Gregg Takayama, Chair
Rep. Matt LoPresti, Vice Chair
Thursday, February 2, 2017
11:00 am
Room 312

REVISED TESTIMONY ON HB 440 – PLEASE DISREGARD PRIOR TESTIMONY

OPPOSITION TO HB 440

Aloha Chair Takayama, Vice Chair LoPresti and Members of the Committee!

Community Alliance on Prisons is in **OPPOSITION** to HB 440 which allows the construction of out-of-state facilities.

This “temporary solution” to overcrowding has wreaked havoc on our system and communities around Hawai`i.

Since 74% of our imprisoned people are serving sentences for Class C felonies (the lowest felony) and misdemeanors it is wasteful to build prison facilities for people with public health challenges.

Instead we need a **COMPREHENSIVE ANALYSIS** of who is in our correctional system and develop better, more effective strategies to address their pathway to incarceration. This analysis has been requested by Community Alliance on Prisons, The Association of Hawaiian Civic Clubs, and the Hawai`i Democratic Party for many years. To date, the department has not provided this important information to the taxpayers. We only get the bill.

Please hold this bill and don’t allow the state to continue the human trafficking of our incarcerated people.

Mahalo for this opportunity to testify.

I strongly support HB440. Housing our fellow residents at private prisons place our residents at risk for exploitation, limited medical treatment, violence, unsafe and unhealthy conditions, and even death.

In July 2016, reporter Shane Bauer published an exposé of a CCA facility in Louisiana.¹ While this facility does not house any of Hawaii’s inmates, the facility is operated by the same private company. Working undercover as a prison guard, Bauer uncovered evidence that CCA severely underreports incidents of violence, rape, and confiscations of shanks²; refrains from seeking medical attention in a timely manner as a cost-savings measure; understaffs the prison; does not man guard towers; places prisons on lockdown due to staffing shortages; confiscates any pictures—including kids’—drawn with crayons; and extends inmates’ prison time for infractions as a money-making scheme because CCA is paid a daily rate for each inmate.³

During his four months as a CCA prison guard at Winn Correctional Center in Louisiana, Bauer experienced an audit by the ACA, which is the auditing body for correctional facilities, and he recorded the following:

In anticipation of the audit, I read the ACA standards. How will the auditors deal with the fact that the cells in segregation are at least 20 square feet smaller than required? Or that inmates only get 10 minutes to eat, not the mandated 20? There are many other ACA standards and recommendations Winn does not appear to meet: We rarely have the required number of positions staffed; guards' pay is not comparable to the pay of state corrections officers; guards rarely ever use the metal detectors at the entrances to the housing units; prisoners often don't get one hour of daily access to exercise space; suicide watch meals are below caloric requirements; there aren't enough toilets in the dorms.

....

[During the audit, two] well-dressed white men enter Ash unit and do a slow lap around the floor. The only questions they ask Bacle and me are what our names are and how we're doing. They do not examine our logbook, nor do they check our entries against the camera footage. If they did, they would find that some of the cameras don't work. They do not check the doors. If they did, they would see they need to be yanked open by hand because most of the switches don't work. They don't check the fire alarm, which automatically closes smoke doors over the tiers, some of which must be jimmed back open by two guards. They do not ask to go on a tier. They do not interview any inmates. They do a single loop and they leave.⁴

¹ Shane Bauer, *My Four Months as a Private Prison Guard*, MOTHER JONES, (July/August 2016), <http://m.motherjones.com/politics/2016/06/cca-private-prisons-corrections-corporation-inmates-investigation-bauer> (last accessed Dec. 28, 2016).

² A shank is “a makeshift knife fashioned from a sharp item such as broken glass or a razor[.]” *Shank*, NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2011).

³ See generally Bauer, note 1, *supra*.

⁴ Bauer, note 1, *supra*.

Bauer speculates that the reason every CCA facility passes audit with an average score of 99% is that, despite multiple problems at each, the co-founder of CCA is now the head of the ACA.⁵ Although Hawaii does have its own auditing procedures of SCC in Arizona, in an audit conducted by Hawaii State officials, the auditors faced severe roadblocks from CCA. The SCC warden refused to disclose documents, and when a few documents were finally released, they were piecemealed and incomplete, and SCC refused to provide information on their inmate tracking system.⁶ Because of the uncooperative demeanor of SCC and CCA, Hawaii has no way of determining whether the same problems that exist at Winn are also present at SCC.

In a recent government study, 4% of prison inmates and 3.2% of jail inmates reported one or more acts of sexual victimization in the last twelve months, which suggests more than 180,000 prisoners have been victimized.⁷ However, officials reported only 8,800 incidents of sexual assault and rape during the same year.⁸ 19% of all inmates in the U.S. report physical assault by other inmates, and 21% report physical assault by prison staff.⁹ Additionally, inmates in private prisons like Saguaro Correctional Center report sexual assaults by prison staff at *nearly twice the rate* of inmates in federal or state prisons.¹⁰

Furthermore, our Constitution provides in Art. I § 2 that “[a]ll persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property.” The right to the pursuit of happiness is extended to familial association, although the right must be balanced against the interest of the state.¹¹ The most affected by violations of the right to familial association are our residents who are sent to prison on the mainland. Inmates serving time in Arizona are almost incapable of maintaining relationships with their loved ones because their friends and family face incredible expenses to travel to and stay in Arizona to visit the inmates. Furthermore, the inmates sent to Arizona are disproportionately the poorest who are the least likely to have family members who can afford travelling to Arizona.

Please bring our residents home. Please end the practice of opening up for exploitation of our residents in private prisons. Show our residents aloha.

⁵ Bauer, note 1, *supra*.

⁶ *Hawaii State Auditor Blasts Private Prison Contracting; State Renews Contract Anyway*, PRISON LEGAL NEWS, Aug. 15, 2011, <https://www.prisonlegalnews.org/news/2011/aug/15/hawaii-state-auditor-blasts-private-prison-contracting-state-renews-contract-anyway/> (last accessed Jan. 1, 2017) [hereinafter *Auditor Blasts Private Prison Contracting*].

⁷ ALLAN J. BECK ET AL., U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES 9, 2011-2012 (2013), *available at* <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> (last accessed 1 Jan., 2017); Bauer, note 1, *supra*.

⁸ Bauer, note 1, *supra*.

⁹ Bauer, note 1, *supra*.

¹⁰ Bauer, note 1, *supra*.

¹¹ “[T]he constitutional liberty interest in the maintenance of the familial relationship is not absolute. The interest of the parents must be balanced against the interests of the state and, when conflicting, against the interests of the children.” *In re AS*, 130 Haw. 486, 513 (Ct. App. 2013), *aff’d*, 132 Haw. 368, 322 P.3d 263 (2014) (internal quotation marks and citation omitted).

Anita Hurlburt

Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 7:43 PM
To: pbstestimony
Cc: maukalani78@hotmail.com
Subject: Submitted testimony for HB440 on Feb 2, 2017 11:00AM

HB440

Submitted on: 1/31/2017

Testimony for PBS on Feb 2, 2017 11:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments: COMMENTS: The fear of having private companies house our inmates is that transparency lacks in how they operate. Private companies need to watch their bottom line so close monitoring is required.

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Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 3:28 PM
To: pbstestimony
Cc: lady.flach@gmail.com
Subject: *Submitted testimony for HB440 on Feb 2, 2017 11:00AM*

HB440

Submitted on: 2/1/2017

Testimony for PBS on Feb 2, 2017 11:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

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February 2, 2017

COMMITTEE ON PUBLIC SAFETY
Rep. Gregg Takayama, Chair
Rep. Matt LoPresti, Vice Chair
Thursday, February 2, 2017 11:00 am Room 312



Re: COMMENTS HB 440 Out-of-State Prisoner Transfers

Aloha Chair Takayama, Vice Chair LoPresti and Members of the Committee:

My name is Carrie Ann Shirota, and I am sharing comments on HB 440 given my work and research relating to criminal justice issues, with a focus on alternatives to incarceration and out-of-state prisoner transfers. Over the past fifteen years, I have served in various capacities – as an Enforcement Attorney for the Hawai'i Civil Rights Commission, as the Program Director for MEO's BEST Reintegration Program, Soros Justice Fellow, Faculty Counselor for a federally-funded Title III Native Hawaiian Program at the University of Hawai'i Maui College, Parents and Children Together Group Facilitator at Maui Community Correctional Center and currently as a Lecturer for UHMC. I have also been a member of Community Alliance on Prisons advocating for criminal justice reform in Hawai'i.

The proposed bill appears to have a laudable intent by prohibiting out-of-state prisoner transfers to private, for-profit prison corporations, such as a Corrections Corporation of America ("CCA" but recently rebranded as CoreCivic). Since Hawai'i started the "temporary" practice of transferring prisoners to out-of-state private prisons twenty-one years ago, substantiated governmental reports and investigative articles have revealed the problems and dangers associated with private-for-profit prisons located in other states (i.e. sexual assaults by staff against female inmates, brutal deaths, rise and growth of a bona fide prisons gangs, exposure to Valley Fever resulting in severe illness and death, understaffing, violations of religious rights, drug smuggling by guards, decreased family visitation, higher recidivism rates, etc.) <https://cdn.relaymedia.com/amp/www.civilbeat.org/2016/04/prison-officials-are-quietly-moving-to-extend-an-out-of-state-contract/>

Despite the fact that research highlights more violence and other problems associated with private rather than publicly operated prisons, I am concerned about this bill for the following reasons:

1. This bill continues and potentially expands the practice of out-of-state prisoner transfers without addressing the DRIVERS of incarceration and overcrowding in Hawai'i.

The specific language of this bill authorizes Hawai'i to contract with federal or state governments or any of its subdivisions to transfer Hawai'i prisoners to out-of-state "public" prisons. Although credible reports have concluded that federal and state operated prisons have less violence than private for profit prisons, this bill would still allow the continuation and expansion of the practice of transferring incarcerated persons thousands of miles away from Hawai'i and their families. Continuance of this "temporary" practice does nothing to address the real drivers of incarceration growth in Hawai'i. In other words, it is simply a band-aid fix!

Our overcrowding problem in Hawai'i is the result of deliberate policy-making decisions, not an implosion in crime rates. If we are genuinely interested in decreasing the incarcerated population and truly committed to bringing back prisoners transferred out-of-state, we would prioritize and implement SENTENCING REFORM.

Simply put, we put too many people behind bars, for too long! A handful of other states have acknowledged the impact of sentencing on overcrowding, and have had tremendous success in

significantly reducing their incarcerated population by enacting sentencing reform and other evidence-based Justice Reinvestment strategies. Although Hawai'i was selected as a Justice Reinvestment site in 2012, we have failed to implement and track the vast majority of specific recommendations outlined to decrease the jail and prison population in Hawai'i. See <https://csgjusticecenter.org/wp-content/uploads/2014/08/JR-in-HI-Analyses-and-Policy-Options.pdf>

2. No research concludes that out-of-state prisoner transfers to federal or state operated prisons will reduce dangers associated with imprisonment, or promote greater transparency or accountability.

Prisons in Hawai'i and the United States are closed institutions. As Professor Michele Deitch, an international expert on prison oversight, explains, little to no oversight mechanisms exist to ensure that humane conditions and constitutional requirements are met. During her keynote address in Hawai'i, Professor Deitch warned of the inherent dangers associated with transferring prisoners thousands of miles away from their home.

I am unaware of any research that supports the potential claim that dangers associated with out-of-state prisoner transfers will be eliminated or reduced by contracting with federal or state governments. Nor have I found any research to substantiate the claim that contracting with the federal or state governments to house prisoners in out-of-state prisons will promote greater transparency or accountability.

Although legislative intent regarding this bill is scant at this time, I am making an assumption that the bill has been proffered, in part, on the premise that state and federal governments are distinguishable from private prison operators because they are not in the business of making profits. This assumption, however, is misguided.

The Sentencing Project recently released a Policy Brief about Repurposing Closed Prisons. <http://www.sentencingproject.org/publications/repurposing-new-beginnings-closed-prisons/> As more states close its prisons and jails, some will be repurposed into re-entry centers, homeless shelters, tourist sites, and other public and commercial uses. Still, concerns have been raised about reopening prisons to lure in business from others states grappling with prison overcrowding. For several years, Pennsylvania had contracted with Michigan to house its inmates in publicly owned and operated Michigan prisons. "West Michigan prison closed in 2011 reopens, new inmates scheduled to arrive next week," The Associated Press. October 5, 2012. Michigan was expected to make some money on the deal, but the biggest benefit to the state was prison jobs that were being saved.

Interestingly, Civil Beat Investigative Journalist Rui Kaneya, recently reported on prisoners transferred to out-of-state prisons under the Interstate Corrections Compact (ICC). Although the numbers of Hawai'i prisoners transferred under this Compact are small in comparison to large scale transfers to out-of-state private prisons (currently 58 prisoners), the article highlighted the lack of transparency and accountability relating to these prisoner transfers.

Aside from reporting inmate information on paper, Hawai'i does not routinely send monitors to these publicly owned and operated state prisons. Nor does Hawai'i have on-site monitors at these out-of-state public prisons. Moreover, prisoners transferred under the ICC may be the only person from Hawai'i in that state prison, creating further isolation, and less transparency and accountability. Indeed, Mr. Kaneya's article highlighted the murder of Frank Pauline, Jr., a prisoner from Hawai'i transferred to a New Mexico prison under the Interstate Corrections Compact, in 2015. To date, secrecy surrounds the circumstances regarding Pauline's transfer and ultimately his death. <http://thecrimereport.org/2017/01/25/a-prisoners-death-3000-miles-from-home/>

Without a meaningful form of oversight, transferring Hawai`i's incarcerated population to out-of-state prisons, whether operated by private, for-profit prisons or state or federal governments, will continue to place them at greater risk of violence, and death and other problems associated with out-of-state transfers. Simply put, out-of-state, means "out of sight and out of mind."

3. This bill ignores Hawai`i's legal, fiscal and ethical responsibility to reduce overcrowding by enacting comprehensive criminal justice reform as successfully accomplished by other states.

We have the ability to reduce overcrowding in Hawai`i and end out-of-state prisoner contracts. The question is not how, but why not? In *Fewer Prisons, Less Crime: A Tale of Three States*, The Sentencing Project highlights three states that have achieved prison population reductions in the range of 25%. Here are some of the key findings:

- New York and New Jersey led the nation by reducing their prison populations by 26% between 1999 and 2012, while the nationwide state prison population increased by 10%.
- California downsized its prison population by 23% between 2006 and 2012. During this period, the nationwide state prison population decreased by just 1%.
- During their periods of decarceration, violent crime rates fell at a greater rate in these three states than they did nationwide. Between 1999-2012, New York and New Jersey's violent crime fell by 31% and 30%, respectively, while the national rate decreased by 26%. Between 2006-2012, California's violent crime rate drop of 21% exceeded the national decline of 19%.
- Property crime rates also decreased in New York and New Jersey more than they did nationwide, while California's reduction was slightly lower than the national average.

Other reputable resources with strategies to end mass incarceration policies, reduce overcrowding and improve Justice Reinvestment processes include:

- *Ending Mass Incarceration: Charting a New Justice Reinvestment* (2015), The Sentencing Project, A paper co-authored by a group of researchers, analysts, and advocates dedicated to **ending mass incarceration**.
- HOW MANY AMERICANS ARE UNNECESSARILY INCARCERATED? Brennan Center for Justice, Dr. James Austin and Lauren-Brooke Eisen with James Cullen and Jonathan Frank Preface by Inimai Chettiar (December 2016)

In summary, I strongly encourage this Committee to focus on the big picture, and enact legislation that will implement the Justice Reinvestment Initiative recommendations, as well as other proven criminal justice reform strategies. Signing contracts for out-of-state prisoner transfers with the federal or state governments, or its subdivisions, will not address the drivers of mass incarceration in Hawai`i.

Sincerely,

Carrie Ann Shirota, JD
Haiku, Hawai`i 96708
Cashirota808@gmail.com

