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No. _____

TESTIMONY ON SENATE BILL 2426
RELATING TO THE CORRECTIONS POPULATION
MANAGEMENT COMMISSION

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Senate Committee on Judiciary
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

Friday, February 9, 2018; 9:30 a.m.
State Capitol, Conference Room 016

Chairs Nishihara and Taniguchi, Vice Chairs Wakai and Rhoads, and Members of the Committees:

The Department of Public Safety (PSD) respectfully requests that Senate Bill (SB) 2426 be deferred pending the final report of the HCR 85 Task Force, which was charged in 2016 with studying effective incarceration policies to help improve Hawaii's correctional system, and updated in the 2017 session, to research ways to reduce the detainee and inmate population, while at the same time, preserving the safety of the public and lower rates of recidivism. PSD notes that the Task Force has made substantial progress, and the Department looks forward to reviewing its findings and recommendations in 2019.

PSD further notes that SB 2426 would create an adversarial inspection and oversight role that was not intended in the establishment of the Commission. The Department does not object to the proposed membership expansion, however, experience has indicated that meeting quorums and quarterly meeting

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requirements would increase the challenges for the Commission and negatively impact its ability to accomplish its goals. PSD suggests, therefore, that the minimum requirement for meetings be twice annually and additionally on an ad hoc basis as circumstances and membership availability permit.

Thank you for the opportunity to present this testimony.

DAVID Y. IGE
GOVERNOR



EDMUND "FRED" HYUN
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MICHAEL A. TOWN
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MEMBERS

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LATE

STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
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No. _____

**TESTIMONY ON SENATE BILL 2426
RELATING TO THE CORRECTIONS POPULATION MANAGEMENT COMMISSION**

By
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

AND

Senate Committee on Judiciary
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

Friday, February 9, 2018, 9:30 a.m.
State Capitol, Conference Room 016

Chairs Nishihara, Taniguchi, and Members of both Committees:

The Hawaii Paroling Authority (HPA) respectfully requests that Senate Bill (SB) 2426 be deferred pending the final report and recommendations of the HCR 85 Task Force. As the Chair of the Hawaii Paroling Authority, I sit on both the Task Force and Corrections Population Management Commission (CPMC). Increasing the Commission by two members may add more insights during CPMC discussions, however, SB 2426 deters from the original intent established by Act 343, Sessions Laws of Hawaii 1993 and Section 353F-4 Hawaii Revised *to "establish maximum inmate population limits for each correctional facility and to formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility"*

Thank you for the opportunity to provide testimony on SB 2426.



SB2426

RELATING TO THE CORRECTIONS POPULATION MANAGEMENT COMMISSION
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senate Committee on Judiciary

February 9, 2018

9:30 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2426, which would require the Corrections Population Management Commission (CPMC) to meet every quarter; expand CPMC membership to include a mental health expert and prisoner advocate; require the Department of Public Safety (PSD) to open access to PSD documents, policies, and facilities to the Commission; and require annual reporting on CPMC data, updates, and recommendations. This measure would enhance the capacity of this important oversight body, and better facilitate its ability to make critical recommendations on reducing Hawai'i's incarcerated population; moreover, it would improve transparency and public trust in our justice system.

Decades of a traditional criminal justice approach have led to the highest prison population in Hawai'i's history. Notably, between 1977 and 2008, the number of people incarcerated in Hawai'i increased by more than 900 percent; between 1977 and today, our incarcerated population increased by 1,400 percent.¹ The Native Hawaiian community has been particularly impacted by this increase, making up 40% of our current prison population.² Moreover, the overrepresentation of Native Hawaiians in the criminal justice system indicates larger systemic issues, such as implicit bias and disparate treatment in interactions from arrest, to adjudication, to final release.³ Accordingly, OHA has long-advocated for criminal justice reform that would thoroughly examine and effectively implement evidence-based incarceration alternatives that could improve public safety while effectively rehabilitating pa'ahao, reducing recidivism, and mitigating the impact of the criminal justice system on Native Hawaiians.⁴

¹ OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010) available at https://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

² In contrast, Native Hawaiians only represent 24% of the general public in Hawai'i. *Id.* at 36.

³ OHA's 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage noting that Native Hawaiians made up "24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population." OFFICE OF HAWAIIAN AFFAIRS at 10. Moreover, after controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. *Id.* at 28-38.

⁴ The NHJTF recommended several options to address systemic issues resulting in overrepresentation of Native Hawaiians in the criminal justice system. These included reconsidering several proposals from the 2011 Justice

LATE

The Native Hawaiian Justice Task Force, in its 2012 report, found that proactive policy and oversight would likely be the only path to reducing the overrepresentation of Native Hawaiians in the criminal justice system.⁵ Consistent with this finding, the CPMC—of which OHA is a member—is mandated to set incarcerated population limits, make recommendations on policies and procedures to avoid exceeding these limits, and provide transparency and oversight for our criminal justice system. However, the efficacy of the Commission since its establishment is unclear. Reviving the charge of the CPMC to meet more frequently; investigate PSD’s policies, procedures, grievances and conditions; and publicly report its updates and recommendations may be critical to making more meaningful progress toward its original goals.

Moreover, OHA believes the CPMC would benefit greatly from the expertise of the additional members proposed by this measure. An expert on substance abuse or mental health and an advocate for pa‘ahao are critical voices that should be included in any discussion about alternative approaches to socially and economically costly incarceration, that could otherwise ensure public health and safety in our islands.

Therefore, OHA respectfully requests that the Committees PASS SB2426. Mahalo for the opportunity to testify on this measure.

Reinvestment Initiative legislation that were not originally passed or implemented, investing in early intervention programs, increasing public defender funding, expanding implicit bias training, strengthening supervised release programs, executing compassionate release consistently, supporting indigenous models of healing alternatives such as pu‘uhonua and bolstering reintegration programs and services to better prevent recidivism. *Id.* at 27-30.

⁵ OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT (2012), at 19, *available at* https://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

SB-2426

Submitted on: 2/7/2018 5:24:14 PM

Testimony for PSM on 2/9/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

In strong support...

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY

Sen. Brian Taniguchi, Chair

Sen. Karl Rhoads, Vice Chair

Friday, February 9, 2018

9:30 am

Room 016

SUPPORT - SB 2426 - CORRECTIONS POPULATION MANAGEMENT COMMISSION

Aloha Chairs Nishihara & Taniguchi, Vice Chairs Wakai & Rhoads 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 more than two decades. This testimony is respectfully offered on behalf of the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 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 Kanaka Maoli, far, far from their ancestral lands.

SB 2426 requires the Corrections Population Management Commission to meet at least once per quarter, expands the commission membership to include a substance abuse or mental health expert and an advocate for incarcerated individuals. It also requires the Department of Public Safety to provide commission members with access to internal information and the authority to conduct spot checks on correctional centers and facilities and requires the commission's annual report to include a summary of the commission's decisions and data and status updates for commission recommendations.

Community Alliance on Prisons supports this measure. Oversight of public institutions is absolutely vital for a dynamic organization.

OVERSIGHT OF PUBLIC INSTITUTIONS IS COMMON

Other institutions have natural constituencies of their own to provide a broader range of oversight, invoking standards that are central to their concerns. Correctional systems don't have this. They generally operate in the dark and isolated from public scrutiny.

The standards for hospitals come out of the fact that hospitals have to treat patients, and patients (with their families and friends) have ideas about how hospitals ought to operate. With the schools, you have Parent Teacher Associations.

NO OVERSIGHT OF CORRECTIONAL FACILITIES

Unfortunately, for the oversight of correctional facilities, there is no natural constituency that is recognized by the public as well as by the people who run the prisons. (Katzenbach 2010)

There actually is a natural constituency for correctional facilities as it is becoming rarer to find a person who has not been impacted by the system. So why doesn't anything get better? RETALIATION. People under the "care and custody" suffer consequences for alerting authorities or anyone else of problems. Families are afraid to say anything because they know that their loved ones will be retaliated against for saying anything, or for filing a grievance, or for asking for a medical visit or to make a legal call.

It is clear to anyone who has worked in or studied organizational structures that leadership and teambuilding is the key to building a strong organization. There appears to be a leadership void in public safety. There does not seem to be any leadership or teambuilding there. This dysfunction is resulting in deaths, injuries and liability to the taxpayers.

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS/NELSON MANDELA RULES

The principle that the public has a responsibility to run prisons humanely was in fact adopted by the United Nations back in 1955. When the U.N. revised and again adopted its "Standard Minimum Rules for the Treatment of Prisoners" in 2013, thereafter dubbed the "Nelson Mandela Rules," not only was it endorsing the idea that penal practices must be humane and prisoners treated like people, but it also made clear that **humane treatment depended upon outsider access to prisons**. (Thompson 2017)

TRANSPARENCY AND ACCOUNTABILITY

Oversight is a means of achieving the twin objectives of transparency of public institutions and accountability for the operation of safe and humane prisons and jails. (Deitch 2010)

As a first step towards injecting more transparency and accountability into the operations of correctional and detention facilities, the legislature should mandate that facilities be regularly monitored and that the CPMC members have unfettered access to information and facilities for site inspections. The CPMC shall publicly report on conditions in prisons, jails, and other correctional and detention facilities for adults and juveniles in Hawai'i.

A PROCESS FOR MONITORING

Community Alliance on Prisons suggests that the CPMC use four tests to determine whether a prison is functioning properly. These four tests are:

- (a) whether imprisoned persons are held in safety,
- (b) whether they are treated with respect for their human dignity,
- (c) whether they are able to engage in purposeful activity, and
- (d) whether they are prepared for resettlement back into the community.

PUBLIC REPORTING PROCESS

Routine and regular reviews of every institution allow problems to be identified (and hopefully corrected) before there are lawsuits about conditions or incidents that make the front page of the newspaper. (Deitch 2010)

- Following each inspection, the Independent Correctional Oversight Board shall release a report with recommendations for improvement that is available on a public website.
- Prison officials must respond with an action plan stating whether each recommendation is accepted and if so how it will be implemented in the prison.
- The Independent Correctional Oversight Board returns to conduct a follow up inspection to determine the agency's state of compliance with its action plan.

BENEFITS & DEMOCRATIC VALUES

The benefits that come from the transparency that results from prison oversight include enhanced effectiveness, greater resources, and new ideas. **Oversight serves democratic values** by engaging the public in the long and difficult discussion of what we, as a society, can reasonably expect of prisons. (Stajkovic 2010)

Routine and regular reviews of every institution allow problems to be identified (and hopefully corrected) before there are lawsuits about conditions or incidents that make the front page of the newspaper. (Deitch 2010)

Regular monitoring helps keep the quality of correctional services high, because the staff's knowledge that an inspector could arrive at any time acts as a means of informal control over staff behavior. In other words, it "keeps staff on their toes" and helps them avoid complacency, even when everything is going well. (Deitch 2010)

"Watching something affects its course. In facilities that confine people, the presence of civilian overseers humanizes everyone—inmates and staff—and makes the prison a better, more effective and more enlightened institution for all." (Brickman, J. 2010)

The research is clear about the need for oversight of public institutions. Hawai'i is going through an unprecedented period of problems. In December 2016, the BJS reported that Hawai'i ranked 7th in the number of deaths in prisons and that was before the last 5 or 6 "suicides" that we know about. Something is terribly wrong.

Why is the department is constantly allowed to "stand on their testimony" without even saying if they support or oppose the bill? This is such an insult to the public, many who take the day off work to testify, who are allowed 2 minutes to state their position - without knowing the department's position because their testimony is not available until after the hearing and the department never testifies.

What happened to democracy?

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Department data from July 2017 given to the HCR 85 Task Force reported that 72% of all the people imprisoned by the state are in for the lowest felonies, misdemeanors, violations, petty misdemeanors, and parole and probation violations. Why is Hawai'i so keenly interested in developing a robust underclass comprised of people contending with a variety of public health and social challenges?

We know there are a plethora of strategies that are more effective, less expensive and humane. We know what to do. Now we need to do it.

We have great hope for this bill as long as it is *not controlled* by the department as the CPMC has been in the past. Improvement is never possible if it is not a priority. The CPMC has traditionally been controlled by the department and this would impede oversight, thus defeating the purpose of this measure.

Independent oversight and continual improvement is a crucial element toward building an organization of excellence. It is worrisome, therefore, when an organization refuses to look inward and refuses to engage outward to interact with the community, whose loved ones live and work there. This is what is happening at the department of public safety.

Community Alliance on Prisons implores the legislature to provide the leadership that is so desperately needed. Don't allow this department to go rogue and operate covertly. People are dying...and they don't have to. Something is very wrong and the community is asking for your help. Please take charge or the federal government will.

Mahalo for the opportunity to support this measure. We urge you to pass it and we respectfully request that the committees include our suggestions in your committee reports.

*A nation that is afraid to let its people judge the truth and falsehood
in an open market is a nation that is afraid of its people.*

John F. Kennedy

February 8, 2018

**TESTIMONY IN SUPPORT OF SB 2426
CORRECTIONS POPULATION MANAGEMENT COMMISSION
with RECOMMENDATIONS FOR AMENDMENTS**

Hearing: February 9, 2018, 9:30, Room 016

TO: Chair Clarence Nishihara, Vice Chair Glenn Wakai and Members of the
Committee on Public Safety, Intergovernmental and Military Affairs

Chair Brian Taniguchi, Vice Chair Karl Rhoads and
Members of the Committee on Judiciary

FROM: Barbara Polk

I am testifying as an individual in support of SB2426. Hawaii badly needs an effective oversight commission to monitor and report on matters pertaining to our justice systems. I support SB 2426 because it greatly improves the current Corrections Population Management Commission (CPMC) by adding members, requiring regular meetings and reporting, and adding a section requiring access to Departmental information and correctional facilities.

However, I am concerned that continuation of placing CPMC under the Department of Public Safety (DPS) and including administrators of DPS on the Commission results in lack of the independence that is normally expected of bodies having oversight of public activities (e.g., the Board of Regents, Board of Education, etc.). Therefore, **I strongly recommend that the Commission members not include DPS administrative personnel and be administratively separate from DPS. A more appropriate placement may be under the State Supreme Court.**

Secondly, spot-checks are not effective when announced in advance. **I strongly recommend adding “unannounced” to (b)(2): “The authority for any member of the Commission to conduct unannounced spot checks . . .”** Without these changes, “security measures” may be interpreted to require advance notice and/or require all Commission members to come at once.

Thirdly, while the list of areas in which the Commission is directed to make recommendations seems quite comprehensive, it lacks several very important areas. **I strongly recommend that the list include the following:**

Any and all matters pertaining to the treatment of inmates.

To include use of solitary confinement and other penalties, and appropriate treatment of inmates with mental health issues, etc.

Data needed to be collected by any part of the justice system.

Data currently collected and made public on request by DPS is often incomplete and summarized in ways that tend to be misleading (not necessarily intentionally).

Transfer of inmates to out of state facilities and assessment of those facilities.

To include criteria for transfer, oversight arrangements at the out of state facility, and evaluation of any contracts with such facilities prior to signing.

Training for corrections officers and other DPS personnel.

Changing norms around the country require that training programs be increased and focus on such areas as understanding mental health and drug treatment issues and the importance of humane treatment of inmates.

With the changes recommended, the public will have more robust oversight of a major area of government that currently runs almost independently.

I urge you to pass SB2426 and recommend that you consider and include the amendments I have suggested above.

Thank you for the opportunity to testify.

SB-2426

Submitted on: 2/7/2018 9:29:13 AM

Testimony for PSM on 2/9/2018 9:30:00 AM

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

Comments:

Thank you for hearing SB2426 which I strongly support.

The commission's oversight will provide information badly needed to see how we can improve our correctional facilities.