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**TESTIMONY ON SENATE BILL 2979
RELATING TO CORRECTIONS.**

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

Tuesday, January 30, 2018; 1:15 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) respectfully offers the following comments to Senate Bill (SB) 2979, relative to the operational impacts of the measure's proposed amendments to current law, codified in Hawai'i Revised Statutes (HRS) Section 353-16.

Please be aware that restricting the Department's ability to determine the eligibility of offenders for transfer to federal and/or out-of-state institutions will have significant detrimental effects on PSD's severely deteriorating and overtaxed infrastructure and facilities' overcrowding statewide.

The medium security prison bed space shortfall in Hawai'i is between 1,500 and 1,600. To house inmates outside of Hawai'i based solely on the criteria set forth in this bill would almost wholly exclude inmates housed on the Mainland from participating in minimum and community custody reentry programming offered in Hawaii, the community to which they will return upon release.

In another example, Halawa Correctional Facility (HCF) is currently undergoing critical security renovations to its main site. Initially, it was anticipated that the current renovations, which have required the shutdown of one module at a time and the temporary relocation of 248 inmates on a rotating schedule, would be completed by December 2017. Because of project delays, the new completion date is anticipated to be in late 2018.

HCF would not be able to complete these much-needed renovations if it could not rehouse the 248 inmates. Should other facilities need to rehouse offenders for similar, important purposes, this measure would prevent PSD from doing so and stand in the way of critical facilities' improvements to improve the safety and security of inmates and staff, alike.

In addition, SB 2979 would negatively impact our Inter-State Compact for offenders requesting return to their home states for incarceration and/or parole, thus, curtailing their rights to request being closer to family and appropriate transition programs.

Finally, this bill will hamper PSD's ability work closely with the Federal Bureau of Prisons, which has its own criteria for whom they will accept and under what conditions. Again, this would create deleterious impacts for the Community Correctional Centers throughout the state.

Thank you for the opportunity to present this testimony.

SB-2979

Submitted on: 1/28/2018 1:12:44 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Martha Nakajima	ACLU People Power	Support	No

Comments:

I believe that no prisoner convicted in Hawaii should be incarcerated out of state. It is particularly cruel to do this to our Hawaiian brothers. No argument on cost- saving can justify tearing human beings away from their homeland, family, and culture and isolating them thousands of miles away.



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR SENATE BILL 2979, RELATING TO CORRECTIONS

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Hon. Clarence K. Nishihara, Chair

Hon. Glenn Wakai, Vice Chair

Tuesday, January 30, 2018, 1:15 PM

State Capitol, Conference Room 229

Honorable Chair Nishihara and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in strong support of Senate Bill 2979, relating to corrections.

Private prisons have no place in Hawai'i. Already, our state undermines its commitment to restorative justice, each day, by criminalizing low-level offenses, like possession of small amounts of marijuana or, under Honolulu's sit-lie bans, the act of being homeless and tired. As the visitor industry reaps record profits, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and harsher drug-related punishments than other ethnic groups.

Private prisons only incentivize the cycle of crime by providing a financial motivation for the further criminalization of nonviolent offenses and imposition of longer sentences. Private prisons are run as businesses, after all. Without inmates, they cannot turn a profit. America's for-profit prison industry currently controls 126,000 Americans' lives. As Lauren Brooke-Eisen, Senior Counsel in the Brennan Center's Justice Program at the Brennan Center for Justice at NYU School of Law, has argued, "It's a \$5 billion sector—one that encompasses the operation of 65 percent of the nation's immigration detention beds. And at the same time, it is largely opaque, often unaccountable to the public or the government."

When Hawai'i began sending prisoners to the private detention centers on the mainland in 1995, the policy was proposed as a temporary measure to relieve overcrowding of local prisons. More than 20 years later though, 1,300 inmates—43 percent of Hawaii's prison population—remain on the continental United States, locked inside a notorious private facility in the Arizona desert, midway between Tucson and Phoenix, nearly 3,000 miles from home. That prison, the Saguaro Correctional Center—named after a cactus native to the Sonoran Desert and based in the small town of Eloy—is run by the Corrections Corporation of America (CCA), recently renamed CoreCivic, the country's largest private-prison firm. The company isn't legally obligated to respond to public information requests and regularly refuses to answer even the most basic questions about its practices. Private prisons are not subject to the same freedom of information and open records laws as other government agencies. Without access to information, of course, it is impossible to know what injuries are being suffered by detainees. Former security guards who have worked at private prisons say that prisoner abuse is rampant, since disclosure of allegations is extremely rare. In the case of at least some Hawai'i prisoners sent to the mainland—like Johnathan Namauleg, Clifford Medina, and Bronson Nunuha—private prisons have proven to be a death sentence.

In 2010, staff from the Office of the State Auditor accompanied state contract monitors conducting a quarterly inspection of Saguaro. They watched as monitors accepted the testimony of CCA staff "without verifying their statements against documentary evidence" and concluded, in a lengthy report, that Hawai'i "lacked objectivity" when monitoring CCA. This should come as little surprise, since, over the past five years, CCA has spent more than \$500,000 to lobby local politicians. Here, we'd be remiss not to note that one of the firm's highest-paid lobbyists was Douglas Chin, Hawai'i's Attorney General, who earned more than \$100,000 for his services.

Incarceration should not be a goal of our state's criminal justice system. Expansion of the prison-industrial complex through for-profit detention centers only casts a pall over the treatment of offenders, who should be afforded every opportunity to become productive members of society. At the same time, if our state is committed to constructing a "new OCCC" capable of housing 1,300 inmates—something IMUAlliance opposes—then the introduction of private prisons is not needed and, in turn, there is no longer any excuse to keep our nonviolent offenders away from their homes and families or send more of them to the mainland. Let's finally bring them home.

We must build people, not prisons. We must strive to increase people's access to justice, not time spent in jail cells. Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance

SB-2979

Submitted on: 1/28/2018 6:48:07 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

Strongly SUPPORT **SB2979**



Aloha chair nishihara, vice chair wakai, and members of the Committee on Public Safety, Intergovernmental, and Military Affairs,

The Young Progressives Demanding Action – Hawai‘i **strongly supports** SB 2979. As we have stated in previous testimony, the isolation and segregation from community, family, land and other aspects of a person's identity that is created through incarceration is already a grave punishment. It is YPDA Hawai‘i's position that the damage done by such an assault on identity should be mitigated, if not outright banned.

Prison abolition may seem like a far off dream, or an unrealistic goal, but it was not always the dominant form of punishment for crimes, and we believe that, in the 21st century, it should be replaced by better, more humane forms of rehabilitation. That being said, preventing the transfer of convicts to out-of-state prisons is a huge step in the right direction. The damage of isolation from incarceration is exponentially enhanced when it includes removal and geographic banishment from community, family and land. This is especially true for Pacific people whose identities are not just intrinsically linked to land and place—as all ours are—but are intrinsically linked to *this* land, and *this* place. Pacific people are also heavily over-represented in our incarcerated population and criminal justice system, so this bill will have a large, positive impact on that community.

We would ask that the framing language in the bill of “violent” versus “non-violent” inmates be removed, however. Again, incarceration is the punishment these inmates are being asked by society to serve out, not banishment. This is true regardless of the crime, and so this bill should apply to all of Hawai‘i's inmates. Indeed, violent inmates are in just as much need of maintaining connections to family, community and place as non-violent ones, and society is in no way served by the mental degradation of violent offenders.

We will support the bill either way, but strongly suggest that language be ammended.

Mahalo,

Will Caron

Social Justice Action Committee Chair

Young Progressives Demanding Action – Hawai‘i



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	Doug Pyle		

January 26 , 2018

TO: Honorable Chair Nishirara and Members of PSM Committee

RE: SB 2979 Relating to Corrections

Support for hearing on Jan 30

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 SB 2979 as it would limit the Director of Public Safety's ability to transfer convicted felons to any federal correctional institution or a correctional institution in another state to only those felons incarcerated for violent crimes under HRS section 351-32. We support limits on sending our inmates to mainland private prisons. We like the section curtailing the Governor's authority to negotiate or contract for expansion or construction of private correctional facilities. We hope this is the first step to bringing all our inmates to public facilities in Hawai'i.

Thank you for your favorable consideration.

Sincerely,

John Bickel
President

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, January 30, 2018

1:15 pm

Room 229

SB 2979 - COMMENTS

Aloha Chair Nishihara, Vice Chair Wakai and Members of the Committee!

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 2979 limits the Director of Public Safety's ability to transfer convicted felons to any federal correctional institution or a correctional institution in another state to only those felons incarcerated for violent crimes under HRS section 351-32. It requires that all felons incarcerated in an out-of-state correctional institution or an out-of-state federal correctional institution for a crime that is not a violent crime under HRS section 351-32 be returned to Hawaii no later than July 1, 2020. Repeals the Governor's authority to negotiate or contract for expansion or construction of private correctional facilities.

Community Alliance on Prisons believes that this bill is well-intended and it is laudable to return our people to Hawai'i who are currently incarcerated on the U.S. continent. We also strongly support removing the option of corporate prisons from any or construction of correctional facilities in Hawai'i. We note that as of 2020 the state could still export our people, but only to other state facilities.

One of our concerns stem from the state's only response to overcrowding: BUILD MORE BEDS. The community's concern with overcrowding is: BUILD MORE JUSTICE.

Another concern is the use of the violent/nonviolent frame. In *Defining Violence: Reducing Incarceration by Rethinking America's Approach to Violence*¹, the Justice Policy Institute (JPI) explores how something is defined as a violent or nonviolent crime, how that classification affects how the justice system treats a person, and how all that relates to the use of incarceration. The report summarizes the relationship of offenses to the use of incarceration and how that varies by:

- How violent offenses are categorized from place to place: An act may be defined as a violent crime in one place and as a nonviolent crime somewhere else. The law in a particular jurisdiction may define something as a nonviolent crime, but a corrections department may define the same behavior differently. For example, although burglary rarely involves person-to-person behavior, it is defined as a violent crime in some places and can lead to a long prison sentence;
- How context matters in the way a violent or nonviolent offense is treated by the justice system: Sometimes a behavior that would not normally be defined as a “crime of violence” or result in a long prison term can mean a much longer term of imprisonment when a gun is involved; and
- The disconnection between the evidence of what works to make us safer and our current policies: People convicted of some of the most serious offenses – such as homicide or sex offenses – can have the lowest recidivism rates, but still end up serving long prison terms.

These three factors overlap with each other in a way that brings into sharp relief the fact that the nation will fail to make meaningful reductions in the use of incarceration unless we revamp our approach to violent crime and how the justice system treats people convicted of a violent crime. How a behavior is treated by the courts can occur in isolation from the research that demonstrates someone’s ability to change, and brings competing values around what is proportionate and just response to behavior.

“The report examines the significant disconnect between current policies and the evidence of what actually makes us safer. For instance, while research shows that people convicted of some of the most serious offenses – such as homicide or sex offenses – can have the lowest recidivism rates, this is often not taken into consideration when considering sentence lengths.

If America is going to truly come to grips with our addiction to incarceration, we need to have a serious and informed conversation about how we respond to people charged with and convicted of violent crimes. Otherwise, all of the energy and effort to reduce incarceration will result only in marginal changes, which unfortunately won’t move us much closer to a fair and effective justice system.”²

¹ *Defining Violence: Reducing Incarceration By Rethinking America's Approach To Violence*, the Justice Policy Institute (JPI), August 2016. <http://www.justicepolicy.org/research/10708>

² *America Can't Reduce Incarceration without Addressing Violent Crime*, Marc Schindler, September 1, 2016. <https://www.opensocietyfoundations.org/voices/america-can-t-reduce-incarceration-without-addressing-violent-crime>

As the National Academy of Sciences notes in its seminal work, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*³, on the causes of prison population growth, **“The change in penal policy over the past four decades may have had a wide range of unwanted social costs, and the magnitude of crime reduction benefits is highly uncertain.”**

Here is the link to a short powerful video (3.5 minute) from the National Academy’s report on *The Growth of Incarceration in the United States*: <https://www.youtube.com/watch?v=l-kFNDIzL9k>

There is mass misunderstanding about what is driving mass incarceration. It is not just one thing – it is a combination of things that are most commonly identified as the war on drugs, corporate prisons, and mandatory minimums. A new book by law professor John Pfaff calls this the “standard scenario”.

“Starting in the 1970s, U.S. policymakers embraced draconian criminal-justice policies as part of the war on drugs. Tough-on-crime politicians rose to power by pledging longer mandatory-minimum sentences and more intense policing practices. The American legal system became the primary tool for addressing the nation’s social ills. And as incarceration grew rapidly in the following decades, so, too, did the coffers of an emerging prison-industrial complex.

That’s what John Pfaff, a law professor at Fordham University in New York, calls the “standard story” of mass incarceration. But in his new book *Locked In*, Pfaff offers a different account of the phenomenon’s origins. Instead of the war on drugs, he points to violent crime as the key factor that fueled America’s exceptional incarceration rate. Public-employee unions and rural politicians, not just the private-prison industry, trumpeted the boost in jobs and help to small-town economies that large penitentiaries can provide. And prosecutors, not judges or legislators, made the crucial decisions that gave the United States the world’s largest population behind bars.”⁴

In an interview with Atlantic magazine, Professor Pfaff said:

*The failure to pay attention to prosecutors, that’s the one I find hardest to understand – why they’ve been able to skate through the cracks for so long. Part of it is just that we don’t have data on prosecutors the way we do on policing and judging and sentencing – but then again, maybe we don’t really have data on them because we don’t focus on them.*⁵

This has been a burning question in the community: Why are prosecutors allowed to operate in secret and not held accountable?

³ The Growth of Incarceration in the United States: Exploring Causes and Consequences. 2014.
<https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>

⁴ Rethinking Mass Incarceration in America, A new book challenges the popular understanding of how the U.S. prison population skyrocketed, MATT FORD, MAR 2, 2017.
<https://www.theatlantic.com/politics/archive/2017/03/rethinking-mass-incarceration/518229/>

⁵ Ibid.

This bill makes it clear that individuals sentenced for a violent crime would continue to be warehoused in state-run correctional facilities on the U.S. continent. This is problematic since Hawai'i is in the process of reforming our correctional system. Those plans are yet to be finalized. The final report of the HCR 85 Correctional Reform Task Force is due before the 2019 legislature where recommendations will be considered.

A review of Department of Public Safety data provided to the HCR 85 Correctional Reform Task Force as of July 2017 reported that there were 566 A felons and 895 B felons sentenced by Hawai'i. On this data sheet, the total population was reported as 5,277; therefore, the 1,461 A & B felons comprise 28% of Hawai'i's incarcerated population.

Why are we talking about building new facilities without any analysis of what is actually happening in our system? A look at the OCCC, WCCC, DOA Draft Environmental Impact Statement should be enough to convince the legislature that we are moving blindly ahead. This is the road to disaster. What have we learned from RAIL FAIL? And now want to add JAIL FAIL?

Community Alliance on Prisons supports bringing ALL our people home – *IF* we can bring them home to a working correctional system. Sadly, despite being separated from their loved ones, many of our people serving time on the continent have said they don't want to go back to Halawa and live in Hawai'i's dysfunctional prisons. We understand their concerns.

Hawai'i has a golden opportunity to reform our broken correctional system. Community Alliance on Prisons implores the committee to really look at who is in our system. When 72% of our correctional facilities are bursting with individuals who are serving sentences for the lowest felony, misdemeanors, violations, petty misdemeanors, parole and probation violations (NOT NEW CRIMES), it is time for the legislature to question why we are using the MOST EXPENSIVE SANCTION for low-level offenses.

It is time for the legislature to start holding prosecutors' feet to the fire. Prosecutors are one of the biggest barriers to reform in the justice system. The aspect we never discuss is that prosecutors are COUNTY employees, but the STATE runs the correctional system. This is how they have managed to be unaccountable for locking up so many people – it doesn't come out of their budget! There are some prosecutors around the county who actually understand the big picture (other than their own job security). Sadly, we don't seem to have any in Hawai'i.

It is up to the legislature to reign in prosecutors if we ever hope to realize reform in our correctional system.

"Imprisonment has become the response of first resort to far too many of our social problems."

Angela Davis

Testimony for the
PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS COMMITTEE
HEARING: January 30, 2018
Conf. Room 229
1:15 PM

SB 2979

(Returning Non-Violent Prisoners to Hawaii)

Testifier: Karen K. Cobeen

From District: Senate District 4, Hawaii Island

Position: IN SUPPORT.

To: Sen. Clarence K. Nishihara, Chair
Sen. Glenn Wakai, Vice Chair
Committee Members

Aloha:

I wish to testify in support of SB2979 in that the current contract processes with private for profit prisons on the mainland clearly is not working. The press is alive with numerous accounts of inhumane and deadly treatment of those inmates. This is not the Hawaiian way of rehabilitating human beings.

In addition, those private prisons, because of their conduct have cost Hawaii many millions in liability and tort lawsuits by settlements or judgments thru no fault of Hawaii. It costs \$30k to \$50k per annum per inmate to house these people on the mainland. Those funds could be better spent on genuine rehabilitation, treatment, education, etc.

Public Safety needs to get out of its comfort zone, travel out of state and find rehabilitation services that have proven successful elsewhere. The models currently in vogue on the mainland treat inmates like animals. That is not the Hawaiian way.

For these reasons I support SB2979 to bring home non-violent offenders.

Respectfully,
Karen K. Cobeen
P.O. Box 7028
Kamuela, HI 96743
808-938-0089

SB-2979

Submitted on: 1/27/2018 2:37:12 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg and Pat Farstrup		Support	No

Comments:

SB-2979

Submitted on: 1/27/2018 3:57:59 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph		Support	No

Comments:

STRONGLY SUPPORT!

SB-2979

Submitted on: 1/27/2018 4:24:13 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lynn Onderko		Support	No

Comments:

SB-2979

Submitted on: 1/27/2018 11:36:25 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bruce		Support	No

Comments:

Any jurisdiction that can pass judgement and incarcerate should be responsible for that incarceration and not be allowed to farm it out to any private company. Period. Basically that is my testimony.

SB-2979

Submitted on: 1/28/2018 2:35:34 AM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kat Culina		Support	No

Comments:

SB-2979

Submitted on: 1/28/2018 9:45:34 AM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Reed		Support	No

Comments:

This bill is a good step forward for greater State responsibility, for more human treatment of prisoners since they will be better able to keep in touch with family, and should act as a stimulus for the State to quit incarcerating people for crimes without a victim. We will need to reduce the prison population and find more pathways to being a productive part of society for prisoners.

SB-2979

Submitted on: 1/28/2018 9:01:06 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk		Support	No

Comments:

Chair Nishihara, Vice Chair Wakai and members of the Senate Committee on Public Safety,

I support SB 2979. Although sending prisoners to the mainland was intended to be a temporary measure, it has become permanent, and will likely remain so unless ended by the legislature. This bill does not entirely end the practice, but does keep Hawaii prisoners out of the hands of private prisons that have failed to protect them and provide service in the interests of the State of Hawaii. I am especially glad to see the prohibition in the bill against sending non-violent felons to the mainland and the requirement that those who are already there be returned.

Secondly, I am very pleased to see the prohibition on the Governor negotiating or signing agreements with private prison operators to expand or construct correctional facilities in the state. Unfortunately, while states and municipalities across the country are instituting successful prison reform measures that reduce incarceration and save money without impacting public safety, our Department of Public Safety and the Governor have forged ahead to build new jails that hold the same number of people or more, under corrections assumptions that have changed little for the past half century. It is very important to put a halt to planning for a new jail until reforms are made and we are much clearer about what kind of jail or how big a jail we really need.

Thank you for the opportunity to submit testimony in support of SB2979

Barbara Polk