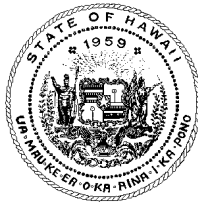


DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Boulevard, 4th Floor  
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Deputy Director  
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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 2362, HOUSE DRAFT 2  
RELATING TO PUBLIC SAFETY.

by

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Ty J.K. Cullen, Vice Chair

Tuesday, February 19, 2020; 2:00 p.m.  
State Capitol, Conference Room 308

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Department of Public Safety (PSD) **supports** House Bill (HB) 2362, House Draft (HD) 2, which would provide funding for the State's purchase of the Federal Detention Center (FDC), to serve as the new Oahu Community Correctional Center (OCCC).

It is well-recognized that like all of PSD's jails, OCCC is severely overcrowded, with inmates and detainees often housed three to a cell meant for one, in less-than-ideal conditions. This antiquated and unsafe facility clearly must be replaced. Replacement or refurbishment costs for facilities to meet the growing housing shortages in the State's correctional facilities has been estimated to be as much as \$1,500,000,000 to \$2,000,000,000, and the State has been hard-pressed to find the resources to deal with overcrowding.

The FDC is not new, but it is an efficient, vertical design which includes integrated, state-of-the-art surveillance and management technologies, accommodating all the necessary functions of a correctional facility. PSD currently houses

approximately 140 State of Hawaii inmates at the FDC, which is estimated to have a total capacity of 1,200. With security and safety of inmates and staff and relief from overcrowding being among our top priorities, it makes good sense to consider purchase of the FDC as a viable alternative to OCCC.

Thank you for the opportunity to present this testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
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DWIGHT K. NADAMOTO  
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LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE SYLVIA LUKE, CHAIR**  
**HOUSE COMMITTEE ON FINANCE**  
**Thirtieth State Legislature**  
**Regular Session of 2020**  
**State of Hawai'i**

February 19, 2020

**RE: H.B. 2362, H.D. 2; RELATING TO PUBLIC SAFETY.**

Chair Luke, Vice Chair Cullen, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 2362., H.D. 2.

While the Department agrees that our county—and Hawaii in general—is urgently in need of new, modern and efficient jail facilities, we strongly believe that this should be addressed by building a correctional facility that is specifically tailored to our county's needs, rather than purchasing another facility that is NOT designed to meet our needs.

Building a new jail would not only ensure the most up-to-date design and technology—as opposed to acquiring a building that is nearly 20 years old—but it could also be designed to effectively and efficiently facilitate on-site treatment and services for defendants, which the Department feels are greatly needed. This could include mental health, substance abuse, educational and other programs. In addition, it could be possible for a new facility to include a satellite “courtroom” where hearings could be conducted, thereby minimizing the need to shuttle defendants to and from the various courthouses, and avoid the confusion and delay that occasionally occurs when a defendant is mistakenly not transported.

Because H.B. 2362, H.D. 2, appears to propose purchasing the federal detention center in lieu of building a new facility, the Department feels that such a solution would be inadequate. For this and all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 2362, H.D. 2. Thank you for the opportunity to testify on this matter.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, February 19, 2020

2:00 pm – Room 325

### **STRONG OPPOSITION to HB 2362 HD2 – BUYING THE FEDERAL DETENTION CENTER**

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 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.

Community Alliance on Prisons is in strong opposition to this measure. First, a little folk wisdom from my Mom: When I was growing up, my Mom cautioned me that the **one thing that must be avoided is to rush into an important decision because you feel pressure to do something**. This is precisely what is happening now. The O'ahu Community Correctional Center has been overcrowded for a long, long time. Ironically, it is the less overcrowded than MCCC and HCCC. Overcrowding is not a new issue; it has been a long-ignored issue.

At the Judiciary Committee hearing for this bill, it was asked if the sale of the Federal Detention Center would require congressional approval. The response was that it would. The department of public safety was then directly asked if the FDC is for sale. After some hesitation, the department's reply was 'NO!'

What is amazing is that the author of the bill went to Norway with the Hawai'i delegation, introduced the bill that established the HCR 885 Task Force, was a member of the task force, and yet buying the FDC NEVER was discussed in the two years that the task force met. WHY?

Civil Beat has a story this morning about 4 former Governors expressing their deep concerns and fears about Hawai'i's future. They see how the people are dissatisfied while the government shuts out their voices. The Rail Fail, the Bail Fail, the Jail Fail, and the questionable purchase of the FDC have left Hawai'i's people holding the bag (read: debt) for very bad decisions made while routinely ignoring the cries of the people.

As of January 31<sup>st</sup>, the population of OCCC was 1,116 individuals; 980 of those individuals are pretrial detainees (many who cannot make bail) and probation violators. This means that 88% of OCCC's population – 980 individuals – are imprisoned at \$198 per person per day costing taxpayers a whopping \$194,040 A DAY! \$1,358,280 a week; \$5,433,120 a month; and \$65,197,440 a year.

### **THERE ARE BETTER, LESS EXPENSIVE, & MORE HUMANE ALTERNATIVES**

Hawai'i continues to be an outlier when it comes to sentencing and incarceration. Many jurisdictions that focused on reducing their incarcerated populations have experienced a decrease in crime rates. The research and data are clear; there are many strategies that will serve our community well, enhance public safety, and save money that could be invested in our people.

Imagine if Hawai'i implemented REAL sentencing and correctional reform as so many conservative states have done. These states have received the benefit of reduced harm and crime in their communities, smaller imprisoned populations, and many have averted the need for new facilities!

### **STOP THE OCCC 'PLANNING PROCESS' NOW**

The OCCC 'process' has enriched some questionable consultants. Was there any discussion about the Louis Berger Group and the published reports of their misdeeds? WHY NOT?

#### **Berger Group Pays \$69.3 Million for Iraq Overbilling**

<http://www.bloomberg.com/news/articles/2010-11-05/louis-berger-group-charged-with-fraud-over-contracts-in-iraq-afghanistan>

**Former Louis Berger Group Inc. Chairman, CEO, and President Admits 20-Year Conspiracy to Defraud Federal Government** <https://www.fbi.gov/contact-us/fieldoffices/newark/news/press-releases/former-louis-berger-group-inc.-chairman-ceo-and-president-admits-20-year-conspiracy-to-defraud-federal-government>

#### **Ex-Louis Berger Group CEO Gets Home Confinement for Fraud**

<http://www.bloomberg.com/news/articles/2015-05-08/ex-louis-berger-group-ceo-gets-year-home-confinement-for-fraud>

**World Bank Group Debars Louis Berger Group** <http://www.worldbank.org/en/news/press-release/2015/02/04/world-bank-group-debars-louis-berger-group>

### **START OVER WITH A REAL COMMUNITY ENGAGEMENT PROCESS**

Hawai'i's government needs to look at our communities as more than just their pocketbook to pay the bills. We respectfully ask our legislators:

- *“Is spending more than \$5 million a month to fund the department's **criminal manufacturing machine** a good investment? “*
- *“Is it a good idea to send a person to jail who is contending with a mental health issue, substance misuse disorder, illiteracy, unemployment, houselessness, and a myriad of other social challenges or should we divert people to appropriate treatment services that directly address their pathways to crime instead?”*

We implore the legislature to listen to the community...to hear the voices of our people who are suffering. Community Alliance on Prisons respectfully asks the committee to hold this ill-conceived measure.

Mahalo for this opportunity to testify.

**Kehaulani Lum**  
**99-045 Nalopaka Place**  
**`Aiea, Hawai`i 96701**

**Testimony on HB 2362, HD2, Relating to Public Safety**  
**House Committee on Finance**  
**Rep. Sylvia Luke, Chair**  
**Rep. Ty J.K. Cullen, Vice Chair**  
**Wednesday, February 19, 2020, 2:00 P.M.**  
**Conference Room 308, State Capitol**

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee,

My name is Kehaulani Lum, and I am the President of the Ali`i Pauahi Hawaiian Civic Club, a member of the `Aiea Community Association and a resident of `Aiea.

On behalf of Ali`i Pauahi Hawaiian Civic Club, which is located in `Aiea, I am writing in support of HB 2362, HD2, Relating to Public Safety. This measure appropriates funds for the purchase of the Honolulu Federal Detention Center.

Ali`i Pauahi's mission is to preserve and promote Native Hawaiian culture and the well being of our people. This measure interests us, because of the impact that incarceration has on our community. While we make up 21% of the State's overall population, we constitute 37% of the prison population; an overrepresentation that has existed for decades and has led to intergenerational incarceration and trauma for many of our families. Societal injustice and disparate health indicators account, in large part, for this situation, and the effects of a severely overcrowded system, devoid of cultural ways of being and healing, are devastating.

We believe that the purchase of the under-utilized Honolulu Federal Detention Center is a cost, time and health-effective alternative to constructing a new O`ahu jail based on old paradigms that are neither sustainable nor effective. Moreover, with the funds saved from the burden of constructing a new facility (which continue to rise annually), it creates a rare opportunity to create innovative, rehabilitative approaches to corrections that will reduce the costs of incarceration and lead to a system of healing, based on our most valuable asset, the spirit of Aloha. In this way, we can serve as a model for the Nation and world.

HB 2362, HD2 is an immediate response to the delay and expense of constructing a new jail. It is already built, has more than adequate space, particularly, if diversion and bail reform proposals recommended by the HCR 85 Task Force are ultimately enacted, and is located close to the courts, jobs and major transportation systems.

Mahalo nui loa for your serious consideration.

**ROBERT K. MERCE**  
2467 Aha Aina Place  
Honolulu, Hawai'i 96821

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email: mercer001@hawaii.rr.com

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February 17, 2020

TO: Committee on Finance  
RE: HB 2362 HD 2  
HEARING: February 19, 2020  
TIME: 2:00 p.m.  
ROOM: 308  
POSITON: **STRONGLY OPPOSE**

Chair Luke, Vice Chair Cullen, and members of the committee:

My name is Bob Merce. I am a retired lawyer and recently served as Vice Chair of the House Concurrent Resolution (HCR) 85 Task Force on Prison Reform.

I am writing in strong opposition to HB 2362 HD 1 which would appropriate funds to acquire the Honolulu Federal Detention Center to serve as the new jail for Oahu.

Let me say at the outset that the Oahu Community Correctional Center (OCCC) is a disgrace. It is old, dilapidated, overcrowded, and incarcerates hundreds of poor, homeless, addicted, and mentally ill people in appalling conditions. OCCC has been a disgrace for decades, but few seemed to notice or care until the Rail Transit Project made the land beneath it valuable, and then, suddenly, everyone wanted to tear down OCCC and put the land to "a higher and better" use.

Almost immediately the focus was on where to relocate the jail. The State hired a bevy of contractors lead by the Louis Berger Group of New Jersey and Architects Hawaii to plan the new jail and hold briefings in the community. At the briefings the State and its contractors told us what they were going to do, but they never asked us *what we thought they should do*. That is why the House Concurrent Resolution Task Force on Prison Reform found that "every important element of the jail—vision, nature, scale, capacity, and key features—was decided by PSD, DAGS, and the consulting team—**the Community was not involved at all.**"<sup>1</sup>

If the community had been involved, we might have started the jail planning process correctly which is not to ask how big does the jail have to be, but how small can we make it? The state never asked that question and never attempted to find ways to reduce the jail population.

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<sup>1</sup> *Creating Better Outcomes, Safer Communities*, Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the 2019 Hawaii Legislature (December 2018 ) 69.

## ROBERT K. MERCER

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If the State and its consultants had just taken a quick look at who is in OCCC they would have seen that over half the jail population are pretrial detainees, i.e. people who are incarcerated because they are too poor to make bail. Another third or more are probation violators, most of whom are in the HOPE program and are jailed for a few days as punishment for violating the program's rules. These people are not dangerous, but they occasionally break one of the HOPE rules, and the program dictates that they must be sent to jail for a short time.

On January 6, 2020, 89% of the OCCC population (1,031 inmates) were either pretrial detainees (56%) or probation violators (33%). Those two groups together cost the state **\$204,000 a day**. If the State transitioned to a non-monetary bail system that resulted in the supervised release of just 80% of the pretrial detainees, and also built a therapeutic environment for the probation violators instead of jailing them, it would save around \$163,000 a day or \$59 million a year on the island of Oahu alone.<sup>2</sup>

So, it clearly makes sense to adopt policies that would reduce the jail population **before we build or buy anything**.

The danger of **building or buying** without addressing the policies that drive the jail population was reinforced in a recent study by the Vera Justice Institute. The study showed that cities and counties that fail to address the factors driving their jail population end up with excess capacity, which results in the jail filling up within a year or two and creating more overcrowding:

Examining the experiences of some counties around the country shows that jail expansion often does not live up to the expectations of policymakers . . . . *This is because expansion alone fails to address the root causes of overcrowding, leaving in place the very policies and practices that drove the jail's population increase in the first place.* Indeed, there is a risk that the existence of a larger jail with more beds may reduce the incentive to make policy changes that address the factors driving overcrowding due to the temporary relief expansion provides. Jail population growth and increasing capacity can thus exist in a vicious cycle, resulting in an ever-increasing number of people in jail. The push to increase jail beds as a way to improve health and social services can also backfire: the inherent harms of incarceration may limit the effectiveness of new service capacities, and investment in corrections-based treatment

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<sup>2</sup> On January 6, 2020 there were 1,117 pretrial detainees statewide. It costs \$198/day to house one inmate for one day in Hawaii, therefore the savings statewide from bail reform would be \$219,000 a day, or about \$80 million a year.



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services may divert needed resources for similar services and supports in the community.<sup>3</sup>

Architects and planners have an expression: “Define before you Design.” It’s an admonition to decide on a project’s space and use requirements, and make appropriate planning assumptions, before starting on the design.

The FDC was defined and designed almost a quarter of a century ago as a short-term detention facility for federal detainees. It was not designed to be to jail for the City and County of Honolulu, and we should not try to make it work as the county jail. We should design and build the jail we need in the 21<sup>st</sup> century.

Aging correctional facilities are one of the most serious problems facing our state. The FDC is already 20 years old. Although it has not reached the end of its useful life, it is simply short-sighted policy to add another old facility to the State’s inventory of old facilities.

The FDC is a 12-story building, and high-rise jails are a bad idea. Leading jail planner and architect Kenneth Ricci has called large-capacity, high-rise jails “conceptually deficient, and operationally obsolete.”<sup>4</sup> The State should not buy a conceptually deficient and operationally obsolete building.

The FDC is a totally enclosed building. **It has no outdoor space.** Inmates are confined to their modules 24/7 and **never go outdoors.** They do not breath fresh air or feel the wind or the warmth of the sun at any time while they are incarcerated. They live in a totally artificial high-rise environment and even receive a special diet that that is formulated by the federal Bureau of prisons for inmates confined to high-rise facilities.

PSD estimates that 9.5% to 12% of all OCCC inmates are deemed mentally ill.<sup>5</sup> That means that as of January 6, 2020, when the population was 1,154, OCCC housed

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<sup>3</sup> Chris Mai, Mikelina Belaineh, Ram Subramanian, and Jacob Kang-Brown, “Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead”, Vera Justice Institute, (November, 2019) 6-7.

<sup>4</sup> House Concurrent Resolution 85 Task Force, “Interim Report of the HCR 85 Task Force (On Effective Incarceration Policies and Improving Hawai'i's Correctional System) to the Legislature for the Regular Session 2017,” February 2017 at 79. Accessed February 4, 2020, [http://www.courts.state.hi.us/wp-content/uploads/2016/07/HCR\\_85\\_TASK\\_FORCE\\_INTERIM\\_REPORT.pdf](http://www.courts.state.hi.us/wp-content/uploads/2016/07/HCR_85_TASK_FORCE_INTERIM_REPORT.pdf).

<sup>5</sup> *Creating Better Outcomes, Safer Communities* at 66.

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between 127 and 161 mentally ill individuals. PSD also estimates that over the course of a year close to 700 Severe and Persistently Mentally Ill (SPMI) people are incarcerated at OCCC, and that 450 to 600 of those individuals are at one time or another on suicide watch.<sup>6</sup> There is no evidence that the FDC was designed could hold such a large number of mentally ill and suicidal prisoners on a sustained basis.

Most 20-year old buildings are not energy efficient by today's standards, which means that if the State buys the FDC, it could be stuck with an energy-inefficient building for decades to come.

The decisions that are made today will affect our correctional outcomes for the next half century or more. **We should not be discussing whether or not to buy a 20-year old building, we should be talking about the policies that are driving the county's jail population and how we can reduce that population without jeopardizing public safety.**

The discussion we should be having is about bail reform, and where and how to house probation violators, and whether we should house severely mentally ill and often suicidal individuals in jail at all, and how we can divert low-level offenders away from the criminal justice system and into community-based treatment facilities, and more generally, the discussion should be about how we treat the people who end up in the jail. As I have previously said, we must redefine the role of the jail and build a jail that will meet the needs of our city and county:

OCCC is filled with poor, homeless, low level offenders, many of whom suffer from mental illness and substance abuse disorders These people live on the street and endlessly cycle through our jails and emergency rooms, costing the State millions, without ever getting the help they need. We can change that by redefining the role of the jail.

At intake, jails should assess the physical, mental, and social needs of inmates and address those needs in a comprehensive manner. Inmates should receive humane and therapeutic treatment while they are in jail, and when they are released it should be with a discharge plan that helps them access the services they need. Inmates who are unable to access services on their own should have the assistance of a "navigator" to help and support them as they reenter the community.<sup>7</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Robert Mercer, "Reinvent the role of a jail to make it smaller, more efficient," Honolulu Star-Advertiser, February 3, 2020.

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I urge legislators to enact bail reform, fund some form of therapeutic housing for probation violators, increase funding for diversion programs, and then – and only then - plan and design a small and humane jail that truly meets the needs of our community instead of opting for a quick-fix” by purchasing a 20-year old detention center that is conceptually obsolete and will produce bad outcome for the next half century or more.

Thank you for allowing me to testify on this matter.

**HB-2362-HD-2**

Submitted on: 2/16/2020 4:39:17 PM

Testimony for FIN on 2/19/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl B.	Individual	Oppose	No

Comments:

*It does not appear that any research or community input was given for this bill. I  
OPPOSE>*

**HB-2362-HD-2**

Submitted on: 2/15/2020 8:37:36 AM

Testimony for FIN on 2/19/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Urasaki	Individual	Oppose	No

Comments:

I oppose the bill, and ask you to defer this measure. Please follow the recommendations of the HCR 85 task force. Your time, energy, and resources will be better served. Thank you.

**HB-2362-HD-2**

Submitted on: 2/18/2020 11:21:25 AM

Testimony for FIN on 2/19/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Individual	Support	No

Comments: