



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1424  
RELATING TO PUBLIC SAFETY.

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 Government Operations  
Senator Laura H. Thielen, Chair  
Senator Lorraine R. Inouye, Vice Chair

Tuesday, February 5, 2019; 3:00 p.m.  
State Capitol, Conference Room 225

Chairs Nishihara and Thielen, Vice Chairs Wakai and Inouye, and Members of the Committee:

The Department of Public Safety (PSD) supports Senate Bill (SB) 1424, which collapses the Reentry Commission and the Corrections Population Management Commission into a single, independent oversight commission to be established in the Office of the Governor. This oversight commission will be responsible for promoting efficiency and provide greater opportunities for member participation, as many of the members of the existing commissions are selected from a pool of individuals possessing knowledge of and experience in the field of corrections.

PSD respectfully offers the following amendments to this measure for the Committee's consideration:

On Page 8, Lines 1-3:

"The oversight coordinator shall hire staff necessary to accomplish the purpose of this chapter, including a minimum of two researchers and one clerical assistant. Employees of the coordinator's office shall

be exempt from chapter 76 and shall not be considered civil service employees but shall be entitled to any employee benefit plans normally inuring to civil service employees.”

Additionally, PSD recommends the deletion of Page 12, Lines 15-21 through Page 16, Lines 1-7, as there are no current positions assigned to and funded for the functions of both the Reentry and Corrections Population Management Commissions. The administrative support for the existing commissions are provided, as assigned, to existing staff as an ancillary task, secondary to the individual’s usual and customary duties.

These recommendations are made so as to assure that all costs, including the set salary of the coordinator (\$147,444), the salaries and benefits of the staff to be hired, the rental cost of required office space, and any supplies and equipment that will be required for this cadre, are included in the final funding calculation to be determined in Section 10 of this measure.

In addition, PSD welcomes additional Native Hawaiian culture-based programs, with an emphasis on healing and reducing recidivism for the inmate population. More importantly, PSD looks forward to the oversight commission bringing forward additional best correctional practices for an effective correctional system.

Thank you for the opportunity to present this testimony.



**SB1424**

**RELATING TO PUBLIC SAFETY**

Senate Committee on Public Safety, Intergovernmental, & Military Affairs  
Senate Committee on Government Operations

February 5, 2019

3:00 p.m.

Room 225

The Administration of the Office of Hawaiian Affairs will recommend that the Board of Trustees **SUPPORT** SB1424. This measure would establish an accountable body, the Hawai'i Correctional System Oversight Commission, to subsume the responsibilities of two other commissions and further develop a much needed and long-awaited strategy to reduce the State's incarcerated population, reduce corrections spending, and reinvest in public safety and recidivism reduction. It would also create a position for an oversight coordinator to oversee the administration of the Commission and assist in transitioning our correctional system from a punitive model to a rehabilitative and therapeutic one.

OHA has long advocated for criminal justice reform that would thoroughly examine and effectively implement evidence-based corrections policy and incarceration alternatives that could successfully rehabilitate pa'ahao, reduce recidivism, improve public safety, and save taxpayer dollars. We support the efforts represented by this bill and are prepared to 'auamo the kuleana of assisting the Hawai'i Correctional System Oversight Commission in every way we can. We look forward to continuing to represent the interests of overrepresented pa'ahao as a member of the Commission, and we further hope to work collaboratively with the Legislature, Administration, and Judiciary toward the expeditious implementation of the recommendations of the Native Hawaiian Justice Task Force and the HCR 85 Prison Reform Task Force, which also seek to facilitate the transition of our criminal justice system from its current punitive model to a rehabilitative and therapeutic one.

Therefore, OHA urges the Committee to **PASS** SB1424. Mahalo nui loa for the opportunity to testify on this important measure.

THE CIVIL BEAT  
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Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Honorable Clarence K. Nishihara, Chair  
Honorable Glenn Wakai, Vice Chair

Senate Committee on Government Operations  
Honorable Laura H. Thielen, Chair  
Honorable Lorraine R. Inouye, Vice Chair

**RE: Testimony Commenting on S.B. 1424, Relating to Public Safety**  
Hearing: February 5, 2019 at 3:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **with comments on S.B. 1424**.

As it concerns the proposed correctional system oversight commission, new section -3(c) provides: "The commission may hold public meetings it deems necessary and may exercise the exemptions in section 92-5." The intent of that provision is unclear.

By normal operation of law, the proposed commission would be a "board" under the Sunshine Law. HRS § 92-2. As a consequence, all the requirements and exceptions of the Sunshine Law would apply to the new commission, regardless whether any reference such as section -3(c) is made to the Sunshine Law in the commission's statutory authority.

Section -3(c) should be removed from the bill to avoid potential confusion or clarified as to its intended purpose.

Thank you again for the opportunity to testify concerning S.B. 1424.

**SB-1424**

Submitted on: 2/1/2019 3:29:07 PM

Testimony for PSM on 2/5/2019 3:00:00 PM

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

Comments:

February 4, 2019

TO: Committee on Public Safety, Intergovernmental and Military Affairs, and  
Committee on Government Operations

RE: SB 1424

HEARING DATE: Tuesday, February 5, 2019

TIME: 3:00 PM

ROOM: 225

POSITION: **SUPPORT**

Dear Chair Nishihara, Chair Thielen, and committee members.

My name Bob Merce. I am a retired attorney and recently served as vice chair of the HCR 85 Task Force on prison reform. I am also a member of the Reentry Commission, and I am on the Board of Directors of the Native Hawaiian Legal Corporation.

SB 1424 is an extremely important bill that would vastly improve Hawaii's correctional system by implementing two of the most important recommendations of the HCR 85 Task Force on Prison Reform: independent oversight and the transition from a punitive to a correctional system.

### **Independent Oversight**

Independent oversight is a correctional best practice and an essential element of the effort to ensure the constitutional treatment of prisoners and preserve the integrity of correctional systems.<sup>1</sup> Professor Michele Deitch of the University of Texas at Austin, one of country's leading experts on oversight, explains it this way:

Prisons and jails are closed institutions, both literally and symbolically, and they operate far away from public view. In such closed environments, abuse is more likely to occur and less likely to be discovered. Staff members and inmates with malicious intent often find they can act with impunity, while those with more benign objectives may find their plans thwarted by a lack of resources or an institutional culture that is unsupportive of their efforts or content with the status quo. Insular environments tend to put prisoners

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<sup>1</sup> See Michele Deitch, The Need for Oversight in a Post-PLRA World, Federal Sentencing Reporter, Vol. 24, No. 4 (April 2012) accessed January 31, 2019  
<https://www.equitasproject.org/wp-content/uploads/2018/01/Deitch-The-Need-for-Independent-Prison-Oversight-in-a-Post-PLRA-World-Federal-Sentencing-Reporter-April-2012.pdf>

at risk of abuse, neglect, and poor conditions, and the lack of outside scrutiny provides no challenge to this treatment.<sup>2</sup>

The type of oversight that would be provided by HB 1552 is exactly what professor Dietsch has recommended, and many of the key elements of the bill are based on her scholarly writing. By adopting HB 1152 Hawaii would be taking an important step forward in reforming and improving its correctional system.

### **Transitioning to a Rehabilitative Correctional System**

The single most important recommendation of the HCR 85 Task Force is that Hawaii should transition from a punitive to a rehabilitative correctional system. The coordinator position described in HB 1152 would ensure that this transition takes place, and that it occurs in a timely and effective manner.

### **Other Matters**

HB 1152 would merge two existing but narrowly focused oversight commissions on reentry and prison population management into a single new oversight commission. This consolidation makes sense and in my view would make oversight of the correctional system more efficient and effective.

Thank you for the opportunity to comment on this bill.

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<sup>2</sup> Michele Deitch, “The Need for Independent Prison Oversight in a Post-PLRA World,” *Federal Sentencing Reporter*, vol. 24, no. 4, (April 2012): 236–244.

**SB-1424**

Submitted on: 2/4/2019 9:16:43 AM

Testimony for PSM on 2/5/2019 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

Comments:

I am e. ileina funakoshi who was a participant at the meetings of the HCR 85 task force committee meetings and also chair of the public safety committee for the Pearl City Neighborhood Board #21.

I strongly support the need for an Oversight Commission/Oversight Coordinators and hope the staffing would be adequate to take on the added duties of the Reentry Commission and Corrections Population Management Commission which is proposed to be transferred to the Oversight Commission.

Thank you for opportunity to submit my testimony and humbly ask for your support.



**SB-1424**

Submitted on: 2/4/2019 1:58:56 PM

Testimony for PSM on 2/5/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	Yes

Comments:

**Strong Support for SB1424, Correctional System Oversight Commission.**

It is essential that an oversight commission represent the public, with the ability to take a fresh look at our correctional systems. Therefore, **no member of the Commission should be a current or former employee of the Department of Public Safety or any jail or prison system in any other state, nor a current or former police officer or prosecutor.** Each of those positions develops a particular outlook on crime and punishment that may be appropriate to the position, but that would limit their ability to take a hard look at our current system. Of course such individuals could, and should, be invited to discuss their positions with the Commission.

I am also concerned that consolidating other functions into this office will dilute the ability of the Commission and its director to carry out its oversight functions.

**I recommend that any member of the Commission, with the consent of the Director, be permitted to make unannounced visits to any agency or correctional facility** to check on conditions or allegations of issues within those facilities. The public pays for those facilities and needs to have much better knowledge of how they are run, what the conditions are, and the treatment of incarcerated individuals.

Because establishing such a commission is very important, I support passage of SB1424 trusting that some of the details mentioned above will be discussed and supported or modified in this and other stages in the bill's consideration.

I urge the Committee to pass SB1424

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

## COMMITTEE ON GOVERNMENT OPERATIONS

Sen. Laura Thielen, Chair

Sen. Lorraine Inouye, Vice Chair

Tuesday, February 5, 2019

1:15 pm

Room 229

## SUPPORT w COMMENTS for SB 1424 - OVERSIGHT OF CORRECTIONAL FACILITIES

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 families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as 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 more than 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.

Community Alliance on Prisons supports oversight of our correctional system. We, as a society, cannot start a conversation about prison conditions without knowing how prisons currently operate. This has been a fundamental problem with this administration. Hawai'i definitely needs an INDEPENDENT Oversight Commission.

### THE RESEARCH:

Other institutions have natural constituencies of their own to provide a broader range of oversight, invoking standards that are central to their concerns. 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. 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)

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)

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 seeks to establish a public entity, independent of any correctional agency, to regularly monitor and publicly report on conditions in prisons, jails, and other correctional and detention facilities for adults and juveniles in Hawai`i.

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 CONSOLIDATION OF OTHER ENTITIES INTO THE OVERSIGHT COMMISSION:**

This bill consolidates the Reentry Commission and the Corrections Population Management Commission into the Independent Oversight Commission. That seems a lot of responsibility to place on a brand-new commission.

The Reentry Commission was established effective January 1, 2010 by the Hawaii State Legislature to work with the Department of Public Safety in monitoring and reviewing the comprehensive offender reentry program, including facility education and treatment programs, rehabilitative services, work furloughs, and the Hawaii Paroling Authority’s oversight of parolees. The Reentry Commission makes recommendations to the Department, the Hawaii Paroling Authority, and the Legislature regarding reentry and parole services.

The Commission membership was amended in 2012, 2013 and 2015 and now stands at ten members including the Director of the Department of Public Safety who is a non-voting ex officio member. Three members are appointed by the Governor, three members are appointed by the

President of the Senate, and three members are appointed by the Speaker of the House of Representatives. The Reentry Commission is governed by the Sunshine Law and is required by statute to meet at least quarterly each year.

The way people are treated when imprisoned and the programming they receive while serving time definitely affects their reentry and oversight is warranted. We can see some justification for folding in the Reentry Commission, however, we have concerns about piling on too much as part of the Oversight Commission's responsibilities.

We are concerned with folding in the Corrections Population Management Commission because the members represent criminal justice agencies. The Corrections Population Management Commission (CPMC) was established through Act 343, Session Laws of Hawaii 1993. It expanded from eight to eleven members representing all three branches of state government, the county prosecuting attorney, and two community representatives. The objective for the CPMC is "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" (Section 353F-4, Hawaii Revised Statutes). The CPMC is administratively attached to the Department of Public Safety.

In the past, the CPMC was quite active doing space analyses of correctional facilities and Sentencing Simulation Modelling to determine the effect of sentencing on the correctional population. In the last 10 - 15 years, the CPMC has met sporadically and not done anything to reduce the population, or even discuss reducing it!

Our concern is that the Oversight Commission will be getting up and running, members will be appointed, the Chair elected and then the Commission must determine what and how they will provide independent oversight of the 7 correctional facilities in Hawai'i nei. It seems unduly burdensome to saddle them with the responsibilities of 2 other Commissions before they figure out their own work plan.

#### **THE OVERSIGHT COMMISSION REPORTS, STUDIES & INVESTIGATIONS:**

The bill states that the oversight coordinator shall submit a monthly report to the commission, the governor, and the legislature. The monthly report shall include actions taken by the commission and expenses for the preceding month.

Community Alliance on Prisons supports the monthly and annual reporting and respectfully requests, in the interest of transparency and accountability, that those reports be placed on the Governor's website, for the public's information.

Also, in the interest of transparency and accountability, all studies and investigations should be placed on the governor's website with names appropriately redacted accompanied by the justification for the redaction. The department of public safety is known to keep unfavorable information hidden as has been proven by the over \$4 million of public money spent on a contract from a public agency with a public institution to evaluate their programs. No one has seen the evaluations - not the public, and not even the legislature, and you fund this agency!

## WHY WE DESPERPERATELY NEED AN INDEPENDENT OVERSIGHT COMMISSION:

In the more than two decades I have been working on justice issues, I have never seen the department of public safety in such dysfunction. Too many people are dying and too many people are committing or attempting suicide. I have been receiving calls from staff on all islands reporting corruption and cover-ups. There are deep problems in this department and they are widespread. When I ask staffers if the problems are the same or worse, they all say that they have been much worse under this administration. Most staff are afraid to speak up in fear of retaliation and losing their jobs.

There are multiple lawsuits that either have been filed or will be filed and I have been told of several other investigations looking into this department. An Arizona court ruled that the department of public safety acted with “deliberate indifference” to the health and well-being of an incarcerated person in Saguaro.

Another concern we have is that the department of public safety is notorious for appointing former staff members loyal to the director so that the department can control the process.

## TEXAS SEES BI-PARTISAN NEED FOR OVERSIGHT:

An article in the Texas Tribune<sup>1</sup> in November 2018 stated:

*After a recent slew of damning headlines regarding conditions within Texas prisons, reform advocates and lawmakers are hopeful that the timing is right to get legislation passed creating independent oversight of the Texas Department of Criminal Justice.*

*State Rep. Jarvis Johnson, D-Houston, and state Sen. Borris Miles, D-Houston, filed identical bills in their respective chambers last week calling for a governor-appointed, independent ombudsman's office to oversee and investigate complaints against the prison agency. The criminal justice department currently has an ombudsman within the agency, but Johnson and Miles say detaching it from the Texas Department of Criminal Justice would free it to more objectively report findings to lawmakers without repercussions.*

*“You just can’t have the fox watching the henhouse,” Johnson said. “They’re not doing their job.”*

We respectfully ask the committee: How many people have to die before you realize that our correctional system is badly broken and needs **independent** oversight? How many lives will be ruined by allowing the over-detention that is happening right now? What will it take for Hawai`i to make the same bold moves of states that have significantly reduced their incarcerated population and are enjoying a decrease in crime? What will move you to reform our very broken correctional system?

**“You just can’t have the fox watching the henhouse.”**

Mahalo for this opportunity to testify,

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<sup>1</sup> **Advocates say the timing is right for independent oversight of Texas prisons**, by Hannah Wiley, Nov. 26, 2018. <https://www.texastribune.org/2018/11/26/advocates-say-time-right-independent-oversight-texas-prisons/>

**SB-1424**

Submitted on: 2/5/2019 2:49:12 PM

Testimony for PSM on 2/5/2019 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Oppose	Yes

Comments: