

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Public Safety,
Intergovernmental, and Military Affairs**

February 8, 2020

S.B. No. 2520: RELATING TO CORRECTIONAL FACILITIES

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

The Office of the Public Defender strongly supports S.B. No. 2520.

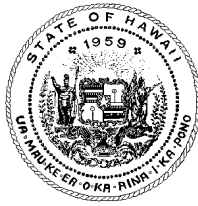
We support the creations of guidelines and limitations on the use of solitary confinement, administrative segregation, and disciplinary segregation. This is particularly important for incarcerated individuals struggling with mental health issues. We have been deeply concerned about the overuse of solitary confinement and segregation that completely fails to provide appropriate medical care and psychiatric care for any incarcerated person with mental health vulnerabilities -- severe depression, severe anxiety, untreated schizophrenia, or any number of medical conditions that can and are exacerbated by prolonged isolation.

The mental health crisis in our communities has been a pipeline into our prison system where mental health care is severely limited. We believe these limited resources have been a direct contributor to the overuse of solitary confinement or segregation. We hope the guidelines proposed in this measure will provide the guidance and rules needed to better regulate the use of solitary confinement and segregation by the Department of Public Safety across the state.

Finally, there are a number of studies that report that isolated prisoners experience negative psychological effects and are at a significant risk of serious harm. *See* Haney, Craig, *Restricting the Use of Solitary Confinement* (January 2018) (<https://www.annualreviews.org/doi/full/10.1146/annurev-criminol-032317-092326> (last visited, February 8, 2020)).

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Shari L. Kimoto
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 2520
RELATING TO CORRECTIONAL FACILITIES.**

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, February 11, 2020; 1:35 p.m.
State Capitol, Conference Room 229

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

The Department of Public Safety (PSD) opposes Senate Bill (SB) 2520, based on the following comments.

The Department of Public Safety is a longtime member of the Association of State Correctional Administrators (ASCA) and a regular participant in training activities of the American Correctional Administration (ACA). Communications and interactions with these professional correctional organizations give PSD access to up-to-date information and training in nationally recognized best practices in the field. For example, the Department has followed the recommendations of the ACA's Ad-Hoc Standards Committee since 2016, in standardizing its policies on administrative and disciplinary segregation according to current national best practices related to restrictive housing.

PSD has also taken steps to institute key practices focusing on the medical and mental health needs of an offender in the continuum of acceptable standards for interactions. The Department requires a multidisciplinary team of staff to conduct checks on inmates daily, whereas, weekly checks are the ACA-recommended standard.

"An Equal Opportunity Employer/Agency"

In addition, the Department requires that a thorough medical and mental health screening be conducted prior to placement where managed by 24-hour health care staff or when health care operations are available. Any inmate who incurs a misconduct and who has demonstrated mental health concerns, is also evaluated. The inmate would also be availed of daily mental health services. The ACA standard is for an evaluation to be conducted within seven (7) days of placement. The “vulnerable populations,” identified in this measure, are given special consideration prior to placement in restrictive housing and reviewed carefully by the medical, mental health, offender services, and security sections before placement.

Further information on the national standards may be found in the ACA’s January 2018 publication, *Current Restrictive Housing Standards*, at: http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_Accreditation/Standards/Restrictive_Housing_Committee/ACA_Member/Standards_and_Accreditation/Restrictive_Housing_Committee/Restrictive_Housing_Committee.aspx?hkey=458418a3-8c6c-48bb-93e2-b1fcbca482a2. The fact that PSD adheres to current national standards in restrictive housing, and in several areas, surpasses the standards, satisfies the intent of SB 2520 and would make its enactment redundant and unnecessary.

In addition, the Department would suggest that if the Committee decides to move the measure forward that certain terms be clarified with clear definitions, including: “indefinite,” “prolonged,” and “continuously,” used in section (g) on page 6, lines 18-21. As they are currently undefined, they are open to multiple interpretations. These terms are also inconsistent with section (c) (7) on page 4, lines 5-7, which allows for long-term segregation.

Finally, it is important to note that PSD must follow the rules of Collective Bargaining Agreements to negotiate any changes to the operations and duties of the Correctional staff as proposed in SB 2520.

Thank you for the opportunity to present this testimony.

SB-2520

Submitted on: 2/9/2020 11:47:17 AM

Testimony for PSM on 2/11/2020 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lorenn Walker	Testifying for Hawai'i Friends of Restorative Justice	Support	No

Comments:

Hawai'i Friends of Restorative Justice (www.hawaiiifriends.org) supports this bill.

Solitary confinement is detrimental to the health of incarcerated people, it undermines rehabilitation and healing and should be discontinued completely.

Mahalo for your public service.

Lorenn Walker, JD, MPH

Director, Hawai'i Friends of Restorative Justice

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 & MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, February 11, 2020

1:35 PM – Room 229

STRONG SUPPORT for SB 2520 – ADMINISTRATIVE, DISCIPLINARY SEGREGATION

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 **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.

SB 2520 establishes procedures for the use of administrative and disciplinary segregation in correctional facilities.

Community Alliance on Prisons is in strong support of this measure. Too many people are either dying in segregation or after shortly release. This bill pays particular attention to those populations that are especially vulnerable.

We have known many people who have been caught in the administrative/disciplinary segregation maze...sometimes for years. And the recent rash of suicides (since 2017) indicate that the individuals who died or attempted suicide were released from administrative or disciplinary segregation.

TWO TYPES OF SOLITARY¹

Two types of solitary confinement are commonly in use today. The first, known as **disciplinary segregation**, is leveled as punishment when inmates break the rules. Steal a cellmate's radio, for instance, and you might be in solitary for a week or two. During disciplinary segregation, an inmate is separated from other inmates for a specified period of time.

¹ Alone, in 'the hole' Psychologists probe the mental health effects of solitary confinement, By Kirsten Weir, May 2012, Vol 43, No. 5, Print version: page 54. <http://www.apa.org/monitor/2012/05/solitary.aspx>

The second type of confinement is known as **administrative segregation**, which is used when prisoners are deemed a risk to the safety of other inmates or prison staff. Prisoners in administrative segregation are placed into isolation units for months or years. Corrections officials first turned to this strategy in response to growing gang violence inside prisons, Dvoskin says.

THE HARMS IMPOSED BY THE STATE

Though critics contend that administrative segregation has never been proven to make prisons safer, use of this type of confinement has continued to rise. That's worrisome to most psychologists who study the issue. Deprived of normal human interaction, many segregated prisoners reportedly suffer from mental health problems including anxiety, panic, insomnia, paranoia, aggression and depression, Haney says (Crime and Delinquency, 2003).

THE RESEARCH

Bureau of Justice Statistics:

The Department of Justice² reports that **Hawai`i has the 7th highest number of prison suicides in the nation.**³ Isn't this a clarion call for reform? If it isn't, how many people have to die in state correctional facilities before something is done to reform a broken system?

The Eighth Amendment to the United States Constitution requires that prison officials "ensure that inmates receive adequate food, clothing, shelter, and medical care" and "take reasonable measures" to guarantee their safety.

Vera Institute of Justice:

Policy changes⁴ that will reduce the use and long-term impact of segregation include the following:

- using alternative sanctions for minor violations
- reducing segregation time for certain categories of violations
- employing standardized incentivized reductions in segregation time for sustained good behavior
- providing opportunities for gradual resocialization to the general prison population

United Nations Special Rapporteur of the Human Rights Council:⁵

The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

² Bureau of Justice Statistics, Mortality in State Prisons, 2001-2014 Statistical Tables, December 2016, NCJ 250150, Table 13 Number of state and federal prisoner deaths, by cause and jurisdiction, 2001–2014, page 12.
<https://www.bjs.gov/content/pub/pdf/msp0114st.pdf>

³ Id.

⁴ Prisons Within Prisons: The Use of Segregation in the United States, Federal Sentencing Reporter • Vol. 24, No. 1 • October 2011. <http://archive.vera.org/sites/default/files/resources/downloads/prisons-within-prisons-segregation.pdf>

⁵ SEEING INTO SOLITARY REPORT:
http://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf

Assessing the impact of time spent in Restrictive housing confinement on subsequent measures of institutional Adjustment Among men in prison:

A paper was published on January 13, 2019⁶ about the effect of restrictive housing on institutional behavior by Ryan M. Labrecque, PhD, is an assistant professor in the Department of Criminal Justice at the University of Central Florida. His research focuses on the evaluation of correctional interventions, the effects of prison life, the development of risk and needs assessments for community and institutional corrections settings, and the transfer of knowledge to practitioners and policy makers. His work has appeared in *Crime and Delinquency*; *Criminal Justice Policy Review*; *Psychology, Public Policy, and Law*; *The Prison Journal*; *Victims and Offenders*; and *Violence and Victims*. Here are the findings:

The results of this study have several policy and practical implications. First, and foremost, these findings suggest that placing men in restrictive housing confinement for longer durations does not lead to great improvements in their institutional adjustment. If the purpose of this practice is to improve one's institutional behavior, this study calls into question the tactic of simply increasing the time spent in restrictive housing as a mechanism for achieving this result. At the same time, these findings do not support the popular contention that restrictive housing units are serious incubators of crime, whereby inhabitants return to the general population at a greater risk for breaking the institution's rules. Nevertheless, these null findings call into question the long-term viability of restrictive housing. Not only does increasing the time spent in this type of housing have no meaningful effect on inmate behavior, it is more expensive to house inmates in restrictive housing units than in the general prison population, the use of this practice raises serious ethical and legal concerns, and placement in this setting reduces opportunities to participate in correctional interventions that may help improve behavior (e.g., educational, vocational, mental health, and other treatment services; Labrecque, 2018a; Smith, 2016). The convergence of these factors highlights the urgency for correctional administrators to explore alternatives to restrictive housing that may better improve inmate outcomes and make prisons safer and more orderly. ...

One potential strategy is to offer higher risk inmates' (e.g., younger, mentally ill, gang affiliates) access to preventive rehabilitative programs before they are placed in restrictive housing and to provide inmates in restrictive housing units with more access to treatment services (Butler, Solomon, & Spohn, 2018; Labrecque & Smith, 2019; Smith, 2016).

We implore the committee to understand that Hawai'i has released people to the community directly from segregation. This does not protect the released person or the community to which they are released. Please understand that today's inmate is tomorrow's neighbor and it is the department's responsibility to do its level best to help people safely return to the community.

Over the decades, Community Alliance on Prisons has developed relationships with correctional officials and researchers around the world so that we can keep abreast of best practices in corrections and on justice issues. There is a larger discussion about solitary confinement taking place around the nation, however, we have been told by people from other jurisdictions that officials from Hawai'i rarely participate in these meetings.

Charles Dickens visited the Eastern State Penitentiary in Pennsylvania in 1842, and the editors call him "one of the earliest – and still one of the most eloquent – critics of solitary confinement." He described the penitents there as men "buried alive." Community Alliance on Prisons humbly and respectfully asks the committee to pass this important bill. Mahalo for the chance to testify.

⁶ Assessing the impact of time spent in Restrictive housing confinement on subsequent measures of institutional Adjustment Among men in prison, Ryan M. LaBrecque University of Central Florida, January 13, 2019.
<https://doi.org/10.1177/0093854818824371>

SB-2520

Submitted on: 2/6/2020 5:45:06 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Individual	Comments	No

Comments:

There are numerous national and international studies which demonstrate the severe psychological harm that is caused to individuals with mental illness who are placed in solitary confinement in prisons. Sadly, a large percentage of the inmates at our penal facilities do suffer from a mental illness. For that reason, some guidelines and protocols and restrictions on the use of solitary confinement would be an appropriate step to take towards ensuring that prisoners are not treated in a way which will needlessly damage their well being. While there may be some policies in place at the prisons we believe that codifying this in statute will provide better protection for these inmates.

SB-2520

Submitted on: 2/9/2020 10:30:01 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki	Individual	Oppose	No

Comments:

These policies should not be codified into law.

SB-2520

Submitted on: 2/9/2020 1:12:06 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments:

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

phone: (808) 398-9594 (cell)
email: mercer001@hawaii.rr.com

February 10, 2020

TO: Senate Committee On Public Safety, Intergovernmental, and Military Affairs
RE: SB 2520
HEARING: February 11, 2020
TIME: 1:35 p.m.
ROOM: 229
POSITION: **STRONGLY SUPPORT**

Chair Nishihara, Vice Chair Wakai, and members of the committee:

My name is Bob Mercer. I am a retired lawyer and recently served as vice chair of the House Concurrent Resolution 85 Task Force on prison reform.

I support SB 2520 which establishes procedures for the use of administrative and disciplinary segregation in correctional facilities.

There is growing concern across the political spectrum about the efficacy and utility of administrative segregation practices, particularly those that involve extended solitary confinement, and growing support for finding ways to safely reduce its use across correctional systems.¹

President Barack Obama asked his Attorney General to review the overuse of solitary confinement, noting that “the social science shows that an environment like that [solitary confinement] is more likely to make inmates more alienated, more hostile, potentially more violent.”²

Supreme Court Justice Anthony Kennedy has repeatedly made clear his concerns about solitary confinement calling it “uncivilized.”³

Rule 43(1) of the Revised Mandela Rules adopted by the UN Commission on Crime Prevention and Criminal Justice in Vienna, Austria on 22 May 2015 prohibits “prolonged

¹ Natasha A. Frost and Carlos El Monteiro, *Administrative Segregation in U.S. Prisons*, National Institute of Justice, March 2016. Accessed February 9, 2020
<https://www.ncjrs.gov/pdffiles1/nij/249749.pdf>

² *Administrative Segregation in U.S. Prisons*, supra. 1.

³ *Ibid.*

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

phone: (808) 398-9594 (cell)
email: mercer001@hawaii.rr.com

solitary confinement,” which Rule 44 defines as “solitary confinement for a time period in excess of 15 consecutive days.”

I believe that Hawaii should conform to the Mandela Rules and limit both administrative and disciplinary segregation to 15 consecutive days.

This is an important bill and I strongly urge you to pass it.

Thank you for allowing me to testify.

SB-2520

Submitted on: 2/10/2020 1:09:09 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R Siciliano	Individual	Support	No

Comments:

SB-2520

Submitted on: 2/10/2020 5:22:04 PM

Testimony for PSM on 2/11/2020 1:35:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support SB2520. Too many people dying in segregation or after shortly release. All lesser sanctions need to be required before placing a person in segregation. Tracking, reporting, and justification needs to be in place before placing a person in segregation.

SB-2520

Submitted on: 2/11/2020 2:41:52 AM

Testimony for PSM on 2/11/2020 1:35:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Gibson	Individual	Support	No

Comments:

Aloha Chair, Vice-Chair and Committee Member,

Please support SB2520.

- Too many people are dying in segregation or shortly after release and this bill pays particular attention to vulnerable populations
- It requires that all lesser sanctions were tried before placing a person in segregation
- It requires tracking, reporting, and justification for placing a person in segregation

Thank you for your attention to this important matter,

Wendy Gibson RN

SB-2520

Submitted on: 2/11/2020 8:48:22 AM

Testimony for PSM on 2/11/2020 1:35:00 PM

LATE

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

Comments: