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No. _____

TESTIMONY ON SENATE BILL 572
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

Tuesday, February 5, 2019; 1:15pm
State Capitol, Conference Room 229

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

The Department of Public Safety (PSD) supports Senate Bill (SB) 572 and welcomes the opportunity for an audit of the specific areas mentioned in this measure.

Thank you for the opportunity to present this testimony.



SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair

S.B. NO. 572, RELATING TO PUBLIC SAFETY

Hearing: Tuesday, February 5, 2019, 1:15 p.m.

The Office of the Auditor has **no position** regarding S.B. No. 572, which requires that the Office of the Auditor conduct a performance audit of various offices and programs within the Department of Public Safety. **However, we have concerns about our ability to conduct work required by the bill.**

The bill requires us to conduct a performance audit of a number of offices and programs within the Department of Public Safety. Specifically, the bill directs that the audit shall include, among other things, assessing:

1. The hiring, staffing, and supervisory policies and practices, including “[a]ctual and perceived conflicts of interest and favoritism among and between employees and supervisors” and employee morale;
2. The handling and dispositions of internal complaints and lawsuits filed by current or former employees;
3. Contracting and procurement policies and practices; and
4. The department’s ability to provide necessary mental health services to inmates and pre-trial detainees.

We are required to submit a report no later than 20 days before the 2020 regular session.

The scope of the audit is very broad. Given the breadth and complexity of the subject matter, we are concerned about our ability to complete the audit (including procuring a consultant) in the time requested. We request that the committee significantly narrow the scope of the requested audit – i.e., the committee should consider reducing the offices and programs to be audited as well as the activities to be assessed – or extend the report deadline to twenty days prior to the regular session of 2021.

Some portions of the work required by the bill are beyond our expertise and will almost certainly require us to procure a consultant to assist us in performing the audit. We note and appreciate that the bill does include an appropriation; however, we have no understanding as to the cost to procure a mental health expert to assess the department’s current mental health services to inmates and pre-trial detainees and the department’s capacity to provide services that are necessary. For that reason, we request that the appropriation be increased to at least \$200,000.

Additionally, we note that the bill incorrectly states that we conducted a performance audit of the department in the 2017 *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Department of Public Safety* (Report No. 17-11). Section 23-13, HRS requires that we review each departments' special, revolving, and trust funds every five years, on a scheduled basis. The report referenced in the bill was limited to reviewing and reporting on the department's special funds, revolving funds, trust funds, and trust accounts. In this review, we did not audit financial data nor did we present any conclusions about the effectiveness of programs or their management, or whether the programs should be continued.

Lastly, for the committee's information, we self-initiated a performance audit of the Department of Public Safety in 2016 to assess: (1) the effectiveness of efforts to manage adult corrections officers' absences and the resulting overtime; and (2) the effectiveness of practices for monitoring adult corrections officers' leave and overtime. However, that audit report has not been issued. The office transitioned to a new auditor in 2016, and the report was held. We are considering completing that audit, which will require additional fieldwork to assess different aspects of the department's procedures relating to the audit objectives and to re-fresh data that we had collected. The audit may address certain areas covered by the bill, specifically the "hiring, staffing, and supervisory policies and practices."

Thank you for considering our testimony related to S.B. No. 572.

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, February 4, 2019

1:15 pm

Room 229

STRONG SUPPORT - SB 572 - PERFORMANCE AUDIT OF CERTAIN OFFICES IN PSD

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.

SB 572 requires the auditor to conduct a performance audit of certain offices and programs within the department of public safety and appropriates funds for this purpose.

Community Alliance on Prisons is in strong support of this measure. We have been advocating on justice issues for more than twenty years and we know many of the wonderful people who work in the department of public safety. Our work is on behalf of the community, the individuals who are imprisoned by the state, and the families of those imprisoned persons.

Community Alliance on Prisons is in strong support of this measure. The recent alleged suicides and other deaths that we know about at WCCC, Halawa, and MCCC have highlighted the need for a closer look at the operations of the Department of Public Safety. Not just what they show the legislature on paper; what matters is how they implement those policies. A 2013 audit¹:

¹ Report on the Implementation of State Auditor's 2010 Recommendations - Business, Economic Development & Tourism Budget and Finance Aloha Tower Development Corporation, State Procurement Office, pCard Program, Public Safety, Sheriff Division Public Safety, Prison Bed Contracting, Department of Taxation, Contracts - A Report to the Governor and the Legislature of the State of Hawai'i, THE AUDITOR STATE OF HAWAI'I, Report No. 13-03, April 2013, Chapter 7 - Mixed Results for Public Safety Department's Efforts to Improve Oversight and Data Quality, page

“found the department has improved the accuracy of its incarceration data, employing a more systematic process that utilizes comparable costs and cost-accounting methodology. Additionally, the current department director told us that compliance with the State procurement rules, policies, and procedures is a top priority for him. However, the department and division still have not documented any formal policies or procedures related to the administration of contracts, the systematic and formal evaluation of its contractors, or the retention of contract-monitoring records. In addition, we found that department staff are participating in procurement activity without having appropriate training – in violation of procurement rules, policies, and procedures – and the director has yet to attend any procurement training. These significant deficiencies call into question the current director’s commitment to proper compliance and introduce the risk that the violations cited in our previous report can and will occur again.”

The 2010 audit of contract beds² concluded:

“The Legislature must hold the Department of Public Safety accountable for its inadequate cost reporting. Without clarified guidance by policymakers, the department has no incentive to perform better and will continue to evade accountability by providing unreliable and inaccurate reporting of incarceration costs. Moreover, the Legislature will continue to receive this insufficient cost information and be unable to address the larger problem of prison overcrowding. To address these issues, the department must first improve the methodology employed to calculate comparable inmate per day costs for the department’s use in decision making and reporting to the Legislature. In addition, management should be more diligent and improve the compilation of its incarceration costs data by utilizing available tools such as Offendertrak.”

The 2013 follow up audit³ on the implementation on recommendations made in the 2010 included this explanation from the department:

“When asked why the department no longer reports these numbers (the costs of incarceration) to the Legislature, the acting business-management officer replied there used to be a proviso in the budget that required the department to submit incarceration costs as part of its budget request. The proviso last appeared in the department’s 2010 budget documents, the last time it reported this information to the Legislature. In addition, the Legislature has not made any subsequent requests for such information. As a result, policymakers are still not provided sufficient or accurate information on incarceration costs for inmates in out-of-state and in-state facilities.”

One of the things that the community has always asked for is that the same level of accountability be applied to the department that the state demands from people in their “care and custody”. We fail to understand why a department that incurs incredible liability to taxpayers and great harm to individuals and their families is allowed to be unaccountable.

² Management Audit of the Department of Public Safety’s Contracting for Prison Beds and Services, A Report to the Governor and the Legislature of the State of Hawai’i, The State Auditor, Report No. 10-10 December 2010.

³ See FN 1

Transparency and accountability are vital to a vibrant democracy. It is insulting to taxpayers when we testify on bills without knowing the position of the department beforehand and then at the hearing the department does not, and generally is not asked, to speak.

This audit will hopefully shed some independent light on this department that is responsible for the lives and safety of the people in their “care and custody” as well as for those who work in their facilities.

Community Alliance on Prisons urges the committee to support this important audit that we hope will provide the information that legislators need in order to develop thoughtful, sound, and just policies that serve the public interest.

Mahalo for hearing this bill and for the opportunity to testify.

*“Everything secret degenerates, even the administration of justice;
nothing is safe that does not show how it can bear discussion and publicity.”*

Lord Acton

ROBERT K. MERCE

February 4, 2019

TO: Senate Committee on Public Safety, Intergovernmental, and Military Affairs

RE: SB 572

HEARING DATE: February 5, 2019

TIME: 1:15 PM

ROOM: 229

POSITION: **SUPPORT**

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

My name Bob Merce. I am a retired lawyer and recently served as vice chair of the HCR 85 Task Force on prison reform.

The Department of Public Safety has near complete authority over thousands of our citizens, many of whom are poor, uneducated, and vulnerable because they suffer from a wide range of mental disorders. The legislature has a duty to oversee the Department of Public Safety, and a comprehensive *and current* audit should certainly be a major part of that oversight.

The factual findings of the HCR 85 Task Force on prison reform clearly support the need for a comprehensive audit. Those findings include a rash of suicides at Hawaii correctional facilities, reports of unlawful sexual relationships between prison guards and inmates, escalating costs, lack of independent oversight, 2,706 complaints by prisoners to the state Ombudsman in FY 2015-2016, the need for more culturally relevant and gender specific programs, lack of progress in reducing the number and percent of Native Hawaiians in the correctional system, and many other issues.

We need a comprehensive audit of PSD. I urge you to pass SB 572.

Thank you for the opportunity to comment on this bill.

SB-572

Submitted on: 2/4/2019 8:34:01 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

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

Comments:

SB572

I STRONGLY SUPPORT SB572 requiring a performance audit of the Department of Public Service.

I am especially concerned about SECTION 2.(b)(4) regarding the capacity of DPS to provide mental health services. On a tour of OCCC with a university class last year, I visited the mental health unit, which seemed to me to be completely inappropriate to the treatment of mental health and, indeed seemed likely to increase, rather than decrease the mental health problems of incarcerated individuals. I was also concerned, at that time, by the report in Civil Beat that the Director of DPS had claimed coloring books as treatment for mental illness, suggesting that he had no understanding of mental health or knowledge of appropriate treatment.

A performance audit is badly needed. The public pays too much for jails and prisons to be left almost completely in the dark about the operations of DPS.

Please pass SB572.

SB-572

Submitted on: 2/4/2019 10:39:49 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keiron Pratt	Individual	Support	No

Comments:

I am in STRONG SUPPORT of this bill. It is way overdue for an audit of this department.

SB-572

Submitted on: 2/4/2019 12:59:48 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
kelli keawe	Individual	Support	No

Comments:

Dear Chair Senator Clarence Nishihara,

and Members of the Committee, Wakai, Baker, Harimoto and Fevella

I, strongly support of SB572, as an employee and union steward. I have received many complaints and concerns from employees, and advocates as stated in SB572.

- 1. to name a few, handling of internal complaints, unqualified employees, employees morale at its worse, falsified documentation of time sheets as it relates to employees schedule, vacation and sick leave, abuse of overtime, mental health services in our facilities, abuse of power by the administrators and no support to line staff, and dirty written outside contracts.**

SB-572

Submitted on: 2/2/2019 8:28:12 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

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

Comments: