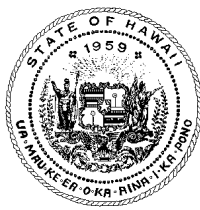


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**TESTIMONY ON SENATE BILL 608
RELATING TO CORRECTIONS.**

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, 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) has reviewed Senate Bill (SB) 608 and would like to offer the following comments.

Over the past four years, the Department of Public Safety has participated with the American Correctional Association (ACA), which has had an Ad-Hoc Standards Committee since 2016, in standardizing its policies on administrative and disciplinary segregation according to current national best practices.

PSD not only follows the standards set by the ACA; it has instituted the more cautionary practices in the continuum of acceptable standards for interactions. For example, PSD requires a multidisciplinary team of staff to conduct checks on inmates daily, whereas, weekly checks are the ACA-recommended standard.

In addition, the Department requires that a thorough medical and mental health screening be conducted within a 24-hour period or sooner, on any inmate with mental health concerns, if and when the inmate incurs a misconduct. The inmate would also be availed of daily mental health services. The ACA standard is for an

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Senate Committee on Public Safety,
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evaluation to be conducted with seven (7) days of placement. The “vulnerable populations,” identified in SB 608, 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 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.

Finally, it is important to note that PSD must follow the rules of collective bargaining to negotiate any changes to the operations and duties of the Correctional staff as proposed in SB 608.

Thank you for the opportunity to present this testimony.

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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 FOR SB 608 - RESTRICTING ADMIN & 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 **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 5,400 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 is in strong support of this measure. We have known many people who have been caught in the admin/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.

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

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>

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).

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 Council⁵

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

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

Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

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 s/he is 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.

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>

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 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.

WHAT CORRECTIONS OFFICIALS AND OTHERS HAVE SAID ABOUT ISOLATION

Here are some thoughts by corrections officials:

- The Association of State Correctional Administrators issued a report calling prolonged isolation of inmates in jails and prisons "**a grave problem in the United States.**"⁷
- **Inmates sent to solitary should be prisoners "we're afraid of, not mad at,"** said Gary Mohr, director of the Ohio Department of Rehabilitation and Correction.⁸

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.**"

SB 608 is a step in the right direction to reform this inhumane practice, however, with little to no oversight, there is no assurance that administrative segregation will not continue to be used as a tool of retaliation.

At a recent meeting of the Reentry Commission, the department staff was asked by Commissioners the purpose of the RAD (assessment tool upon intake) and the staff response was: "**To assess the level of punishment.**"

That statement clearly shows that the department does not understand that INCARCERATION - the loss of liberty - IS THE PUNISHMENT. We have a l-o-n-g way to go to reforming our very broken correctional system. We need the legislature's help to create policies that help rather than harm the people of Hawai`i.

Mahalo for this opportunity to testify.

⁷ Rethinking solitary: National prisons group pushes changes, Andrew Welsh-Huggins, AP Legal Affairs Writer, January 16, 2016. <http://www.seattlepi.com/news/us/article/Rethinking-solitary-National-prisons-group-6763615.php>

⁸ Id.

SB-608

Submitted on: 2/1/2019 11:46:34 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments:

I strongly support SB608.

Mike Golojuch, Sr.

SB-608

Submitted on: 2/2/2019 8:31:31 AM

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

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

Comments:

While I agree with the intent, I oppose this measure as it puts prison safety and security procedures in state law.

SB-608

Submitted on: 2/2/2019 5:17:25 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Individual	Comments	Yes

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.

ROBERT K. MERCE

February 4, 2019

TO: Senate Committee On Public Safety, Intergovernmental, and Military Affairs
RE: SB 608
HEARING DATE: Tuesday, February 5, 2019
TIME: 1:15 PM
ROOM: 229
POSITION: **SUPPORT**

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

My name is Bob Merce. I am a retired lawyer and recently served as vice chair of the HCR 85 Task Force on prison reform. I am also on the Board of Directors of the Native Hawaiian Legal Corp.

I am writing **in SUPPORT** of SB 608, but would make the following comments for your consideration.

Limiting the use of administrative segregation is vitally important, but it is also important to specify by statute acceptable conditions of confinement for those who are segregated from the general prison population. Accordingly, I would recommend specifying the following conditions for administrative segregation, all of which are included in the American Bar Association's *Standards for the Treatment of Prisoners*:

1. Prisoners in administrative segregation should be provided with:
 - a. In cell programming;
 - b. Frequent face-to-face interaction with staff;
 - c. Access to television or radio;
 - d. Access to phone calls and correspondence;
 - e. Access to reading material; and

f. The right to progress gradually toward more privileges and fewer restrictions, even if they continue to require physical separation.¹

The ABA Standards also provide that exercise **should be out of doors, weather permitting**,² and that prisoners who are being considered for long term segregation should be afforded **a hearing with substantial due process rights** on whether such segregation is necessary or appropriate.³

Further, ABA Standard 23-3.3(b) provides that prisoners in segregated housing should at a minimum be provided with a bed and mattress raised off the floor, a writing area and seating, a storage compartment, **natural light**, and light sufficient to permit reading.⁴

Incorporating the foregoing items into SB 608 would strengthen the bill and provide important protections for prisoners.

Thank you for the opportunity to comment on this bill.

¹ American Bar Association, *ABA Standards For Criminal Justice, Third Edition, Treatment of Prisoners 23-2.1*, (2011) at 35.

² ABA Standard 23-3.6(b). See also ABA Standards page 6 note 8

³ ABA Standard 23-2.9.

⁴ The standard states that “it is difficult to think of a situation in which any prisoner should be denied natural light, ABA Standards, p. 98.