

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 Judiciary**

February 23, 2021

S.B. No. 744: RELATING TO THE PHASEOUT OF PRIVATE  
CORRECTIONAL FACILITIES

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender respectfully **supports** S.B. No. 744, which seeks to repeal the authorization for the Governor to negotiate with any person for the development or expansion of private correctional facilities and prohibit the establishment of private correctional facilities in the State.

Justice Michael D. Wilson and the HCR 85 Task Force’s Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai‘i Legislature 2019 Regular Session addresses this very issue, recommending that “Hawai‘i Should Develop a Plan to Bring All of its Mainland Prisoners Back to Hawai‘i and to Stop Using Private Prisons.”<sup>1</sup>

In Hawai‘i, our prison population has increased 670% in the last 40 years.<sup>2</sup> And our incarceration rate has risen to the point that if we were a nation instead of a state, we would rank fifth in the world, behind United States, El Salvador, Turkmenistan and Cuba (excluding the other 49 states).<sup>3</sup> But this has not made us one of the safest places in the world.<sup>4</sup>

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<sup>1</sup> Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai‘i Legislature 2019 Regular Session, “Creating Better Outcomes, Safer Communities” (December 2018) at 57, [https://19of32x2y133s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform\\_Final-Report\\_12.28.18.pdf](https://19of32x2y133s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform_Final-Report_12.28.18.pdf).

<sup>2</sup> HCR 85 Report at 3.

<sup>3</sup> Prison Policy Initiative, “States of Incarceration: The Global Context.” *See* <https://www.prisonpolicy.org/global/2018.html>; *See also* World Prison Brief, Institute for Criminal Policy Research (ICPR), Data for Sweden, <http://www.prisonstudies.org/country/sweden>. (Hawai‘i incarceration rate of 390 prisoners per 100,000 population would put Hawai‘i in the top 20 incarcerators in the world).

<sup>4</sup> VERA, “Incarceration Trends in Hawaii.” *See* <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-hawaii.pdf>

While Hawai‘i’s alarming rate of imprisonment deprives individuals of freedom, loved ones from their families, and drains the limited resources of our State, communities, and taxpayers, the private prison industry has been reaping lucrative profits. This Act is a first step to stop corporations from profiting off of incarcerating Hawai‘i citizens.

Incarceration does not come cheap. In 2017, Hawai‘i spent \$255 million on corrections, accounting for 3 percent of the state’s total general fund spending that year.<sup>5</sup> Corrections general fund spending increased by 263 percent between 1985 and 2017.<sup>6</sup> Feeding and caring for an incarcerated person costs \$198 a day in Hawai‘i.<sup>7</sup> Pre-COVID19 we were spending around \$209,000 a day (\$76 million annually) to incarcerate more than 1,000 people statewide simply because they were too poor to afford bail.<sup>8</sup>

These costs come with trade-offs in other state spending priorities like education, healthcare, and social services. Between 1987 and 2007, corrections budgets rose by 127 percent while higher education funding increased by only 21 percent, forcing the cost of attending higher education to increase each year. The cost of attending the University of Hawai‘i at Mānoa for the 2019-2020 school year, including tuition, room, board, books, supplies, and personal expenses, was \$30,000.<sup>9</sup> With the daily savings from bail reform, we could pay all expenses for a full year of education for 7 students at U.H. Mānoa, and with the savings from a year of bail reform, we could pay all expenses for more than 2,500 students.

Mass incarceration is a result of many systems failing to support basic community needs people need to thrive. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few.

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<sup>5</sup> State of Hawaii Department of Budget and Finance, “Executive Biennium Budget, Fiscal Biennium 2017-2019, Operating and Capital Budget-Department of Public Safety,” <https://budget.hawaii.gov/wp-content/uploads/2016/12/24.-Department-of-Public-Safety-FB17-19-PFP.pdf>.

<sup>6</sup> National Association of State Budget Officers, State Expenditure Report series, <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.

<sup>7</sup> State of Hawaii Department of Public Safety Annual Report FY 2019, <https://dps.hawaii.gov/wp-content/uploads/2019/11/PSD-ANNUAL-REPORT-2019.pdf> at 16.

<sup>8</sup> These numbers have decreased during the COVID19 pandemic but will soon go back to the preCOVID19 numbers unless we adopt the policies recommended in the HCR 85 Task Force.

<sup>9</sup> University of Hawaii at Mānoa, 2019-2020 Cost of Attendance, Accessed December 31, 2019, <https://www.collegesimply.com/colleges/hawaii/university-of-hawaii-at-manoa/price/>.

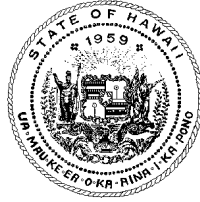
This Act is a step in the right direction to prohibit private prisons in Hawai‘i from profiting off locking up more and more of our citizens, disproportionately people living in poverty, with mental health and substance use disorders, women, Native Hawaiians, Pacific Islanders and Black communities.<sup>10</sup>

Thank you for the opportunity to provide testimony in this matter.

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<sup>10</sup> American Civil Liberties Union, “Blueprint for Smart Justice Hawai‘i” (2019), <https://50stateblueprint.aclu.org/states/hawaii/>.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**MAX N. OTANI**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Tommy Johnson**  
Deputy Director  
Corrections

**Jordan Lowe**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

**TESTIMONY ON SENATE BILL 744  
RELATING TO CORRECTIONAL FACILITIES**

by  
**Max N. Otani, Director**

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021; 9:45 a.m.  
State Capitol, Via Video Conference

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

Senate Bill (SB) 744, seeks to repeal the authorization for the Governor to negotiate with any person for the development or expansion of private correctional facilities. This measure also seeks to prohibit the establishment of private correctional facilities in the State.

The Department of Public Safety (PSD) understands the intent of SB 744 and provides comments for consideration. At present, Hawaii's correctional facilities, which includes eight (8) jails and prisons that are old and outdated, manpower-intensive, and constantly in need of repairs. As of January 31, 2021, six (6) of the eight (8) facilities were operating above their designed capacity and have been for some time (See attached January 2021 inmate population report). The newest correctional facility in Hawaii is the Halawa Correctional Facility, which opened in 1985 and is now over 35 years old. The remaining seven (7) facilities range in age from 40 to over 100 years old.

Despite the increases in both the prison and jail populations over the years, Hawaii has not built a new correctional facility in over 35 years. In 1995 following the Spear vs. Ariyoshi consent decree brought by the U.S. Department

of Justice, PSD began housing inmates out of State in various private prisons on the mainland. While it is unfortunate that approximately 1,000 Hawaii inmates must be housed on the mainland via private prison contracts, the use of private prisons is necessary in order to prevent costly litigation and additional consent decrees relating to overcrowding and inhumane conditions in our facilities. It should be noted, federal consent decrees can be very costly and could require the State to allocate hundreds of millions, if not, billions, of dollars to build and modernize Hawaii's aging and decrepit facilities.

To that end, repealing the authorization for the Governor to negotiate with any person for the development or expansion of private correctional facilities would be short-sighted and hamper the State's ability to react more quickly to overcrowding in our jails and prisons. For example, at present the Judiciary has more than 17,291 offenders on probation supervision statewide, which includes approximately 9,435 convicted felons. If only 10% of the sentenced felony probationers (approximately 935) were resentenced to prison, the State's correctional system, which is already severely strained, with insufficient capacity to house all of our current inmates in Hawaii facilities, would be overwhelmed. This measure would take away PSD's flexibility to respond to and rectify emergency situations.

As an example, the courts have been closed for several months now due to the COVID-19 pandemic, and with the courts' reopening, PSD will see an influx of offenders at all security levels from all of the four (4) counties. The influx may very likely require PSD to seek additional bed space to house the offenders sentenced to prison and sentenced felony probationers resentenced to prison.

With respect to the prohibition on the establishment of private correctional facilities in the State, PSD takes no position, as such a policy decision would be made by both the Governor and the Legislature.

Thank you for the opportunity to submit comments regarding SB 744.

**DEPARTMENT OF PUBLIC SAFETY  
END OF MONTH POPULATION REPORT**

Date: January 31, 2021

FAC.	DESIGN BED CAP.	OPER. BED CAP.	HEAD COUNT ENDING																		
			TOT.	M	F	SENT. FEL.		SENT. FEL. PROB.		SENT. MISD.		PRETRIAL FEL.		PRETRIAL MISD.		OTHER JURIS.		PAR VIOL.		PRB VIOL.	
						M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
HCCC	206	226	277	228	49	26	4	33	7	6	1	113	23	11	2	3		15	4	21	8
SNF	90	132	90	90	0	90															
HMSF	496	992	798	798	0	222		8		1		14						547		6	
KCCC	110	128	134	116	18	33	3	19	7	9		40	5	8	1					7	2
KCF	200	200	138	138	0	138															
MCCC	209	301	308	259	49	25	5	34	6	4	1	128	23	6	1	2	0	28	2	32	11
OCCC	628	954	949	860	89	127		74	14	14		416	36	46	9					183	30
WCCC	258	260	209	0	209		145						1					62			1
WCF	294	334	218	218	0	144												74			
<b>TOTAL</b>	<b>2491</b>	<b>3527</b>	<b>3121</b>	<b>2707</b>	<b>414</b>	<b>805</b>	<b>157</b>	<b>168</b>	<b>34</b>	<b>34</b>	<b>2</b>	<b>711</b>	<b>88</b>	<b>71</b>	<b>13</b>	<b>5</b>	<b>0</b>	<b>664</b>	<b>68</b>	<b>249</b>	<b>52</b>

	CONTRACTED FACILITIES																			
	TOT.	M	F	SF		SFP		SM		PTF		PTM		OJ		PARV		PRBV		
				M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
RED ROCK CC, AZ	0	0	0																	
SAGUARO CC, AZ	999	999	0	956													43			
FEDERAL DET. CTR. <sup>1</sup>	10	4	6		1		1		1		1		2							4
<b>TOTAL</b>	<b>1009</b>	<b>1003</b>	<b>6</b>	<b>956</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>43</b>	<b>0</b>	<b>4</b>	<b>0</b>	

FAC.	DESIGN BED CAP.	OPER. BED CAP.	ASSIGNED COUNT ENDING																		
			TOT.	M	F	SENT. FEL.		SENT. FEL. PROB.		SENT. MISD.		PRETRIAL FEL.		PRETRIAL MISD.		OTHER JURIS.		PAR VIOL.		PRB VIOL.	
						M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
HCCC	206	226	290	241	49	30	4	37	7	7	1	113	23	11	2	6		15	4	22	8
SNF	90	132	90	90	0	90															
HMSF	496	992	809	809	0	228		8		1		14						552		6	
KCCC	110	128	143	123	20	38	5	19	7	11		40	5	8	1					7	2
KCF	200	200	138	138	0	138															
MCCC	209	301	308	259	49	25	5	34	6	4	1	128	23	6	1	2	0	28	2	32	11
OCCC	628	954	968	879	89	135		75	14	15		417	36	47	9	2		2		186	30
WCCC	258	260	237	0	237		169		1	1		1						64			1
WCF	294	334	218	218	0	144												74			
<b>MAINLAND</b>			999	999	0	956												43			
<b>TOTAL</b>	<b>2491</b>	<b>3527</b>	<b>4200</b>	<b>3756</b>	<b>444</b>	<b>1784</b>	<b>183</b>	<b>173</b>	<b>35</b>	<b>38</b>	<b>3</b>	<b>712</b>	<b>88</b>	<b>72</b>	<b>13</b>	<b>10</b>	<b>0</b>	<b>714</b>	<b>70</b>	<b>253</b>	<b>52</b>



AMERICANS FOR DEMOCRATIC ACTION

**OFFICERS**

John Bickel, President  
Alan Burdick, Vice President  
Dave Nagajji, Treasurer  
Doug Pyle, Secretary

**DIRECTORS**

Melodie Aduja  
Juliet Begley  
Stephanie Fitzpatrick  
Jan Lubin  
John Miller  
Jenny Nomura  
Stephen O'Harrow  
Lyn Pyle

**MAILING ADDRESS**

P.O. Box 23404  
Honolulu  
Hawaii 96823

February 19, 2021

TO: Chair Rhoads and members of JDC Committee

RE: SB 744 Relating to Correctional Facility; Prohibition

Support for hearing on Feb. 23

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 744 as it would help end the use of private prisons. They have an economic incentive to extending a prisoner's stay in prison. The ones on the mainland deny visitations from local families and therefore inhibit the transition to post-prison integration into society. We should not be paying for private profits sacrificing public purpose.

Thank you for your favorable consideration.

Sincerely,

John Bickel, President



# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021

9:45 a.m.

### **STRONG SUPPORT FOR SB 744**

### **BANNING DEVELOPMENT OF CORPORATE CAGES IN HAWAII NEI**

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 more than 4,100 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 1,000 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 stands in strong support of this measure to add language prohibiting private/corporate cages to §353-16.35, HRS Development or expansion of in-state correctional facilities.

The problems with prison corporations were laid out in a paper that Loren Walker and I submitted to the Department of Public Safety in 2012. The paper, our response to PSD upon their REQUEST FOR INFORMATION - RFI No.: 14- COR-35 clearly outlined the problems with states doing business with these entities whose only interest is their bottom line. This is why these corporate profiteers are known for shoddy construction, labor problems, spending outrageous sums to defeat bills that would require accountability and transparency, and obvious ethical problems.

And now the largest of these corporate privateers have turned into REITs (Real Estate Investment Trusts) so they can avoid paying taxes. Here is that section of our response to PSD’s RFI in 2013:

*Conversion to a REIT – Real Estate Investment Trust: On 1 January 2013, CCA decided to effectively convert from a standard corporation to a Real Estate Investment Trust (REIT). CCA was given the nod by the Federal government on February 8, 2013 and as a result, its share price exploded upwards. But what may be lost on shareholders*



*is that CCA operated as a REIT once before in the late 1990s. Its first foray into the REIT world ended in near bankruptcy. Today, CCA is facing revenue contraction, dwindling demand, and a bleak outlook. From here the road is a short one to earnings issues and dividend cuts.*

*By converting to a REIT, corporations can avoid paying federal taxes on their earnings as long as at least 90% of those earnings are paid out to shareholders in the form of dividends. This corporate maneuvering to avoid paying federal taxes is yet another one of CCA's questionable business practices. As a New York Times article explained: "One of the bedrock principles – and the reason for the tax exemption – was that the trusts do not do any business other than owning real estate. But bit by bit, especially in recent years, that has changed as the IRS, in a number of low-profile decisions, has broadened the definition of real estate, and allowed companies to split off parts of their business that are unrelated to real estate." ...*

*Somewhere along the way, CCA and a host of other companies with fixed assets started taking advantage of the designation by claiming that they effectively manage real estate, and thus fit the criteria for REIT status. But while CCA owns prison real estate, common sense dictates that the Company doesn't rent them out – it gets paid to run them.*

*For example, the Company's **10-K filing in 2011** (and prior) describe its business as: "We are **compensated for operating and managing facilities** at an inmate per diem rate based upon actual or minimal guaranteed occupancy levels."*

*However, that wording was changed in their **10-K filing in 2012** to: "We are **compensated for providing prison bed capacity and correctional services** at an inmate per diem rate based upon actual or minimum guaranteed occupancy levels."*

*It seems that this deliberate change in wording was a tortured attempt by Management to reinforce the idea that CCA rents out bed capacity instead of operating and managing facilities, making CCA appear more as a 'landlord' and less as an 'operations and management' service.*

*Just this June, the IRS launched a review to define what type of companies can qualify for REIT status. What the IRS review will mean for CCA and a host of REIT imitators is anyone's guess, but in a time of budgetary deficits and vitriol against corporate tax loopholes, growing abuse of the REIT structure was bound to get the attention of IRS and Congress.*

This is important to put in statute now as these profiteers of misery are trying to worm their way deeper into communities and state economies as the threat of losing federal contracts looms. These corporations have already bought out smaller companies that could expand their services such as electronic monitoring (invisible incarceration), reentry 'facilities' (bogus – reentry happens in the community, not from jail or prison), and other needs they could supply to feed the hungry of the prison industrial complex.

Please don't be swayed by their sweet talk. Too many of our people have died, been murdered, and assaulted in incidents that are a shameful example of poor management by the corporation and a pitiful lack of oversight by the state that has been known and allowed to continue for decades.

For us in the community, it is really difficult to understand how we continue to banish our people to facilities where we know the problems, yet our government ignores the harms they are causing and the future problems that will arise from the deals they made with unethical corporations at the expense of human life.

Please support this measure to shut the door on corporate cages now. Don't let this be a battle our kids have to fight. It's time to end profiteering from the misery of human beings.

We close with the last part of the paper Loren Walker and I wrote in 2013 and urge passage of this bill.

*Partnering with any corporate prison entity to renovate and/or construct any facilities in Hawai'i is a bad idea and we respectfully urge the state to not to open Hawai'i's door to the private prison industry.*

*Hawai'i can do more to rehabilitate people. We know that prisons further increase criminal thinking. Hence, prison-building is not a good investment for Hawai'i. Invest in our people. Increase everyone's social capital.*

*We can do this.*

Mahalo for this opportunity to offer testimony.

**SB-744**

Submitted on: 2/20/2021 7:53:20 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ronald S. Fujiyoshi	Testifying for Ohana Ho`opakele	Support	No

Comments:

Ohana Ho`opakele strongly supports SB744.

Ohana Ho`opakele has been in existence since 2000 and has followed pa`ahao from Hawai`i placed in private prisons in Oklahoma and especially in Saguaro Correctional Center in Eloy, AZ. This experiment in having private prisons incarcerate our pa`ahao has been a failure. Private prisons, whose bottom line is making a profit, does not help the healing of our pa`ahao. Even President Biden, in one of the first actions taken, has stopped using private prisons on the federal level. Governor Neil Abercrombie ran for governor promising to bring home the pa`ahao from North America. He changed his mind after being elected.

The recent Covid pandemic has shown that the number of pa`ahao can be reduced significantly without major repercussions. Ohana Ho`opakele has been advocating that all pa`ahao over the age of 65 years be released because statistics have shown that the recidivism rate for this age is about 1 %. We need to change the policy from one of punishment to one of healing. We have advocated for Pu`uhonua or Wellness centers as the model for healing our Hawaiian pa`ahao, who are disproportionately represented in our prison system.

Now is the time to make this happen. And this bill is an action in the right direction.

Mahalo for the opportunity to testify!



**THE SENATE  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2021**

**COMMITTEE ON JUDICIARY**  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021, 9:45 AM  
Via Videoconference

**Re: Testimony in Support of SB744 - RELATING TO CORRECTIONAL FACILITIES**

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee on Judiciary:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

UPW **supports** SB744 which repeals the authorization for the governor to negotiate with any person for the development or expansion of private correctional facilities and prohibits the establishment of private correctional facilities in the State.

UPW is opposed to initiatives that subsidize or otherwise encourage the sale or lease of public infrastructure to private investors that could result in private control or operation of public assets. Research has shown the adverse effects on inmates who are incarcerated in out-of-state, private prisons and the shortfall of oversight and accountability at these facilities.

As we consider investments that look at trying to improve our state’s correctional infrastructure, we ask that it does not come at the expense of the workers who are presently keeping those facilities operational. Thank you for the opportunity to provide testimony.



## Hawai'i

Committees: Senate Committee on Judiciary  
Hearing Date/Time: Tuesday, February 23, 2021, 9:45a.m.  
Place: Via videoconference  
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 744, Relating to Correctional Facilities

Dear Chair Rhoads Vice Chair Keohokalole, and members of the Committee,

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in support of S.B. 744**, which prohibits the use of for-profit correctional facilities in the State.

For-profit jails and prisons are a multibillion-dollar industry. By definition, a for-profit prison will be driven by maximizing profit, not by what is best for rehabilitation and public safety. In a 2016 review of for-profit prisons, the U.S. Office of the Inspector General found that overall, for-profit prisons are *less* safe and *less* secure than government-run prisons.<sup>1</sup> For-profit prisons are typically paid per person housed there. As a result, they benefit from harsher sentencing and the curtailment of probation and parole. While the State has a joint duty to protect public safety and the civil rights of those in its custody, private prison executives have fiduciary duties to shareholders and incentives to maximize profits — incentives that often conflict with public safety and ensuring civil rights of those in custody.

For-profit prisons do not necessarily save Hawai'i money, either. On the contrary, it may cost the State *more* to incarcerate inmates in private prisons than in state-run facilities.<sup>2</sup> This is despite private prisons' tendency to cherry pick the people housed there, often choosing those who are the least expensive to incarcerate.<sup>3</sup> We must end the Department of Public Safety's use of for-profit prisons and ban future contracts to use for-profit correctional facilities, while simultaneously enacting comprehensive reforms in the areas of bail, sentencing, and probation/parole, could offer long-term cost savings for the state.

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<sup>1</sup> This report concerns for-profit facilities contracted to house federal inmates. U.S. Department of Justice Office of the Inspector General, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, Aug 2016, available at <https://oig.justice.gov/reports/2016/e1606.pdf>.

<sup>2</sup> D. M. Levine, *What's Costlier than a Government Run Prison? A Private One*, *Fortune*, Aug 18 2010, [https://money.cnn.com/2010/08/17/news/economy/private\\_prisons\\_economic\\_impact.fortune/index.htm](https://money.cnn.com/2010/08/17/news/economy/private_prisons_economic_impact.fortune/index.htm).

<sup>3</sup> Richard A. Oppel Jr., *Private Prisons Found to Offer Little in Savings*, May 18, 2011, <http://www.nytimes.com/2011/05/19/us/19prisons.html>.

Chair Rhoads and Members of the Committee  
February 23, 2021  
Page 2 of 2

For these reasons, we request that the Committee support this measure. Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes  
Policy Director  
ACLU of Hawai'i

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

American Civil Liberties Union of Hawai'i  
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## SB 744, RELATING TO CORRECTIONAL FACILITIES

FEBRUARY 23, 2021 · SENATE JUDICIARY  
COMMITTEE · CHAIR SEN. KARL RHOADS

**POSITION:** Support.

**RATIONALE:** Imua Alliance supports SB 744, relating to correctional facilities, which repeals the authorization for the governor to negotiate with any person for the development or expansion of private correctional facilities and prohibits the establishment of private correctional facilities in the State.

Private prisons have no place in Hawai'i. Already, our state undermines its commitment to restorative justice, each day, by criminalizing low-level offenses, like possession of small amounts of marijuana or, under Honolulu's sit-lie bans, the act of being homeless and tired. As the visitor industry reaps record profits, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and harsher drug-related punishments than other ethnic groups.

Private prisons only incentivize the cycle of crime by providing a financial motivation for the further criminalization of nonviolent offenses and imposition of longer sentences. Private prisons are run

as businesses, after all. Without inmates, they cannot turn a profit. America's for-profit prison industry currently controls 126,000 Americans' lives. As Lauren Brooke-Eisen, Senior Counsel in the Brennan Center's Justice Program at the Brennan Center for Justice at NYU School of Law, has argued, "It's a \$5 billion sector—one that encompasses the operation of 65 percent of the nation's immigration detention beds. And at the same time, it is largely opaque, often unaccountable to the public or the government."

When Hawai'i began sending prisoners to the private detention centers on the mainland in 1995, the policy was proposed as a temporary measure to relieve overcrowding of local prisons. More than 20 years later though, 1,459 inmates—35 percent of Hawai'i's prison population—remain on the continental United States, locked inside a notorious private facility in the Arizona desert, midway between Tucson and Phoenix, nearly 3,000 miles from home. That prison, the Saguaro Correctional Center—named after a cactus native to the Sonoran Desert and based in the small town of Eloy—is run by the Corrections Corporation of America (CCA), recently renamed CoreCivic, the country's largest private-prison firm.

The company isn't legally obligated to respond to public information requests and regularly refuses to answer even the most basic questions about its practices. Private prisons are not subject to the same freedom of information and open records laws as other government agencies. Without access to information, of course, it is impossible to know what injuries are being suffered by detainees. Former security guards who have worked at private prisons say that prisoner abuse is rampant, since disclosure of allegations is extremely rare. In the case of at least some Hawai'i prisoners sent to the mainland—like Johnathan Namauleg, Clifford Medina, and Bronson Nunuha—private prisons have proven to be a death sentence.

In 2010, staff from the Office of the State Auditor accompanied state contract monitors conducting a quarterly inspection of Saguaro. They watched as monitors accepted the testimony of CCA staff "without verifying their statements against documentary evidence" and concluded, in a lengthy report, that Hawai'i "lacked objectivity" when monitoring CCA. This should come as little surprise, since, over the past five years, CCA has spent more than \$500,000 to lobby local politicians. Here, we'd be remiss not to note that one of the firm's highest-paid lobbyists was Douglas Chin, Hawai'i's Attorney General, who earned more than \$100,000 for his services.



If private prisons are introduced on our shores, the Saguaro nightmare will unfold in our own backyard. Incarceration should not be a goal of our state's criminal justice system. Expansion of the prison-industrial complex through for-profit detention centers only casts a pall over the treatment of offenders, who should be afforded every opportunity to become productive members of society. At the same time, if our state is committed to constructing a "new OCCC" capable of housing 1,300 inmates—something Imua Alliance firmly opposes—then the introduction of private prisons is not needed.

We must build people, not prisons. We must strive to increase people's access to justice, not time spent in jail cells.

**Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · [kris@imuaalliance.org](mailto:kris@imuaalliance.org)**

**SB-744**

Submitted on: 2/19/2021 4:29:10 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments:

Privat Prisons are better then Government owned. Government prisions are just to Corrupt to be allow to go on. They are geart places for mnoey landering and Durgs and abuse of prisnors. This Has bin going on for Decads in the Hawaii prison system this needs to be cleaned up.

Privat may be the way to Clean some of this Up.

**SB-744**

Submitted on: 2/20/2021 7:15:55 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Noelani Ahia	Individual	Support	No

Comments:

I strongly support this bill.

**SB-744**

Submitted on: 2/20/2021 4:23:28 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carla Allison	Individual	Support	No

## Comments:

My name is Carla Allison and I strongly support SB744. We must both prohibit doing business with corporations that profit from incarceration and stop the governor from continuing to negotiate the development and expansion of HI correctional facilities. Hawaii's leaders need to focus instead on creating programs & beds to address mental & drug disabilities because people with disabilities do not belong in jails. Hawaii needs to provide housing because no one should be jailed because they have no place to sleep or live. Bail reform is needed so we stop jailing people awaiting trial simply because they can't afford bail. Legislating and adopting these types of changes would reduce Oahu's jail population significantly and save the state money. We know that incarceration increases criminal thinking, so why would we continue to invest in incarceration. Invest in Hawaii's people instead. Please support SB744. Thank you.

**SB-744**

Submitted on: 2/21/2021 11:34:46 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Support	No

Comments:

Dear Senators,

I am writing in support of SB744 that repeals the authorization for the governor to negotiate with any person for the development or expansion of private correctional facilities and prohibits the establishment of private correctional facilities in the State.

Please carefully scrutinize the Department of Public Safety's testimony in opposition to this bill. For over twenty years, the Department of Public Safety and Hawai'i Paroling Authority has had ample opportunity to adopt and implement evidence based practices to reduce the incarcerated population and stop transferring our people to out-of-state transfers. PSD influences releases at various points in the criminal legal system: setting minimum sentences, parole supervision, early discharge, work furlough, educational furlough, extended furlough, electronic monitoring furlough, compassionate release, providing health care, substance use and mental health treatment and educational and rehabilitation training programs. They have also had the opportunity to implement recommendations from the Council of State Government's Justice Reinvestment Initiative, HCR 85 Task Force, Native Hawaiian Criminal Justice Task Force, and partner with non-profits to enhance opportunities for rehabilitation.

Rather than focusing on programs and services within its control and responsibility, we repeatedly hear the Department of Public Safety pointing fingers at the Judiciary and Legislature for sending people their way.

To be fair, PSD is partially correct - this legislative body and our Judiciary should take responsibility for the increase in our incarcerated population over the years. However, PSD needs to do the same and assess why recidivism rates are so high, and why they have not created and adopted evidence based strategies to end private prison contracts and reduce the incarcerated population in Hawai'i.

Building more jails and prisons is not the solution to overcrowding, and allowing private prison profiteers to step foot in Hawai'i is poor public policy.

**Other Jurisdictions Have Safely Reduced their Incarcerated Population While Reducing Crime Rates**

We should learn from other jurisdictions that have successfully and significantly reduced their incarcerated population. Here are some concrete examples:

### **New Jersey Outcomes**

Between 1999-2012, NJ state prison population reduced by 26%, while the nationwide state prison population increased by 10%

The population went from 31,493 persons to 23,225 persons (decrease of 8,268)

NJ's violent crime rate fell by 30%, while the national rate decreased by 26%

NJ's property crime rates also decreased by 31% compared to the national decline of 24%

### **New York Outcomes**

Between 1999-2012, New York reduced its prison population by 26%, while the nationwide state population increased by 10%.

Incarcerated population went from 72,896 persons to 54,268 persons (decrease of 18,268)

NY's violent crime rate fell by 31%, compared to the national rate which decreased by 26%.

NY's property crime rate fell by 29% compared to the national decline of 24%.

### **California Outcomes**

Between 2006 and 2012, California downsized its prison population by 23%, compared to the nationwide state prison population decrease of 1%.

173,942 to 134,211 (decrease of 39,731)

CA's violent crime rate drop of 21% exceeded the national decline of 19%.

California's property crime rate dropped by 13%, but that rate was slightly lower than the national reduction of 15%.

More recently, Rhode Island, Connecticut, Michigan, Michigan and South Carolina achieved prison population reductions of 14-23%. This produced a cumulative toll of 23, 646 fewer people in prison with no adverse effects on public safety. See, <https://www.sentencingproject.org/publications/decarceration-strategies-5-states-achieved-substantial-prison-population-reductions/>

## Rhode Island Outcomes

Since Rhode Island's incarcerated population is most similar to Hawai'i in size, their data demonstrates the reductions we can achieve through targeted strategies.

<b>Peak Year 2008</b>	<b>Population</b>	<b>Decrease</b>	<b>% Change</b>
	4, 045	3,103 (-942)	23%

The Sentencing Project concluded that all five states achieved significant reductions through the following strategies:

1. Measures to Get Justice Reforms Underway and Maintain Momentum
2. Decreased Prison Admissions via Fewer New Prison Commitments
3. Decreased Prison Admissions via Reduced Incarceration for Failure on Community Supervision
4. Increased Prison Releases via Increasing the Feasibility and/or Efficiency Of Release
5. Increased Prison Releases via Requiring Less Time Served Before Eligibility for Release

If we truly want to build a safe and just legal system and thriving communities, then we must stop investing in private and public jails and prisons, and instead invest in evidence-based public policies that have proven to safely reduce the incarcerated population, and divert people from the current punishment model of "corrections" that is costly and ineffective - as evidenced by recidivism rates of over 50%.

Thank you for the opportunity to submit testimony in support of SB 744.

Sincerely,  
Carrie Ann Shirota, Esq.

**SB-744**

Submitted on: 2/22/2021 9:34:37 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	No

## Comments:

I strongly support SB744. There is no reason to keep using private prisons, which are even being abandoned by the federal government. The State needs to get rid of this disgusting business as soon as it possibly can. There are always people who will seek to profit on the weak or helpless, and private prisons are a prime example of this.

Please passs SB744.



**LATE**

**SB-744**

Submitted on: 2/22/2021 1:28:50 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diana Bethel	Individual	Support	No

Comments:

I am writing in support of SB744 which repeals authorization for the Governor to negotiate with anyone to develop or expand private prison facilities as well as prohibits establishing private prison facilities in the State.

Private prison companies have such a bad reputation for their single-minded pursuit of profit at the expense of inmates and staff that almost half of all states as well as the federal government have banned the use of private prisons. Even major banks are refusing to loan to them.

This should be a flashing red light to discourage the Governor from negotiating with private prison companies. Our prison overcrowding issue is a problem of our own making. We cannot continue to sweep up the homeless, mentally ill, and low level drug users and warehouse them in correctional facilities that often make their problems worse. We know what to do and it does not include building a new half a billion dollar facility, as if that would solve all our problems. The answers are in the HCR 85 Task Force Report and other reports provided to the legislature by former judges and correctional system professionals.

Other states have been pioneers in establishing more evidence-based, cost-effective, and public safety enhancing programs that assist people in becoming productive members of society. Why can't Hawaii learn from them and stop wasting taxpayer money?

Please pass SB744. Mahalo for your consideration.

Diana Bethel, Honolulu

**LATE**

**SB-744**

Submitted on: 2/22/2021 1:28:51 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cadence Feeley	Individual	Support	No

Comments:

Dear Chair Nishihara, Vice Chair English, and members of the Committee,

I am a UH MÄ• noa Social Work student, but these opinions are my own and do not represent the University. I'm in **strong support** of S.B. 744, which prohibits the use of for-profit correctional facilities in the State of Hawai'i. As a future social worker, I am optimistic of a paradigm shift when it comes to incarceration, as we have seen time and time again that not only does it not rehabilitate offenders (Cullen et al., 2011), but it expensive and can cause trauma to all those involved.

Although many of the jails in our state are dated, for-profit prison systems are not the answer. The 70-billion dollar industry profits off of harsh sentences and will only hurt Hawai'i. I believe we should be moving towards reform, not turn back with dated incarceration systems. When looking at the last few decades, it is clear that private prisons also do not save money, as many of these businesses and partnerships claim.

Capitalizing on mass incarceration will detrimentally affect the community in ways that will have consequences for generations. Please support this measure, so we can end this suffering and move towards a brighter Hawai'i that is focused on people over profits.

Mahalo for the opportunity to share.

Cadence Feeley

Cullen, Francis T., et al. "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science." The Prison Journal, vol. 91, no. 3\_suppl, Sept. 2011, pp. 48S-65S, doi:10.1177/0032885511415224.

**LATE**

**SB-744**

Submitted on: 2/22/2021 5:14:20 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong Support.

**LATE**

**SB-744**

Submitted on: 2/22/2021 5:19:35 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
jessica hernandez	Individual	Support	No

Comments:

I am writing in support of this bill. Private prisons are a stain on our society and government practices. I will reiterate the testimony submitted by Kaua'i County's Office of the Prosecuting Attorney:

[Private Prisons'] goal of generating the greatest possible profit is in direct conflict with providing safe and humane conditions. This applies both to the inmates and the staff. Private prisons are often understaffed, overcrowded and unsafe. The Department of Justice found that, in general, private prisons provide fewer correctional services at greater security and safety risk to inmates and staff, without producing substantial savings. The federal government and at least twenty-two states have stopped using for-profit prisons for the above reasons.