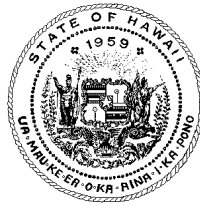


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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No. _____

**TESTIMONY ON SENATE BILL 2777, SENATE DRAFT 1
RELATING TO SEARCHES OF FEMALE INMATES.**

by
Max N. Otani, Director
Department of Public Safety

House Committee on Corrections, Military, and Veterans
Representative Takashi Ohno, Chair
Representative Sonny Ganaden, Vice Chair

March 16, 2022; 10:00 a.m.
Via Videoconference

Chair Ohno, Vice Chair Ganaden, and Members of the Committee:

The Department of Public Safety (PSD) respectfully opposes Senate Bill (SB) 2777, Senate Draft (SD) 1, which seeks to require that pat downs and searches of female inmates be conducted by female correctional facility employees unless the inmate presents a risk of immediate harm to herself or others, or a risk of escape. This measure also seeks to prohibit male correctional facility employees from entering areas where female inmates may be in a state of undress, including, but not limited to, restrooms, shower areas, or medical treatment areas, again, with the exceptions of an inmate presenting a risk of immediate harm to herself or others or risk of escape.

The Department offers the following comments in opposition. Most importantly, PSD strongly adheres to Departmental Policy (COR.08.31 – Searches of Inmates) and the federal Prison Rape Elimination Act (PREA), which reflect the highest national standards addressing gender-related issues with respect to pat downs and searches of female inmates. In addition, facilities' post assignments address male correctional officers' restricted access to areas in

which female inmates may be in a state of undress, including, but not limited to, restrooms, shower areas, medical treatment areas, etc. These policies and procedures should effectively address the issues brought forward in this measure.

It is also very well-known that the Department continues to experience severe shortages of both female and male adult corrections officers (ACOS), and PSD is making every effort to increase the number of hires. The high vacancy rate has been attributed to the very high retirement rate, as identified by DHRD, as well as the challenges of recruiting suitable candidates and the lengthy training cycle. The Department has been diligently recruiting to fill all correctional officer positions, both male and female. We cannot and do not discriminate based on gender when recruiting and filling Correctional Officer positions. In addition, PSD's Training Academy now runs two ACO training courses simultaneously, doubling the number of officers in training.

The Department's aggressive efforts to hire more ACOs and fill vacant positions, coupled with strong policies and procedures and the heightened vigilance of facilities' administrators show that PSD is doing what must be done to care for and protect female inmates.

For these reasons, the Department opposes this measure and respectfully requests that it be deferred.

Thank you for the opportunity submit testimony on SB 2777, SD 1.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON CORRECTIONS, MILITARY, & VETERANS

Representative Takashi Ohno, Chair

Representative Sonny Ganaden, Vice Chair

Wednesday, March 16, 2022

10:00 AM

STRONG SUPPORT - SB 2777 SD1 - SEARCHES OF INCARCERATED FEMALES

Aloha Chair Ohno, Vice Chair Ganaden 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 HD1 of the more than 4,008 Hawai'i individuals living behind bars¹ under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that 1,110 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 appreciates the time to testify in strong support of SB 2777 about searches/pat downs of incarcerated women and the SD1 that requires the Department of Public Safety

- to increase its recruitment and training of female adult corrections officers to satisfy the requirements of female gender specific posts,
- to make every effort within the law to address the concerns of the advocates, requirements of the Prison Rape Elimination Act, and staffing shortages of female gender specific posts, as well as the hiring and training of female adult corrections officers, and
- to submit a report of its efforts in recruiting, hiring, and training female adult corrections officers to the Legislature no later than twenty days prior to the convening of the Regular Session of 2023.

One might believe that since PREA - the Prison Rape Elimination Act - became law in 2003, that everything is fine. Well, it took until 2012 for the Department of Justice to issue prison and jail standards² and to publish it in the federal register a month later.

¹ Department of Public Safety, Weekly Population Report, March 7, 2022.

<https://dps.hawaii.gov/wp-content/uploads/2022/03/Pop-Reports-Weekly-2022-03-97.pdf>

² PRISON PRISONS AND JAIL STANDARDS, United States Department of Justice Final Rule, National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA), 28 C.F.R. Part 115, Docket No. OAG-131 RIN 1105-AB34, May 17, 2012 RAPE ELIMINATION ACT.

In just about every PREA audit, Hawai`i has met the basic standards with policies and procedures. One of the main problems with this is that an agency can tout their policies and procedures when challenged, however, **IT IS WHAT THEY DO THAT MATTERS.**

The department may say they follow up on every report, however, one must look further if the numbers are very low. That leads to the question of why people in prison do not report sexual assault or harassment incidents. It's the imbalance of power in jails and prisons. One thing people learn very quickly when incarcerated is that retaliation is real. This we know to be true from our contact with people inside and their families.

Hawai`i should have learned this lesson when the former AG told the Hawai`i Supreme Court in August 2020 that the state was "caught off guard" and the Department of Public Safety could not comply with the Pandemic Response Plan they were flaunting as their compliance with COVID protocols while the virus was blowing up OCCC.

Policies and Procedures are good, but how they are incorporated into the daily work of the people who work in jails and prisons matters. Policies and Procedures are only good if they are enforced, and reinforced, and re-reinforced. The committee might want to ask how the department handles changes in Policies and Procedures with their workforce.

The department did hire more women Adult Correction Officers yet there is still a staffing problem at gender responsive posts statewide.

Several women have reported sexual harassment and assault during pat downs and are afraid of retaliation, therefore, most incidents go unreported

The bottom line is that state has the responsibility to protect the imprisoned person's health and safety. This is precisely why the Hawai`i Systems Correctional Oversight Commission was formed - to investigate these reports and other incidents in jails and prisons holding our people.

Community Alliance on Prisons mahalos the committee for hearing this important bill and reviewing our testimony. We urge the committee to pass this measure.

Mahalo for this opportunity to testify.

COMMITTEE ON CORRECTIONS, MILITARY & VETERANS AFFAIRS Honorable
Representative Takashi Ohno, Chair
Honorable Sonny Ganaden, Vice Chair

HEARING DATE: Wednesday March 16, 2022
TIME: 10:00 AM, Via Videoconference

SUPPORT FOR SB2777 RELATING TO SEARCHES OF FEMALE INMATES

The Women's Prison Project (WPP) strongly supports this bill prohibiting males employed at Hawai'i correctional facilities from performing pat down searches of incarcerated females; from entering any area in facilities where females are undressed and from entering areas where females may be undressed without announcing that they are entering "unless the prisoner presents a risk of immediate harm to herself or others or risk of escape and a female correctional facility employee is not available to conduct the search." I was a deputy attorney general in the 1990s and defended PSD in prison sexual assault cases. WPP understands that this bill covers areas that the federal Prevention of Rape Elimination (PREA) law also covers. We acknowledge too that the department of public safety (PSD) administration takes PREA seriously and it diligently mandates PREA training for correctional volunteers. We also believe that PSD is doing what it can to hire more female correctional officers. This proposed law would help to *reinforce* the importance of protecting incarcerated women who are especially vulnerable to male sexual exploitation. Almost 90% of incarcerated women have suffered from sexual violence ([Lynch, et al](#), 2012, p. 32), and at least 40% suffer from posttraumatic stress disorder (PTSD) ([Komarovskaya, et al](#), 2011, p. 1). Male staff touching their bodies and viewing them undressed can further damage them. For these and other reasons in 2018 [California enacted](#) a similar law that allows exceptions under specific circumstances like SB2777 does. We urge the Committee to please pass this bill. If you have any questions about WPP's support for this measure please contact Lorenn Walker, JD, MPH, at lorenn@hawaii.edu or (808) 218-3712. Mahalo for your public service.

COMMITTEE ON CORRECTIONS, MILITARY & VETERANS AFFAIRS Honorable
Representative Takashi Ohno, Chair
Honorable Sonny Ganaden, Vice Chair

HEARING DATE: Wednesday March 16, 2022
TIME: 10:00 AM, Via Videoconference

SUPPORT FOR SB2777 RELATING TO SEARCHES OF FEMALE INMATES

Hawai'i Friends of Restorative Justice (HFRJ) strongly supports this bill prohibiting males employed at Hawai'i correctional facilities from performing pat down searches of incarcerated females; from entering any area in facilities where females are undressed and from entering areas where females may be undressed without announcing that they are entering "unless the prisoner presents a risk of immediate harm to herself or others or risk of escape and a female correctional facility employee is not available to conduct the search." I was a deputy attorney general in the 1990s and defended PSD in prison sexual assault cases. HFRJ understands that this bill covers areas that the federal Prevention of Rape Elimination (PREA) law also covers. We acknowledge too that the department of public safety (PSD) administration takes PREA seriously and it diligently mandates PREA training for correctional volunteers. We also believe that PSD is doing what it can to hire more female correctional officers. This proposed law would help to *reinforce* the importance of protecting incarcerated women who are especially vulnerable to male sexual exploitation. Almost 90% of incarcerated women have suffered from sexual violence ([Lynch, et al](#), 2012, p. 32), and at least 40% suffer from posttraumatic stress disorder (PTSD) ([Komarovskaya, et al](#), 2011, p. 1). Male staff touching their bodies and viewing them undressed can be further damaging. For these and other reasons, in 2018 [California enacted](#) a similar law that allows exceptions under specific circumstances like SB2777 does. We urge the Committee to please pass this bill. If you have any questions about HFRJ's support for this measure please contact its director Lorenn Walker, JD, MPH: lorenn@hawaiiifriends.org. Mahalo for your public service.

SB-2777-SD-1

Submitted on: 3/12/2022 4:10:46 PM

Testimony for CMV on 3/16/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support.

SB-2777-SD-1

Submitted on: 3/13/2022 5:12:15 PM

Testimony for CMV on 3/16/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Carolyn Eaton	Individual	Support	Written Testimony Only

Comments:

Aloha, Chair Ohno, Vice Chair Ganaden and members of the Committee,

My name is Carolyn Eaton and I support, urge you to support this bill. Mahalo for your hard work for all the people of Hawai'i.

SB-2777-SD-1

Submitted on: 3/14/2022 10:52:49 AM

Testimony for CMV on 3/16/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Support	Written Testimony Only

Comments:

Support.

SB-2777-SD-1

Submitted on: 3/14/2022 11:22:05 AM

Testimony for CMV on 3/16/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Carla Allison	Individual	Support	Written Testimony Only

Comments:

I strongly support SB2777 and ask CMV members to do the same.

Thank you.

SB-2777-SD-1

Submitted on: 3/15/2022 11:12:40 AM

Testimony for CMV on 3/16/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Wendy Gibson-Viviani	Individual	Support	Written Testimony Only

Comments:

TO: House of Representatives, The Thirty-First Legislature Regular Session Of 2022

Committee On Corrections, Military, & Veterans

FROM: Wendy Gibson-Viviani RN/BSN

RE: SB2777 (In Support)

Dear Chair Ohno Vice-Chair, Ganaden, and Members of the Committee,

Please support this bill. We have a lot of work to do to improve our criminal justice system.

Passing this Female Inmate --patdown/searches bill is an important step towards this goal.

Thank you,

Wendy Gibson-Viviani RN/BSN

Kailua

(Oahu Resident for 29 years)