

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
HAWAII PAROLING AUTHORITY
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No. _____

TESTIMONY ON HB 1132, HD1
RELATING TO THE HAWAII CORRECTION SYSTEM OVERSIGHT COMMISSION

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

Senate Committee on Public Safety and Intergovernmental and Military Affairs
Senator Glenn Wakai, Chair
Senator Brandon J. C. Elefante, Vice Chair

Wednesday, March 15, 2023 – 3:00 p.m.
Conference Room 225

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

The Hawaii Paroling Authority (HPA) offers comments regarding HB 1132, HD1. While HPA understands the intent of the HB, it believes the Oversight coordinator should serve a four year term in parity with other cabinet level positions appointed by the Governor and confirmed by the Senate.

Thank you for the opportunity to testify before the Committee. I am available for questions.

JOSH GREEN, M.D.
GOVERNOR



MARK PATTERSON
CHAIR

CHRISTIN M. JOHNSON
OVERSIGHT COORDINATOR

COMMISSIONERS
HON. MICHAEL A. TOWN
(ret.)
HON. RONALD IBARRA
(ret.)
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STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
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(808) 587-4160

TO: The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice Chair
Senate Committee on Public Safety and Intergovernmental and Military Affairs

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 1132, House Draft 1, Relating to the Hawaii Correctional System Oversight Commission
Hearing: Wednesday, March 15, 2023; 3:00 p.m.
State Capitol, Room 225

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

The Hawaii Correctional System Oversight Commission (the Commission) strongly supports House Bill 1132, House Draft 1, Relating to the Hawaii Correctional System Oversight Commission, which strengthens our ability to carry our Legislative directives as found in Act 179/SLH 2019.

The Commission's mandate, codified in Chapter 353L, HRS, includes four core functions: 1) investigating complaints at correctional facilities and facilitating a transition to a rehabilitative and therapeutic model of corrections; 2) establish maximum inmate population limits for each correctional facility and formulate policies to prevent overcrowding; 3) monitor, review and make recommendations about the comprehensive offender re-entry program and parole services; and, 4) ensure that the comprehensive offender reentry system under chapter 353H is working properly.

House Bill 1132, House Draft 1, addresses three areas that will improve the work of the Commission:

1. Extend the term of the Oversight Coordinator from two to six years. Much of the work of the Commission is delegated by Act 179 to the Oversight Coordinator. Hawaii's criminal justice and correctional systems are unique to our State and requires intimate knowledge to address the requirements of Chapter 353L. It is through gaining that knowledge and developing working relationships with elected and appointed officials, private entities, and their staff that will make the Commission successful. Staff longevity is in the best interest of the Commission.

2. Section 353L-3, HRS, mandates the Commission “have jurisdiction over investigating complaints at correctional facilities...,” and Section 353L-7 (d), HRS, requires the Oversight Coordinator when conducting investigation complaints to “maintain confidentiality in respect to all matters and the identities of the complainants or witnesses...” The Commission has jurisdiction over investigating complaints but no clause demanding confidentiality. This disconnect means the Oversight Coordinator cannot discuss investigations with the Commission as a whole in a confidential manner. Rather, Hawaii’s sunshine laws would require the discussion take place at a public meeting. Exceptions can be made to hold a meeting closed to the public under Section 92-5(8), HRS, if the purpose is “to deliberate or make a decision upon a matter that requires the consideration of **information that must be kept confidential pursuant to state or federal law**, or a court order.” [Emphasis added.]
3. Effective oversight of a correctional system requires unfettered access to facilities, including entering without notice to inspect the site. Section 353L-7 currently limits that unfettered access to the Oversight Coordinator only pursuant to an investigation of a complaint. As an independent Commission, our staff should be able to access and inspect facilities on demand. Section 3 of this measure makes access universal.

The companion to this measure, Senate Bill 455, was heard by this Committer earlier in the session. At that time, the Office of Information Practices (OIP) and the Civil Beat Law Center (CBLC) submitted testimony against the proposed language relating to convening an executive meeting to discuss confidential complaints and investigations. To ensure we got this part right, the Commission consulted with OIP and CBLC to come up with language that satisfied their concerns. The language included in House Draft 1 has been agreed to by OIP and CBLC.

We urge your support of this measure to support the mandate of the Hawaii Correction System Oversight Commission. Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

Senate Committee on Public Safety and Intergovernmental and Military Affairs

Senator Glenn Wakai, Chair

Senator Brandon J.C. Elefante, Vice Chair

Wednesday, March 15, 2023 at 3:00 P.M.
Conference Room 225 & Via Videoconference

by:

Dr. Erin E. Harbinson

Director, Criminal Justice Research Institute

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1132, H.D. 1, Relating to the Hawai'i Correctional System Oversight Commission

Purpose: Extends the Oversight Coordinator's term to six years, permits executive discussion to discuss confidential complaints, and clarifies the coordinator's process for entering facilities.

Judiciary's Position:

The Criminal Justice Research Institute (CJRI), which is administratively attached to the Judiciary, urges **support** for House Bill No. 1132, H.D. 1. Both CJRI and the Hawai'i Correctional System Oversight Commission (HCSOC) were established in Act 179 (2019). Though each organization has separate duties and missions, both are focused on providing information important to improve the criminal justice system. As part of CJRI's work to establish a database, we recognize the importance of learning the complexity of the criminal justice system's policies and practices, and the value of developing relationships with agencies to accomplish our duties. As such, we agree the Oversight Coordinator's term should be extended in order to be effective in their role. We defer to the Oversight Coordinator on the clarifications required regarding executive sessions and entering facilities that are necessary to conduct their oversight duties.

Thank you for the opportunity to comment on this measure.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Glenn Wakai, Chair

Sen. Brandon Elefante, Vice Chair

Wednesday, March 15, 2023

Room 225 and Videoconference

3:00 PM

STRONG SUPPORT FOR HB 1132 HD1 - HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

Aloha Chair Wakai, Vice Chair Elefante 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 3,981 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 917 - 24.4% of the male imprisoned population² - 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.

Mahalo for this opportunity to testify in strong support of this measure and mahalo for introducing this important bill. HB 1132 HD1 extends the term for the Hawai'i Correctional System Oversight Commission (HCSOC) Coordinator from two years to six years. This is so important to the transition Hawai'i is making to a rehabilitative and therapeutic model. Corrections has many moving parts and a six-year term would give the Coordinator time to start making the necessary changes to accomplish the Governor's goal.

Community Alliance on Prisons is delighted that Hawai'i finally has a professional coordinator to oversee our correctional system. The other part of this bill is the authorization for the Commission to conduct investigative hearings of

¹ Department of Public Safety, End of Month Population Report, February 28, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-EOM-2023-23-28_George-King.pdf

² Why are 24.4% of Hawai'i's male prison population sent thousands of miles from home when the following prisons in Hawai'i have room here: Halawa is at 75%; Halawa Special Needs Facility is at 60%; Kulani is at 44%; Waiawa is at 53% of operational capacity.

complainants in Executive Sessions. One of the important aspects of oversight is communication with the staff downtown as well as staff working in our jails.

Community Alliance on Prisons supports these confidential investigations to protect whistleblowers, however, **provided that when an investigation is concluded, the commission shall publish a summary of the investigation, without information that would identify the complainant or witnesses, and any action taken by the commission in response.**

Traditionally, it has been difficult to get information from the department, therefore, this change will promote much-needed transparency for the community since this is a publicly-funded agency.

An article by Michele Deitch³, the expert in Oversight explains:

Prisons and jails in this country are among the most opaque public institutions in our society. We have erected massive walls and razor wire fences around these buildings, placed them in remote corners of each state, limited public access to these spaces, and restricted information that can reveal what is happening inside the walls. We lack reliable data pertinent to the health, safety, and well-being of people in custody, and cannot even assess the relative safety or danger of any particular facility. Information about deaths in custody remains elusive in many states. Even data about the spread and toll of Covid-19 behind bars is spotty and unreliable, and is virtually nonexistent in local jails. In contrast to our peer nations, most states in this country lack oversight mechanisms that can prevent harm in prisons and jails by allowing independent officials to routinely monitor conditions of confinement.

For decades, we relied on our federal courts to provide that oversight. In the 1970s and 1980s, many states' prison systems operated under the scrutiny of federal judges who had found conditions in the correctional facilities in violation of the Eighth Amendment prohibition against cruel and unusual punishment. Cases in Texas, Arkansas, New York City, and Alabama, among other places, revealed and seared into our collective memories appalling practices such as the use of brutal prisoners as guards to control cellblocks; torture devices that deliver electric shocks to the genitals; "hitching posts" to restrain prisoners in the fields, and rampant violence and overcrowding in dilapidated facilities. Long-term court oversight of the detailed consent decrees in these and other cases ensured the dismantling of those practices, often through regular inspections conducted by court monitors and special masters, and by the ongoing threat of contempt fines for agencies that resisted reform.

But there are several reasons that court oversight is insufficient to fill the gap and promote transparency. First, court oversight is reactive, occurring only after problems have hit constitutional rock bottom; it does not prevent those problems in the first place. Second, increasingly narrow interpretations of the Eighth Amendment by the Supreme

³ ² Independent Oversight Is Essential for a Safe and Healthy Prison System, Michele Deitch, November 3, 2021.

<https://www.brennancenter.org/our-work/analysis-opinion/independent-oversight-essential-safe-and-healthy-prison-system>

Court, and the restrictions imposed by [the Prison Litigation Reform Act \(PLRA\)](#) passed by Congress in 1996, vastly reduce the likelihood of successful lawsuits (the PLRA also limits the extent of ongoing court oversight following a rare judgment against a prison agency). Third, court oversight is timebound, lasting only as long as it takes to remedy the problem, even though conditions can (and do) easily backslide after the court's supervision ends. Finally, the objective of court oversight is to raise institutional conditions to constitutional minima, not to help the agency implement best practices, or work towards a more humane culture. The courts continue to be essential as a backstop against the worst punitive excesses, but we fool ourselves if we think they can fundamentally change prison culture and transform prisons and jails into places that respect human dignity. One need only look at [the horror that is Rikers Island](#) to realize that even court-sanctioned consent decrees do not always solve deep-seated problems.

Since the passing of the Prison Reform Litigation Act (PLRA) correctional systems have become even more closed. Litigation was one way the public could find out what is happening in these institutions. We mention this because we don't ever want to see Hawai'i go backwards and hide publicly-funded information about how our jails and prisons operate while they house our family and friends.

We cannot underscore enough the importance of this Commission in moving Hawai'i toward a rehabilitative and therapeutic model. The Commission has also taken over the responsibilities of the Corrections Population Management Commission and the Reentry Commission in addition to their specific requirements under Act 179.

Mahalo for caring enough about Hawai'i to support overseeing the system that has done so much harm to our families. We can change this, and Ms. Johnson and the Oversight Commission are the great leaders Hawai'i needs to help us get there!

Amending the statute as suggested, will ensure that publicly-funded institutions will not operate in the dark,

Community Alliance on Prisons urges the committee to pass this measure onto FIN with a strong recommendation for passage.

Mahalo!

HB-1132-HD-1

Submitted on: 3/13/2023 3:25:23 PM

Testimony for PSM on 3/15/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Support

HB-1132-HD-1

Submitted on: 3/14/2023 2:42:20 AM

Testimony for PSM on 3/15/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kristine Crawford	Individual	Support	Written Testimony Only

Comments:

Please extend to six years the term of the Oversight Coordinator for the Hawaii Correctional System Oversight Commission. I fear that failure to do so will mean that the shameful dealings of the past, which have resulted in the legal problems of the present, will quickly return. I strongly urge you to pass HB 1132 HD1. Thank you.

HB-1132-HD-1

Submitted on: 3/14/2023 7:49:06 AM

Testimony for PSM on 3/15/2023 3:00:00 PM

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

Comments:

Aloha,

I am writing in strong support of HB1132 HD1. This bill stipulates a six-year term for the Coordinator of the Hawaii Correctional System Oversight Commission. This allows the new Coordinator to establish a firm foundation of oversight and implementation of the Commission’s mandate to transition Hawaii’s archaic and problem-plagued correctional system to a more rehabilitative and therapeutic model.

The long overdue appointment of a coordinator for the Hawaii Correctional System Oversight Commission has been a game changer in Hawaii's quest to transform our criminal justice system from an inhumane, ineffective, and punitive system to a more evidence-based, cost-effective, and rehabilitative system that reduces recidivism and helps incarcerated people succeed when they leave prison. In just one year, the Coordinator has accomplished an amazing amount of work to lay the groundwork for effective oversight of Hawaii's problem-plagued correctional system. Much progress has been made in identifying issues and forming collaborative relationships. But much remains to be done. A two-year term is not nearly enough to address the many problems, from an alarming number of suicides, to inhumane conditions, etc.

In the first year of the Coordinator’s term, it was discovered that there were many violations of federal corrections law that were endangering the lives and well being of the imprisoned population. It was surprising that many prison officials and employees were not even aware of the laws they were violating. While it may be uncomfortable for public safety officials and the legislators who support the status quo, the Coordinator’s role is to improve the correctional system and, at the same time, safeguard the State from claims of financial liability that might arise from these many violations.

I believe that only someone who is aware of correctional systems research and evidence-based programs in other states and who has the vision to implement changes can be successful. I am doubtful that this task can be left to anyone who has repeatedly resisted efforts to implement rehabilitative and restorative programs and may not have the ability to transcend old school thinking and allegiances.

Lastly, confidentiality of the identities of those contacting the Oversight Commission is essential to protect them from retaliation.

Please pass HB1132 HD1 to allow the Coordinator and the Commission to continue their valuable work to help Hawaii transition to a more rehabilitative correctional system. This is the best and most cost-effective way to protect public safety.

Mahalo for your consideration.

Diana Bethel, Honolulu

HB-1132-HD-1

Submitted on: 3/14/2023 12:00:29 PM

Testimony for PSM on 3/15/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cards Pintor	Individual	Support	Written Testimony Only

Comments:

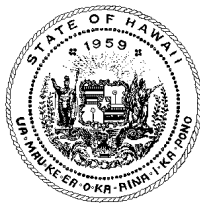
Aloha,

I support this bill.

Mahalo nui,

Cards Pintor

JOSH GREEN, M.D.
GOVERNOR



TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William F. Oku
Deputy Director
Law Enforcement



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF PUBLIC SAFETY
Ka 'Oihana Ho'opalekana Lehulehu
1177 Alakea Street
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON HOUSE BILL 1132, HOUSE DRAFT 1
RELATING TO THE HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

By
Tommy Johnson, Director

Senate Committee on Public Safety and Intergovernmental and Military Affairs
Senator Glenn Wakai, Chair
Senator Brandon J.C. Elefante, Vice Chair

Wednesday, March 15, 2023; 3:00 p.m.
State Capitol, Conference 225 and Via Videoconference

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

The Department of Public Safety (PSD) supports House Bill (HB) 1132, House Draft (HD) 1, which seeks to extend the term of the Oversight Coordinator for the Correctional System Oversight Commission and to also broaden the coordinator's authority with the following recommendations.

PSD recommends the legislature consider amending Section 1 to a four-year, which is more in line with other boards and commissions such as the Chairman of the Hawai'i Paroling Authority (§ HRS 353-63). Requiring that the coordinator be confirmed by the Senate is appropriate given the unique nature of the duties and responsibilities of the position coupled with the authority vested in the coordinator.

With respect to Section 3 of this measure, which seeks to amend §HRS Section 353L-7(c), PSD has no concerns as the Oversight Coordinator already can and does routinely request information, records, and the coordinator and any member of the Commission already have the authority to enter any correctional facility unannounced.

Thank you for the opportunity to provide testimony on HB 1132, HD1.