

THE CIVIL BEAT
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Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair

**RE: Testimony Opposing S.B. 455 S.D. 1, Relating to the
Hawaii Correctional System Oversight Commission**
Hearing: February 24, 2023 at 9:30 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **opposing the expansive and unjustified confidentiality in S.B. 455 S.D. 1.**

In discussions with a representative of the Hawaii Correctional System Oversight Commission about the intended scope of the confidentiality provision, amended language, as adopted by the House in **H.B. 1132 H.D. 1**, would address the Law Center's concerns. As drafted, however, the confidentiality provision is too broad.

This bill provides complete confidentiality for any "investigation" by the Hawaii Correctional System Oversight Commission.

Under the Sunshine Law, "investigation" has a broad meaning. Boards may form permitted interaction groups that are not subject to the open meetings provision to "investigate" any matter related to board business, but there are limitations and reporting requirements for such investigations. HRS § 92-2.5(b)(1). The Sunshine Law also provides for closed-door sessions for "criminal misconduct" investigations. *Id.* § 92-5(a)(5). Unlike the existing Sunshine Law provisions, the proposed Commission provision has no limitations, no reporting requirements, and thus no public oversight.

The proposed confidentiality also permits the Commission to take any "other measures, as necessary, to maintain the confidentiality regarding all matters in the investigation." The Commission may argue that such vague language permits withholding public records regarding an investigation. The public records law already provides numerous grounds for withholding records regarding an investigation, especially to protect the identity of complainants and witnesses. *E.g.*, OIP Op. No. F22-01. Those exceptions, however, are narrowly tailored to balance the relevant investigatory and privacy interests with the public interest in disclosure.

To focus the bill on the apparent intended scope, the Law Center supports the Commission's proposed amendments as adopted by the House in H.B. 1132 H.D. 1. Specifically, instead of adding a (b)(5) to HRS § 353L-3, a new subsection (c) would grant the Commission a separate exemption from the Sunshine Law that permits closed-door meetings to discuss the Commission's investigation of complaints. And to ensure sufficient access for the public to understand what the Commission is doing, the Commission would be required to publish summaries of its investigations; the summaries would not include the identity of any complainant or witness.

There is no justification for the broader exemption as originally drafted.

Thank you again for the opportunity to testify **opposing** S.B. 455 S.D. 1 unless amended.

SB-455-SD-1

Submitted on: 2/21/2023 9:07:52 PM

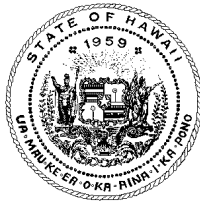
Testimony for JDC on 2/24/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

We need to strengthen oversight of the corrections system. Please support SB455 SD1.

JOSH GREEN, M.D.
GOVERNOR



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF PUBLIC SAFETY
Ka 'Oihana Ho'opalekana Lehulehu
1177 Alakea Street
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TOMMY JOHNSON
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Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William F. Oku
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 455, SD 1
RELATING TO THE HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

By
Tommy Johnson, Director

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Wednesday, February 24, 2023; 9:30 a.m.
State Capitol, Conference Room 225 and Via Videoconference

WRITTEN TESTIMONY ONLY

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

The Department of Public Safety (PSD) supports Senate Bill (SB) 455, SD 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.

PSD appreciates the legislature's inclusion of our recommended amendments reflected in SB 455, SD1, which amended Section 1 to a four-year term, which is more in line with other boards and commissions such as the Chairman of the Hawaii Paroling Authority (§ HRS 353-63). In addition, as written, this measure now required the Coordinator to be confirmed by the Senate. Given the unique nature of the duties and responsibilities of the position coupled with the authority vested in the Coordinator, requiring senate confirmation is appropriate.

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 has the ability to 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 in support of SB 455, SD 1.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 24, 2023, 9:30 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 455, S.D. 1
Relating to the Hawaii Correctional System Oversight Commission

Thank you for the opportunity to submit testimony on this bill, which would, among other things, require the Hawaii Correctional System Oversight Commission to take measures to maintain confidentiality in investigations. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers comments on the effect of the confidentiality provision and points out that a reported amendment by the prior committee was apparently not made in the S.D. 1.

The provision requiring the Commission to take measures to maintain confidentiality in investigations, on bill page 3, requires the Commission to hold executive sessions under the Sunshine Law “as necessary” to maintain confidentiality in investigations, including witness identities. The provision does not provide the Commission with an additional exception to the Sunshine Law’s open meeting requirements beyond those already provided for Sunshine Law boards in general, so the Commission must rely on the executive session purposes listed in section 92-5, HRS, as its basis for holding such an executive session. In other words, **the effect of this proposal is to require the Commission to hold an**

executive session for its discussion of an investigation whenever the Sunshine Law authorizes it to do so; it does not authorize the Commission to hold an executive session that would not otherwise be authorized by the Sunshine Law.

Potentially relevant purposes for which an executive session is authorized under the Sunshine Law include “[t]o investigate proceedings regarding criminal misconduct” and “[t]o consider sensitive matters related to public safety or security,” as well as consultation with a board’s attorney and consideration of information made confidential by law or court order. Thus, this measure would require the Commission to discuss an investigation in executive session whenever one of those purposes, or any other authorized purpose, applies.

OIP notes that the Committee Report from the Committee on Public Safety and Intergovernmental and Military Affairs states that the S.D. 1 version of this bill was amended to instead authorize the Commission to hold closed executive sessions related to an investigation even when not otherwise authorized by section 92-5, HRS; however, **it appears the intended amendment was not made.** Its companion bill, H.B. 1132, H.D. 1, bill section 2, was amended (1) to add a new subsection 353L-3(c) allowing a closed meeting to discuss a complaint with the oversight coordinator as needed to maintain the confidentiality required by section 353L-7(d) and (2) to require the Commission to publish a summary of a concluded investigation. **If the S.D. 1 was intended to use the same language as H.B. 1132, H.D. 1, that language is narrowly tailored to address the Commission’s legitimate need for confidentiality while still providing a degree of public access and OIP would not object to it.**

Thank you for considering OIP’s testimony.

TESTIMONY IN SUPPORT OF SB 455, SD 1

TO: Chair Rhoads, Vice Chair Gabbard, & Judiciary Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 24, 2023 (9:30 AM)

Hawai'i Health & Harm Reduction Center (HHHRC) **supports** SB 455, SD 1, which specifies that the Commission shall take measures as necessary to maintain confidentiality in investigations. The measure also broadens the Oversight Coordinator's power to make inquiries, obtain information, and inspect the premises of agencies and correctional facilities.

Confidentiality is key to effective oversight so that staff at every level of operations at the Department of Public Safety are unburdened by fears of prospective retaliation by others in the work environment.

HHHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions. They have also been deeply impacted by trauma that includes histories of physical, sexual, and psychological abuse and criminal legal system involvement.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
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(808) 587-4160

MARK PATTERSON
CHAIR

CHRISTIN M. JOHNSON
OVERSIGHT COORDINATOR

COMMISSIONERS
HON. MICHAEL A. TOWN
(ret.)
HON. RONALD IBARRA
(ret.)
TED SAKAI
MARTHA TORNEY

TO: The Honorable Karl Rhoads Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

WRITTEN
TESTIMONY
ONLY

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: Senate Bill 455, Senate Draft 1, Relating to the Hawaii Correctional
System Oversight Commission
Hearing: Friday, February 24, 2023; 9:30 a.m.
State Capitol, Room 016

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

The Hawaii Correctional System Oversight Commission (the Commission) **strongly supports** Senate Bill 455, Senate Draft 1, relating to the Hawaii Correctional System Oversight Commission, with some recommended amendments that we respectfully request the Committee to consider. Senate Draft 1:

1. Extend the term of the Oversight Coordinator to six years;
2. Delete the requirement that the position be submitted for Senate confirmation; and
3. Clarify the language to allow the Commission to go into a meeting closed to the public for discussion of confidential information pursuant to an investigation of a complaints.

This measure, as introduced at the request of the Commission, asked that the Oversight Coordinator term be extended from two years to six. We are recommending six years to ensure longevity of the incumbent. The closest example of a similar investigative position is the Ombudsman who is appointed for six-year terms and may be reappointed. Hawaii's criminal justice and correctional systems are unique to our State and require 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 staffs that will make the Commission successful. We respectfully request this Committee reconsider extending the term to six years instead of four.

We also do not agree that the Oversight Coordinator should be confirmed by the Senate. The Commission is the policy making body, the Oversight Coordinator is staff and carries out the policies enacted by the Commission. According to the Hawaii State

Legislature website, “[the] Senate is responsible for confirming individuals appointed by the Governor to serve as directors or, in some cases, deputy directors to executive agency departments and members of state boards and commissions.” Staff to these boards and commissions are not subject to Senate confirmation. We respectfully request that the requirement for Senate confirmation be deleted.

Of great importance to the Commission is the ability to convene meetings closed to the public for discussion of confidential information pursuant to an investigation of a complaints. Chapter 353L, HRS, assigns the Commission “jurisdiction over investigating complaints at correctional facilities” (Section 353L-3(b)(1)) and requires the Oversight Coordinator “to maintain confidentiality in respect to all matters and the identities of the complainants and witnesses...” (Section 353L-7(d)). Yet, there is no clear statement that the Commission may hold a closed meeting to accommodate discussion of investigations initiated and ongoing.

Section 2 of SD 1 contains language that was strongly objected to by the Office of Information Practices (OIP) and the Civil Beat Law Center (CBLC) as too broad. The Commission wants to ensure we got this part of the law right and worked with OIP and CBLC to come up with language that satisfied their concerns. We respectfully request this Committee amend SD 1 to reflect our agreed upon language. The specifics are below.

Amend Section 2 by replacing Page 1, lines 16 through Page 2, line 3 with the following:

“(1) Oversee the State’s correctional system and have jurisdiction over investigating complaints at the correctional facilities and facilitating a correctional system transition to a rehabilitative and therapeutic model[;], 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;”

Delete the proposed amendments found on Page 3, lines 3 through 11, and replace the period found at the end of the sentence on Page 3, line 2.

Add additional language to Section 2 by adding a new Subsection (c) as follows:

“(c) In addition to the purposes described in section 92-5(a) or any other applicable exemption from part I of chapter 92 and in accordance with the procedures for holding an executive session meeting pursuant to section 92-4, the commission may hold a meeting closed to the public to discuss with the oversight coordinator a complaint investigated pursuant to subsection (b)(1) when necessary to maintain confidentiality as required by subsection 353L-7(d).”

To avoid confusion, attached is a draft language in Ramsyer format for incorporating the above.

In closing, we would like to bring to your attention that even though the Commission was formed in 2019, funds were not released until 2022, preventing staff hires and greatly impeding progress in achieving the Commission's mandate. In July 2022 Christin M. Johnson was hired as the Oversight Coordinator, bringing with her an abundance of experience in oversight of jails, prisons and police. Since her hiring, the Commission has made substantial steps in achieving its goals. We are very grateful to have someone of her caliber joining us.

In summary, 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.

A BILL FOR AN ACT

RELATING TO THE HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 2. Section 353L-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "(b) The commission shall:

4 (1) Oversee the State's correctional system and have
5 jurisdiction over investigating complaints at the
6 correctional facilities and facilitating a
7 correctional system transition to a rehabilitative and
8 therapeutic model^[+], provided that when an
9 investigation is concluded, the commission shall
10 publish a summary of the investigation, without
11 information that would identify the complainant or
12 witnesses, and any action taken by the commission in
13 response;

14 (2) Establish maximum inmate population limits for each
15 correctional facility and formulate policies and
16 procedures to prevent the inmate population from
17 exceeding the capacity of each correctional facility;

.B. NO.

1 (3) Work with the department of public safety in
2 monitoring and reviewing the comprehensive offender
3 reentry program, including facility educational and
4 treatment programs, rehabilitative services, work
5 furloughs, and the Hawaii paroling authority's
6 oversight of parolees. The commission may make
7 recommendations to the department of public safety,
8 the Hawaii paroling authority, and the legislature
9 regarding reentry and parole services; and

10 (4) Ensure that the comprehensive offender reentry system
11 under chapter 353H is working properly to provide
12 programs and services that result in the timely
13 release of inmates on parole when the maximum terms
14 have been served instead of delaying the release for
15 lack of programs and services.

16 To achieve these ends, the commission shall authorize the
17 oversight coordinator to adopt rules in accordance with chapter
18 91.

19 (c) In addition to the purposes described in section 92-
20 5(a) or any other applicable exemption from part I of chapter 92
21 and in accordance with the procedures for holding an executive
22 session meeting pursuant to section 92-4, the commission may

____.B. NO.____

1 hold a meeting closed to the public to discuss with the
2 oversight coordinator a complaint investigated pursuant to
3 subsection (b) (1) when necessary to maintain confidentiality as
4 required by subsection 353L-7(d)."

5

DRAFT

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Friday, February 24, 2023

Room 016

9:30 AM

STRONG SUPPORT FOR SB 455 AND THE WORK OF THE HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

Aloha Chair Rhoads, Vice Chair Gabbard 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 4,028 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 (41% 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.

Community Alliance on Prisons appreciates this opportunity to strongly support the work of the Hawai`i Correctional System Oversight Commission and to the legislature for the policies that created the Commission.

There are so many great parts of both HB 1132 and SB 455 that we hope that any differences can be worked out in conference. The main difference is the term of the Coordinator. Two years is insufficient to follow the mandates in Act 179, which is why the original bills both extended the term to six years. Bringing a system that has focused on punishment and isolation for far too long to a more rehabilitative and therapeutic model will take time. And we want to do this right. We are lucky to have a Coordinator who has experience overseeing jails and prisons on the continent to help us realize this transition.

¹ Department of Public Safety, Weekly Population Report, February 13, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/02/Pop-Reports-Weekly-2023-02-13_George-King.pdf

² Why are 41% of Hawai`i’s male prison population sent thousands of miles from home when the following prisons in Hawai`i have room? Here are the capacity rates of the following prisons: Halawa is at 74.3%; Halawa Special Needs Facility is at 63.6%; Kulani is at 39.5%; Waiawa is at 59% of operational capacity. SEE FN1

Community Alliance on Prisons disagrees with having the Coordinator be subject to the advice and consent of the Senate. In a 60-day session this seems to be impractical for the Senate to have to advice and consent this level of state worker. And it will take a tremendous percentage of time away from the Senate's important policy work.

Community Alliance on Prisons agrees that authorizing the Commission to hold meetings closed to the public for purposes relevant to conducting an investigation not otherwise authorized by section 92-5, Hawaii Revised Statutes in order to maintain the confidentiality, including the identities of any complainants and witnesses. The House bill - HB 1132 HD1 ensures that once an investigation is complete, a report would be issued and posted on the HCSOC website: www.hcsoc.hawaii.gov. We support transparency and accountability.

An article from 2020³ succinctly explained transitioning to a better model:

*There are 2.3 million individuals held in our prisons and jails in the United States. **Despite valiant efforts to reimagine justice and reduce our over-reliance on incarceration, the notable increases in imprisonment rates that occurred over nearly four decades are unlikely to be reversed overnight. For this reason, it is essential to turn (at least part of) our attention to the well-being of the men and women who find themselves behind bars.***

Hawai'i is on its way to creating a more just and equitable system and the Commission and its dynamic Coordinator are instrumental to keep Hawai'i moving toward a more thoughtful system that helps rather than harms.

Mahalo.

³ Can People Change for the Better in Prison? By The Crime Report Staff, January 16, 2020. <https://thecrimereport.org/2020/01/16/can-people-change-for-the-better-in-prison/>