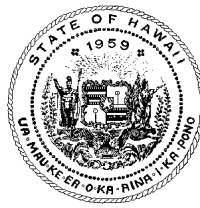


JOSH B. GREEN, M.D.
GOVERNOR



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF PUBLIC SAFETY
KA 'OIHANA HO'OPALEKANA LEHULEHU
1177 Alakea Street
Honolulu, Hawaii 96813

TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William Oku
Acting Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 455
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, February 1, 2023; 3:00 p.m.
CR 225 and Via Videoconference

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

The Department of Public Safety (PSD) supports Senate Bill (SB) 455, which seeks to extend the term of the Oversight Coordinator for the Correctional System Oversight Commission and to also broaden the the Coordinator's authority with the following recommendations.

PSD recommends the legislature consider amending 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). It is also recommended that the legislature consider requiring 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 would be 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

Testimony on SB 455
Senate Committee on Public Safety and Intergovernmental and Military Affairs
February 01, 2023
Page 2

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 comments supporting of SB 455.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Public Safety and Intergovernmental
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 1, 2023, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 455
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.

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.

Thank you for considering OIP’s testimony.



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(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: Senate Bill 455, Relating to the Hawaii Correctional System Oversight Commission
Hearing: Wednesday, February 1, 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** Senate Bill 455, 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.

Senate Bill 455 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.” The proposed amendment included in Section 2 of this bill would resolve this matter.

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.

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 Correctional System Oversight Commission. Thank you for the opportunity to testify.

SB-455

Submitted on: 1/28/2023 8:06:22 AM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lynette Cruz	Testifying for Malama Makua	Support	Written Testimony Only

Comments:

This is long overdue. Totally support the intent to shift the (obviously broken) system to rehabilitation by extending the coordinator's term to 6 years.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Glenn Wakai, Chair

Senator Brandon Elefante, Vice Chair

Wednesday, February 1, 2023

Room 225

3:00 PM

STRONG SUPPORT FOR SB 455 - HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION (HCSOC)

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 4,058 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 965 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 to Chair Wakai for introducing this important bill. SB 455 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 make the necessary changes to accomplish the Governor's goal.

¹ Department of Public Safety, Weekly Population Report, January 23, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-23_George-King.pdf

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>

The other agency that also have six-year terms is the Public Utilities Commission in acknowledgement of the work it takes to transition from a fossil fuel system to a clean and renewable energy system. Both these agencies are creating the path for Hawai`i's sustainable future for our families.

Community Alliance on Prisons is delighted that Hawai`i finally has a professional coordinator to oversee our correctional system. One of the important aspects of oversight is communication with the staff downtown as well as staff working in our jails and prisons. It is, therefore, important that the Commission conduct investigations that are confidential to protect the people coming forward with information.

We cannot underscore enough the importance of this Commission in moving Hawai`i toward transition to a rehabilitative and therapeutic model. Mahalo, Chair Wakai, for introducing this bill and 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!

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
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info@civilbeatlawcenter.org

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

**RE: Testimony Opposing S.B. 455, Relating to the
Hawaii Correctional System Oversight Commission**

Hearing: February 1, 2023 at 3:00 p.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.**

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.

If there is a reason that existing law would not protect the Commission’s concerns, the statutory language should be crafted to specifically address that concern. There is no justification for this broad exemption.

Thank you again for the opportunity to testify **opposing** S.B. 455.

SB-455

Submitted on: 1/28/2023 9:21:33 AM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mary Lacques	Individual	Support	Written Testimony Only

Comments:

In strong support.

SB-455

Submitted on: 1/28/2023 9:39:27 AM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Esther Geil	Individual	Support	Written Testimony Only

Comments:

The work of the HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION is critical to achieving the valuable goal of increasing the number of contributing citizens in our communities and reducing the number of prison inmates who tax our citizens to support them while causing them to suffer the pains of powerlessness to achieve worthy goals and support their families. The path to this goal is to do everything we can to lead people to be good citizens instead of having them be burdens on the state. The method to accomplish this is through therapy and assistance, particularly to younger people, rather than through exposure to and confinement within the prison system. Every person so redirected into positive and productive paths reduces the financial burden on the citizens of our state, while uplifting our total population with persons able and inspired to live worthwhile lives in the community.

SB455 is one important part of helping achieve this extremely worthwhile goal. I urge you to support it.

SB-455

Submitted on: 1/29/2023 2:31:23 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

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

Comments:

My name is Carla Allison and I strongly support SB455. In reviewing the HCSOC's 2022 Annual Report and Strategic Plan, it's impressive to see what the Oversight Coordinator has already accomplished. It is important to change the term of this position from 2 to 6 years since moving our correctional system to the desired rehabilitative and therapeutic model involves coordinating many elements. I additionally support this bill's specification for the OSOC to act to ensure confidentiality in investigations. Please support SB455. Thank you.

SB-455

Submitted on: 1/29/2023 4:41:18 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

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

Comments:

Aloha Chairs, Vice Chairs, and Committee members,

Please pass this important bill to support broadening the Oversight Coordinator's power to make inquiries, obtain information, and inspect the premises of agencies and correctional facilities. I, as many others in my community, were shocked to hear the report last year that came out of HCCC. Without the work of the Oversight Coordinator we wouldn't have been aware of the horrible conditions that urgently need correcting at the HCCC. Giving the Coordinator more support and control to do their job is crucial in this time where we need more transparency and action in addressing the issues before us. We need many reforms in our current system of justice, and this bill is just one part of that puzzle. Mahalo for your time and consideration.

Shannon Matson

Hawai'i Island Resident

SB-455

Submitted on: 1/30/2023 9:04:15 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

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

Comments:

Expanding the Correctional System Oversight Commission's powers is warranted given the recent failures within the Department of Public Safety. Please support SB455.

SB-455

Submitted on: 1/30/2023 10:54:02 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

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

Comments:

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

My name is Carolyn Eaton and I stand in strong support of this bill. Our HCSOC Coordinator, Christin Johnson, and the system over which she is providing oversight, will have a more reasonable time to correct course given 6 years, as opposed to a term of two years. The importance of the specific review process written into this measure cannot be overstated if the State is to see a new day in corrections reform.

Mahalo for your consideration of this testimony.

SB-455

Submitted on: 1/31/2023 2:26:01 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

Please pass SB455. The Oversight Commission has been hamstrung in carrying out its duties by the lack of an Executive Director. Now finally there is one, who is proving to be excellent. To limit that position to two years is not appropriate. Please pass this bill to extend that timeframe.

JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



EDMUND "FRED" HYUN
CHAIR

GENE DEMELLO, JR.
CLAYTON H.W. HEE
MILTON H. KOTSUBO
CAROL K. MATAYOSHI
MEMBERS

COREY J. REINCKE
ACTING ADMINISTRATOR

No. _____

LATE

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
HAWAII PAROLING AUTHORITY
Ka 'Ākena Palola o Hawai'i
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

TESTIMONY ON SENATE BILL 455
RELATING TO THE HAWAII CORRECTIONAL 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, February 1, 2023 – 3:00 p.m.
Conference Room 225

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

The Hawaii Paroling Authority (HPA) strongly supports Senate Bill 455, 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.

The HPA recommends the legislature consider amending 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). It is also recommended that the legislature consider requiring the Coordinator to be confirmed by the Senate.

Thank you for the opportunity to provide comments supporting SB 455

SB-455

Submitted on: 1/31/2023 3:00:48 PM

Testimony for PSM on 2/1/2023 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 SB455. This bill extends the term of the Oversight Coordinator for the Hawai'i Correctional System Oversight Commission, specifies that the Commission shall take measures as necessary to maintain confidentiality in investigations, and broadens the Oversight Coordinator's power to make inquiries, obtain information, and inspect the premises of agencies and correctional facilities.

Nearly two years after the Commission was established, finally a coordinator was appointed. In the last year, the Coordinator has accomplished an amazing amount of work to lay the groundwork for effective oversight of Hawaii's problem-plagued correctional system. A two-year term is not nearly enough to address the many problems, from an alarming number of suicides, to inhumane conditions, etc. It is in the State's best interests to support the Commission.

Please pass SB455 to enable the Commission to accomplish the task it was created to do.

Mahalo for your consideration.

Diana Bethel

LATE

SB-455

Submitted on: 1/31/2023 3:33:13 PM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dr. Sue Haglund	Individual	Support	Written Testimony Only

Comments:

Strong support.

this bill allows a change in terms from 2 to 6 years. This is important to match consistency in leadership and it matches similar existing terms as that with the Public Utility Commissioners.

SB-455

Submitted on: 2/1/2023 7:15:58 AM

Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

I am submitting testimony in strong and full support of SB455. The Hawaii Correctional System Oversight Commission has finally been able to fully move forward with their important tasks since the Oversight Coordinator has been hired. The term of this position must be extended to six years in order to fulfill the monumental and hugely important tasks of the Commission. In addition, it is important that the Oversight Coordinator is able to make inquiries and enter facilities/relevant agencies in order to submit full and transparent information to the Commission. Please pass SB455 in it's entirety.

Respectfully-

Raelyn Reyno Yeomans

ROBERT K. MERCE
2467 Aha Aina Place
Honolulu, Hawai'i 96821
(808) 398-9594

January 30, 2023

TO: Committee on Public Safety and Intergovernmental and Military Affairs
RE: SB 455
HEARING: Wednesday, February 1, 2023
TIME: 3:00 PM
ROOM: Conf. Rm. 225 & videoconference
POSITON: **Strongly Support**

Chair Wakai, Vice Chair Elefante, and members of the committee:

My name is Bob Merce. I am a retired lawyers and have been active in prison reform for the past ten years. I served as vice-chair of the HCR 85 Task Force on Prison Reform and I was the principal author of the Task Force's final report to the 2019 Legislature. I served on the Reentry Commission from 2018 until its responsibilities were transferred to the Hawaii Correctional System Oversight Commission in 2019.

I strongly support SB 455.

1. The Proposed Confidentiality Amendments to HRS 353L Will Improve Oversight

Confidentiality in conducting investigations is essential to effective correctional oversight. Without confidentiality, prisoners and correctional staff will be reluctant to speak to oversight officials for fear of retaliation which would close off a vital source of information and make effective oversight more difficult. The American Bar Association's (ABA's) Key Requirements for the Effective Monitoring of Correctional and Detention Facilities recognizes that oversight authorities must be able to conduct confidential interviews with any person, including line staff and inmates concerning the facility's operation, and that procedures must be in place to enable facility administrators, line staff, inmates, and others to transmit information confidentially to the monitoring entity about the facility's operations and condition.¹

¹ See generally, Michele Deitch & Michael B. Mushlin , "Let the Sunshine In: The ABA and Prison Oversight," in *The State of Criminal Justice* 243 (2011), <http://digitalcommons.pace.edu/lawfaculty/983/>.

See also "Report to the House of Delegates, American Bar Association, Criminal Justice Section, Recommendation" (August 2008) and *Creating Better Outcomes, Safer Communities, Final Report of the HCR 85 Task Force on Prison Reform to the 2019 Legislature*, December 2018, pp. 34-38. Available at https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf

The proposed confidentiality amendments to HRS 353L are consistent with best practices in correctional oversight and monitoring and the ABA's requirements for effective oversight. SB 455 would strengthen and improve oversight in Hawaii.

2. The Oversight Coordinator Should Have a Six Year Term

The Hawaii Correctional System Oversight Coordinator is one of the most important positions in the State. It requires highly specialized knowledge and a person of integrity and courage to speak truth to power. The Coordinator's job is to shine a light on practices that others might prefer to keep in the dark, to call out government officials when necessary, and to stand up for those whose voices cannot be heard. A six-year term would help to insulate the Oversight Coordinator from the political pressures that can arise in the course of the four-year election cycle, and is needed so that the Coordinator can pursue long-term improvements to the correctional system. Other positions that require independence and public trust typically have six-year terms, such as the Ombudsman and the Director of the Legislative Reference Bureau, and some have even longer terms, such as the Legislative Auditor, whose term is eight years.

I urge this committee to pass SB 455.

