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SCPW-20-0000200 and SCPW-20-0000213

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SCPW-20-0000200

OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

CLARE E. CONNORS, Attorney General of the State of Hawai'i;
DONALD S. GUZMAN, Prosecuting Attorney, County of Maui;
MITCHELL D. ROTH, Prosecuting Attorney, County of Hawai'i;
JUSTIN F. KOLLAR, Prosecuting Attorney, County of Kaua'i;
DWIGHT K. NADAMOTO, Acting Prosecuting Attorney, City and County
of Honolulu, Respondents.

SCPW-20-0000213

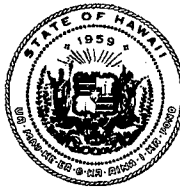
STATE OF HAWAI'I OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA,
Director, State of Hawai'i Department of Public Safety;
EDMUND (FRED) K.B. HYUN, Chairperson, Hawai'i Paroling Authority;
Respondents.

INITIAL SUMMARY REPORT AND INITIAL RECOMMENDATIONS
OF THE SPECIAL MASTER

EXHIBITS "1" - "5"



**STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEMS OVERSIGHT COMMISSION**

March 27, 2020

To: Governor David Ige

On Monday, March 23, 2020, we apprised you of our serious concerns regarding the ability of Hawaii's correctional system to cope with an outbreak of COVID-19 in any of its facilities. Our concerns are based on the following:

- The level of overcrowding in our facilities has been at unacceptable levels for decades. Some of the capacities fixed by the Corrections Population Management Commission (CPMC) were based on the facilities' operating capacities, and not their design capacities. That is, the official capacities are based on what the CPMC determined to be levels at which the facilities could safely operate in normal times. Many of the living units in most of the facilities were designed for single occupancy, but were rated at double occupancy for safe operating purposes. For example, the Halawa Correctional Facility was designed to hold 586 inmates in single cells. On February 29, 2020, there were 927 inmates incarcerated at this facility. Similar situations exist at the Oahu Community Correctional Center (CCC), the Maui CCC, the Hawaii CCC and the Kauai CCC. These facilities also hold a substantial proportion of their inmates in dormitory settings i.e. open group living setting. The Women's CCC, the Kulani Correctional Facility and the Waiawa Correctional Facilities all house inmates in dormitory settings. This reality raises serious questions about our system's ability to effectively quarantine inmates if any become infected, or to effectively allow any meaningful social distancing. We believe that the principles of social distancing and quarantine, which inform your Third Supplemental Proclamation of March 23, 2020, need to be applied to our correctional facilities to the extent possible consistent with public safety.
- All of the support units within each facility were designed to accommodate the populations for which they were designed. This includes the health care units. Some of the facilities have been expanded to accommodate more traffic. However, at their very best, the correctional health facilities can operate as infirmaries, and not as hospitals. Therefore, we have serious concerns that an outbreak of COVID-19 could quickly overrun the capacity of any of our correctional facilities.
- A significant number of our inmates suffer from chronic and serious health problems. This creates a potentially devastating situation for our health care staff who will have to establish priorities as to the levels of care that will be afforded to inmates.

EXHIBIT 3

The Authority of the Corrections System Oversight Commission

Act 179 SLH 2019 established the Corrections System Oversight Commission. Section 3 of Act 179 states:

The commission shall . . . establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.”

In normal times, the Commission would assess the adequacy of the previously set capacities with a more measured approach. However, as you are well aware, we are faced with an unprecedented and unforeseen emergency. Moreover, we have no way of predicting with any certainty how long this emergency will last. Therefore, the Commission believes that the population limits for each facility must be re-established immediately to reflect the emergency. We would like to work closely with your administration to ensure that capacities are set that provide inmates and correctional staff with reasonable levels of safety to prevent and/or mitigate the effects of COVID-19.

Request for Information

Therefore, in order to assess the adequacy of our policies and procedures on maximum population limits, the Commission requests the following:

- All plans developed to date by the Department of Public Safety related to COVID-19, including plans that may have been developed independently by contractors that house our inmates in private facilities in Hawaii as well as other states.
- The information on the capacities of each housing unit in each facility, including contract facilities that house inmates under the jurisdiction of PSD. Please also provide for each housing unit information as to whether the unit is configured as cells or dormitories; and the design and operation capacities of each cell and dormitory.
- The most recent information available on the number of inmates housed in each housing unit of each facility, including contract facilities that house inmates under the jurisdiction of PSD.

We would like to point out that Act 179 SLH 2019 also provides:

Section __-5 Access to records by oversight coordinator and commission. The department of public safety shall provide full access to all information requested by the oversight coordinator and commission.

In view of the exigent circumstances, we request the information be transmitted electronically by the close of business on Monday, March 30, 2020.
mpatterson@dhs.hawaii.gov.

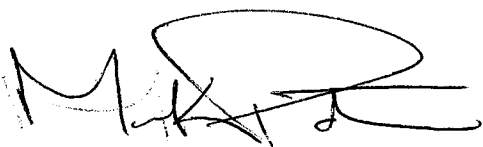
Need for a Coordinated Approach

We are well aware that the Judiciary has set forth in motion actions to reduce the population. We are very gratified by the leadership demonstrated by Chief Justice Rectenwald, the Public Defender and other concerned citizens. However, we believe that reducing the population, though necessary, may not be enough to prevent a quick

spreading of COVID -19 among the inmates and staff, and subsequently to the community-at-large. Therefore, we urge you to quickly implement the working group we recommended in our March 23, 2020 memorandum to you. We need a coordinated and comprehensive plan drawing on the expertise of sectors of our government and community outside the Department of Public Safety. We again recommend that at a minimum the following be asked to participate:

- The Department of Public Safety
- The Judiciary, including the Circuit and District Courts of all circuits
- The Prosecuting Attorneys of all counties
- The Public Defender
- The Hawaii Paroling Authority
- The Police Departments of all counties
- The Department of Health, including
 - The Division(s) that can assist PSD with testing, obtaining PPE and other necessary supplies, screening incoming inmates and staff to work, proper quarantine procedures, and relevant information needed for non-health care staff and inmates.
 - The Mental Health Division, to advise on proper placement of inmates who may with mental illness who qualify for release
- Representatives of human services and housing agencies who can advise on placement of inmate who may need supportive services and/or housing. While we believe that it is critical that we reduce the population, we also know that we should not release them to the community if there is not housing and critical social and health services for them.

Thank you for your prompt attention. This is a serious concern that must be addressed as expeditiously as possible.



Mark Patterson
HCSOC, Chair

cc: Chief Justice Mark E. Recktenwald
Senate President Ronald D. Kouchi
House Speaker Scott K. Saiki
Department of Public Safety Director Nolan Espinda
OHA Chair Colette Y. Machado