



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON SENATE BILL 2520, SENATE DRAFT 1
RELATING TO CORRECTIONAL FACILITIES.

by

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Thursday, February 27, 2020; 10:15 a.m.
State Capitol, Conference Room 016

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

The Department of Public Safety (PSD) opposes Senate Bill (SB) 2520, Senate Draft (SD) 1, based on the following comments.

The Department of Public Safety is a longtime member of the Association of State Correctional Administrators (ASCA) and a regular participant in training activities of the American Correctional Association (ACA). Communications and interactions with these professional correctional organizations give PSD access to up-to-date information and training in nationally recognized best practices in the field. For example, the Department has followed the recommendations of the ACA's Ad-Hoc Standards Committee since 2016, in standardizing its policies on administrative and disciplinary segregation according to current national best practices related to restrictive housing.

PSD has also taken steps to institute key practices focusing on the medical and mental health needs of an offender in the continuum of acceptable standards for interactions. The Department requires a multidisciplinary team of staff to conduct checks on inmates daily, whereas, weekly checks are the ACA-recommended standard.

In addition, the Department requires that a thorough medical and mental health

screening be conducted prior to placement where managed by 24-hour health care staff or when health care operations are available. Any inmate who incurs a misconduct and who has demonstrated mental health concerns, is also evaluated. The inmate would also be availed of daily mental health services. The ACA standard is for an evaluation to be conducted within seven (7) days of placement. The “vulnerable populations,” identified in this measure, are given special consideration prior to placement in restrictive housing and reviewed carefully by the medical, mental health, offender services, and security sections before placement.

Further information on the national standards may be accessed in the ACA’s January 2018 publication, *Current Restrictive Housing Standards*, at: http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_Accreditation/Standards/Restrictive_Housing_Committee/ACA_Member/Standards_and_Accreditation/Restrictive_Housing_Committee/Restrictive_Housing_Committee.aspx?hkey=458418a3-8c6c-48bb-93e2-b1fcbca482a2. The fact that PSD adheres to current national standards in restrictive housing, and in several areas, surpasses the standards, satisfies the intent of SB 2520, SD 1 and would make its enactment unnecessary.

The Department appreciates that the Senate Committee on Public Safety, Intergovernmental, and Military Affairs (PSM) accepted PSD’s recommendation to clarify definitions for the terms “indefinite,” “prolonged,” and “continuously,” however, the Department notes that the definition for the term “prolonged” continues to be vague and ambiguous. PSD respectfully recommends deleting “...to continue for a long time or...” and keeping “Prolonged means longer than usual as defined by department standards.” These terms used in section (g) on page 3 remain inconsistent with section (c) (7) on page 2, which enables long-term segregation.

Finally, it is important to note that PSD must follow the rules of Collective Bargaining Agreements to negotiate any changes to the operations and duties of the correctional staff as proposed in SB 2520, SD 1.

Thank you for the opportunity to present this testimony.



SB2520 SD1
RELATING TO CORRECTIONAL FACILITIES
Ke Kōmike Hale o ka Ho'okolokolo

Pepeluali 27, 2020

10:15 a.m.

Lumi 016

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2520 SD1, which limits the use of administrative and disciplinary segregation, otherwise known as “solitary confinement,” and emphasizes a rehabilitative approach in the use of administrative and disciplinary segregation in the State’s correctional facilities.

Solitary confinement may have significant, long-lasting, and counterproductive impacts on pa’ahao subject to this potentially debilitating experience. Currently, pa’ahao in solitary confinement can spend up to 23 hours a day alone in a cell with scarce meaningful human contact or recreational activities;¹ studies show that people subject to such solitary confinement for any notable amount of time may experience increases of mental health episodes, including anxiety, depression, and even psychosis.² The Department of Justice has also documented high rates of serious psychological distress among inmates held in solitary confinement.³ Even otherwise healthy people have reportedly developed mental health problems after placement in solitary confinement, and inmates held in long-term isolation may be 33 percent more likely to commit suicide than those in general population.⁴ To the extent that solitary confinement may create or exacerbate mental health challenges of inmates, it may also be counterproductive to the State’s rehabilitation goals. Accordingly, OHA appreciates the intent of this measure to limit the use of solitary confinement in state detention facilities, with conditions and restrictions to ensure that this practice is used primarily for rehabilitation purposes.

OHA notes that this measure would also address concerns noted in the 2018 report of the HCR85 Task Force on prison reform. The HCR85 Task Force expressed concerns regarding the use of administrative segregation (i.e. solitary confinement) and noted various ways to maintain the protective oversight often sought through administrative

¹ Rui Kaneya, *Do Hawaii Prisons Overuse Solitary Confinement?*, CIVIL BEAT, Dec. 22, 2016 <https://www.civilbeat.org/2016/12/do-hawaii-prisons-overuse-solitary-confinement/>.

² Fatos Kaba & Andrea Lewis et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates* AM. J. PUBLIC HEALTH 442-447 (2014) (finding that acts of self-harm are strongly associated with assignment of inmates to solitary confinement); U.S. DEPARTMENT OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 11 (2016).

³ U.S. DEPARTMENT OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 11 (2016).

⁴ Samarth Gupta, *From Solitary to Society* Harvard Political Review, HARVARD POLITICAL REVIEW, February 7, 2016.

segregation, but limit its potential significant and harsh impacts. For example, the HCR85 Task Force recommended including group therapy, increased motivational interviews with staff, increased out-of-cell time, enrichment activities, and increased social interaction opportunities whenever solitary confinement was used.⁵ The HCR85 Task Force also noted that those in solitary confinement are often the most vulnerable, including those subjected to sexual assault, those with physical and mental disabilities, kūpuna, and prisoners with special medical needs.

Mahalo nui for the opportunity to comment on this measure.

⁵ HCR 85 TASK FORCE REPORT 18,(2018).

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

Friday, February 27, 2020

10:15 AM – Room 016

STRONG SUPPORT for SB 2520 SD1 – SOLITARY CONFINEMENT

Aloha Chair Rhoads, Vice Chair Keohokalole 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 families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 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.

SB 2520 SD1 establishes procedures for the use of administrative and disciplinary segregation in correctional facilities.

Community Alliance on Prisons is in strong support of this measure. Please understand that 'segregation; administrative segregation; disciplinary segregation' are all euphemisms for solitary confinement. Isolation. There is a large and growing body of literature that demonstrates the harmful impact of isolation, particularly when used punitively, without clear time limits, for periods that are longer than four weeks and for people with prior mental health problems and poor social adjustment. Too many people are either dying in solitary or after shortly release. This bill pays particular attention to those populations that are especially vulnerable and creates a transparent and accountability process before sending an individual to isolation.

We have known many people who have been caught in the administrative/disciplinary segregation maze...sometimes for years. And the recent rash of suicides (since 2017) indicate that the individuals who died or attempted suicide were released from administrative or disciplinary segregation.

TWO TYPES OF SOLITARY¹

¹ Alone, in 'the hole' Psychologists probe the mental health effects of solitary confinement, By Kirsten Weir, May 2012, Vol 43, No. 5, Print version: page 54. <http://www.apa.org/monitor/2012/05/solitary.aspx>

Two types of solitary confinement are commonly in use today. The first, known as **disciplinary segregation**, is leveled as punishment when inmates break the rules. Steal a cellmate's radio, for instance, and you might be in solitary for a week or two. During disciplinary segregation, an inmate is separated from other inmates for a specified period of time.

The second type of confinement is known as **administrative segregation**, which is used when prisoners are deemed a risk to the safety of other inmates or prison staff. Prisoners in administrative segregation are placed into isolation units for months or years. Corrections officials first turned to this strategy in response to growing gang violence inside prisons, Dvoskin says.

THE HARMS IMPOSED BY THE STATE

Though critics contend that administrative segregation has never been proven to make prisons safer, use of this type of confinement has continued to rise. That's worrisome to most psychologists who study the issue. Deprived of normal human interaction, many segregated prisoners reportedly suffer from mental health problems including anxiety, panic, insomnia, paranoia, aggression and depression, Haney says (Crime and Delinquency, 2003).

ALTERNATIVES

An article² by the Director of the Prison Law Office, the nonprofit that sent a delegation from Hawai`i to Norway in 2015 talks about some California jails that are using a kinder approach to solitary:

“...More than a quarter of states and numerous smaller jurisdictions are looking for ways to reduce the use of solitary confinement, according to the Vera Institute of Justice, which encourages alternatives to a practice that behavioral experts say is dehumanizing and can worsen mental illness. ...

... Some jurisdictions nationwide are banning isolation for young offenders, pregnant women or those with mental health diagnoses. The California counties’ approach of generally limiting it to those who engage in continued violent behavior has dramatically reduced the number of inmates in isolation and the length of time they stay there. ...”

THE RESEARCH

Bureau of Justice Statistics:

The Department of Justice³ reports that **Hawai`i has the 7th highest number of prison suicides in the nation.**⁴ Isn't this a clarion call for reform? If it isn't, how many people have to die in state correctional facilities before something is done to reform a broken system?

The Eighth Amendment to the United States Constitution requires that prison officials “ensure that inmates receive adequate food, clothing, shelter, and medical care” and “take reasonable measures” to guarantee their safety.

² These California jails use kinder approach to solitary, By Don Thompson, Dec. 26, 2019.

<https://www.sfchronicle.com/news/article/These-California-jails-use-kinder-approach-to-14933231.php#>

³ Bureau of Justice Statistics, Mortality in State Prisons, 2001-2014 Statistical Tables, December 2016, NCJ 250150, Table 13 Number of state and federal prisoner deaths, by cause and jurisdiction, 2001–2014, page 12.

<https://www.bjs.gov/content/pub/pdf/msp0114st.pdf>

⁴ Id.

Vera Institute of Justice:

Policy changes⁵ that will reduce the use and long-term impact of segregation include the following:

- using alternative sanctions for minor violations
- reducing segregation time for certain categories of violations
- employing standardized incentivized reductions in segregation time for sustained good behavior
- providing opportunities for gradual resocialization to the general prison population

United Nations Special Rapporteur of the Human Rights Council:⁶

The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

Assessing the impact of time spent in Restrictive housing confinement on subsequent measures of institutional Adjustment Among men in prison:

A paper was published on January 13, 2019⁷ about the effect of restrictive housing on institutional behavior by Ryan M. Labrecque, PhD, is an assistant professor in the Department of Criminal Justice at the University of Central Florida. His research focuses on the evaluation of correctional interventions, the effects of prison life, the development of risk and needs assessments for community and institutional corrections settings, and the transfer of knowledge to practitioners and policy makers. His work has appeared in *Crime and Delinquency*; *Criminal Justice Policy Review*; *Psychology, Public Policy, and Law*; *The Prison Journal*; *Victims and Offenders*; and *Violence and Victims*. Here are the findings:

The results of this study have several policy and practical implications. First, and foremost, these findings suggest that placing men in restrictive housing confinement for longer durations does not lead to great improvements in their institutional adjustment. If the purpose of this practice is to improve one's institutional behavior, this study calls into question the tactic of simply increasing the time spent in restrictive housing as a mechanism for achieving this result. At the same time, these findings do not support the popular contention that restrictive housing units are serious incubators of crime, whereby inhabitants return to the general population at a greater risk for breaking the institution's rules. Nevertheless, these null findings call into question the long-term viability of restrictive housing. Not only does increasing the time spent in this type of housing have no meaningful effect on inmate behavior, it is more expensive to house inmates in restrictive housing units than in the general prison population, the use of this practice raises serious ethical and legal concerns, and placement in this setting reduces opportunities to participate in correctional interventions that may help improve behavior (e.g., educational, vocational,

⁵ Prisons Within Prisons: The Use of Segregation in the United States, Federal Sentencing Reporter • Vol. 24, No. 1 • October 2011. <http://archive.vera.org/sites/default/files/resources/downloads/prisons-within-prisons-segregation.pdf>

⁶ SEEING INTO SOLITARY REPORT:

http://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf

⁷ Assessing the impact of time spent in Restrictive housing confinement on subsequent measures of institutional Adjustment Among men in prison, Ryan M. LaBrecque University of Central Florida, January 13, 2019.

<https://doi.org/10.1177/0093854818824371>

mental health, and other treatment services; Labrecque, 2018a; Smith, 2016). The convergence of these factors highlights the urgency for correctional administrators to explore alternatives to restrictive housing that may better improve inmate outcomes and make prisons safer and more orderly. ...

One potential strategy is to offer higher risk inmates' (e.g., younger, mentally ill, gang affiliates) access to preventive rehabilitative programs before they are placed in restrictive housing and to provide inmates in restrictive housing units with more access to treatment services (Butler, Solomon, & Spohn, 2018; Labrecque & Smith, 2019; Smith, 2016).

We implore the committee to understand that Hawai'i has released people to the community directly from segregation. This does not protect the released person or the community to which they are released. Please understand that today's inmate is tomorrow's neighbor and it is the department's responsibility to do its level best to help people safely return to the community.

Over the decades, Community Alliance on Prisons has developed relationships with correctional officials and researchers around the world so that we can keep abreast of best practices in corrections and on justice issues. There is a larger discussion about solitary confinement taking place around the nation, however, we have been told by people from other jurisdictions that officials from Hawai'i rarely participate in these meetings.

There is a large and growing body of literature that demonstrates the harmful impact of isolation, particularly when used punitively, without clear time limits, for periods that are longer than four weeks and for people with prior mental health problems and poor social adjustment.

Charles Dickens visited the Eastern State Penitentiary in Pennsylvania in 1842, and the editors call him "one of the earliest—and still one of the most eloquent—critics of solitary confinement." He described the penitents there as men "**buried alive.**"

SB 2520 SD1 embodies the best practices of a humane and rehabilitative system. Community Alliance on Prisons humbly and respectfully asks the committee to pass this important bill.

Mahalo for the chance to testify.

SB-2520-SD-1

Submitted on: 2/21/2020 6:42:02 PM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments:

There are numerous national and international studies which demonstrate the severe psychological harm that is caused to individuals with mental illness who are placed in solitary confinement in prisons. Sadly, a large percentage of the inmates at our penal facilities do suffer from a mental illness. For that reason, some guidelines and protocols and restrictions on the use of solitary confinement would be an appropriate step to take towards ensuring that prisoners are not treated in a way which will needlessly damage their well being. While there may be some policies in place at the prisons we believe that codifying this in statute will provide better protection for these inmates.

SB-2520-SD-1

Submitted on: 2/22/2020 9:50:34 AM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki	Individual	Oppose	No

Comments:

It should be kept as policy and have stricter oversight of DPS, than codified into law.

SB-2520-SD-1

Submitted on: 2/22/2020 11:14:11 AM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

SB-2520-SD-1

Submitted on: 2/24/2020 7:59:56 AM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

SB-2520-SD-1

Submitted on: 2/24/2020 12:00:18 PM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lynette Cruz	Testifying for Hui Aloha Aina o Ka Lei Maile Alii	Support	No

Comments:

Hui Aloha Aina o Ka Lei Maile Alii, established in 2016 and firmly rooted in the call for social justice and social and political equity, strongly supports SB 2520. Our members believe solitary confinement is a form of torture, as noted by Dr. J. Wesley Boyd, M.D. and Ph.D, in a 2018 article published in Psychology Today (Solitary Confinement: Torture, Pure and Simple: Placing prisoners in solitary is tantamount to torture and it needs to stop, Jan. 15, 2018). It is ironic that the state of Hawaii has something called the Aloha Law, yet ignores it in favor of policies and practices that consistently harm those in the criminal justice system. How does solitary confinement help? Or is the intent merely to punish? Being behind bars and isolated from the community is already the punishment. Public trust in government is already at a low point. Please consider the harm and backlash that may result if there isn't some kind of overhaul of a failing criminal justice system. Mahalo for allowing this testimony.

Posted Jan 15, 2018

SB-2520-SD-1

Submitted on: 2/24/2020 3:14:05 PM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Costa	Individual	Support	No

Comments:

SB-2520-SD-1

Submitted on: 2/24/2020 5:16:24 PM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support SB2520. Lesser sanctions need to be required before placing a person in segregation plus tracking, reporting, and justification needs to be in place before placing a person in segregation. With the increasing number of deaths (11 in the last 6 months) the need for the Correctional Oversight Commission to get involved is imperative. Solitary confinement is now being recognized as a form of torture with too many people dying in segregation or after shortly release. Hawaii needs to get out in front of this. Please support SB2520.

SB-2520-SD-1

Submitted on: 2/24/2020 10:34:05 PM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

SB-2520-SD-1

Submitted on: 2/26/2020 1:18:09 AM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristine Crawford	Individual	Support	No

Comments:

The use of solitary confinement, which can cause great harm, should be restricted and tracked. I strongly support this bill.

LATE

SB-2520-SD-1

Submitted on: 2/26/2020 10:32:17 AM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne	Individual	Support	No

Comments:

LATE

SB-2520-SD-1

Submitted on: 2/26/2020 2:54:51 PM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Siciliano	Individual	Support	No

Comments:

Our prisons are dehumanizing enough already. Please let's end the torture of solitary confinement.

LATE

SB-2520-SD-1

Submitted on: 2/27/2020 12:00:24 AM

Testimony for JDC on 2/27/2020 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

Aloha Senator Rhoads, Senator Keohokalole, and Committe Members,

SB2520 establishes guidelines for the use of solitary confinement in correctional facilities.

This is especially important because there seems to be an abuse in the use of solitary confinement. Those placed in solitary confinement are disproportionately people with mental health issues, and solitary confinement may only increase the severity of these issues. An indication of the harmful impact of solitary confinement on vulnerable people is the high number of deaths in Hawai'i's correctional facilities.

Lack of transparency of the Department of Public Safety makes it difficult to find out information about the suicides. Correctional facilities are public institutions and the public has a right to know how the facilities are being operated and details of the circumstances surrounding any death that takes place inside them.

The World Health Organization has labeled prolonged solitary confinement as a form of torture. This barbaric and inhumane practice must be used only as a last resort. Given that incarcerated persons who experience the most severe punishment have a high rate of recidivism, it is time to recognize the humanity of inmates and focus more on rehabilitation to enable successful reentry into society.

Mahalo for your consideration,

Diana Bethel, Honolulu