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TESTIMONY ON HOUSE BILL 2007, HD1 RELATING TO CORRECTIONS

by Clayton A. Frank, Director Department of Public Safety

House Committee on Legislative Management Representative Michael Y. Magaoay, Chair Representative James Kunane Tokioka, Vice Chair

Tuesday, February 12, 2008; 2:00 p.m. State Capitol, Conference Room 423

Representative Magaoay, Representative Tokioka, and Members of the Committee:

The Department of Public Safety opposes House Bill 2007, HD1 which requires the auditor to conduct a financial and management audit of commissaries located in a Hawaii correctional facility and commissaries located at out-of-state contracted correctional facilities where Hawaii inmates are confined. It also requires the auditor to conduct performance audits of private prisons on the mainland housing Hawaii prisoners with regard to delivery of services, visitation, and the Department of Public Safety's monitoring of these contracts.

Regarding the commissaries, the Department of Public Safety's outer island facilities operate individual inmate stores utilizing a maximum mark-up not exceeding 10 percent of the distributor's wholesale price. These stores are operated by the individual facilities, which utilize general fund positions to provide this inmate privilege.

In comparison, the Department of Public Safety's Centralized Canteen, which encompasses all of the Oahu facilities' canteens or inmate stores are

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operated by the Department's Correctional Industries. Correctional Industries is a self-supporting vocational rehabilitation program, which is mandated to provide work and training opportunities for qualified, able-bodied inmates. The intent of the canteen centralization was to take advantage of volume purchasing discounts while providing the means to train inmates in warehousing, receiving and distribution, inventorying, and quality assurance methods.

While the amount charged to the inmates for products provided appears to be high, the service to provide direct delivery of products to an incarcerated inmate and operating this type of vocational training program within a correctional facility is costly due to the amount of training time required and security and administrative restrictions. By having Correctional Industries operate commissaries and other inmate operations, it allows the Department to utilize general fund positions and monies to provide a safe and secure environment for inmates, staff, and the public. Further, KMH LLP, the state-designated auditor for the Department, annually audits centralized canteen operations.

In addition, in the Department of Public Safety's contractual agreement with out-of-state private facilities under Inmate Commissary, all proceeds generated from the commissary services shall benefit <u>all</u> persons housed at the facility. This includes equipment (i.e. satellite television hook up in every cell, weights, basketballs, etc.), special meals for special occasions, such as Super Bowl BBQ meals, and commissary operating expenses, which include purchasing inventory, and salaries and benefits for three employees operating the commissary.

Because this is a contractual item, this area is already routinely audited and the facility is required to provide the State with a financial report on its commissary revenues. In addition, an independent auditing firm audits the facility's commissary operations annually. The audit is conducted in part to ensure inventory controls are in place, waste/spoilage is kept to a minimum, and that all inmates benefit for commissary services.

Regarding the contracts with mainland facilities, the Department contracts with Corrections Corporation of America (CCA) on its current out-of-state population. All CCA facilities nationwide are accredited and audited under

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the American Correctional Association (ACA). ACA has a comprehensive audit of all facility operations, its policies and procedures on mandatory standards. The Department's contractual terms and conditions require all private prisons to meet ACA standards and be accredited within eighteen (18) months of activation.

This measure is unnecessary and repetitive as the Department already conducts quarterly contractual audits of its private prison facilities using its subject matter experts from various divisions and branches (i.e. Heath Care Division, Substance Abuse, Education, Security, etc.). Further, a detailed deficiency notice on all non-compliant contractual items is issued to the respective facility and a plan of corrective action is provided to the Department within thirty (30) days of the deficiency notice. The contract also allows the Department to access liquidated damages for staffing requirements and substance abuse programs. To date, no liquidated damages have been accessed as all deficiencies have been corrected within the required thirty (30) response period. Also, the Department's contracts and monitoring reports are public record and are made available to the Legislature and the public.

Lastly, this measure is based on the premise that performance audits should be applied to a very specific type of contractor (private prisons) under contract with the Department. If it is the intent to implement the process of performance audits to provide accountability and transparency to the public regarding the services provided by any vendor for any contract made with the State as a legal requirement, then it should apply to all State contracts and not be limited to just the Department of Public Safety.

Thank you for the opportunity to provide testimony on this measure.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. Michael Magaoay, Chair Rep. James Kunanae Tokioka, Vice Chair Tuesday, February 12, 2008 2:00 PM Room 423

STRONG SUPPORT - HB 2007 HD1 – PERFORMANCE AUDIT OF COMMISSARIES AND PRIVATE PRISONS HOUSING HAWAI'I PRISONERS

Aloha Chair Magaoay, Vice Chair Tokioka and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai'i for a decade. I respectfully offer our testimony being always being mindful that Hawai'i has more than 6,000 people behind bars with more than 2,000 individuals serving their sentences abroad, thousands of miles away from their homes and their loved ones.

HB 2007 HD1 requires the auditor to conduct a financial and management audit of each commissary located in a Hawai'i correctional facility, as well as commissaries located at out-of-state contracted correctional facilities where Hawai'i inmates are confined. Also requires the auditor to conduct performance audits of private prisons on the mainland that house Hawai'i prisoners.

Community Alliance on Prisons strongly supports this bill. This audit is long overdue.

The Rising Numbers of Hawai'i People on the U.S. Continent:

We started shipping people out the first 300 individuals in 1996. Twelve years later, Hawai'i still has no exit strategy for this 'temporary situation' twelve years later. In 2006, that number of inmates exported rose to 1,844 Hawai'i inmates serving their sentences in prisons across the U.S. continent. As of January 7, 2008, we had 2,089 Hawai'i people serving their sentences abroad – more than one-third of Hawai'i's entire incarcerated population of 6,010.

What has shipping out – the exportation of the bulk of our prison population brought us? Sadly, it has delivered multiple gangs, individuals returning from U.S. prisons more hardened, and an increasing number of devastated families trying to survive back home. Hawai'i needs to train a more critical eye on what is happening in these contract prisons. Are we getting the programs and services for which we are paying more than \$50 million a year?

Over the years, Community Alliance on Prisons has heard many complaints about the commissary – from prices to the availability of items to chosen vendors. This bill would give us an independent view of

how the commissaries in Hawai'i and out-of-state facilities are being run, how our contracts are being enforced, and how private prisons are complying with contract provisions.

The State Bears the Liability for the Health and Safety of Hawai'i's Incarcerated Individuals:

The glaring facts are that our people have died in these prisons, several of our people have been hospitalized for serious medical conditions, and now we find out that an employee at Otter Creek smuggled in a loaded 22 into the prison with no one noticing anything. This is more than a breach of security. This is a clear indication that something is wrong. Something is very wrong. The state is still responsible for the care of individuals sentenced by our courts regardless of where that individual is housed.

In November 2007, I traveled with this committee to Eloy, Arizona to visit the two prisons housing the majority of our male prisoners. Saguaro Correctional Facility was built by Corrections Corporation of America in the Sonoran desert exclusively for Hawai`i's prisoners and 'sold' to Hawai`i as a program-intensive prison.

The staff at the prisons is young and inexperienced in corrections best practices. This has been illustrated with the problems of cell doors opening 'by mistake' at several CCA prisons. When this happened in Tallahatchie in Mississippi, one of our inmates was beaten to within an inch of his life. It's interesting that these events always seem to occur in the administrative segregation unit, called SHIP.

Is Hawai'i Getting What We Are Paying For?

Sadly, the most constant program in Saguaro is SHIP – Special Housing Incentive Program. SHIP is described as a behavior-modification program for people who are violent and cannot live in the general population because they are 'always violating the rules'. The individual does discipline time and gets a due process hearing, we were told. He can appeal the decision to the warden. SHIP has six month levels:

- SHIP I: 1 16 people locked down 23 hours a day with 1 hour out for recreation
- SHIP II: 11 13 people locked down 22 hours a day with 2 hours out for recreation
- SHIP III: 11 16 people locked down 20-21 hours a day with 3-4 hours out for recreation (CCA mentioned that these numbers are from October 25, 2007)

Does this sound like a program? What could someone learn being locked down for 20-23 hours a day? Community Alliance on Prisons has received numerous letters from our men in Saguaro and from their families advising us that 'write-ups' are increasing for minor infractions. In other words, men are being put in lockdown (aka SHIP I program) for taking an extra 8 ounce cup of juice with meals, for not lining up correctly, or for not displaying their ID badges prominently. We have been advised that the SHIP program is full. Is this the 'intensive programming' that we are paying for?

Staffing Problems at Saguaro:

On August 12, 2007, the Honolulu Star Bulletin, in an article entitled "Mainland prison slammed" (http://starbulletin.com/2007/08/12/news/story03.html) reported that:

"The heads of the education and addiction-treatment programs at a private Arizona prison holding Hawaii inmates abruptly quit their jobs complaining of poor management, inadequate facilities and lack of staffing.

Their resignations came just days before an Aug. 3 incident in which the staff at Saguaro Correctional Facility inadvertently opened security doors, releasing Hawaii inmates from their cells. Seven inmates left their cells when

the doors opened, one was injured in a fight with another inmate and a third inmate had to be subdued for refusing to return to his cell, Hawaii Department of Public Safety officials said.

Rich Stokes was the principal at Saguaro Correctional Facility in Eloy. Michael VanSlyke was the facility's addiction treatment manager.

"They essentially walked out," said Steve Owen, spokesman for the Tennessee-based Corrections Corporation of America, which runs the Saguaro facility. "Their leaving was not expected."

Stokes and VanSlyke did not explain their departures to CCA officials but instead sent e-mails to Shari Kimoto, state Department of Public Safety mainland branch administrator.

In the e-mails, Stokes said upper management at the facility spies on staff, controls all communication with the outside, and devalues and degrades inmates and programs for them. He said water runs into cells when inmates take showers because the drains are higher than the surrounding floors, the air-conditioning system experiences frequent failure and staff are often locked in or out of their units because doors cannot be opened."

In a briefing last month, the department of public safety reported that the Electrical Engineering teacher had also quit. Community Alliance on Prisons has also received numerous calls and letters that there is little to no programming taking place at Saguaro since the Hawai`i delegation's trip in November. Something is very wrong.

Problems at Otter Creek:

At Otter Creek Correctional Center in Wheelwright, KY, there have been and continue to be many problems for our women banished there.

In December 2005, three of our women were rushed to the hospital after repeatedly asking for medical care. One had pneumonia, one had triple by-pass surgery, and Sarah Ah Mau died on December 31, 2005 after being threatened with lockdown if she continued to ask for help.

A Kentucky inmate died in August of 2007. When we questioned public safety about the death, they told us that it was a Kentucky inmate, so they had no reason to question anything. Why would we not be concerned if someone died in a facility holding our women? Isn't any death a serious situation?

The health care at Otter Creek leaves a lot to be desired. Women have reported to us that their physician-prescribed medications are denied or changed by the facility, nurses who have left the facility confided to me that they were asked to perform procedures outside their scope of practice, and that Otter Creek is 'a mess'.

Of course, the latest incident involving the warden's secretary who smuggled a loaded 22 into Otter Creek is of great concern and is indicative of much more than a 'security breach'. Something is very wrong.

Shenanigans with Money for Inmate Accounts:

There also appear to be some shenanigans going on with the money that families and loved ones send to prisoners' accounts. The system recently changed so that all money sent to inmate accounts goes to a company in Georgia. I know of families who sent money to be placed in inmates' accounts in early December. By mid-January that money had not been deposited in the inmate's account. Why? Who is keeping track of these funds? Is this just another scam to make money off the backs of some of Hawai`i's most economically-challenged families?

CCA Accountable to Their Shareholders:

Again, we reiterate that the state bears the responsibility for the health and safety of our people in prisons thousands of miles away. Corrections Corporation of America is a private company listed on the NYSE. Where do you think their first responsibility lies? Correct...their first responsibility is to their shareholders.

We're sure that it is very convenient to house states' prisoners thousands of miles away – CCA is enjoying relative autonomy as evidenced by this statement that was overheard recently by a family member. "If it was up to me, you'd get nothing," said Assistant Warden Ben Griego, who is now Acting Warden at Saguaro – the program-intensive prison built for Hawai`i's inmates.

The State of Arizona Cracking Down on CCA:

The Saturday, February 2, 2008 Honolulu Advertiser (Nation and World – page A3) ran a story entitled, "Ariz. bill targets private jails"

http://the.honoluluadvertiser.com/article/2008/Feb/02/In/hawaii802020355.html

1900 Island inmates there; law would stop import of murderers and rapists

PHOENIX – The governor of Arizona is pushing legislation that would prevent private prisons from importing murderers, rapists and other dangerous or seriously ill felons into the state.

The law drafted by Gov. Janet Napolitano's office and introduced by Republican Sen. Robert Blendu also would require private prison companies to share security and inmate information with state officials.

The growing industry is now virtually unregulated by the state.

...."we were welcomed to the state 15 years ago. We answered the call to help with economic development in Pinal County," said Tony Grande, a senior vice president for Corrections Corporation of America, the largest private prison firm in the nation.

...."if you change the rules of the game midstream, we are going to resist it because we invested based on the current rules," he said.

...Of the 15 states that expressly authorize private prisons, Arizona is one of the least restrictive, said Dora Schriro, director of the state prison systems."

Community Alliance on Prisons respectfully urges the committee to pass this bill with appropriate funding so that a full and independent audit of the commissaries and contract prisons can be done. Hawai'i is in its twelfth year of exporting prisoners. It is about time that we thoroughly and independently analyze the wisdom of that policy decision, the rigor of contract compliance from the vendor, and the level of scrutiny that Hawai'i applies to monitoring these contracts. An independent audit is the only way we will discover what is really going on in these private prisons.

Our trip in November revealed that the department of public safety has been making excuses for CCA's non-compliance. When Senators questioned the lack of programming in Saguaro, the program-intensive prison, the department repeatedly jumped in to answer for CCA saying they are 'ramping up'. Our question is simple, "Why did they open the prison if they were not ready to provide the services we have been paying for?"

We need answers, not more hardened criminals.

Community Alliance on Prisons urges you to pass HB 2007 HD1 onto the Finance Committee with a strong recommendation for passage. An audit will provide the data you need to make necessary and important policy changes. Mahalo for this opportunity to testify.



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To: Representative Michael Magaoay, Chair

Representative James Kunane Tokioka, Vice Chair

And Members of the Committee on Legislative Management

From: Jeanne Y. Ohta

Executive Director

Re: HB2007 HD1 Relating to Corrections

Hearing: Tuesday, February 12, 2008, 2:00 p.m., Room 423

Position: Strong Support

The Drug Policy Forum of Hawaii supports this measure which would require the legislative auditor to conduct performance audits of private prisons on the mainland that hold Hawaii prisoners.

The contracts with private prisons are some of the most expensive contracts that the state enters into. These contracts also involve persons whose care is entrusted to the State of Hawaii. It is because of this responsibility and liability that an independent audit of private prisons is necessary. The audit should include the Department of Public Safety's statutory duties to monitor, enforce, and provide public access to its monitoring reports.

Private prisons have different objectives than those run by government entities. They are for-profit operations; whose goal is to keep as many beds occupied as possible while keeping expenses low. There have been numerous problems at the prisons; sometimes with questions as to implementation of programs that are required under the contracts. It is important that the audit include treatment and services to the inmates, and facilitation of family and community connections.

Please pass this bill so that we can know whether the contractors are complying with the terms of their contract. They must be held accountable for their performance.

Thank you for allowing me to testify today.

COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. Michael Magaoay, Chair Rep. James Kunane Tokioka, Vice Chair Tuesday, February 12, 2008 2:00 p.m. in Room 423

STRONG SUPPORT FOR HB 2007 HD1 – Relating to Corrections PERFORMANCE AUDIT OF PRIVATE PRISONS AND COMMISSARIES

Aloha Chair Magaoay, Vice Chair Tokioka and Members of the Committee:

My name is Carrie Ann Shirota, and I am writing in strong support of HB 2007 HD1 Requesting a Performance Audit of Private prisons and commissaries. My experiences as a former Civil Rights Enforcement Attorney and Public Defender, and current staff of a reentry program on Maui have shaped my advocacy efforts to promote accountability and transparency within our correctional system, and better prepare incarcerated persons for their return home as law-abiding, contributing members of their `ohana and our community.

Given the State of Hawai`i's increased reliance of transferring our prisoners to out of state correctional facilities, it is imperative that our elected officials and community are fully aware of the fiscal costs associated with these transfers. In fiscal year 2007, the Department of Public Safety spent \$50,291,459.61 to transfer inmates from Hawai`i out of state private prisons in Oklahoma, Mississippi, Arizona, and Kentucky.

As a taxpaying citizen who believes in rehabilitation programs to stop the cycle of incarceration, I would like to know how the \$50 million dollars were spent. In particular, I am interested in learning about the amount of money spent on programs, such as education, substance abuse treatment, mental health services, vocational training and medical care, as well as the effectiveness of these services. I am also interested in the number of in person and teleconference visits, and contracts outlining the telephone rates. We should be investing in programs that work, and better prepare men and women for their transition back into the community as law-abiding, contributing members of their families and our community.

In addition, the independent audit should detail PSD's execution of its duties in the areas of: 1) monitoring private prisons; 2) enforcement of contract provisions and c) public access to contract and monitoring reports. Public access to these contracts, monitoring reports, and other demographic data relating to persons housed out of state is critical in order to provide for accountability and transparency, and to determine if out-of-state transfers is cost-effective to reducing recidivism rates in Hawai`i.

As elected officials, our community looks to you for leadership in shaping legislation and ensuring that hard earned tax dollars are spent in a fiscally responsible matter and to ensure that private prisons that Hawai`i contracts with are complying with our contract. Please hold PSD and responsible for an accounting of its \$50+million dollar expenditure.

If we demand accountability from incarcerated persons, it is only right to demand the same from PSD and CCA! Please support HB 2007 HD 1!

Sincerely, Carrie Ann Shirota, Esq. Kahului, Hawai`i cashirota@aol.com (808) 269-3858 Clair C. Doctor 94-615 Kahakea St. Apt. 10F Waipahu, HI 96797 (808) 381-1052

COMMITTEE ON LEGISLATIVE MANAGEMENT Rep. Michael Magaoay, Chair Rep. James Kunanae Tokioka, Vice Chair Tuesday, February 12, 2008 2:00 PM Room 423

RE: STRONG SUPPORT - HB 2007 HD1 – PERFORMANCE AUDIT OF COMMISSARIES & PRIVATE PRISONS HOUSING HAWALI PRISONERS

Aloha Chair Magaoay, Vice Chair Tokioka and Members of the Committee!

My name is Clair Doctor, and I am in strong support of HB 2007 HD1. I am a graduate of the School of Social Work at the University of Hawaii and I am honored to hold a bachelor and master's degree in this profession that I am very passionate about. I have worked for the Department of Human Services for the last 5 years and I have also interned at TJ Mahoney's transitional home for women several years ago.

My clients have been reporting to me for years the corruption, incompetence, and indecencies that occur within the prison system, which includes, but is not limited to the CCA. In the last two years, I have had first hand experience of these issues after a loved one was incarcerated. Unfortunately, it has taken this first hand experience to fully acknowledge that the issues are very real and unexaggerated.

The CCA does not provide the type of service that it personifies on its brochures and websites. I have visited their prison. The CCA is strictly a money making business. It is also extremely frustrating that the Department of Public Safety (DPS) continually supports the CCA instead of the tax paying citizens that are paying for this service. I have written several letters to the DPS informing them of unethical and incompetent practices of the CCA and little is ever done about any complaint.

The CCA does not hire competent employees. Several of the employees of the CCA have never had prison work experience and/or are qualified to run treatment and rehabilitative programs. The DPS does not provide the public with the credentials of the CCA employees or program curriculums due to this issue.

Below is a list of problems that I have been made aware of by an inmate residing in a CCA prison and in turn, I have written to the DPS regarding these issues with minimal acknowledgement, concern, reply, and follow up:

- Drug treatment counselors are incompetent and run their programs subjectively instead of by its curriculum, thus, they often abuse their power and pick and choose who can be enrolled and/or terminated from a program depending on how they feel instead of the inmate's participation and work in the program.
- Drug treatment counselors often do not show up to teach the classes on its given days.
- The prison guards and counselors abuse their power and control.

- The inmates are fed food that is packaged with labels that say "not to be used for human consumption" (reported by a former inmate and head cook at Oklahoma prison). I recently saw this on a television show like "48 hours" that confirmed this illegal practice of prisons.
- Female guards are allowed to supervise male inmates showering.
- Female and male guards have been caught having sex with inmates.
- Female guard in Mississippi prison provided "lap dances" to the male inmates on New Years Eve in Mississippi.
- Female guard was arrested for bringing in crystal methamphetamine into Mississippi prison.
- Male inmate was high on crystal methamphetamine in Mississippi and the prison was on lock down for over a month, past the allotted time by federal guidelines. The DPS did not disclose this to the public. *Inmates in Mississippi do not receive visitors due to the distance and cost from Hawaii, thus, the staff has to be bringing in the drugs.
- The CCA has a high turn over rate due to corruption among the staff, including a warden, sergeant, and gang detail person, (Mississippi), and incompetent staff. The employees of the CCA were found guilty and fired.
- In order to receive medical treatment, the inmates have to pay approximately \$6.00 to be seen by the doctor, otherwise, an inmate could be denied services.
- The only medication that the CCA provides is aspirin for every single ailment no matter how bad the conditions are.
- The CCA makes it very difficult for inmates to receive adequate healthcare at a nearby hospital if
 necessary and inmates medical conditions are often life threatening and incurable by the time
 they receive necessary healthcare.
- The CCA hires physicians that do not think highly of their patients because they are inmates, thus, they are unempathetic and violate their own medical code of ethics by not providing adequate care. I have written a complaint to the Arizona Medical Board due to this issue.
- Several inmates have died or have been mutilated while incarcerated in CCA prisons, but the public often is not aware of it.
- Several inmates are missing teeth due to lack of preventive dental care and often are missing an
 eyeball due to lack of eye care. A walk -through Saguaro Correctional Center will validate this.
- The CCA does not properly train their employees and they often treat family members of inmates disrespectfully when they are law abiding citizens.
- The CCA decides who will visit inmates and the DPS defers to their authority. This is frustrating for family members who have to deal with an out of state private prison and have to follow their procedures that are often lengthy and difficult to get in touch with instead of receiving permission from the local "mainland branch" in Hawaii who is responsible for monitoring the contract.
- The CCA does not allow Hawaii people to use their own telephone company, although it would be cheaper, and instead monopolizes the phone company local families can utilize. It costs approximately \$3.00 to accept a collect call from the CCA and 50 cents a minute thereafter. This is beyond costly and heartbreaking for families that have loved ones on the mainland and are already struggling financially in Hawaii.
- The CCA is not culturally competent although they report that they are. The Warden of the Saguaro Correctional Center was interviewed on a Hawaii News Channel and he commented condescendingly that the inmates surprisingly requested spam and eggs and was surprised that that it was their favorite meal. Hawaii is well known for liking SPAM across the country.
- The DPS does not make unannounced visits to the CCA prisons. The DPS did not respond to my
 inquiry on why they did not do unannounced visits to ensure that the prison is running the way
 it ought to.
- The CCA does not provide information to family members and friends on transportation, lodging, and visitation rules. Upon insult to injury on paying thousands of dollars to visit out of

- state, visitors have to find out pertinent information regarding their visits when they arrive at the prison (if they are lucky to find it).
- The CCA does not provide the money sent the inmate via Western Union in a timely manner. Although the money is sent immediately, the CCA has taken weeks to provide the inmate with the money, thus, store orders and telephone calling cards are unable to be met when needed. This is frustrating again for families who want to hear from their loved ones and inmates who may have to order things due to allergies due to the CCA's refusal to make accommodations for allergic reactions to the products they provide cost-free.
- The calling cards that the CCA provides the inmates are expensive even though it is within the United States of America. There are calling cards available to call foreign countries for the same allotted time that is cheaper than the ones that CCA provides within the states.

Please do the right thing and support this bill. For all the reasons I have listed above and several other reasons, it is pertinent that the CCA is audited. I am also speaking on behalf of all the families that I have worked with and met through this tragic experience. Many families that I have met do not exercise their right to testify and often feel hopeless that nothing will be done about it anyway. I still believe in the system although at times I wonder why. Please pass this bill.

Thank you and please support HB 2007 HD1.

Sincerely, Clair Doctor Concerned Citizen

You can read more about this at the Private Corrections Institute website at www.privateci.org/Hawaii_shame.htm