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**TESTIMONY ON HOUSE BILL 1151
RELATING TO RESTRICTED ACCESS TO CORRECTIONAL FACILITIES**

by
Clayton A. Frank, Director
Department of Public Safety

House Committee on Public Safety
Representative Faye P. Hanohano, Chair
Representative Henry J.C. Aquino, Vice Chair

Thursday, February 19, 2009, 9:30 AM
State Capitol, Conference Room 309

Representative Hanohano and Members of the Committee:

The Department of Public Safety (PSD) strongly supports House Bill 1151. The measure will require the consent of anyone coming on state correctional facility grounds to allow the search of their vehicle or person. This will provide access for correctional staff to search persons and vehicles that might be carrying weapons or contraband when they enter onto State correctional facility grounds.

Currently, correctional staff in PSD are not law enforcement personnel. Therefore, they do not have the authority to search any person or vehicle that may bring weapons or contraband on correctional facility grounds as do law enforcement personnel. There has been a history of contraband being introduced into correctional facilities in PSD, all of which were transported either by vehicle or by person. This bill will assist staff in combating the introduction of contraband and/or weapons, and more importantly assist staff in making the facilities safer and more secure for both staff and inmates

PSD will promulgate administrative policy that will govern the search of vehicles and persons coming on grounds that will clarify the factors to be considered before a search is conducted, similar to probable cause. Further, if a search of a person is necessary, the search would be conducted by a correctional officer who is the same gender as the person(s) being searched. PSD does not anticipate, nor would the department be able to search every person or vehicle that enters facility grounds.

The measure would also assist in the prosecution of anyone attempting to smuggle contraband into the facilities by clarifying that the person or vehicle consented to the search by entering on the grounds by statutory means.

Based on all the foregoing reasons, PSD strongly supports HB1151.

Thank you for this opportunity to provide testimony on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, February 19, 2009

Room 309

9:30 A.M.

COMMENTS on HB 1151 – Restricted Access to Correctional Facilities

PBSTestimony@capitol.hawaii.gov

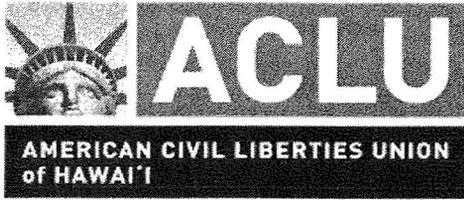
Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 1151 permits the search of persons and vehicles entering state correctional facility grounds.

Community Alliance on Prisons expresses concerns about granting police powers to the Department of Public Safety. We urge the committee to include all facility staff as well in the searches.

Mahalo for this opportunity to testify.



Via E-mail: PBSTestimony@capitol.hawaii.gov
Committee: Committee on Public Safety
Hearing Date/Time: Thursday, February 19, 2009, 9:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1151, Relating to Restricted Access to Correctional Facilities

Dear Chair Hanohano and Members of the Committee:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1151, which seeks to allow visitation to a correctional facility to be conditioned upon “a search for weapons or contraband[.]”

H.B. 1151 violates the Fourth Amendment rights of visitors and employees

The ACLU of Hawaii does not dispute that corrections officers may conduct *limited* searches of prospective visitors to correctional institutions. Our concern with H.B. 1151 is simply with the overbreadth and vagueness of the proposed language, because the bill does not define the scope of the searches or the circumstances under which different kinds of searches may be allowed. While corrections officers may be able to condition prison visits on passing through a metal detector, for example, they may not require visitors to “consent” to strip searches without reasonable suspicion that the prospective visitor possesses weapons and/or contraband. *See, e.g., Deserly v. Dep’t of Corrections*, 995 P.2d 972 (Mont. 2000) (collecting cases on prison visitation searches).

Furthermore, to avoid against arbitrary enforcement of visitor search rules (that is, to ensure that searches take place without regard to race, sex, or other protected classification), the Legislature should ensure that searches of prison visitors are consistent and that more invasive searches are based on objective criteria.

With regard to vehicle searches, corrections officers should have reasonable suspicion that visitors’ and employees’ vehicles contain contraband before searching them so as maintain a balance between the Fourth Amendment rights of the individuals and the facility’s need to maintain safety. “Contraband” should be defined and limited so as not to include innocuous items like pencils and paper that are almost certainly found inside every vehicle.

It is also unclear from the bill whether visitors and employees have the right to refuse the search and leave the facility grounds without being charged with a misdemeanor.

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and Members Thereof
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Extensive, arbitrary and unnecessary searches deter visits from family and friends and hamper rehabilitation.

Visits have a positive impact on inmates and we should reject efforts to discourage visitation that do little to address the problem of contraband or increase security.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney

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