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No. _

**TESTIMONY ON HOUSE BILL 408
RELATING TO CORRECTIONS**

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 12, 2009; 8:30AM
State Capitol, Conference Room 309

Representative Hanohano, Representative Aquino, and Members of the Committee:

The Department of Public Safety (PSD) strongly opposes House Bill 408, which seeks to codify in statute standards governing the transfer of inmates to mainland prisons or between correctional facilities in Hawaii. The measure is unnecessary as the PSD previously established sound standards used to assist in identifying and determining those inmates that qualify to be transferred to mainland facilities. We also use our sequential phasing process to assist in identifying and determining those inmates that are ready to move on to the next phase of the rehabilitative process, which at times, requires their transfer between correctional facilities.

This measure also seeks to require the PSD to consider non-traditional and clearly unsound correctional management practices when determining which inmates should be transferred, it will severely affect PSD's ability to effectively and efficiently manage the inmate population. It is already very difficult to manage the inmate population and address protective custody, separate issues, inmate gangs, and other security threat groups. For these reasons and others, no jurisdiction in the country has a provision that allow inmates

to appeal a decision regarding the location of incarceration. The United States Supreme Court has ruled that inmates **do not** have a constitutional right to determine the location of their incarceration.

Further, the provision of this measure that requires that a committed person be notified not less than fourteen days prior to their transfer, and that they have the right to appeal the decision to transfer is simply bad corrections management. If enacted, this measure would frustrate legitimate government operations, place staff and the public at risk, and add to the already over burdensome administrative requirements and responsibilities of institutional case managers, correctional supervisors, and correctional managers.

No jail or prison jurisdiction in the country operates under a "voluntary" transfer system, that places the wishes of the offender over the operational, security, and safety of the facility, staff, and the general public. In addition, no jail or prison jurisdiction allows for an appeals process regarding the location of incarceration and/or transfers between correctional facilities. To do so opens up the State to almost limitless liability as overcrowding in our State facilities will become unbearable and create cruel and usual punishment conditions that will trigger Department of Justice oversight, which will cost the State millions of dollars.

Therefore, for the reasons listed above and on the preceding page, the PSD does not support House Bill 408 and we strongly urge the committee to hold this measure. Thank you for the opportunity to provide testimony on this matter.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 408, RELATING TO CORRECTIONS.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, February 12, 2009 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 309
Deliver to: Committee Clerk, Room 310, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Darcy H. Kishida, Deputy Attorney General

Chair Hanohano and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill provides for advance notice of, and establishes standards for, the transfer of Hawaii inmates to mainland correctional facilities. This bill presents significant problems.

Section 2 of the bill provides that the director may transfer inmates to other correctional facilities in Hawaii "if the transfer is in the best interests of the State **and** the welfare of the committed felon will be best served by the transfer" (emphasis added). Requiring the transfer to be in the best interests of both the State and the inmate would unreasonably limit the director's discretion and flexibility, especially with regard to safety and security issues.

Section 3 of the bill prohibits, absolutely, out-of-state transfers of inmates who maintain a regular visiting schedule with their children, regardless of the correctional facility's physical capacity to safely and securely accommodate inmates beyond a certain number. A constitutional concern is presented when a correctional facility lacks the physical capacity to accommodate more than correctional standards will allow, but does so anyway. This is the main reason for the use of mainland prisons - so that

the State can provide adequate space and resources for the safe and humane treatment of inmates, in light of the physical incapacity to do so within the State at the present time.

Overcrowding in prisons can constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. See Johnson v. Levine, 588 F.2d 1378, 1380-81 (4th. Cir. 1978) (noting that "[o]vercrowding, with all of its consequences, can reach such proportions that the impact of the aggregate effect amounts to cruel and unusual punishment").

If this bill became law, the State would have to choose between two objectionable options: (1) keep all qualifying inmates housed in Hawaii, even if it results in prison overcrowding; or (2) violate the statute by sending them to the mainland. Either choice would put the State at risk of costly litigation and liability.

Section 3 of the bill also contains troubling ambiguities. One of the criteria used to determine whether the director may not transfer an inmate out of state is whether the inmate "[h]as had at least six contacts, whether in person or by telephone, with the committed felon's child prior to time of the proposed transfer." The period of time within which the six contacts must be made is not defined and could include, for example, a situation whereby an inmate contacts his or her child only once every other year over a twelve year period (for a total of six contacts). The intent of this bill would not be satisfied by such infrequent contacts. Nor would the intent of the bill be satisfied by mere telephone contact, as such "contact" could consist of six short telephone calls made by the inmate specifically to avoid being transferred to a mainland facility. In any event, if the bill considers telephone contact as substantial and meaningful, then it would follow that such substantial and meaningful contact could be easily maintained even if the inmate were to be transferred to the mainland.

Section 3 also provides that an inmate's child includes "hanai" children, which the bill does not define. Without a definition of hanai, this provision is difficult to enforce. Even if the bill contained a definition of hanai, however, factual determinations would be complicated, expensive and time-consuming to make. It would be extremely difficult to distinguish between legitimate hanai children and those who might be fabricated to meet the criteria in this section.

Additionally, section 3 of the bill requires the Department of Public Safety to give inmates "not less than fourteen days notice prior to transfer." This presents security concerns. Advance notice of transfer dates can lead to an increase in escape plans and attempts, and to protest activities that require extra security and law enforcement attention. Because of these security risks, inmate transfers are handled on a strict, confidential, need-to-know basis, and already involve a high security component. Adding to the security concerns surrounding inmate transfers would strain law enforcement and corrections resources and put the safety of inmates and others at risk.

We respectfully ask the Committee to hold this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE FAYE HANOHANO, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

February 12, 2009

RE: H.B. 408; RELATING TO CORRECTIONS.

Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney submits the following testimony in opposition to HB 408.

The purpose of this bill is to codify in Hawaii Revised Statutes chapter 353, provisions regulating the transfer of inmates between correctional facilities. H.B. 408 provides criteria for transferring prisons between correctional facilities in the state and out of the state. In addition, this proposal requires the Department of Public Safety to give inmates fourteen days notice prior to transfer and a right to appeal the transfer. In addition, H.B. 408 provides that felons who volunteer to be transferred shall be given preference in the department's decision on transferring inmates.

We oppose this bill as we believe it will hamper the department's effort to safely and effectively manage inmate populations, programs and correctional facilities. The department already has multiple issues it considers in housing inmates; it must consider issues such as inmate gangs, inmates who need protective custody, appropriate levels of security and facility overcrowding. To permit the individual desire of the inmate to be the overriding factor in determining where an inmate is held, will make effective population management unachievable. We suspect that instead of saving the state money, this bill might actually increase costs because some facilities may not have sufficient resources while other facilities which have more resources may be underutilized.

For these reasons, we oppose the passage of H.B. 408 and thank you for this opportunity to testify.

HAWAII YOUTH SERVICES NETWORK

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Alan Shinn, President

Judith F. Clark, Executive Director

Acadia Hawaii Residential Treatment Center (Formerly Children's Comprehensive Services)

Adolescent Services Program, Kaiser Permanente Medical Care System

Aloha Pride Center

American Civil Liberties Union of Hawaii

Assistive Technology Resource Ctrs. of HI

Bay Clinic, Inc.

Big Brothers Big Sisters of Honolulu

Big Island Substance Abuse Council

Blueprint for Change

Bobby Benson Center

Catholic Charities Hawaii

Central Oahu Youth Services Assn.

Child and Family Service

Coalition for a Drug Free Hawaii

Community Assistance Center

Domestic Violence Action Center

EPIC, Inc.

Family Support Services of West Hawaii

Foster Family Programs of Hawaii

Friends of the Missing Child Center of HI

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Behavioral Health

Hawaii Foster Parent Association

Hawaii Student Television

Healthy Mothers Healthy Babies Coalition

Hina Mauka Teen Care

Kahi Mohala Behavioral Health

Kama'aina Kids, Inc.

KEY (Kualoa-He'eia Ecumenical Youth) Project

Kids Behavioral Health

Kids Hurt Too

Kokua Kalihi Valley

Life Foundation

Marimed Foundation

The Maui Farm, Inc.

Maui Youth and Family Services

Palama Settlement

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

Planned Parenthood of Hawaii

Salvation Army Family Intervention Srvs.

Salvation Army Family Treatment Srv.s.

Sex Abuse Treatment Center

Susannah Wesley Community Center

Turning Point for Families

Waikiki Health Center

Women Helping Women

YouthVision

YWCA of Kauai

February 10, 2009

To: Representative Faye Hanohano, Chair
And members of the Committee on Public Safety

Testimony on HB 408 Relating to Corrections

Hawaii Youth Services Network, a statewide coalition of youth-serving organizations, supports HB 408 Relating to Corrections.

When incarcerated persons and their families are able to maintain strong family bonds, there are substantial benefits to family members (particularly the children), the prisoner, and to the correctional facility administration. It is extremely difficult to sustain family ties when the prisoner is housed thousands of miles away.

Children of incarcerated parents experience grief and loss, similar to the experience of divorce or the death of a parent. Studies show that children of incarcerated parents are at increased risk of abuse or neglect, and more likely to have mental problems, and difficulty in school. Children of incarcerated parents are seven times more likely to enter the juvenile or adult correctional systems themselves. Providing opportunities to sustain the parent-child bond can alleviate many of these problems.

Prisoners who have regular contact with family members benefit as well. They are less likely to violate prison rules and create trouble for prison authorities. They are more likely to take advantage of rehabilitation and educational opportunities while in prison. Regular contact with family members increases the chances of successful reintegration into the community when a person is released from prison.

Hawaii Youth Services Network believes that children and their incarcerated parents would benefit considerably from efforts to keep these parents in Hawaii, rather than incarcerating them in out-of-state facilities. We believe that family relationships should be a key factor in making decisions about moving prisoners to out-of-state facilities.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



the
**Drug Policy
Forum**

February 12, 2009

To: Representative Faye Hanohano, Chair
Representative Henry J.C. Aquino, Vice Chair
And Members of the Committee on Public Safety

From: Jeanne Ohta, Executive Director

RE: HB 408 Relating to Corrections
Hearing: February 12, 2009, 8:30 a.m., Room 309

Position: Support

I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii. Thank you for this opportunity to testify in support of HB 408 which clarifies the circumstances that an inmate may be transferred between facilities in Hawai`i and those outside of Hawai`i.

Transfers should be systematically planned; they should not be haphazard nor should they give the impression that they are retaliatory. Good business practices and common sense mandate a plan establishing criteria for transfer inside and outside of Hawai`i.

Maintaining contact and relationships with family members can motivate successful transition from prison back into the community. Transferring inmates and disrupting those important relationships can make maintaining those ties more difficult.

Transfers should further the individual's rehabilitation and reentry plan. Other jurisdictions, including Washington state, California, and Alaska have established transfer criteria.

In my role with DPFH, I have had inquiries from family members as to how the decision to transfer inmates is made. It would be beneficial to those family members to have clear criteria so that they understand what is happening. Transparency would help everyone.

Please pass HB 408 as it would be good public policy for the operations of the department, for those incarcerated and for their families.

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COMMITTEE ON PUBLIC SAFETY
Rep. Faye P. Hanohano, Chair
Rep. Henry J.C. Aquino, Vice Chair
Thursday, February 12, 2009
8:30am
Room 309

**STRONG SUPPORT
HB 408 – RELATING TO CORRECTIONS (Transfer Criteria)**

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

My name is Carrie Ann Shirota, and I am writing in strong support of HB 408. My experiences as a former Public Defender and staff member of a reentry program on Maui and member of Community Alliance on Prisons have shaped my advocacy efforts to promote accountability and transparency within our correctional system, and increase opportunities for individuals to better release for their release as law-abiding, contributing members of their `ohana and community.

HB 408 clarifies the circumstances under which inmates may be transferred between Hawai`i facilities and facilities outside of Hawai`i. The bill amends Chapter 353 to create a statute that the director shall consider the individual's 1) current programming and if it could be continued at another facility, 2) family and whether transfer would interrupt contact, and 3) willingness to be transferred. It also gives the individual 14 days notice so they can contact their loved ones and make any arrangements necessary for their families as well as the right to appeal the transfer.

For too long, the Department of Public Safety has transferred men and women to out of state prisons without regard to any standards that take into consideration the rehabilitation needs of the incarcerated individual, as well as the impact that such a transfer will have on the incarcerated person's `ohana.

Many years ago, Hawai`i provided individuals with a hearing prior to making transfer decisions to prisons on the Mainland. And while other states provide opportunities for incarcerated persons to have a hearing prior to taking the drastic measure of transferring them to another state, our incarcerated brothers and sisters are not provided with any means of due process. The manner in which PSD currently transfers individuals to Mainland prisons has changed for the worst. The practice of ACOs showing up at one's cell and directing the individual to pack their bags without having an opportunity to challenge whether the transfer promotes rehabilitation and visit with their loved ones before being exported thousands of

miles away is cruel and inhumane. Its effect is to not only to punish the prisoner, but to further punish their families. Where is the aloha spirit in this practice?

I pray that our elected representatives will enact this bill that will mandate the Department of Public Safety to adhere to established criteria regarding transfers, particularly when transferring to out of state prisons. As it stands, the lack of transfer criteria leads to abuse of power and retaliatory transfers. Furthermore, it appears that some transfer decisions are made in blatant violation of Act 8's mandate to return individuals home one year prior to their release date. Accordingly, I strongly urge you to pass HB 408!

Sincerely,

Carrie Ann Shirota, Esq.
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From: Helen Kon [sugoishu1@yahoo.com]
Sent: Wednesday, February 11, 2009 6:39 AM
To: PBStestimony
Subject: 2/12/09 Testimony HB408

Categories: Orange Category

COMMITTEE ON PUBLIC SAFETY

Rep. Faye P. Hanohano, Chair

Rep. Henry J.C. Aquino, Vice Chair

Thursday, February 12, 2009

8:30 AM

Room 309

Bill #HB408, RELATING TO CORRECTIONS

SUPPORT

Thank you for the opportunity to submit my testimony.

Request your consideration in the passage of this bill.

There is a lot of confusion on transfer of inmates whether to or from the mainland. There have been instances where inmates with less than three months are sent to the mainland. Also, inmates who are to be furloughed are kept behind for reasons unbeknown to them. Some are kept behind as much as a year when others who are not to be furloughed are sent home. This kind of irresponsible transferring of inmates causes much distress among the inmates and animosity toward the "system."

With technology, a more reliable and humane system need to be established where inmates have enough time to pack and take care of their personal belongings, and have someone notify their loved ones so they don't find out on visitation day. The inmates, themselves, don't know when they will be shipped out so have a friend notify their parents/next of kin. It is a heartwrenching experience to get such a call and not have had the opportunity to bid your loved one goodbye. Furthermore, inmates are "bumped" getting on the airplane, kept in ot buses for up to 6 hours (chained) because of poor connections between flights, etc.

Thank you for your consideration.

Elaine Funakoshi