

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

CLAYTON A. FRANK  
DIRECTOR

DAVID F. FESTERLING  
Deputy Director  
Administration

TOMMY JOHNSON  
Deputy Director  
Corrections

JAMES L. PROPOTNICK  
Deputy Director  
Law Enforcement

No. \_

**TESTIMONY ON HOUSE BILL 409  
RELATING TO PUBLIC SAFETY**

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

Tuesday, February 5, 2009; 9:15AM  
State Capitol, Conference Room 309

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

The Department of Public Safety (PSD) opposes House Bill 409, which seeks to codify in the statute the Office of the Ombudsman ability to conduct investigations at PSD facilities in the state and facilities under contract with the PSD to house inmates from Hawaii on the mainland.

This measure is unnecessary as the PSD, including our Mainland Branch Office, closely monitors contract compliance issues with the facilities on the mainland that house inmates from Hawaii under contract with the Department. To date, there has not been a single instance in which either the PSD or the facilities on the mainland have not fully cooperated and/or assisted the Office of the Ombudsman in addressing any inmate, family, or legislative complaint or concern.

The PSD enjoys a strong, mutually respectful and good working relationship with the Office of the Ombudsman. We have and will continue to be receptive to their inquiries and have addressed all issues of concern in a timely manner. Therefore, PSD sees no

need for this costly measure and will negatively affect the priorities as outlined in the Governor's executive budget.

Further, in these extremely challenging fiscal times, we all have a shared responsibility to ensure that our taxpayer dollars are used for those items and services that are the most critical to the people of Hawaii. Given that this measure is clearly not one of critical importance when weight against the difficult financial challenges the state is experiencing and coupled with the fact that the Office of the Ombudsman and PSD enjoy a strong working relationship that facilitates the resolution of issues of concern, PSD respectfully requests that this measure be held as it is unnecessary.

Finally, thank you for the opportunity to provide testimony on this matter.



Robin K. Matsunaga  
Ombudsman

David T. Tomatani  
First Assistant

**OFFICE OF THE OMBUDSMAN  
STATE OF HAWAII**  
465 South King Street, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Tel: 808-587-0770 Fax: 808-587-0773 TTY: 808-587-0774  
complaints@ombudsman.hawaii.gov

**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,  
ON H.B. NO. 409, A BILL FOR AN ACT  
RELATING TO PUBLIC SAFETY**

**HOUSE COMMITTEE ON PUBLIC SAFETY  
FEBRUARY 5, 2009**

Chair Hanohano and Members of the Committee:

Thank you for the opportunity to present testimony on H.B. No. 409, which will expand the jurisdiction of the ombudsman to include the acts of any correctional facility contracted by the Department of Public Safety (PSD) to house persons committed to the custody of the Director of Public Safety (Hawaii inmates). The bill also amends section 96-9, Hawaii Revised Statutes (HRS), to specify that when investigating a complaint involving a correctional facility, the ombudsman may visit the correctional facility at a suitable hour.

I am aware that there is continued concern over the treatment of Hawaii inmates being held out of state at private correctional facilities contracted by the PSD. It is appropriate that this committee and the Legislature are considering whether greater oversight of the contracted private correctional facilities is needed, regardless of where those facilities are located, and if so, how such oversight should be provided.

Since becoming the ombudsman in 1998, I have been concerned that the privatization of government programs and services, particularly in the areas of health care and human services, has removed those programs and services from the direct oversight of the ombudsman. While most of the private entities that deliver these services are well run and sensitive to those they service, the recipients of those services tend to be vulnerable or marginalized in some way and often find it difficult, if not impossible, to proceed through the bureaucracy of existing grievance processes if they should have a complaint against the private entity delivering the program or service. If the ombudsman was authorized to investigate the acts of the contracted private entities, the recipients of the governmental services that those entities provide would have an easily accessible and simple mechanism to address their grievances. H.B. No. 409 addresses one of the more recent privatized programs, adult corrections, and therefore, at least in general concept, would address at least part of my concern regarding privatization.

However, I have serious concerns with section 5 of this bill, which would amend Section 96-9, HRS, to specify that the ombudsman, if investigating a complaint involving a correctional facility, may visit the facility at a "suitable hour." The existing language of Section 96-9 authorizes the ombudsman to enter any agency's premises without notice and places no limitation on the time of day when the ombudsman can do so. This authority is a major tool of the ombudsman, and while the term "suitable hour" is not defined in H.B. No. 409, specifying that the ombudsman may visit at a suitable hour would appear to limit the ombudsman's ability to conduct an on-site inspection to certain hours of the day. I do not feel it is necessary to provide special treatment for correctional facilities, as compared to other state and county facilities (especially since unlike most other agencies, correctional facilities are "open for business" 24 hours a day, every day of the year). **Therefore, I respectfully urge this committee to delete section 5 of the bill.**

With regard to the impact that this bill would have on my office, in fiscal year 2007-2008, the office received a total of 3,268 jurisdictional complaints. Of this total, 1,746 complaints were against correctional facilities or programs in Hawaii. We also received 99 complaints in fiscal year 2007-2008 against the contracted correctional facilities on the mainland. While the number of complaints is low, please bear in mind that many Hawaii inmates being held at mainland facilities understand that the ombudsman does not have jurisdiction to investigate complaints against the private contracted facilities. Should the ombudsman's jurisdiction be expanded to include private contracted facilities, I believe it is safe to assume the number of complaints from Hawaii inmates held at the contracted private facilities will increase significantly and necessitate the hiring of additional staff.

With regard to the appropriation necessary to carry out the intent of the bill, providing jurisdiction over contracted facilities will have operational and fiscal implications beyond simply hiring staff to handle the complaint workload. With contracted facilities, the Office of the Ombudsman will need to learn the policies and procedures of each facility, familiarize itself with the key staff at each facility, and have the resources necessary to conduct site visits and on-site investigations, if necessary. The ability of the ombudsman to conduct on-site investigations, especially the ability to conduct these visits without notice to the agency (assuming the proposed amendment to Section 96-9 to limit visits to "suitable hours" is deleted), is not only an investigative tool of the ombudsman but also acts as a disincentive for an agency that might contemplate providing a less than truthful or timely response to an inquiry from the ombudsman.

At this time, I cannot provide this committee with an estimate of the total amount of funding that will be needed to effectively carry out the purpose of this bill, primarily due to the question of

how to resolve the problem of a lack of available space in our office to accommodate the additional analyst staff that will be needed to handle the anticipated increase in caseload.

In terms of staffing, my best estimate, based on the number of complaints we currently receive against Hawaii correctional facilities and the number of Hawaii inmates being held at mainland facilities, is that we will need 4 additional analysts. The funding that will be required for the first year is approximately \$300,000, which would cover the cost of salaries, furnishings, equipment, books, etc. Of this total, \$260,000 would be recurring costs for salaries.

In addition, we will need funding for travel-related expenses to visit the out-of-state contracted facilities. Based on the current, primary facilities in Arizona and Kentucky, we will need \$8,000 for travel-related expenses for the ombudsman or first assistant plus 2 staff persons to conduct an initial 2-day visit to each facility, and an additional \$16,000 to allow subsequent visits as necessary.

We will also need to establish an arrangement with each out-of-state contracted facility to provide Hawaii inmates held at those facilities with similar telephone access to our office that inmates held in local facilities have. Such an arrangement might involve our office accepting collect calls (which we currently do not do for any complainant), establishing some sort of dedicated telephone line, or having the contracted facility assist in making the telephone calls and then charging the office or the PSD based on the actual costs that the contracted facility incurs (which should be lower than the cost of collect calls). Funding will be needed to cover the cost of the selected alternative.

With regard to office space, our current location is approximately 2,715 square feet in size. We no longer have a conference room, which was renovated in 1990 to create two offices for analyst staff. According to Department of Accounting and General Services (DAGS) standards, for the number and type of staff that we have, we should have approximately 3,714 square feet of office space. In order to restore the conference room, the total area should be approximately 3,974 square feet, and to accommodate 4 additional investigative staff, the total would be approximately 4,442 square feet.

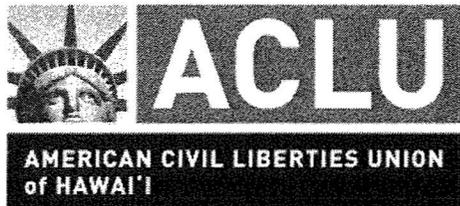
We have previously explored a number of alternatives to address the office space issue. The first alternative, which would have the least impact on our operations, would be to acquire space adjacent to our office on the fourth floor of the Kekuanaoa Building that is currently assigned to the State Auditor. While this alternative would require some renovation, it is preferable to relocating the office to entirely new space, which would involve moving costs and also most

probably require some level of renovation. However, the Auditor has consistently informed me that she requires all of the existing office space on the fourth floor.

The second alternative would be to relocate the office to state-owned space that is or might become available. In our last inquiry to DAGS in 2007, there was no state-owned space under their control that was available or anticipated to be available in the near future. Two locations that we believe might be appropriate if they became available are the makai/diamond head corner of the fourth floor of the State Capitol, which is currently occupied by the Governor's Office of Information and other administrative offices, and the old Archives building on the grounds of the Iolani Palace, which is under the control of the Department of Land and Natural Resources and currently occupied by the Friends of Iolani Palace.

The third alternative, and most costly, would be to relocate the office to leased space in the private sector. In 2007, DAGS Leasing Branch informed us that lease rents in the capital district ranged from \$2.72 to \$3.00 per square foot, and costs to renovate were estimated to be \$50 per square foot. Based on 4,442 square feet, we estimated at that time the annual cost to lease private space would be about \$160,000. We did not seek an estimate on moving expenses or the cost to renovate (it was and is our understanding that at least some degree of renovation will likely be required). However, at \$50 per square foot, it would cost \$100,000 to renovate 2,000 square feet of the leased space. If this bill continues to move forward, we will work with DAGS throughout the session to seek an acceptable resolution to the office space issue.

Thank you, again, for the opportunity to submit these comments on H.B. No. 409. If you have any questions, I would be happy to answer them.



Via E-mail: PBSTestimony@Capitol.hawaii.gov  
Committee: Committee on Public Safety  
Hearing Date/Time: Thursday, February 5, 2009, 9:15 a.m.  
Place: Room 309  
Re: Testimony of the ACLU of Hawaii in Support of HB 409, Relating to Public Safety

Dear Chair Hanohano and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in strong support of HB 409, which seeks to clarify that the Office of the Ombudsman has the authority to investigate facilities that hold Hawaii inmates.

This bill clarifies that the scope of the Ombudsman’s authority includes assisting Hawaii inmates currently held in mainland correctional institutions. The ACLU of Hawaii has received hundreds of complaints about the treatment these inmates are receiving at the mainland facilities; these complaints to the Ombudsman have gone unaddressed due to the Ombudsman’s claims that it lacks “jurisdiction” over the inmates because they are on the mainland. Hawaii’s inmates are therefore left without any recourse, because the Arizona Ombudsman will not review their complaints either (because they are Hawaii’s inmates).

Without this bill, the inmates from Hawaii are left without an essential tool to address and resolve grievances with the mainland correctional institutions. Confirming that the scope of the Ombudsman’s jurisdiction extends to mainland facilities will ensure that the inmates’ legal rights, as well as their health and safety, are maintained.

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.

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

Hon. Rep. Hanohano, Chair, PBS Committee  
and Members Thereof  
February 5, 2009  
Page 2 of 2

Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. M. Gluck', written in a cursive style.

Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

TO: COMMITTEE ON PUBLIC SAFETY  
Rep. Faye Hanohano, Chair  
Rep. Henry Aquino, Vice Chair  
Thursday, February 5, 2009  
9:15 AM  
Room 309, Hawaii State Capitol

RE: Testimony in Support of HB 409 – State Ombudsman Authority

FROM: Atty Daphne Barbee-Wooten  
1188 Bishop Street, Suite 1909, Honolulu, Hawaii 96813

Dear Representative Hanohano:

My name is attorney Daphne Barbee-Wooten and I represent inmates who are incarcerated in Saguaro Correctional Facility. One of my clients requested assistance from the State Ombudsman office. I wrote to the State Ombudsman office in an effort to contact my client who was being held in solitary confinement for allegedly sending me grievances of other inmates who were retaliated against when they complained about the facility. Attached is my letter to the State Ombudsman. The State Ombudsman responded to my complaint and stated "Our office does not have authority to investigate complaints about SCC." See attached letter. Since the State of Hawaii is giving money to Saguaro Correctional Facility to house inmates from Hawaii, the State Ombudsman should have authority to investigate complaints. The purpose of the State Ombudsman is to investigate complaints about the State from State citizens. Inmates in Hawaii are allowed to go through the State Ombudsman with their complaints. Since the inmates are transferred to Saguaro without their consent or agreement, they should not be prohibited from filing complaints with the State Ombudsman concerning their treatment. The inmates are still Hawaii residents despite the transfer from Hawaii to Arizona. Allowing the State Ombudsman to investigate these complaints makes good fiscal sense. Many of these complaints can be resolved without filing a lawsuit, which takes resources from the courts and financial costs. Thus, allowing inmates to file the complaints with the State Ombudsman will save the taxpayers money. Furthermore, a State agency should be authorized to investigate the lack of State oversight and condoning unconstitutional acts against inmates when the State transfers inmates from Hawaii to another state. President Obama is now closing Guantanamo Bay because of the lack of constitutional protections for those that are incarcerated. The State of Hawaii should follow suit and if it is going to transfer someone to another state, it should ensure that the transferred prison facility follow the State Constitution. Please pass this Bill. It would be a step in the right direction to ensure Hawaii inmates are guaranteed their Hawaii State Constitutional Rights.

Dated: Honolulu, Hawaii

2-2-09



Daphne Barbee-Wooten  
Attorney at Law



Robin K. Matsunaga  
Ombudsman

David T. Tomatani  
First Assistant

**OFFICE OF THE OMBUDSMAN  
STATE OF HAWAII**

465 South King Street, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Tel: 808-587-0770 Fax: 808-587-0773 TTY: 808-587-0774  
complaints@ombudsman.hawaii.gov

In reply, please refer to:  
**#09-01666 (PK)**

November 12, 2008

Ms. Daphne E. Barbee  
Attorney At Law  
1188 Bishop Street, Suite 1909  
Honolulu, HI 96813

Dear Ms. Barbee:

Re: Your Complaint Regarding Saguaro Correctional Center

This letter is in response to your telephone request on November 10, 2008 for a written response from our office.

We received your letter dated November 6, 2008, in which you stated that you were writing on behalf of your client Eric Wilson, a Hawaii inmate currently housed in the Saguaro Correctional Center (SCC) in Eloy, Arizona. You stated that Mr. Wilson has been unable to send you legal mail "without it being confiscated by the guards." You included a copy of a your letter dated October 30, 2008 to Attorney General Mark Bennett, and a copy of your letter dated November 5, 2008 to SCC Warden Todd Thomas.

As we informed you during our telephone conversation on November 10, 2008, our office does not have authority to investigate complaints about the SCC. Therefore, you should address your client's concerns to the Mainland Branch (MB) of the Department of Public Safety. The MB staff monitors the contractual performance of the mainland correctional facilities and is in regular contact with those facilities. The MB may be reached at:

Department of Public Safety  
919 Ala Moana Boulevard, Room 400  
Honolulu, HI 96814

Ms. Daphne E. Barbee  
November 12, 2008  
Page 2

If you write to the MB and do not receive a timely or reasonable response, you may write or call us again and we can review the actions of the MB.

Sincerely yours,



PAUL KANOHO  
Analyst

Approved by   
ROBIN K. MATSUNAGA  
Ombudsman

PK:so

COMMITTEE ON PUBLIC SAFETY  
Rep. Faye P. Hanohano, Chair  
Rep. Henry J.C. Aquino, Vice Chair  
Thursday, February 5, 2009  
Room 309 at 9:15am

**STRONG SUPPORT  
HB 409 - RELATING TO PUBLIC SAFETY (Ombudsman)**

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

My name is Carrie Ann Shirota and I offer my strong support for HB 409. As a former deputy public defender and staff member of a re-entry program in Hawai'i, I have had direct contact with the prison population and their families.

HB 409 clarifies that the Office of the Ombudsman has the authority to investigate facilities that hold Hawai'i inmates, and appropriates funds to conduct investigations.

I strongly support this bill because it would strengthen oversight of prisons wherever Hawai'i inmates are housed. As you are aware, Hawai'i's incarcerated population increased by 153 percent from 1980 to 2007. In 1980, Hawai'i's inmate population totaled 926 persons. By 2007, the incarcerated population increased to 6,045 persons. See, Department of Public Safety Annual Report 2007.

I believe that the Legislature shares a growing concern among taxpayers about increased public expenditures on prison and whether this money is effective in maintaining safe facilities and assisting adult offenders with their successful reintegration back into the community. Despite the massive expenditure of taxes and the Department of Public Safety's mandate to operate humane and safe prisons, there is little oversight of prisons where Hawai'i inmates are housed.

**Significantly, a growing number of United States jurisdictions have established independent Oversight Committees to ensure public and private facilities that confine individuals for alleged or adjudicated crimes meet their legal obligation to ensure constitutional conditions of confinement.** See, "Opening Up a Closed World: What Constitutes Effective Prison Oversight" Conference sponsored by the Lyndon B. Johnson School of Public Policy at the University of Texas-Austin, <http://www.utexas.edu/lbj/prisonconference/index.php>. **In August 2008, the American Bar Association approved a policy recommendation requesting federal and state governments to establish public entities independent of any correctional agency to regularly monitor and report publicly on the conditions in all correctional facilities.**

The proposed measure is consistent with ABA's recommendation calling upon an independent body to monitor and publicly report on the conditions in all correctional facilities. This will help the State to fulfill its mandate to ensure constitutional conditions of confinement for incarcerated persons whether they are housed in-state or transferred to private prisons on the U.S. continent. Please support HB 409.

Sincerely,  
Carrie Ann Shirota, Esq.  
Wailuku, Hawai'i  
(808) 269-3858

**COMMITTEE ON PUBLIC SAFETY**

Representative Faye Hanohano, Chair  
Representative Henry Aquino, Vice Chair  
Thursday, February 5, 2009

9:15 AM

Room 309

[PBSTestimony@capitol.hawaii.gov](mailto:PBSTestimony@capitol.hawaii.gov)

HB409 – Clarifying the Role of the Ombudsman

**STRONG SUPPORT**

Chair Hanohano, Vice Chair Aquino, and Members of the Committee:

Thank you for the opportunity to submit testimony to the committee. My name is Diana Bethel, and I am writing in strong support of HB409.

People who are unfamiliar with prisons, as I was until several months ago, do not know about the kind of treatment that inmates often must endure, especially, as we have learned in the news, in prisons run by the Correctional Corporation of America.

Hawaii inmates serving sentences on the mainland deserve protection from incompetence, criminal neglect, and retaliation. Of course, the Ombudsman should advocate for Hawaii inmates!

HB409 would clarify the role of the Ombudsman and promote increased transparency and accountability.

Thank you for your attention to this important issue.

Sincerely,

Diana Bethel  
1441 Victoria St.  
Honolulu, Hawaii 96822



the  
**Drug Policy  
Forum**

**LATE TESTIMONY**

February 5, 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: HB409 Relating to Public Safety  
Hearing: February 5, 2009, 9:15 a.m., Room 309

Position: Support

I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawai'i. Thank you for this opportunity to testify in support of HB409 which clarifies that the Ombudsman has the authority to investigate facilities housing Hawai'i inmates, appropriates funds to conduct investigations, and makes gender neutral amendments.

The Office of the Ombudsman currently asserts that they cannot investigate cases pertaining to those incarcerated in mainland facilities. In fiscal year 2007, the Office of the Ombudsman had 4,649 inquiries. Of those, 1,746 inquiries were categorized as prison complaints. Since 38% of complaints are regarding prisons, it is important that those on the mainland have access to the services of the Ombudsman.

The fact that Hawai'i does not have sufficient prison capacity within the boundaries of the state should not prevent those who are sent away to mainland facilities from having their cases investigated by the Ombudsman. The office is charged with "investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments." In the past, the office has assisted in clarifying rules regarding prison visitation and ensuring that the rules are enforced properly and consistently.

Please pass HB409 to ensure that the services of the Ombudsman's office are available to those incarcerated on the mainland and their families.

**Board of Directors**

Pamela Lichty, M.P.H.  
*President*

Kat Brady  
*Vice President*

Heather Lusk  
*Treasurer*

Katherine Irwin, Ph.D.  
*Secretary*

Michael Kelley, D.Phil.

Richard S. Miller, Prof. of  
Law Emer.

Robert Perkinson, Ph.D.

*Donald Topping, Ph.D.  
Founder 1929-2003*

P.O. Box 61233  
Honolulu, HI 96839

Phone: (808)-988-4386  
Fax: (808) 373-7064

Email: [info@dpfhi.org](mailto:info@dpfhi.org)  
Website: [www.dpfhi.org](http://www.dpfhi.org)