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GOVERNOR



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DEPARTMENT OF PUBLIC SAFETY

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No. _

TESTIMONY ON SENATE BILL 210, SD2 (HSCR 1131)
RELATING TO CORRECTIONS

By

Clayton A. Frank, Director
Department of Public Safety

House Committee Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Wednesday, April 1, 2009; 11:00AM
State Capitol, Conference Room 308

Representative Oshiro, Representative Lee, and Members of the Committee:

The Department of Public Safety (PSD) **strongly opposes** Senate Bill 210, SD2 (HSCR 1131) which seeks to codify in statute standards governing the transfer of inmates between in-state correctional facilities and those that house inmates from Hawaii under contract with the Department on the mainland. The measure is unnecessary as the PSD previously established sound standards used to assist in identifying and determining the transfer of inmates using a "**sequential phasing**" process. This process initially provides for the assessment and classification determination of inmates and their program/rehabilitative needs and the degree of danger they may pose to the community, other inmates/staff, and themselves.

This is accomplished using valid assessment and associated trailer instruments such as the Level of Service Inventor - Revised (LSI-R), Adult Substance Use Survey (ASUS), Static 99 and Acute (Sex Offender Assessment Instruments), Domestic Violence (DV) trailer and others. These instruments are nationally recognized assessment tools that assist PSD and other correctional jurisdictions around the county in determining the level of risk an offender may pose (classification / security level) and the rehabilitative programs needs that specifically addresses the criminogenic factors that led to the criminal behavior.

The sequential phasing process allows for the orderly scheduling of inmates that wish to participate in identified program within their respective custody level, which also facilitates timely transfers between in-state correctional. This process allows those incarcerated to participate in recommended programs prior to the end of their longest minimum sentence, which helps facilitate their transition back into the community. At times, in order for inmates to complete all of the recommended programs and/or to ensure they are housed at a correctional facility commensurate with their classification level, transfers are necessary.

As written, SB 210, SD2 (HSCR 1131) seeks to require the PSD to consider non-traditional and clearly unsound correctional management practices when determining which inmates should be transferred. This measure 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 valid security threat groups. For these reasons and others, **no jurisdiction in the country operates under a "voluntary" transfer system in which one offender replaces another by volunteering to be relocated.** To do so would in affect place the wishes of the offender above the operational, security, and safety of the facility, staff, and the general public. In addition, the provision of this measure that would allow an inmate to volunteer to be transferred in the place of another is irresponsible and would be used by inmates to remain at their current location by threatening others to volunteer to be transferred in their place.

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 and correctional supervisors, and correctional managers. **In addition, as written this measure 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.**

Further, the United States Supreme Court has ruled that inmates do not have a constitutional right to determine the location of their incarceration. Some of the same groups and/or individuals that testify in support of this unwise measure may be the same groups and/or individuals that will sue the state when PSD is unable to comply due to the worsening overcrowding in our State facilities that would be a direct result of passage of this measure. The PSD respectfully and urgently recommends this measure be held.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE MARCUS OSHIRO, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

April 1, 2009

RE: S.B. 210, S.D. 2; RELATING TO CORRECTIONS.

Chair Oshiro and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony in opposition to SB 210, SD 2.

The purpose of this bill is to create statutory criteria in Hawaii Revised Statutes chapter 353 which regulate the transfer of inmates between correctional facilities. In addition, SB 210, SD 2 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 a significant 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 SB 210, SD 2 and thank you for this opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/kat.caphi@gmail.com



COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn Lee, Vice Chair

Wednesday, April 1, 2009

11:00 AM

Room 308

SB 210 SD2 - CRITERIA FOR INMATE TRANSFERS

STRONG SUPPORT

FINTestimony@capitol.hawaii.gov

Aloha Chair Oshiro, Vice Chair Lee 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 the 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.

SB 210 SD2 specifies criteria that must be considered in deciding whether to transfer inmates between correctional facilities located in Hawai'i and correctional facilities located outside of Hawai'i.

Community Alliance on Prisons strongly supports this measure. The bill amends Chapter 353 to create a statute that the director shall consider the current programming and if it could be continued at another facility and that some inmates, especially single men, volunteer to be transferred.

CAP has received many complaints from families and inmates, alike, that their reentry programming is interrupted by transfers. This is counter-productive to the Legislature's reentry policy. We hear stories from families going to Halawa only to find their loved one is no longer in Hawai'i and then are unable to get any information as to the whereabouts of the individual they were to visit. There is no aloha in this practice.

Any transfers should be systematically planned; that is good business. Transfers should not be haphazard or retaliatory. Stories of people with under a year left until their entire sentence was served being sent out of Hawai'i are not unusual, as are stories of individuals sent who when have to be returned to Hawai'i for a court case, causing the state to send two Adult Corrections Offices (ACOs) to the continent to pick up the individual, incurring unnecessary travel expenses

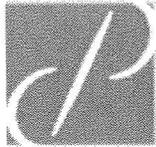
that could have been avoided if there was a system for transfers, if there have to be any transfers at all. What a tremendous waste of resources. The Department has said in hearings they never send anyone with less than two years on their sentence, yet we have heard from men and women, families, and others that this is not true.

Other states that transfer inmates (Washington, Alaska and California) have established criteria for transfers and post those criteria on their websites. Why is Hawai`i so far behind the times?

Good business practices mandate a plan establishing criteria for transfer both inside and outside of Hawai`i.

This bill has no fiscal impact - it simply professionalizes a sadly dysfunctional department.

Community Alliance on Prisons urges passage of SB 210 SD2 because it calls for accountability and transparency.



the
**Drug Policy
Forum**

April 1, 2009

To: Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
And Members of the Committee on Finance

From: Jeanne Ohta, Executive Director

RE: SB 210 SD2 Relating to Corrections
Hearing: April 1, 2009, 11:00 a.m., Room 308

Position: Support

I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii testifying in support of SB 210 SD2 which clarifies the circumstances that an inmate may be transferred between facilities in Hawai`i and those outside of Hawai`i.

The bill requires the department of public safety to consider various factors when transferring inmates. Among the considerations are the individual's current programming and if it could be continued at another facility.

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.

Families should know if there are plans to transfer their family member. Maintaining contact and relationships with their families can motivate successful transition from prison back into the community. Transferring inmates and disrupting those important relationships can make maintaining those ties more difficult. It is also not fair that appropriate programs are unavailable when those programs are required for parole consideration.

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 SB110 SD2 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: Committee on Finance
Hearing Date/Time: Wednesday, April 1, 2009, 11:00 a.m.
Place: Room 308
Re: Testimony of the ACLU of Hawaii in Support of SB 210, SD2, Relating to Corrections

Dear Chair Oshiro and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in strong support of SB 210, SD2, which seeks to clarify the circumstances under which inmates may be transferred between Hawaii facilities and facilities outside of Hawaii.

Although the ACLU of Hawaii does not believe that involuntarily transferring prisoners to out-of-state institutions is an appropriate solution to the prison over-crowding problem, we do support instituting criteria that will provide better guidance for determining which inmates are subject to involuntary transfer. We believe that maintaining families whenever possible, and giving inmates reasonable notice before transfer, are necessary steps in the rehabilitation process.

The ACLU of Hawaii is frequently contacted by individuals who have been transferred between facilities (particularly those being transferred to the mainland). The majority of these inmates do not want to be separated from their families any more than they have to be. Clarifying the circumstances under which inmates may be transferred will further the goals of maintaining family and community connections and preparing inmates for successful release and rehabilitation.

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,

Daniel M. Gluck
Senior Staff Attorney

American Civil Liberties Union of Hawai'i
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TO: COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Wednesday, April 1, 2009
11:00 AM
Room 308, Hawaii State Capitol

RE: SB 210 SD2 – Testimony in Support of Establishing Criteria for Inmate Transfers

FROM: Atty Daphne Barbee-Wooten, 1188 Bishop Street, Suite 1909, Honolulu, Hawaii
96813, (808) 533-0275

Dear Chair Oshiro and Vice Chair Lee, and Members of the Committee on Finance:

I am an attorney in private practice who represents inmates. I am testifying in support of SB210 SD2 establishing a criteria for inmate transfers. There have been several times when I have gone to visit my clients only to find that they were transferred without notice to any of their family or relatives, causing great concern. Furthermore, I represented a client who was transferred even though his case was up on appeal. Within six months of his transfer the Appellate Court reversed his conviction. Now the State has to pay extra funds to return him from Saguaro to Halawa Correction Facility for further proceedings on his case. Before he was transferred I informed DPS not to transfer him because his case was on appeal. My pleas were ignored. Transferring inmates whose cases are up on appeal not only disrupts the family life for persons who live in Hawaii and have relatives in prison, but also is expensive when their cases are reversed on appeal. There should be some criteria which is in an objective manner and not whomever DPS wants to transfer. There should be some notice before the transfer has been made. Other jurisdiction have criteria, such as Washington, California and Alaska. Hawaii should also have this criteria for transferring inmates.

Dated: Honolulu, Hawaii _____

Daphne Barbee-Wooten
Attorney at Law

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Wednesday, April 1, 2009
11:00 AM
Room 308

STRONG SUPPORT

SB 210 SD2 – Specifies criteria for inmate transfers

FINTestimony@capitol.hawaii.gov

Aloha Chair Oshiro, Vice Chair Lee, and Members of the Committee,

I am writing in strong support of SB 210 SD2, which will establish criteria for inmate transfers. This will ensure that the most sensible and cost-effective criteria are used when selecting inmates for transfers between prisons in Hawaii or between Hawaii and mainland prisons.

The most important criteria should be that the decision take into account the individual's current program of rehabilitation and avoid disrupting this important process – helping the inmate to successfully reenter society should be the first priority of incarceration.

Also, families should be notified and not end up finding out about the transfer when they arrive at the prison on visiting day. This is a matter of professional procedure and basic humanity.

Other states are open and transparent about inmate transfer criteria. Hawaii's correctional service officials should become more professional in their operations and take the lead in making the process more transparent and accountable.

Mahalo for this opportunity to express my views on this issue. Please support SB 210 SD2.

Sincerely,

Diana Bethel
1441 Victoria St.
Honolulu, Hi 96822