



**EXECUTIVE CHAMBERS**  
HONOLULU

**LINDA LINGLE**  
GOVERNOR

Written Testimony of  
**Linda L. Smith**  
Senior Policy Advisor to the Governor

Before the  
**HOUSE COMMITTEE ON PUBLIC SAFETY**  
Thursday, March 19, 2009, 8:30 p.m.  
Room 309, State Capitol

**SB 212 SD2 RELATING TO PUBLIC SAFETY**

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

The Administration strongly opposes SB 212 SD2, which requires privately owned prisons or out-of-state detention facilities holding prisoners under a contract with the State to follow state freedom of information laws. This bill is objectionable because it is unnecessary and unfair.

It is unnecessary because information requested can be obtained and disclosed by and through the Department of Public Safety. Currently, information regarding out-of-state correctional facilities, such as audit reports, contracts, and corrective action plans, are online and accessible to the public via the Department of Public Safety's website. Furthermore, printed copies are also available upon request.

This measure is unfair because no other contractor with the State is required to comply with chapter 92F, Hawaii Revised Statutes. Moreover, requiring private prison contractors to comply with information requests will create a chilling effect on competitive bidding and procurement, which could lead to increased costs for housing Hawaii's inmates. In the event no firms bid due to these requirements, some or all of the 2,300 inmates now located out-of-state might need to be returned to already over-crowded facilities in the State.

Additionally, a similar measure was vetoed by the Governor in 2008. As such, the Administration is opposed to this measure.

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 SENATE BILL 212, SD 2  
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

Thursday, March 19, 2009; 8:30AM  
State Capitol, Conference Room 309

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

The Department of Public Safety (PSD) opposes Senate Bill 212, SD2. This measure is an unnecessary and inequitable procedure that will discourage any contractor from bidding with PSD for the contract to house Hawaii inmates. Further, this measure only applies to contractors housing Hawaii inmates. If the intent is to implement this process as a legal requirement, it should apply to all State contracts on all subjects. Also, as Chapter 92F Hawaii Revised Statutes is currently written, it cannot apply to a non-governmental entity.

This measure requires a private corrections contractor who contracts to house Hawaii State inmates to submit to procedures required of State agencies under HRS §92F simply because they contract to house Hawaii inmates.

However, no other type of contractor is held to this same standard, including those contracting with PSD or with any other state agency. Further, any document or record that is material to the State's interest regarding a correctional contract can be requested by the Legislature and it will be provided by PSD under existing contracting terms. The same procedure applies for any private citizen requesting documents that can be released pursuant to Hawaii Revised Statutes Chapter 92F, in that the Department will provide the documents they receive from the contractor.

There are over 2,000 State inmates currently in mainland contract prisons simply because there is no adequate space in the State to safely and securely house these inmates. While there are a number of companies that contract to operate private prisons, there are few private contractors, if any, that would bid on PSD contracts if they are required to release information directly to the public upon request in the same way State agencies are required to comply. Implementing this requirement would discourage many contractors from bidding, effectively forcing the State to return inmates to existing State facilities. This would create serious overcrowding, creating dangerous and potentially unconstitutional situations. Therefore, the overall effect of this measure would greatly increase costs for the State, either by paying much more for a contractor who charges more to perform these tasks, or by paying the adverse judgments upon the return of all Hawaii inmates due to a lack of contractors.

PSD opposes this measure based on the premises that this procedure applies only to a very specific type of contractor, the measure would be very difficult to enforce, and that under the current circumstances, the same results can be achieved by a simple request from the Legislature or from the public pursuant to HRS §92F. This bill is repetitive and inequitable, and will have an unnecessary chilling effect on any bidding process pursued by PSD for the housing of state prisoners.

Thank you for the opportunity to testify.

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: House Committee on Public Safety

From: Paul T. Tsukiyama, Director

Date: March 19, 2009, 8:30 a.m.  
State Capitol, Room 309

Re: Testimony on S.B. 212, S.D. 2  
Relating to Public Safety

---

Thank you for the opportunity to submit testimony on S.B. 212, S.D. 2.

The Office of Information Practices ("OIP") supports the intent of this bill, which would require nongovernmental entities contracting with the State to incarcerate state prisoners to release information about prison operations in the same way that a state agency operating such a facility would be required to under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes.

It is often uncertain whether a nongovernmental entity performing a government function is subject to accountability laws such as the UIPA, and OIP welcomes legislative action to clarify the issue. This bill would make clear that although a private prison operator housing state prisoners is not itself a state agency, it must respond to UIPA requests in the same way as an agency.

House Committee on Public Safety

March 19, 2009

Page 2

The issues of the enforceability of the measure against private entities located out of state and the administrative burden that would be placed on such entities are beyond OIP's jurisdiction, so OIP defers to PSD on those issues.

Thank you for the 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 PUBLIC SAFETY

Rep. Faye Hanohano, Chair  
Rep. Henry Aquino, Vice Chair  
Thursday, March 19, 2009  
8:30 AM  
Room 309

## STRONG SUPPORT

**SB 212 SD2 - Freedom of Information, Out-of-State Contracted Facilities**  
[PBSTestimony@capitol.hawaii.gov](mailto: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.

SB 212 SD2 requires privately owned prisons and out-of-state detention facilities holding prisoners under a contract with the state to follow state freedom of information act laws pursuant to Chapter 92 (f), Hawai'i Revised Statutes.

Community Alliance on Prisons is in strong support of this measure.

Accountability is mandated for those incarcerated and it should be modeled by the rules and the staff at all facilities. There currently appears to be little to no accountability on the part of the contract prisons and any information that is requested is not easily accommodated, if at all. With 2,063 Hawai'i individuals serving their sentences in prisons abroad, accountability and transparency should be very important factors when deciding upon vendors.

## *SB 212 PROMOTES GOOD GOVERNMENT:*

As Congressman Bobby Scott, Chair of the Subcommittee on Crime, Terrorism and Homeland Security, said upon opening hearings on HR 1889 The Private Prison Information Act,

*"This is a simple piece of legislation that would do one thing - it would require prisons and other correctional facilities holding Federal prisoners under a contract with the Federal Government to comply with 5 U.S.C. 552, the Freedom of Information Act (FOIA).*

*There have been incidents when members of the press and public have attempted, unsuccessfully, to obtain information from private prisons, even in situations as serious as prison escapes or incidents of assaults in prison. There is simply no reason why these institutions, which are serving a governmental function, should not be subject to FOIA. This is a good government bill, which I hope my colleagues will support.*

The recent ruling by Tennessee Chancellor Claudia Bonneyman ruled that Corrections Corporation of America (CCA) was a "functional equivalent" to a governmental entity because of its operation of jails and prisons is an essential government function and most of its revenues are taxpayer-funded. She further ruled that CCA is not exempt from public records laws because of court orders or seals.

SB 212 is very important because it promotes good government. In A New Beginning for Hawai'i, the pamphlet published by the Governor's campaign it says:

***Making Government Work Better***

*"Restoring integrity to government requires us to share information openly with the public so the people of Hawai'i will know the true condition of state government, the programs it operates and the results of its efforts. Both elected leaders and the public must know the information essential to good decision-making. Government resources are limited, so all spending and policy choices must be based on reliable information and clearly articulated values and objectives, rather than short-term political considerations. ...Financial accountability and openness are essential if government leaders are able to make sound decision and then be held accountable for the actual results. They are absolutely necessary to break the vicious cycle of corruption and favoritism in state contracting, and to restore trust and integrity in government service."*

We agree with the Governor that good government demands transparency and accountability.

**2. THE PUBLIC HAS A RIGHT KNOW HOW OUR MONEY - IN EXCESS OF \$50 MILLION A YEAR AND RISING - IS BEING SPENT:**

Sadly, this transparency and accountability has been lacking when families have questions or inquire about their loved ones serving their sentences in Hawai'i's prison and jail facilities, Corrections Corporation of America (CCA) prisons, and the Interstate Compact prisons holding Hawai'i prisoners in various states.

PSD's opposition to the bill last session was that this is not required of other state contractors. **The state has enacted laws overseeing contractors.** For instance, care home operators were finally subject to unannounced visits when the Legislature passed a law after a death from alleged negligence occurred.

**3. CCA'S SHAMEFUL HISTORY OF MISMANGEMENT, UNDER-STAFFING & UNDER TRAINED CORRECTIONAL OFFICERS NEEDS PUBLIC OVERSIGHT:**

There have been several deaths, beatings, rapes, sexual assaults, and riots at CCA prisons housing Hawai'i individuals and no one knows what is happening at the interstate compact prisons holding Hawai'i individuals as there is no public information available. Two men died at Saguaro Prison in Eloy, Arizona since August 2008. This should not be acceptable to any person on good will.

**4. ALLEGATIONS ABOUT CCA'S 'QUALITY CONTROL':**

The allegations about two sets of books - one doctored for the clients and the public and the other for 'internal' use - should be very disturbing to everyone in Hawai'i. This allegation arose from the congressional investigation of Bush nominee, Gus Puryear IV, CCA's general counsel:

*Now, a former CCA manager tells TIME that Puryear oversaw a reporting system in which accounts of major, sometimes violent prison disturbances and other significant events were often masked or minimized in accounts provided to government agencies with oversight over prison contracts. Ronald T. Jones, the former CCA manager, alleges that the company even began keeping two sets of books – one for internal use that described prison deficiencies in telling detail, and a second set that Jones describes as "doctored" for public consumption, to limit bad publicity, litigation or fines that could derail CCA's multimillion-dollar contracts with federal, state or local agencies.*

*Source: <http://www.time.com/time/nation/article/0,8599,1722065,00.html>*

Community Alliance on Prisons urges the Legislature to pass SB 212 SD2 in the interest of accountability and transparency and public disclosure of information pertaining to the operation and conditions of facilities holding Hawai'i prisoners and paid for with taxpayer money - public funds! We need public information when public money is spent.

SUNSHINE IS THE BEST DISINFECTANT!

Mahalo for allowing us to testify on this important measure. Please pass SB 212 SD2!



the  
**Drug Policy  
Forum**

March 19, 2009

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

From: Jeanne Ohta, Executive Director

RE: SB 212 SD2 Relating to Public Safety  
Hearing: March 19, 2009, 8:30 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 SB 212 SD2 which requires privately owned prisons and out-of-state detention facilities holding prisoners under a contract with the state to follow state freedom of information act laws pursuant to Chapter 92 (f), Hawai'i Revised Statutes.

There should be no question that a multi-facility, \$50 million contract should be transparent and have accountability. There currently appears to be little to no accountability on the part of contract prisons and access to information is extremely limited. Since more than 2,000 individuals from Hawai'i are the responsibility of mainland prisons, an open information process is good practice, whether the facility is government owned or not. These prisons are serving a governmental function and are paid with taxpayer funds; and as such, should follow the state freedom of information laws.

When incidents happen in private prisons, the public should have access to information about them. The public has an interest in seeing that the contracted prisons fulfill their obligations under their contracts and that those entrusted to them are treated humanely and according to the specifications of the contract.

In the interest of accountability and transparency and public access to information pertaining to privately owned prison facilities, I urge you to pass SB212 SD2. Thank you for this opportunity to testify.

**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)



COMMITTEE ON PUBLIC SAFETY

Rep. Faye P. Hanohano, Chair

Rep. Henry J.C. Aquino, Vice Chair

Thursday, March 17, 2009

8:30am

Room 309

SUPPORT: SB 212 SD2 Relating to Public Safety  
Freedom Of Information Act Applicable To Out-of-State Entities Housing Prisoners

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

My name is Carrie Ann Shiota, and I am writing in strong support of SB 212 SD2. I am an attorney on the island of Maui and have previously worked as a Public Defender, Civil Rights Enforcement Attorney, and staff member of a reentry program on Maui. I am also an active member of Community Alliance on Prisons. These experiences have shaped my advocacy efforts to promote accountability and transparency within our correctional system.

Presently, our FOIA laws do not apply to private prisons operated by Corrections Corporation of America or State correctional agencies that confine Hawai'i prisoners under the Interstate Compact Act. This legislation would require private prisons and out of state correctional agencies that incarcerate Hawaii prisoners to release information about the operation of the prison in accordance with the Freedom of Information Act under chapter 92F, Hawaii Revised Statutes.

As of December 31, 2007, PSD was responsible for a total of 5,995 inmates. Of the total number, 2,080 prison inmates were housed on the mainland in contracted facilities. With the increasing number of Hawai'i prisoners in private out-of-state facilities, and small but steady number of prisoners transferred under the Interstate Compact Act, it is important that these privately owned and operated facilities be held to the same standards and have the same responsibilities as the state government to promptly process requests for information and release information concerning prisoners and detainees under the FOIA laws.

Each of us has kuleana to ensure that the Department of Public Safety and any entity that PSD contracts with to house Hawai'i prisoners, operates safe and humane prisons that adheres to federal and state constitutional requirements. In addition, our community has a vested interest in ensuring that prisons both at home and on the American continent provides rehabilitation opportunities proven effective in helping individuals acquire the training and support to become law-abiding, contributing members of their `ohana and our community. This legislation would help to achieve the twin objections of accountability and transparency by requiring private prisons and out of state prisons where our people are housed to adhere to the freedom of information standards under chapter 92F, Hawaii Revised Statutes.

Mahalo for this opportunity to submit testimony in support of SB 212 SD2.

Respectfully submitted,

Carrie Ann Shiota, Esq.  
Wailuku, Hawai'i 96793  
(808) 269-3858