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**TESTIMONY ON SENATE BILL 969, SD2
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, March 19, 2009, 10:00 AM
State Capitol, Conference Room 309

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

The Department of Public Safety (PSD) strongly supports Senate Bill 969, SD2, which seeks to authorize correctional staff to search persons and vehicles that might be carrying weapons and/or contraband when they enter onto State correctional facility grounds.

Currently, correctional staffs within the Department are not law enforcement personnel. Therefore, they do not have the authority to search any person or vehicle that may bring weapons and/or contraband on correctional facility grounds as law enforcement personnel do. 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.

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.

The department requests the following amendments to this measure:

1. Section 1(b)(Page 1, Line 17) – **Currently reads** “The entry of any person or vehicle onto state correctional or detention facility grounds may be conditioned upon a search for weapons and/or contraband; provided that prior to searching the person or the person’s vehicle, the correctional staff shall give the person notice and an opportunity to decline a conditional search provided further that the correctional staff shall have probable cause to believe...”

Requested amendment – Delete the term “probable cause.” The staff will provide notice to the persons prior to their search, and the persons will be provided with the opportunity to leave the grounds instead of submitting to the search of their person and/or vehicle. By requiring **probable cause** for PSD staff to search, the staff will require training in the area of search and probable cause, which will incur overtime for the department.

The intent of this measure is to prevent contraband from being introduced into PSD facilities, and not to have PSD staff arrest or detain visitors. By allowing the visitors to leave after notice of an impending search, any possible concerns regarding the visitor’s Constitutional rights are addressed and the introduction of any potential contraband is avoided.

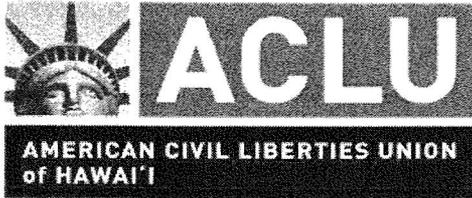
2. Section 1(d)(Page 2, Line 8 thru Line 9) – **Currently reads**, “Any person who violates subsection (a) shall be guilty of a misdemeanor.”

Requested amendment - Delete the word “misdemeanor” and replace with “Class C felony.”

The department strongly believes that any person who brings weapons or drugs onto the grounds of a correctional or detention facility does so with the purpose of smuggling the contraband into the facility, and should be found guilty of a felony not a misdemeanor. Introduction of weapons and/or contraband into correctional facilities poses the greatest level of risk to the inmates, staff, and the public and therefore, should be treated as a Class C felony offense.

Based on all the foregoing reasons, PSD strongly supports SB 969, SD2 and respectfully requests the legislature adopt the recommended amendments that will strengthen this measure, assist in reducing contraband entering the correctional facilities, and simultaneously protect the rights of visitors from unreasonable search and seizure.

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



Via E-mail: PBSTestimony@capitol.hawaii.gov
Committee: Committee on Public Safety and Committee on Labor and Public
Employment
Hearing Date/Time: Thursday, March 19, 2008, 10:00 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 969, SD2,
Relating to Restricted Access to Correctional Facilities

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

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B.
969, SD2, which seeks to allow visitation to a correctional facility to be conditioned upon “a
search for weapons or contraband[.]”

S.B. 969, SD2, 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 and would give officers a pretext to
search *every* vehicle.

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Hon. Rep. Hanohano, Chair, PBS Committee
and Members Thereof
March 19, 2009
Page 2 of 2

Extensive, arbitrary and unnecessary searches deter visits from family, friends, legal and social service providers and hamper rehabilitation.

We should reject efforts to discourage visitation and legal and social service visits given the positive impact they have on clients. Further, innocent individuals should not have to sacrifice their privacy for searches that do very 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,
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Senior Staff Attorney

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COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, March 19, 2009

10:00 AM

Room 309

SB 969 SD2 - RESTRICTED ACCESS TO CORRECTIONAL FACILITIES

OPPOSED

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 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 969 SD2 permits the conditional search of persons and vehicles entering state correctional or detention facility grounds.

Community Alliance on Prisons opposes this measure. We are concerned with giving police powers to the Department of Public Safety.

Mahalo for this opportunity to testify,