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**TESTIMONY ON HOUSE BILL 2266
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 11, 2010; 9:30 a.m.
State Capitol, Conference Room 309

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

The Department of Public Safety (PSD) supports the intent of House Bill 2266 that encourages PSD to provide appropriate counseling for victims of sexual assaults and to develop policies to achieve a zero-tolerance policy on sexual assault.

PSD currently has policy and practices in effect that follow the intent of this measure and the federal Prison Rape Elimination Act (PREA). The standards developed by the commission established under PREA were submitted to the Attorney General of the United States in June of 2009. Under PREA, the Attorney General is to develop federal regulations regarding prison sex assaults. The earliest date the federal regulations could be published would be June of 2010, with indications that the regulations will actually take longer to publish. All states have one year following the date the regulations are published to comply with the regulations. PSD staff have consistently attended seminars and meetings regarding PSD's compliance with the federal regulations once they are promulgated. PSD will endeavor to comply with all state laws as well as the federal regulations once they are published.

PSD already complies with the intent of this measure and PREA, and any sexual assault victim is currently offered counseling services. In addition, PSD is currently assessing the PREA standards and awaiting the federal regulations before it amends its policies any further to avoid unnecessary change and expense. PSD also provides the statistics annually to the federal government on sexual assaults within the department, and can provide the same statistics to the Legislature.

PSD supports the intent of this measure, but believes it is unnecessary as the actions required by the measure are already in place.

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

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, February 11, 2010

9:00 AM

Room 309

STRONG SUPPORT HB 2266 - PRISON RAPE

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 by supporting smart justice policies. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that almost 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 2266 requires the department of public safety to address sexual assault in prison. Requires the department to provide annual data regarding acts of sexual assault and sexual misconduct. Requires the department to report to the legislature on any implementation of the federal Prison Rape Elimination Act.

Community Alliance on Prisons is in strong support of this measure. The psychological effects of sexual abuse can re-traumatize victims for years following an assault, and studies show that victims have more physical health problems than non-abused individuals. Although sexual abuse typically leaves few visible scars, most victims report persistent, if not lifelong, mental and physical repercussions. Being violently assaulted in a correctional facility is simply not part of the sentences levied by the courts.

The Supreme Court ruled unanimously that deliberate indifference to the substantial risk of sexual abuse violates incarcerated individuals' rights under the Eighth Amendment and that courts have an active, supervisory role in ensuring prisoners' safety. Officials have a duty to protect prisoners because, as the Supreme Court said, "having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course."

Allowing any level of sexual abuse in a correctional setting creates a security breach that jeopardizes the safety of staff and incarcerated persons.

Therefore, Community Alliance on Prisons respectfully suggests that:

1. Every facility in Hawai'i at least one or two staff members be trained immediately as sex assault victimization counselors and available on call 24/7
2. Every facility in Hawai'i have a rapid response team whose training includes responding to sexual assault victimization
3. Every facility hand out educational materials on sex assault as a matter of course to staff, contractors, and incarcerated individuals
4. Protocols for dealing with sexual assault are posted on the department's website
5. Every contract for prison beds include clauses calling for facilities holding Hawai'i's incarcerated persons to have sex assault victimizations professional and rapid response teams as well as educational training and materials for staff and incarcerated persons.

Community Alliance on Prisons supports the Department of Public Safety's development of a department-wide strategy and specific policies and programs for inmate education as well as investigation, prosecution, provision of victim services, and accurate documentation of sexual assaults. This is crucial in light of recent events at Otter Creek, Saguaro, and OCCC.

The administration must cultivate management, staff and inmate buy-in to the strategy and develop staff in-service training programs that specifically address rape ensures that staff will be protected from false allegations.

The department should also develop inmate education programs that explain prison policies and practices regarding rape, inmate rights, and how to avoid assault and distribute educational materials in the Inmate Handbook that every incarcerated person must receive.

In light of the economic crisis, the department should seek the assistance of community experts to present information on sexual assault to staff and incarcerated persons.

Leadership matters because corrections administrators can create a culture within facilities that promotes safety instead of one that tolerates abuse. Good leaders not only have a policy on paper, they ensure that the policy is reflected in practice by carefully assessing and responding to attitudes, beliefs, and values that support or conflict with a culture of zero tolerance.

Prison rape and sexual assault is a problem at Hawai'i and contract prisons that must be addressed immediately.

We urge the committee to pass this important measure.

Mahalo for this opportunity to testify.



Committee: Committee on Public Safety
Hearing Date/Time: Thursday, February 11, 2010, 9:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Support of H.B. 2266, Relating to Corrections

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 H.B. 22266, which seeks to require the Department of Public Safety (“DPS”) to address sexual assault in prison, provide annual data regarding acts of sexual assault and sexual misconduct and report to the legislature on any implementation of the federal Prison Rape Elimination Act.

The ACLU of Hawaii receives numerous requests for assistance from Hawaii inmates each year alleging sexual assaults by other inmates and correctional facility staff. We have particular concerns about the private prisons on the mainland, because of their distance and lack of oversight. As this Committee is certainly aware, Hawaii *and* Kentucky recently removed their prisoners from the Otter Creek correctional facility after numerous sexual assaults on inmates were alleged and proven. It is imperative that DPS develop policies and procedures to address sexual assault so as to prevent future sexual assaults and the resulting lawsuits.

Further, DPS should be required to report comprehensive sexual assault data to the Legislature to ensure DPS’ accountability and transparency.

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,

Laurie A. Temple
Staff Attorney

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the
**Drug Policy
Forum**
of hawai'i

February 11, 2010

To: Rep. Faye Hanohano, Chair
Rep. Henry Aquino, Vice Chair and
Members of the Committee on Public Safety

From: Jeanne Y. Ohta, Executive Director

Re: HB 2266 Relating to Corrections
Hearing: Thursday, February 11, 2010, 9:30 a.m., Room 309

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of HB 2266 Relating to Corrections. This measure proposes to establish policies and standards to provide appropriate treatment to victims of sexual assault in prison and to prevent the occurrence of sexual assaults in prisons.

State and prison officials have a duty to protect inmates from sexual assault and to provide the necessary care should an assault occur. Sexual assault can have persistent, long-lasting psychological effects on victims. Since those effects will likely last even after release from prison, they cannot and should not be ignored by the responsible agencies. Proper treatment must be given in a timely manner.

This measure proposes the bare minimum of policies regarding sexual assault. Among other policies that should be considered: requiring one or two staff members in each facility to be trained sexual assault counselors; a trained rapid response team; and that staff and inmates are all acquainted with the department's protocols dealing with sexual assault. These policies should also be required of contracted prisons housing inmates from Hawai'i.

The Department of Public Safety must create a culture within its facilities that does not tolerate sexual assault. Staff should not be allowed to be indifferent to the sexual violence that occurs within the walls of prisons.

Please pass this bill as a starting point to preventing sexual assault in our prisons and contracted prisons. Thank you for this opportunity to provide testimony.

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TO: COMMITTEE ON PUBLIC SAFETY
Rep. Faye Hanohano, Chair
Rep. Henry Aquino, Vice Chair
Thursday, February 11, 2010
9:30 A.M.
Room 309, Hawaii State Capitol

RE: Support of HB 2266 – Prison Rape

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

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

My name is Daphne Barbee-Wooten. I am an attorney in private practice here in Honolulu. I represent many people who are incarcerated. I support the bill HB 2266 which requires the Department of Public Safety to report to the legislatures on implementation of the Federal Prison Rape Elimination Act and to provide data regarding the acts of sexual assault and sexual misconduct. I would only add that this bill should require the Department to present what procedures and acts it has taken to prevent sexual assault and measures to ensure sexual assault in the prisons will not occur again. Remedies such as prosecuting guards who abuse inmates sexually and other remedies such as termination from employment should also be addressed by the Department of Public Safety. Furthermore, any inmate who reports rape or sexual abuse should not be retaliated against by the Department of Public Safety, but every measure should be taken to protect that inmate. Thank you for your consideration.

Dated: Honolulu, Hawaii

February 9, 2010

/s/ Daphne Barbee-Wooten
Daphne Barbee-Wooten
Attorney at Law