

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MICHAEL A. TOWN
ANNELLE C. AMARAL
FITUINA F. TUA
MEMBERS

TOMMY JOHNSON
ADMINISTRATOR

No. _____

**TESTIMONY ON SENATE BILL 2426
RELATING TO THE CORRECTIONS POPULATION MANAGEMENT COMMISSION**

By
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

AND

Senate Committee on Judiciary
Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

Friday, February 9, 2018, 9:30 a.m.
State Capitol, Conference Room 016

Chairs Nishihara, Taniguchi, and Members of both Committees:

The Hawaii Paroling Authority (HPA) respectfully requests that Senate Bill (SB) 2426 be deferred pending the final report and recommendations of the HCR 85 Task Force. As the Chair of the Hawaii Paroling Authority, I sit on both the Task Force and Corrections Population Management Commission (CPMC). Increasing the Commission by two members may add more insights during CPMC discussions, however, SB 2426 deters from the original intent established by Act 343, Sessions Laws of Hawaii 1993 and Section 353F-4 Hawaii Revised to *"establish maximum inmate population limits for each correctional facility and to formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility"*

Thank you for the opportunity to provide testimony on SB 2426.



SB2426

RELATING TO THE CORRECTIONS POPULATION MANAGEMENT COMMISSION
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senate Committee on Judiciary

February 9, 2018

9:30 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2426, which would require the Corrections Population Management Commission (CPMC) to meet every quarter; expand CPMC membership to include a mental health expert and prisoner advocate; require the Department of Public Safety (PSD) to open access to PSD documents, policies, and facilities to the Commission; and require annual reporting on CPMC data, updates, and recommendations. This measure would enhance the capacity of this important oversight body, and better facilitate its ability to make critical recommendations on reducing Hawai'i's incarcerated population; moreover, it would improve transparency and public trust in our justice system.

Decades of a traditional criminal justice approach have led to the highest prison population in Hawai'i's history. Notably, between 1977 and 2008, the number of people incarcerated in Hawai'i increased by more than 900 percent; between 1977 and today, our incarcerated population increased by 1,400 percent.¹ The Native Hawaiian community has been particularly impacted by this increase, making up 40% of our current prison population.² Moreover, the overrepresentation of Native Hawaiians in the criminal justice system indicates larger systemic issues, such as implicit bias and disparate treatment in interactions from arrest, to adjudication, to final release.³ Accordingly, OHA has long-advocated for criminal justice reform that would thoroughly examine and effectively implement evidence-based incarceration alternatives that could improve public safety while effectively rehabilitating pa'ahao, reducing recidivism, and mitigating the impact of the criminal justice system on Native Hawaiians.⁴

¹ OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010) available at https://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

² In contrast, Native Hawaiians only represent 24% of the general public in Hawai'i. *Id.* at 36.

³ OHA's 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage noting that Native Hawaiians made up "24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population." OFFICE OF HAWAIIAN AFFAIRS at 10. Moreover, after controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. *Id.* at 28-38.

⁴ The NHJTF recommended several options to address systemic issues resulting in overrepresentation of Native Hawaiians in the criminal justice system. These included reconsidering several proposals from the 2011 Justice

LATE

The Native Hawaiian Justice Task Force, in its 2012 report, found that proactive policy and oversight would likely be the only path to reducing the overrepresentation of Native Hawaiians in the criminal justice system.⁵ Consistent with this finding, the CPMC—of which OHA is a member—is mandated to set incarcerated population limits, make recommendations on policies and procedures to avoid exceeding these limits, and provide transparency and oversight for our criminal justice system. However, the efficacy of the Commission since its establishment is unclear. Reviving the charge of the CPMC to meet more frequently; investigate PSD’s policies, procedures, grievances and conditions; and publicly report its updates and recommendations may be critical to making more meaningful progress toward its original goals.

Moreover, OHA believes the CPMC would benefit greatly from the expertise of the additional members proposed by this measure. An expert on substance abuse or mental health and an advocate for pa‘ahao are critical voices that should be included in any discussion about alternative approaches to socially and economically costly incarceration, that could otherwise ensure public health and safety in our islands.

Therefore, OHA respectfully requests that the Committees PASS SB2426. Mahalo for the opportunity to testify on this measure.

Reinvestment Initiative legislation that were not originally passed or implemented, investing in early intervention programs, increasing public defender funding, expanding implicit bias training, strengthening supervised release programs, executing compassionate release consistently, supporting indigenous models of healing alternatives such as pu‘uhonua and bolstering reintegration programs and services to better prevent recidivism. *Id.* at 27-30.

⁵ OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT (2012), at 19, *available at* https://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

Senate Committees on Public Safety, Intergovernmental, and Military Affairs; and Judiciary
Chair Clarence Nishihara, Chair Brian Taniguchi

02/09/2018 9:30 AM Room 016
SB2426 – Relating to the Corrections Population Management Commission

TESTIMONY / SUPPORT with Amendments
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Nishihara, Chair Taniguchi, and members of the committee:

Common Cause Hawaii supports SB2426 with amendments which would require the Corrections Population Management Commission to meet at least once per quarter, expands commission membership, requires the commission's annual report to include information on the commission's decisions, data, and status updates.

We believe that by requiring regular meetings and reportings, and requiring access to Departmental information and correctional facilities, is a good first step to increasing transparency and accountability, which will help to foster the public's trust in government. However, we note that more information could, and should be provided regarding the treatment of inmates, out of state facilities, and training for corrections officers and DPS personnel.

Thank you for the opportunity to offer testimony **supporting SB2426 with amendments.**

LATE

SB-2426

Submitted on: 2/8/2018 9:07:05 PM

Testimony for PSM on 2/9/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Cuddle Party	Support	No

Comments:

I believe if we had safe compassionate nonjudgmental places to go to for people who are homeless, have mental health or addiction problems, or just need help of some kind, we could largely depopulate our jails and truly assist people to change their lives for the better. I imagine these places as open air buildings around the Islands which offer a safe place to sleep, wash up and clean your clothes. Churches could distribute food there and students and volunteers could offer medical advice, counsel, assistance with beaurocratic processes, and caring touch.

For those who do go to jail we could truly focus on rehabilitation, skill acquisition and reentry support.

All this could be done for less than what we now spend on the revolving door of jail, emergency visits and policing.

Lets not get lost in an outdated "prison beds equal profits" mentality and instead create a true justice system for the 21st century.

Mahalo

LATE

HAWAII JUSTICE COALITION

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair Sen. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY

Sen. Brian Taniguchi, Chair Sen. Karl Rhoads, Vice Chair

Friday, February 9, 2018 9:30 am

Room 016

SUPPORT WITH AMENDMENTS - SB 2426 – CORRECTIONS POPULATION MANAGEMENT COMMISSION

Dear Chairs Nishihara and Taniguchi, Vice Chairs Wakai and Rhoads and Members of the Committees:

Hawai'i Justice Coalition is comprised of organizations and individuals united in our work to reduce the number of people incarcerated in Hawai'i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services. We believe that comprehensive criminal justice reform promotes public safety, makes responsible use of our resources, and builds healthy communities.

SB 2426 requires the Corrections Population Management Commission to meet at least once per quarter, and expands the commission membership. It also requires the Department of Public Safety to provide commission members with access to internal information and the authority to conduct spot checks on correctional centers and facilities and requires the commission's annual report to include a summary of the commission's decisions and data and status updates for commission recommendations.

Hawai'i Justice Coalition supports this measure with amendments. Oversight of correctional institutions is absolutely vital to ensure the humane treatment of all persons under the best of circumstances.¹ This oversight is even more necessary as severe overcrowding persists in our jails and prisons as a result of policy decisions that drive

¹ STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS/(aka NELSON MANDELA RULES). The principle that the public has a responsibility to run prisons humanely was in fact adopted by the United Nations back in 1955. When the U.N. revised and again adopted its "Standard Minimum Rules for the Treatment of Prisoners" in 2013, thereafter dubbed the "Nelson Mandela Rules," not only was it endorsing the idea that penal practices must be humane and prisoners treated like people, but it also made clear that **humane treatment depended upon outsider access to prisons**. (Thompson 2017)

incarceration rates -even though crime rates in Hawai'i continue to decrease.² Toxic jail and prison conditions affect those who are imprisoned, those who work in these facilities and loved ones that visit.

TRANSPARENCY AND ACCOUNTABILITY IS NECESSARY FOR THE SAFE AND HUMANE OPERATION OF CORRECTIONAL FACILITIES.

When a person's liberty is removed by the government, that government incurs the ABSOLUTE RESPONSIBILITY to protect that person's safety - whether that person is awaiting trial, or has been convicted of a criminal offense/s.

According to Michele Deitch, an attorney, professor of public policy, and world leading expert on prison oversight, "a robust system of correctional oversight involves sound internal adducting and accountability measures, complemented by credit and effective forms of external scrutiny." Special Topics in Preventing and Responding to Prison Rape: Medical and Mental Health Care, Community Corrections Settings and Oversight, Hearing before the National Prison Rape Elimination Commission (Dec. 6, 2007) (testimony of Michele Deitch).

Oversight is a means of achieving the twin objectives of transparency of public institutions and accountability for the operation of safe and humane prisons and jails. (Deitch 2010)

As a first step towards injecting more transparency and accountability into the operations of correctional and detention facilities, the legislature should mandate that facilities be regularly monitored and that the CPMC members have unfettered access to information and facilities for site inspections. The CPMC shall publicly report on conditions in prisons, jails, and other correctional and detention facilities for adults and juveniles in Hawai'i.

A PROCESS FOR MONITORING TO DETERMINE WHETHER A CORRECTIONAL FACILITY IS FUNCTIONING PROPERLY.

Hawai'i Justice Coalition suggests that the CPMC use four tests to determine whether a prison is functioning properly. After all, ninety-five (95%) of all men and women entering our jails and prisons will return home to our community. It behooves us to ensure that these men and women return home as contributing members of our community, rather than traumatized persons, or returning home with more sophisticated criminal skills.

² See <http://governor.hawaii.gov/newsroom/latest-news/atg-news-release-crime-in-hawaii-at-record-low-level-in-2016>. Attorney General Douglas S. Chin announced today the release of the State of Hawaii's annual Uniform Crime Report, *Crime in Hawaii, 2016*. The report shows that in Calendar Year 2016, a total of 45,805 Index Crimes* were reported in the State of Hawaii, yielding a rate of 3,206 offenses per 100,000 resident population, the lowest on record since statewide data collection began in 1975. Hawaii's Index Crime rate in 2016 was 6.2% below the rate reported in 2015, and 27.1% below the rate reported a decade earlier (2007).

LATE

The four tests to determine whether a prison or jail is functioning properly are:

- (a) whether imprisoned persons are held in safety,
- (b) whether they are treated with respect for their human dignity,
- (c) whether they are able to engage in purposeful activity, and
- (d) whether they are prepared for resettlement back into the community.

A PUBLIC REPORTING PROCESS IS ESSENTIAL TO INCREASING TRANSPARENCY AND REMEDYING CONDITIONS TO AVOID LAWSUITS.

- Routine and regular reviews of every institution allow problems to be identified (and hopefully corrected) before there are lawsuits about conditions or incidents that make the front page of the newspaper. (Deitch 2010)
- Following each inspection, the Independent Correctional Oversight Board shall release a report with recommendations for improvement that is available on a public website.
- Prison officials must respond with an action plan stating whether each recommendation is accepted and if so how it will be implemented in the prison.
- The Independent Correctional Oversight Board returns to conduct a follow up inspection to determine the agency's state of compliance with its action plan.

BENEFITS & DEMOCRATIC VALUES

- The benefits that come from the transparency that results from prison oversight include enhanced effectiveness, greater resources, and new ideas. **Oversight serves democratic values** by engaging the public in the long and difficult discussion of what we, as a society, can reasonably expect of prisons. (Stajkovic 2010)
- Routine and regular reviews of every institution allow problems to be identified (and hopefully corrected) before there are lawsuits about conditions or incidents that make the front page of the newspaper. (Deitch 2010)
- Regular monitoring helps keep the quality of correctional services high, because the staff's knowledge that an inspector could arrive at any time acts as a means of informal control over staff behavior. In other words, it "keeps staff on their toes" and helps them avoid complacency, even when everything is going well. (Deitch 2010)
- "Watching something affects its course. In facilities that confine people, the presence of civilian overseers humanizes everyone—inmates and staff—and makes the prison a better, more effective and more enlightened institution for all." (Brickman, J. 2010)

LATE

SUGGESTED AMENDMENTS TO THIS PROPOSED BILL

1. The CPMC shall consist of 18 members;
2. Add one member of the public who has experience and expertise in Chemical Dependency/Substance abuse;
3. Add one member of the public who has experience and expertise in Mental Health;
4. Add one member from the public from a non-profit service provider that works with and/or advocates for incarcerated individuals;
5. Add one member from the public who have experience and expertise in criminal justice reform; and
6. Add one member from the public who has experience and expertise in criminal justice related research.

These suggested amendments will create a more diverse representation of stakeholders on the CPMC to fulfill its “objective of establishing maximum inmate population limits for each correctional facility and to formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.”

Mahalo for the opportunity to support this measure with the proposed amendments.

Sincerely,

Carrie Ann Shirota, JD
Hawai'i Justice Coalition
cashirota808@gmail.com
www.hijustice.org

“The degree of civilization in a society can be judged by entering its prisons.”

Fyodor Dostoevsky

SB-2426

Submitted on: 2/9/2018 2:11:52 AM

Testimony for PSM on 2/9/2018 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

LATE

SB-2426

Submitted on: 2/8/2018 3:35:04 PM

Testimony for PSM on 2/9/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Justin Jansen		Support	No

Comments:

Hawaii's jails and prisons are severely overcrowded, creating inhumane conditions of confinement

There has been an increase in suicides in Hawaii's jails and prisons

There has been reported physical assaults in our jails and prisons

There has been reported sexual assaults in our jails and prisons

There is a shortage of mental health professionals in our jails and prisons

Prisons and jails are the most closed institutions. Meaning that conditions for abuse of power are prevalent