

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

1177 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON HOUSE BILL 1738, HOUSE DRAFT 1
RELATING TO CONFINEMENT**

by
Max N. Otani, Director

House Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair,

Wednesday, February 16, 2022; 2:00 p.m.
State Capitol, Conference Room 325, and Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of Public Safety (PSD) has reviewed House Bill (HB) 1738, House Draft (HD) 1, which seeks to statutorily establish policies and procedures for long-term confinement, disciplinary confinement, and administrative confinement of inmates in the State's correctional facilities.

The Department offers the following comments regarding this measure. As written, HB 1738, HD 1 has many similarities with PSD's established policies and procedures, which are periodically reviewed and updated, as needed. The Department's policies and procedures align with guidelines of the National Institute of Corrections (NIC) and the American Correctional Association (ACA). PSD's Correctional Policy (COR.11.01) Administrative Segregation and Disciplinary Segregation is posted on PSD's website for interested persons to access and review.

PSD respectfully suggests that new information and changed conditions may necessitate changes in departmental policies and procedures from time to time, and the Department's ability to amend policies and procedures would be seriously impaired if such changes required amending the HRS.

Thank you for the opportunity to provide testimony on HB 1738, HD 1.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Representative Mark Nakashima, Chair

Representative Scot Matayoshi, Vice Chair

Wednesday, February 16, 2022

2:00 PM

HB 1738 HD1- STRONG SUPPORT

Aloha Chair Nakashima, Vice Chair Matayoshi and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the more than 4,069 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety or the corporate vendor on any given day. We are always mindful that 1,112 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons strongly supports transparency and accountability when addressing management of our jails and prisons as well as those of the corporate vendors to whom we sell our people. There is a huge national movement called UNLOCK THE BOX that seeks to ban this cruel and inhumane punishment that produces life-long effects on a person during incarceration and post release.

There is a large body of research on the mental health and medical effects of isolating people from the general population. Drs. Craig Haney and Terry Kupers have done amazing and informative research on the effects of isolating human beings. Here is some information on the mental and physical health effects of this sanction¹.

Mental health effects

A [large body of research](#) shows that solitary confinement causes adverse psychological effects and increases the risk of serious harm to individuals who experience it. According to an article in the [Journal of the American Academy of Psychiatry and the Law](#), isolation can be as distressing as physical torture.

The [BJS](#) report that approximately 25% of people in prison and 35% of those in jail who had spent 30 days or longer in solitary confinement during the previous year had symptoms of serious psychological distress. The rates were similar for those who only spent 1 day in isolation.

¹ What are the effects of solitary confinement on health?

<https://www.medicalnewstoday.com/articles/solitary-confinement-effects>

Humans require social contact. Over time, the stress of being isolated can cause a range of mental health problems. According to Dr. Sharon Shalev, who authored [*A Sourcebook on Solitary Confinement*](#) in 2008, these problems may include: [anxiety](#) and [stress](#), [depression](#) and hopelessness, anger, irritability, and hostility, [panic attacks](#), worsened preexisting mental health issues, hypersensitivity to sounds and smells, problems with attention, concentration, and memory, hallucinations that affect all of the senses, paranoia, poor impulse control, social withdrawal, outbursts of violence, [psychosis](#), fear of death, self-harm or suicide.

[Research](#) indicates that both living alone and feelings of loneliness are strongly associated with suicide attempts and suicidal ideation. Additionally, many individuals who experience confinement [become incapable](#) of living around other people.

Physical health effects

Most studies focus on the psychological effects of solitary confinement. However, psychological trauma and loneliness can also lead to physical health problems. Studies indicate that social isolation increases the likelihood of death by [26–32%](#).

According to Dr. Shalev's [*A Sourcebook on Solitary Confinement*](#), the recorded physical health effects of solitary confinement include: chronic [headaches](#), eyesight deterioration, digestive problems, dizziness, [excessive sweating](#), [fatigue](#) and lethargy, genitourinary problems, [heart palpitations](#), hypersensitivity to light and noise, [loss of appetite](#), muscle and joint pain, [sleep problems](#), [trembling hands](#), and weight loss

A lack of physical activity may also make it difficult to manage or prevent certain health conditions, such as [diabetes](#), high [blood pressure](#), and [heart disease](#).

A prolonged lack of sunlight [can cause](#) a [vitamin D deficiency](#), which can put older adults at risk of [fractures](#) and falls. These injuries are among the leading causes of hospitalization and death for older adults.

A letter received by Community Alliance on Prisons from one of our people in Arizona describes what it is like to be far from home, isolated from the general population, with nothing for 18 hours a day or more.

"I have been incarcerated for five years and out of those 5 years I have done 2 and one-half years in solitary confinement/restrictive housing. When I refer to "restrictive housing" I am meaning being locked down for 18 plus hours a day. That two and a half years have taken a drastic toll on my mental state. I had suicidal train of thoughts a couple times & major anxieties & depression.

Here in Saguaro Correctional Center they have a tactic an insidiously cruel & inhumane practice called property and recreation restrictions. Saguaro Correctional Center will place inmates on property restriction for doing or saying things they don't like. ... CoreCivic uses this tactic widely, constantly, & consistently against Hawaii inmates in segregation. It's used as a weapon, as punishment & even as disciplinary sanctions for misconducts with the segregation units.

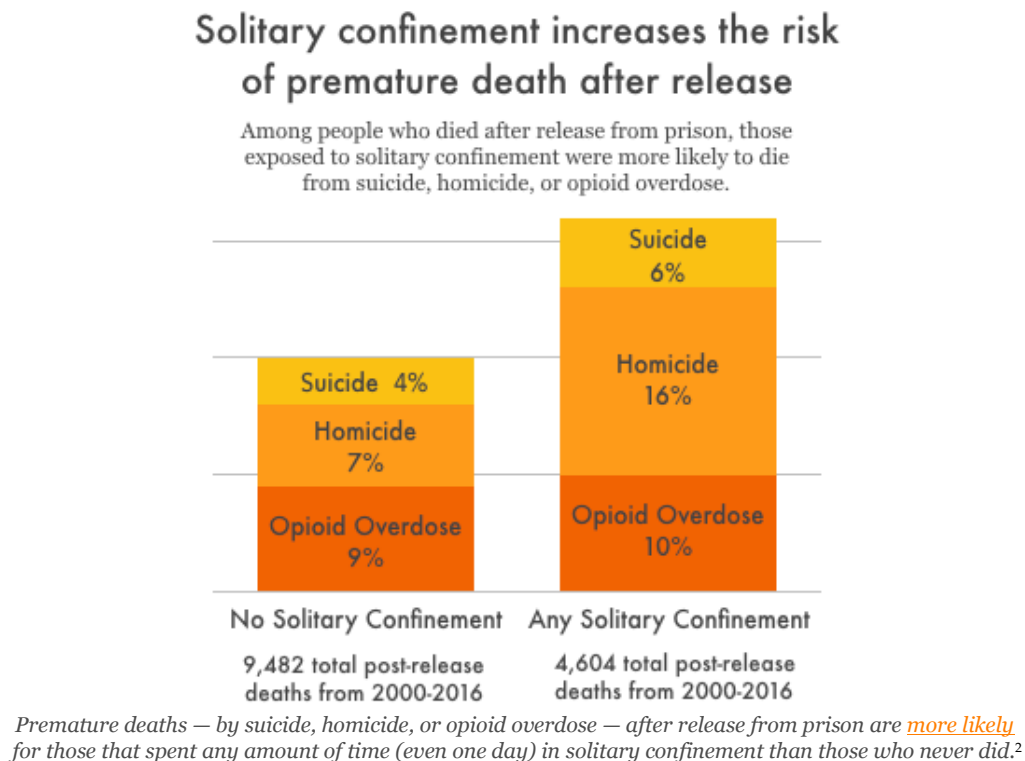
Often we are on property restriction from 7 to 30 days. It is often used in conjunction with recreation restriction which an inmate is not allowed to have recreation at all. Hawaii segregation inmates can be put on property restriction for any reason & at any time, for any excuse. It is used arbitrarily & harshly. It is used at the administrations discretion & whim with no due process afforded whatsoever.

Prior to being placed on property restriction we are not afforded a hearing or given notice or any sort of paperwork detailing the reasons for being put on property restriction. Once one is arbitrarily placed on property restriction it is unappealable & unchallengeable.”

How can we allow such violations of basic constitutional rights in our names?

The reality that must be faced is that Hawai‘i allows CoreCivic to ‘operate‘ their prison their way. And then the people are burdened with all the costs associated with their way of operating their prison.

At the International Symposium on Solitary Confinement, researchers and formerly incarcerated people made it clear that isolation causes severe and permanent damage and that any “positive” benefits correctional institutions gain by using solitary confinement are outweighed by the severe and often permanent damages caused by prolonged isolation. Recent studies show that time spent in solitary confinement shortens lives, even after release, and speakers at the International Symposium emphasized various other ways solitary causes irreparable harm.



Community Alliance on Prisons has been reporting on the conditions in Saguaro at the monthly Hawai‘i Correctional Systems Oversight Commission meetings. Sadly, without staff, this all-volunteer commission’s work has been severely curtailed. They have sent lists of applicants for the Coordinator position (that is in statute) they have interviewed over the last 2 years with no response from the governor.

² The research is clear: Solitary confinement causes long-lasting harm, by Tiana Herring, December 8, 2020. https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/

We have reviewed Policy No. Cor.11.01³ and this bill and we support SB 3344's calls for transparency and accountability in how the state itself honors the humanity of the people in its care and custody and how it protects our people in the care and custody of its corporate vendors. We wonder how COR.11.01 is implemented and monitored since those records are not public.

We support transparency and accountability as provided in Section 2.(e) starting on page 17 line 13 and everything through page 20 line 10. "Section 2.(e) that no later than July 1, 2023, the department will develop written policies and implement procedures to (1) Establish less restrictive interventions as alternatives to solitary confinement; (2) Require periodic training of disciplinary staff and all other staff who interact with inmates held in solitary confinement; (3) Require documentation of all decisions, procedures, and reviews of inmates placed in solitary confinement; (4) Require monitoring of compliance with all rules governing cells, units, and other spaces used for solitary confinement; (5) Require the posting of quarterly reports on the department's official website; (6) Update the department's corrections administration policy and procedures manual, as necessary and appropriate, to comply with the provisions of this section, including the requirement to use appropriate alternatives to solitary confinement for inmates who are members of a vulnerable population."

When we consider that the state incarcerates people for causing harm; it is unconscionable that the state itself inflicts long-lasting harm on the people it incarcerates. We long for the day when included in the training of people working with persons in an extremely stressful environment there is an emphasis on **FIRST, DO NO HARM**.

This bill follows the Department of Justice guidance on restrictive housing⁴. The Report's "Guiding Principles" include:

- Inmates should be housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public.
- Correctional systems should always be able to clearly articulate the specific reason(s) for an inmate's placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement.
- Restrictive housing should always serve a specific penological purpose.
- An inmate's initial and ongoing placement in restrictive housing should be regularly reviewed by a multi-disciplinary staff committee, which should include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals.
- For every inmate in restrictive housing, correctional staff should develop a clear plan for returning the inmate to less restrictive conditions as promptly as possible. This plan should be shared with the inmate, unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public.

³ Department of Public Safety, Corrections Administration Policies and Procedures, Administrative Segregation and Disciplinary Segregation, Policy No. Cor.11.01. <https://dps.hawaii.gov/wp-content/uploads/2014/12/COR.11.01.pdf>

⁴ U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing EXECUTIVE SUMMARY January 2016. <https://www.justice.gov/archives/dag/file/815561/download>

- All correctional staff should be regularly trained on restrictive housing policies. Correctional systems should ensure that compliance with restrictive housing policies is reflected in employee-evaluation systems.
- Correctional systems should establish standing committees, consisting of high-level correctional officials, to regularly evaluate existing restrictive housing policies and develop safe and effective alternatives to restrictive housing.
- Absent a compelling reason, prison inmates should not be released directly from restrictive housing to the community.
- Correctional systems should seek ways to increase the minimum amount of time that inmates in restrictive housing spend outside their cells and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates.

In closing, there is a robust scientific literature that has established the negative psychological effects of solitary confinement. The empirical findings are supported by a theoretical framework that underscores the importance of social contact to psychological as well as physical well-being. In essence, human beings have a basic need to establish and maintain connections to others and the deprivation of opportunities to do so has a range of deleterious consequences. These scientific conclusions, as well as concerns about the high cost and lack of any demonstrated penological purpose that solitary confinement reliably serves, have led to an emerging consensus among correctional as well as professional, mental health, legal, and human rights organizations to drastically limit the practice.⁵

Community Alliance on Prisons urges the committee to remember that most incarcerated people will come home someday. What kind of citizens and neighbors are we building in these institutions that are ostensibly about rehabilitation?

And § 5-7.5 "Aloha Spirit" reminds the state that each person must think and emote good feelings to others. In the contemplation and presence of the life force and in exercising their power on behalf of the people and in fulfillment of their responsibilities, obligations and service to the people, the legislature, governor, lieutenant governor, executive officers of each department, the chief justice, associate justices, and judges of the appellate, circuit, and district courts may contemplate and reside with the life force and give consideration to the "Aloha Spirit".

Please support these changes that promote transparency and accountability in how the people in the care and custody of the state are treated, no matter where they are.

Mahalo for this opportunity to share our many years of research into this inhumane practice.

"We must learn to regard people less in the light of what they do or omit to do, and more in the light of what they suffer." Dietrich Bonhoeffer

⁵ Restricting the Use of Solitary Confinement, Craig Haney, **Annual Review of Criminology**, Vol. 1:285-310 (Volume publication date January 2018), First published as a Review in Advance on November 3, 2017.
<https://doi.org/10.1146/annurev-criminol-032317-092326>