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No. \_\_\_\_\_

**TESTIMONY ON SENATE BILL 2269  
RELATING TO CORRECTIONAL FACILITIES.**

by  
Max N. Otani, Director  
Department of Public Safety

Senate Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 1, 2022; 10:00 a.m.  
Via Videoconference

Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committee:

Senate Bill (SB) 2269 seeks to repeal the authorization of the Governor to negotiate with any person for the development or expansion of private in-state correctional facilities and to prohibit the establishment of private correctional facilities within the State. In addition, this measure would allow the Governor to enter into a contract with a private entity to construct a correctional facility on public or private land, as long as the facility is operated by the Department of Public Safety (PSD).

The Department offers comments on SB 2269, specifically regarding Section 2 of the bill (Page 3, Line 6). PSD does not agree that the statute should be amended to delete the language, "and then lease or purchase". Removal of this language would restrict options available to the Governor and the State,

which, in large CIP projects such as correctional facilities, could significantly increase the costs of facilities' development and ultimately, costs to the State.

Thank you for the opportunity to submit testimony on SB 2269.



THE SENATE  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2022

**Committee on Commerce and Consumer Protection**

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

**Committee on Judiciary**

Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 1, 2022, 10:00AM  
Conference Room 229 and via Videoconference

**Re: Testimony in Support of SB2269 - RELATING TO CORRECTIONAL FACILITIES**

Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committees:

The United Public Workers, AFSCME Local 646, AFL-CIO ("UPW") is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

UPW **supports** SB2269 which repeals the authorization for the governor to negotiate with any person for the development or expansion of private correctional facilities and prohibits the establishment of private correctional facilities in the State. This bill would also allow the governor to enter into a contract with a private entity to construct correctional facilities on public or private lands for the benefit of the State if the facilities are operated by the Department of Public Safety.

Research has shown the adverse effects on inmates who are incarcerated in out-of-state, private prisons and the shortfall of oversight and accountability at these facilities. As we consider investments that look at trying to improve our state's correctional infrastructure, we ask that it does not come at the expense of the workers who are presently keeping those facilities operational.

Thank you for the opportunity to provide testimony.

Sincerely,

Kalani Werner  
State Director

**UNITED PUBLIC WORKERS**  
**AFSCME Local 646, AFL-CIO**



# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn Baker, Chair

Senator Stanley Chang, Vice Chair

## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 1, 2022

10:00 AM

## OPPOSITION TO SB 2269 - CORRECTIONAL FACILITIES

Aloha Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole, and Members of the Committees!

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 4,052 Hawai'i individuals living behind bars<sup>1</sup> under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that 1,111 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 is OPPOSED to this measure because the entire process to relocate OCCC has been planned in the dark with absolutely no community input.

## WHY COMMUNITY ENGAGEMENT MATTERS

<https://aese.psu.edu/research/centers/cecd/engagement-toolbox/engagement/why-community-engagement-matters>

Citizens are 'engaged' when they play a meaningful role in the deliberations, discussions, decision-making and/or implementation of projects or programs affecting them. Accordingly, organizational and government leaders need to broaden the way they see their responsibilities to include roles as facilitator, supporter, collaborator, and empower of citizens and stakeholders. This change requires letting go of some of the traditional reins of power and trusting that citizens can and will effectively engage in the issues. The result is a partnership(s) that is nearly always healthy for a community and can more effectively address the issue or problem.

**CITIZENS AT THE CENTER**, A new approach to civic engagement, The Case Foundation

<http://www.politicipublice.ro/uploads/citizens-at-the-center.pdf>.

### Citizen-Centered Approaches Are:

- Focused primarily on culture change, rather than short-term outcomes, issues, or victories, although the latter can be a foundation through which communities achieve a sense of efficacy to move forward toward other efforts collectively.
- Representative of a cross-section of the entire community, rather than parts of it.
- Concerned with the deliberative process to identify public problems or concerns—no matter how messy or complex it can be—as equally as important to civic engagement as the tactics employed to address these problems and concerns.
- Cognizant of the importance of helping people form and promote their own decisions, build capacities for self-government, and promote open-ended civic processes.

Advancing citizen-centered approaches requires a **shift in focus** from “What we are going to do to encourage civic engagement, how, with whom, where and for how long?” to:

- What opportunities can we provide for people to convene with others who are concerned about issues in their communities, schools, or workplaces to deliberate about problems and issues; define these for themselves; and decide what they will do about them?
- Do we see people as consumers of our services and activities, or as citizens?
- To what extent can we help people feel more empowered to carry out what they plan to do about public problems in ways that they believe are most appropriate for them and their communities?
- How can we facilitate citizen-driven and citizen-centered engagement so that it becomes deeply embedded in the day-to-day functioning of communities and people in those communities are able to solve the problems of everyday life?
- Are we asking people to “plug into” already existing initiatives or decide for themselves what to do?

### COMMUNITY ENGAGEMENT MATTERS (NOW MORE THAN EVER), Stanford SOCIAL INNOVATION Review

[https://ssir.org/articles/entry/community\\_engagement\\_matters\\_now\\_more\\_than\\_ever](https://ssir.org/articles/entry/community_engagement_matters_now_more_than_ever)

Data-driven and evidence-based practices present new opportunities for public and social sector leaders to increase impact while reducing inefficiency. But in adopting such approaches, leaders must avoid the temptation to act in a top-down manner. Instead, they should design and implement programs in ways that engage community members directly in the work of social change.

### WHY CONTRACTING WITH PRISON PROFITEERS IS A BAD INVESTMENT

We understand that this proposal is for building - not operating - facilities. Nevertheless, Hawai'i's experience with CCA should inform any decisions about contracting with corporate prison companies. We highlight a few of the problems with CoreCivic/CCA:

**Shoddy Construction:** Saguaro was built by CCA for Hawai'i's people who are incarcerated for felony offenses. Within months of the prison's opening in July 2007, complaints were filed about dirty shower water running into the pods because the drains were not installed properly. Six months later the showers were closed for repairs because of the serious drainage problems.

**Expansion Spending:** In 2012, CCA spent less on expansion than any year since 2002. That's a far cry from the expansion spree the Company went on in 2007 and 2008. In fact, in February 2008,

CCA began construction of a 2,040 bed prison which was expected to cost US \$143 million. What started as a “temporary” halt appears to be turning into a permanent one.

**Labor Problems:** *There is evidence that CCA has engaged in anti-union activities and committed Unfair Labor Practices (ULP) in violation of the National Labor Relations Act (NLRA). In 2006, the NLRB issued a decision finding that CCA interfered with protected concerted activity in violation of the NLRA by initiating a drive to decertify the union (International Union, Security, Police and Fire Professionals of North America (SPFPA)) and then coercing and threatening its employees to support the decertification drive. The board also upheld the finding that the company violated the NLRA by unlawfully transferring an officer to a less desirable position and unlawfully discharging another officer because of those individuals' union activities.<sup>2</sup> Also, in 2010, the NLRB reversed an earlier decision holding that CCA unlawfully discharged an employee in retaliation for protected union activity in violation of the NLRA.*

**Ethical Problems:** CCA was held in contempt of court in the Idaho suit against the CCA prison called the “gladiator school.” Most disturbing are the ethical violations, falsifying staffing information, failure to comply with court orders, etc. U.S. District Judge David Carter said, '*For CCA staff to lie on so basic a point – whether an officer is actually at a post – leaves the Court with serious concerns about compliance in other respects, such as whether every violent incident is reported.*'

**Lobbying Against Transparency:** Existing federal Freedom of Information Act (FOIA) regulations do not extend to private prisons. However, advocates and legislators have for years argued that privately-contracted facilities should be subject to open records law. Since 2005, legislators have introduced the Private Prison Information Act (PPIA), a federal bill that would subject private prisons to the same open records laws as publicly operated facilities. Yet each hearing has been met with staunch resistance from the private prison industry, swiftly dying in or before subcommittee hearings.<sup>3</sup> CCA has led this attack, spending more than \$7 million lobbying against various incarnations of the Private Prison Information Act since 2007.

**Conversion to a REIT – Real Estate Investment Trust:** On 1 January 2013, CCA decided to effectively convert from a standard corporation to a Real Estate Investment Trust (REIT). CCA was given the nod by the Federal government on February 8, 2013<sup>4</sup> and as a result, its share price exploded upwards. But what may be lost on shareholders is that CCA operated as a REIT once before in the late 1990s. Its first foray into the REIT world ended in near bankruptcy. Today, CCA is facing revenue contraction, dwindling demand, and a bleak outlook. From here the road is a short one to earnings issues and dividend cuts.

**Expansion Spending:** In 2012, CCA spent less on expansion than any year since 2002. That's a far cry from the expansion spree the Company went on in 2007 and 2008. In fact, in February 2008, CCA began construction of a 2,040 bed prison which was expected to cost US\$143 million. At the time of the announcement, Management touted the construction project as the result of “strong demand for prison beds.”<sup>5</sup> What started as a “temporary” halt appears to be turning into a permanent one. With softening demand, state prisons closing, and a growing number of unutilized beds in its own facilities, CCA's US\$143 million prison project has become nothing

more than a patch of dirt on the edge of Trousdale County, Tennessee. In February 2009, almost a year to the date that the project was announced, CCA “temporarily” halted construction of the facility amid uncertainty over the demand for additional bed space.

It is a sad statement that the state only considers incarceration rather than the plethora of options being employed in other jurisdictions. Hawai`i needs to implement REAL alternatives to incarceration for people convicted of misdemeanors, petty misdemeanors for low-level offenses.

To determine the extent that misdemeanors and low-level offenses contribute to jail overcrowding, decisionmakers should ask:

- How many people in our jail have been convicted of non-violent misdemeanors and low-level offenses?
- Does Hawai`i offer jail diversion programs for people convicted of misdemeanors and low-level offenses? Are these programs affordable and accessible to all?
- Does Hawai`i have case monitors that continually review people coming into the jail to identify those who could be diverted?
- Has Hawai`i increased its use of diversion programs in order to reduce jail overcrowding?
- What is the average sentence length for people incarcerated in Hawai`i’s jails? How does this compare to jurisdictions that have reduced their jail populations?

#### Is Hawai`i...

- **Reducing the number of jailable offenses:** States and counties can reduce their jail populations by reducing the number of jailable offenses, thus reserving jail only for people who pose a demonstrable threat to public safety. For example, states and counties can make some offenses civil matters, and re-classify others as non-jailable offenses. If state law does not allow a county to reclassify offenses, the county should lobby the state to do it.
- **Encouraging prosecutors to be less punitive:** District attorneys have a lot of discretion in whom they choose to prosecute and what charges they bring, giving them enormous power to reduce jail populations if they are reform-minded. Prosecutors can decline to prosecute minor, low-level offenses and instead pursue non-carceral sanctions in order to reduce jail populations.
- **Encouraging judges to give shorter sentences:** Shortening sentences is a key tool for reducing jail populations.
- **Diversion programs and alternatives to incarceration:** Police, prosecutors, and judges should be encouraged to connect people with diversion programs that seek to address the underlying cause of the offense, rather than pursuing jail time. For example, alternatives to incarceration could provide vocational training, literacy and educational support, counseling, mentoring, or residential and outpatient mental health and substance use treatment. Research has demonstrated that diversion programs can dramatically cut reoffending rates and improve employment outcomes compared to incarceration. Hawai`i should ensure that diversion programs are free and accessible and that the programs allow people to avoid the collateral consequences of a criminal conviction. If necessary, rural counties with limited resources should consider collaborating with neighboring counties to fund and create evidence-based diversion programs.

- **Sentencing people to probation in lieu of incarceration:** Probation, by design, is an important alternative to incarceration. In cases where incarceration is the only practical alternative, probation should be used to minimize the broad social and economic harms of incarceration. But Hawai'i should be wary of using probation as a knee-jerk response to low-level offenses (it's been used for things as minor as nonpayment of fines). When used, probation should be minimally restrictive, not fee-based, individualized, and short in length.

For example:

- In 2018, the Manhattan District Attorney decided to decline prosecuting public transportation fare evasion if there are no threats to public safety. Instead, people caught evading fares may be warned, ejected, connected with social services, issued a civil ticket, or issued a criminal ticket. As a result, the number of fare evasion prosecutions declined by 96% in the first year alone.
- In St. Louis, Missouri, the District Attorney announced that prosecutors will no longer pursue charges for most low-level marijuana offenses. Prior to this announcement, lower-level marijuana crimes made up about 20 percent of the prosecution docket.
- Seattle, Miami-Dade County, and several towns in Massachusetts have implemented diversion programs specifically designed for people with mental health and substance abuse disorders.

There are many reasons that planning a jail or any other correctional facility **MUST** include the community, but first and foremost it is about respect. There has been little to no respect shown to the community OR to legislators during this flawed process where consultants are getting rich and the community is getting shunned. The only community the consultants have spoken to is the `Aiea Neighborhood Board where they give a mind numbing report to the bored Board. **THIS IS NOT COMMUNITY ENGAGEMENT.**

Another very disturbing question is why Hawai'i continues to do business with corporate prison profiteers who have terrible records of abuse and shoddy construction and yet the state is happy to sell 1,111 of our people to CoreCivic, who work to promote recidivism. Hawai'i has lost its moral compass.

Lastly, community values are crucial to consider. This has been ignored by the many consultants who don't appear to understand our community and the values that we hold dear.

It is great to ban corporate prisons, however, we need to ensure that they don't build anything in Hawai'i. **KEEP CORPORATE PRISON PROFITEERS OUT OF HAWAI'I NEI.**

Mahalo for this opportunity to testify.

**LATE**

**SB-2269**

Submitted on: 2/28/2022 4:19:53 PM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lorenn Walker	Testifying for Hawai'i Friends of Restorative Justice	Oppose	No

Comments:

We oppose the part of this measure that would allow the "Governor to enter into a contract with a private entity to construct a correctional facility on public or private land, only upon the condition that the facility is operated by the Department of Public Safety." Private entities should not fund the construction of correctional facilities in Hawai'i. Large hedge funds owned by wealthy stock investors, without an interest in rehabilitation or healing for people harmed by crime, would fund this construction to invest in potential financial benefits while our taxpayers lose the benefit, and additionally suffer from the harms that incarceration causes. The American Bar Association noted it is immoral for private parties to financially profit from prisons when it [passed a resolution against private prisons last year](#). Rehabilitation programs including more community based housing and programming, and bail reform prison, etc., make the need for jail and prison beds obsolete. PSD should be spending its time and resources on rehabilitation strategies and funding those instead of planning corrections construction. Our state legislators should also be working to end mass incarceration. We should not be helping private investors profit from corrections construction, which is a detriment of the public in many ways. Please vote against the measure. Mahalo for your public service. Please contact Lorenn Walker, JD, MPH, at [lorenn@hawaiiifriends.org](mailto:lorenn@hawaiiifriends.org) if you have questions about our testimony.

**SB-2269**

Submitted on: 2/28/2022 9:10:29 AM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Zoe Ryan	Individual	Oppose	No

## Comments:

We can do better by providing quality treatment and programs, early release, prevention and education. Our own facilities with rehabilitation in mind, NOT PROFIT on peoples worst mistakes. Let's NOT plan on MORE inmates... let's plan on FEWER!! End minimum mandatory sentences, end mass incarceration, release the elderly population and those making an effort to change!! Our focus should ABSOLUTELY NOT be on caging more people, but effectively HELPING more people become healthy, happy, contributing individuals.

**SB-2269**

Submitted on: 2/28/2022 9:48:30 AM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Wendy Gibson-Viviani	Individual	Oppose	No

Comments:

To: Committee on Commerce and Consumer Protection

To: Committee on Judiciary

From: Wendy Gibson-Viviani RN

RE: SB2269 Related to Correctional Facilities – in OPPOSITION

Hearing: Tuesday, March 1, 2022 at 10am.

Aloha Chairs Baker and Rhoads, Vice-Chairs Chang and Keohokalole and Members of the Committees,

I am Wendy Gibson-Viviani RN, a resident of Oahu for 29 years and I urge you to **OPPOSE** SB2269 which would: **Allow the governor to enter into a contract with a private entity to construct correctional facilities on public or private lands.**

I am opposed to this bill, for all of the many reasons cited by Kat Brady at the Community Alliance on Prisons, including the needs:

- To engage the community into discussions and find citizen-centered approaches
- To keep corporate prison profiteers out of Hawaii, especially those with terrible track-records and ethical issues, such as CCA.
- To reduce the number of jailable offenses and encourage prosecutors to be less punitive and judges to give shorter sentences and/or sentence people to probation instead of incarceration
- To encourage police, prosecutors and judges to start using diversion programs (such as LEAD) to address the underlying cause of the offense instead of sending non-violent offenders to jail/prison.

We have seen examples of these types of techniques working well in other states. Please oppose SB2269. Thank you for this opportunity to testify on this important bill.

Wendy Gibson-Viviani RN/BSN

Kailua

**Robert K. Merce**  
2467 Aha Aina Place  
Honolulu, HI 96821

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Testimony Before The  
Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
–And–  
Committee on Judiciary  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 1, 2022  
10:00 a.m.  
Via Video Conference  
In Strong Opposition to of SB 2269

Chairs Baker and Rhoads, Vice Chairs Chang and Chang and Keohokalole, and Committee Members:

My name is Robert Merce. I am a retired lawyer and served as vice chair of the HCR 85 Task Force on Prison Reform and wrote the Task Force's final report to the 2019 Legislature.

I **strongly Oppose SB 2269** which would authorize the Governor to negotiate and enter into a contract with a private corporation (or a consortium of corporations) to design, finance, build, own and maintain a private jail on state property on Oahu, as long as the jail is operated with State employees. The new jail is expected to cost at least \$1 billion and will be one of the largest, if not *the* largest, public works project in the State's history. Giving the Governor what amounts to a blank check to contract for a billion-dollar public works project, and outsource the design and ownership of our largest jail to a private corporation with no oversight by the Legislature or anyone else, is reckless and irresponsible.

The concept of allowing the Governor to contract with the private sector to design, finance, build, own and maintain a new jail to replace OCCC (P3) was strongly opposed by the HCR 85 Task Force on Prison Reform, and has been strong criticized by the Hawaii Correctional System Oversight Commission, Hawaii Health and Harm Reduction Center, OHA, the Native Hawaiian Legal Corp, ACLU-Hawaii, Common Cause Hawaii, the Office of the Public Defender, Community Alliance on Prisons, Ohana Ho'opakele, Pono Hawaii Initiative, Faith Action, Hawaii Alliance for Progressive Action, Malu 'Aina, Pearl City Neighborhood Board #2, and KULANUI.ORG, as well as about 44 individuals. (See Testimony to HB 2516).

Please **defer SB 2269**.

Thank you for allowing me to testify on this very important matter.



## **SB 2269, RELATING TO CORRECTIONAL FACILITIES**

MARCH 1, 2022 · SENATE JUDICIARY AND  
COMMERCE AND CONSUMER PROTECTION  
COMMITTEES · CHAIRS SEN. KARL RHOADS AND  
SEN. ROSALYN BAKER

**POSITION:** Support.

**RATIONALE:** Imua Alliance supports SB 2269, relating to correctional facilities, which repeals the authorization for the Governor to negotiate with any person for the development or expansion of private in-state correctional facilities; prohibits the establishment of private correctional facilities within the State; allows the governor to enter into a contract with a private entity to construct correctional facilities on public or private lands for the benefit of the State if the facilities are operated by the Department of Public Safety; and repeals the authorization of the Governor to enter into a contract with a private entity for the lease or purchase of correctional facilities the entity constructs.

Private prisons have no place in Hawai'i. Already, our state undermines its commitment to restorative justice, each day, by criminalizing low-level offenses, like possession of small amounts of marijuana or, under Honolulu's sit-lie bans, the act of being homeless and tired. As the visitor industry reaps record profits, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of

the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and harsher drug-related punishments than other ethnic groups.

Private prisons only incentivize the cycle of crime by providing a financial motivation for the further criminalization of nonviolent offenses and imposition of longer sentences. Private prisons are run as businesses, after all. Without inmates, they cannot turn a profit. America's for-profit prison industry currently controls 126,000 Americans' lives. As Lauren Brooke-Eisen, Senior Counsel in the Brennan Center's Justice Program at the Brennan Center for Justice at NYU School of Law, has argued, "It's a \$5 billion sector—one that encompasses the operation of 65 percent of the nation's immigration detention beds. And at the same time, it is largely opaque, often unaccountable to the public or the government."

When Hawai'i began sending prisoners to the private detention centers on the mainland in 1995, the policy was proposed as a temporary measure to relieve overcrowding of local prisons. More than 20 years later though, 1,459 inmates—35 percent of Hawai'i's prison population—remain on the continental United States, locked inside a notorious private facility in the Arizona desert, midway between Tucson and Phoenix, nearly 3,000 miles from home. That prison, the Saguaro Correctional Center—named after a cactus native to the Sonoran Desert and based in the small town of Eloy—is run by the Corrections Corporation of America (CCA), recently renamed CoreCivic, the country's largest private-prison firm.

The company isn't legally obligated to respond to public information requests and regularly refuses to answer even the most basic questions about its practices. Private prisons are not subject to the same freedom of information and open records laws as other government agencies. Without access to information, of course, it is impossible to know what injuries are being suffered by detainees. Former security guards who have worked at private prisons say that prisoner abuse is rampant, since disclosure of allegations is extremely rare. In the case of at least some Hawai'i prisoners sent to the mainland—like Johnathan Namauleg, Clifford Medina, and Bronson Nunuha—private prisons have proven to be a death sentence.

In 2010, staff from the Office of the State Auditor accompanied state contract monitors conducting a quarterly inspection of Saguaro. They watched as monitors accepted the testimony of CCA staff "without verifying their statements against documentary evidence" and concluded, in a lengthy report, that Hawai'i "lacked objectivity" when monitoring CCA. This should come as little surprise, since, over the past five years, CCA has spent more than \$500,000 to lobby local politicians. Here, we'd be remiss not to note that one of the firm's highest-paid lobbyists was Douglas Chin, Hawai'i's Attorney General, who earned more than \$100,000 for his services.

If private prisons are introduced on our shores, the Saguaro nightmare will unfold in our own backyard. Incarceration should not be a goal of our state's criminal justice system. Expansion of the prison-industrial complex through for-profit detention centers only casts a pall over the treatment of offenders, who should be afforded every opportunity to become productive members of society. At the same time, if our state is committed to constructing a new billion-dollar jail capable of housing 1,300 inmates—something Imua Alliance firmly opposes—then the introduction of private prisons is not needed.

We must build people, not prisons. We must strive to increase people's access to justice, not time spent in jail cells.

**Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · [kris@imuaalliance.org](mailto:kris@imuaalliance.org)**

**LATE**

**SB-2269**

Submitted on: 2/28/2022 10:25:09 AM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kathy McDuff	Individual	Oppose	No

**Comments:**

Aloha Senators. This is not a good decision for Hawaii. This bill is an acknowledgment by Hawaii that their criminal justice system is a total failure. After years of complaining of increasing prison populations, setting up a private prison system here only insures increasing levels of incarcerations because the State will be required to enter into a contract to provide taxpayer dollars to pay for prison beds whether used or not. This will provide a disincentive for the legislature and courts to reduce the population. In addition this company has already shown their inability to properly provide for inmates or to rehabilitate inmates. Threats and withholding basic needs are common tools they use. They do not provide programs for inmates. They sometimes allow other inmates to do small workshops. But no in-depth programs or rehabilitation. The nutrition provided to inmates is based on profit. At a current facility the person who heads up the kitchen is monetarily rewarded if they can reduce the amount spent on food for inmates to the point that the inmates only get high carb meals (mainly rice with hardly any meat). Hawaiians are prone to diabetes already and this kind of diet can be deadly. The administration and guards during the several Covid attacks told the inmates that if they complained about symptoms they were wussies. Anyone who asked to be tested was punished by being put in isolation. Private prisons are abysmally bad for both the inmate and the state. The inmate suffers because of inadequate nutrition, programs, medical care, and incentives to rehabilitate. The State suffers because they have to basically pay for the for profit private prison system. The citizens of the State suffer because the for profit system must be fed money and inmates to make it run. This company is corrupt and getting rich on states who don't care enough about the inmates in them. If all you want to do is punish and increase recidivism then this is the company for you. Instead of investing in a system that has been shown to fail at every turn, the legislature should seek to model its "new prison" after systems that have proven that humane care of inmates and robust rehabilitation programs have reduced recidivism and led former offenders to a productive life in their community. These systems work. These systems exist. You have a chance to choose wisely for your citizens. Please do.

**LATE**

**SB-2269**

Submitted on: 2/28/2022 12:08:38 PM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Hannah Tavares	Individual	Oppose	No

Comments:

I OPPOSE for SB 2269

**LATE**

**SB-2269**

Submitted on: 2/28/2022 8:01:13 PM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carolyn Eaton	Individual	Oppose	No

Comments:

Aloha, Chairs Rhoads and Baker, Vice Chairs Keohokalole and Chang,. and members of the Committees.

My name is Carolyn Eaton and I oppose this bill with every fiber of my being. Our current Governor does not have the best interests of Hawaii and all its people at heart in his pursuit of a new correctional facility in Halawa. He has never properly invited engagement with the experts in criminal justice reform or the local community. His administration has never conducted a credible needs analysis for the structure he pursues.

This Governor has stood in the way of staffing for the Hawaii Correctional Oversight Commission, the Commission you in the legislature wisely brought into being. The Commission initiated submission of a bill, HB 2516, to pause the planning of the billion dollar facility. HB 2516 has died, but the Commission has years of wisdom about corrections in Hawaii among its Commissioners. Why has not their wisdom been appreciated? The Governor's wrong-headed desire to saddle the State with a building far larger than needed, and costing a billion dollars just to build, is not an impulse you should facilitate. The State needs to begin again, with authentic community input and the wisdom of correctional reform scholars like Dr. Michele Deitch, director of the Prison and Jail Innovation Lab at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. No one except those who look to gain by the construction of the facility the Governor contemplates, no one who has watched this strong-arming, undemocratic process should hope to see it built. Mahalo for the opportunity to place my views before you.

**LATE**

**SB-2269**

Submitted on: 2/28/2022 10:09:12 PM

Testimony for JDC on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Diana Bethel	Individual	Oppose	No

Comments:

I am writing in strong opposition to authorizing the Governor to enter into a contract with a private entity to construct a correctional facility.

There are so many problems with partnering with a private, for-profit prison company! Other state governments, major banks, and even the federal government are now withdrawing from and refusing to do business with private prisons because private prisons have such a dismal track record. Private prisons always work to increase their bottom line, so staff are poorly trained and compensated, leading to prisoner abuse, medical neglect, and many other problems. Also, there is no accountability and transparency in private prisons and this is dangerous for inmates as well as a financial liability for Hawaii.

According to experiences of some states, the structures built by private prisons are shoddy construction and not maintained well. So at the very end of the contract, when the facility is turned over to the State, it is rundown and costly to repair. Also, now that private prisons are shunned by investors, state and federal governments, and the major banks, etc., they may have a tougher time getting loans, and that could mean more financial problems for Hawaii.

Please oppose SB 2269.



**LATE**

Committees: Senate Committees on Judiciary and Commerce  
and Consumer Affairs  
Hearing Date/Time: Tuesday, March 1, 2022 at 10:00 A.M.  
Place: Via videoconference  
Re: **Testimony of the ACLU of Hawai'i with comments on SB 2269  
Relating to Correctional Facilities and a proposed amendment**

Dear Chairs Baker and Rhoads, Vice Chairs and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") **offers comments relating to SB2269** which prohibits the establishment of private in-state correctional facilities, and permits the Governor into a contract with a private entity to construct correctional facilities on public or private lands for the State if the facilities are operated by the Department of the Public Safety. The proposed measure also repeals the authorization of the Governor to enter into a contract with a private entity for the lease or purchase of correctional facilities the entity constructs.

The ACLU of Hawai'i is committed to transforming Hawaii's criminal legal system and building a new vision of safety and justice. First and foremost, **we advocate for decarceration strategies to reduce the number of people in our jails and prisons**, the majority of whom are Native Hawaiians, Pacific Islanders and people of color. Simultaneously, we advocate for tailored conditions of community supervision, humane conditions of confinement, meaningful rehabilitation opportunities, and comprehensive re-entry support services that starts from the first day of incarceration.

**Prohibiting Private Jails and Prisons From Setting Foot in Hawai'i**

The ACLU supports the prohibition of establishing private in-state correctional facilities for the following reasons:

- For-profit prisons are a multibillion-dollar industry. By definition, a for-profit prison will be driven by maximizing profit, not by what is best for rehabilitation and public safety.
- In a 2016 review of for-profit prisons, the U.S. Office of the Inspector General found that overall, for-profit prisons are less safe and less secure than government-run prisons.<sup>1</sup> For-profit prisons are typically paid per person housed there. As a result, they benefit from harsher sentencing and the curtailment of probation and parole. While the State has a joint duty to protect public safety and the civil rights of those in its custody, private prison executives have fiduciary duties to shareholders and incentives to maximize profits — incentives that often conflict with public safety and ensuring civil rights of those in custody.

- For-profit prisons do not necessarily save Hawai'i money. On the contrary, it may cost the State more to incarcerate inmates in private prisons than in state-run facilities. This is despite private prisons' tendency to cherry pick incarcerated persons based on their own selection criteria and other costs not included in the contracts (i.e. transportation, medical care, lawsuit settlements, etc.)
- Incarcerated people from Hawai'i have been assaulted, sexually assaulted and murdered in prisons operated by Corrections Corporation of America, now rebranded Core Civic.
- Bona fide prison security threat groups (aka gangs) arose in Hawai'i in response to exporting Hawaii's incarcerated population to private for profit prisons on the American continent.

**Prohibiting The Lease or Purchase Option with a Private Developer After Constructing a Jail or Prison on Public or Private Land Would Promote Transparency**

The ACLU supports the provision repealing the Governor's authority to enter into and execute contracts on behalf of the State with any private entity to construct correctional facilities and **then leasing or purchasing** the correctional facility on public or private lands for the benefit of the state. Other State Governors who have executed these lease-buy-back contracts with private prison developers have been heavily criticized for negotiating in secrecy while excluding lawmakers out of the process. As a result, lawmakers were unable to carry out their fiduciary responsibilities to protect taxpayers without knowing anything about the P3 contracts or the costs of the prisons.

**ACLU's Proposed Amendment**

Mass incarceration stems from many policies, including the incentive to incarcerate through the use of private prisons.<sup>1</sup> The private prison business model depends on a simple formula: build prisons and then secure government contracts to fill them with people.

Under the proposed measure, the Governor would retain the authority to negotiate and contract with a private prison corporation to solely construct correctional facilities as long as there is no leasing or purchasing option in the contract, and the state operates the correctional facility.

Given the documented civil and human rights violations by private corporations operating prisons and immigration detention centers such as Core Civic (formerly known as Corrections Corporation of America and the GEO Group), **the ACLU proposes an amendment that would explicitly prohibit the Governor from contracting with any private for-profit prison corporations to construct any correctional facility.**

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<sup>1</sup> <https://www.aclu.org/blog/smart-justice/mass-incarceration/aclu-un-tomorrow-testify-horrific-human-rights-record-us>. See also <https://www.un.org/en/chronicle/article/until-we-resolve-our-racially-unjust-incarceration-system-we-cannot-be-peace>

**Decarceration is the Path Forward to Eliminating Jail and Prison Overcrowding and Transforming our Corrections System Towards a System of Rehabilitation**

The ACLU is concerned that some Hawai'i lawmakers continue to believe that building new or expanding jails and prisons is the solution to overcrowding. Rather than building a new jail to replace O'ahu Community Correctional Center estimated to cost taxpayer nearly \$1 billion for construction alone, Hawai'i must dramatically change its approach to corrections and invest in proven strategies to reduce the incarcerated population and decrease recidivism rates.

This starts with reforming our pretrial system. **Pretrial incarceration is one of the major drivers of overcrowding in Hawai'i's jails. Currently, roughly 56% of the individuals housed in Hawai'i's correctional facilities and more than half of those jailed at OCCC have not been convicted of any crime and are merely awaiting trial,<sup>2</sup> most often because they cannot afford the amount of bail set in their case.** While recent changes to pretrial practices are steps in the right direction,<sup>3</sup> there is a long way to go before Hawai'i can claim to have substantially ended its reliance on cash bail and reformed its pretrial system.

The ACLU of Hawai'i believes that Hawai'i's families will continue to bear the human and financial cost of incarceration until we implement meaningful, community-based solutions and alternatives to incarceration. Many groups, including the ACLU of Hawai'i,<sup>4</sup> have proposed pathways for divestment from incarceration and reinvestment in our communities.

Prior to authorizing any new correctional facility, the Legislature should fully implement the recommendations presented by community members, civil rights and criminal legal reform experts, and the task forces and commissions that it created for the purpose of transforming our corrections system from one based on punishment to a system of rehabilitation. Thank you for the opportunity to submit comments relating to **SB2269**.

Sincerely,

**Carrie Ann Shiota**

Carrie Ann Shiota

Policy Director

ACLU of Hawai'i

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*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for over 50 years.*

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<sup>2</sup> State of Hawai'i Dep't of Pub. Safety, Weekly Population Report (February 1, 2021).

<sup>3</sup> See, e.g., Act 277 (2019).

<sup>4</sup> In 2019, the American Civil Liberties Union, in partnership with the ACLU of Hawai'i and Urban Institute, released the Blueprint for Smart Justice Hawai'i. This report resulted from a two-year research project dedicated to identifying key reforms in Hawai'i that would cut the state's incarcerated population in half and reduce racial disparities in Hawai'i's corrections system. The report is available at <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-HI.pdf> and may serve as a resource as the Legislature considers further reforms.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

**LATE**

The Thirty-First Legislature, State of Hawaii  
The Senate  
Committee on Commerce and Consumer Protection  
Committee on Judiciary

Testimony by  
Hawaii Government Employees Association

March 1, 2022

**S.B. 2269 –RELATING TO CORRECTIONAL FACILITIES**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2269, which prohibits private correctional institutions within the State.

We find that S.B. 2269 is in direct alignment with President Joseph Biden's recent order to curb the use of private prisons by directing the U.S. Attorney General not to renew contracts with privately operated criminal detention facilities. While it may be necessary for our state to enter into a partnership to facilitate the design or finance the construction of a new facility, we strongly oppose private operation or ownership.

Thank you for the opportunity to testify in support of S.B. 2269.

Respectfully submitted,

Randy Perreira  
Executive Director