



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:
H.B. NO. 861, CORRECTIONS.

BEFORE THE:
HOUSE COMMITTEE ON CORRECTIONS, MILITARY AND VETERANS

DATE: Friday, February 3, 2023 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Hashem and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

This bill amends chapters 353 and 353L, Hawaii Revised Statutes (HRS), to require the Department of Public Safety (PSD) to obtain the approval of the Hawai'i Correctional System Oversight Commission before developing or expanding any new or existing correctional facility in Hawai'i. The bill also empowers the Commission to oversee proposed purchase, construction, reconstruction, improvement, expansion, extension, or enlargement of any new or existing correctional facilities. The bill further prohibits money for construction or other capital expenditures from being requested through the executive budget process or expended unless the Commission has approved the project. The bill appropriates funds to the Commission for staff positions. The bill further appropriates funds to PSD to plan for new or redeveloped correctional facilities, provided that the Commission shall provide oversight over planning and design.

The Department is concerned that the bill appears to violate separation of powers by giving the Commission command authority over PSD, which is a principal department within the Executive Branch, as well as by restricting the Governor's authority to submit an executive budget under Article VII, section 8, of the Hawai'i State Constitution. The Hawai'i Supreme Court has ruled that

“[T]he separation of powers doctrine is not expressly set forth in any single constitutional provision, but like the federal government, Hawaii’s government is one in which the sovereign power is divided and allocated among three co-equal branches.” *Hawaii Insurers Council v. Lingle*, 120 Hawai’i 51, 69, 201 P.3d 564, 582 (2008) (internal quotation marks and citation omitted). The separation of powers doctrine is intended “to preclude a commingling of essentially different powers of government in the same hands and thereby prevent a situation where one department would be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments.” *Pray v. Judicial Selection Comm’n of State*, 75 Haw. 333, 353, 861 P.2d 723, 732 (1993) (internal quotation marks and citation omitted).

Alakai Na Keiki, Inc. v. Matayoshi, 127 Hawai’i 263, 275, 277 P.3d 988, 1000 (2012).

PSD is one of the principal departments of the Executive Branch. It is headed by the Director of Public Safety under section 26-14.6(b), HRS. The Director is nominated by the Governor and confirmed by the Senate, and then serves at the pleasure of the Governor. The Commission, which is placed within the Department of the Attorney General for administrative purposes pursuant to section 353L-1, HRS, however, is comprised of five members appointed by various branches of government – the Office of Hawaiian Affairs, the House of Representatives, the Senate, the Judiciary, and the Governor. By granting the Commission approval and oversight authority over new or redeveloped correctional facilities, this bill subjects the operations of a principal executive department to the command authority of a body of which the majority of members is appointed by non-Executive Branches. See State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982) (appointment of legislators to environmental commission was a violation of separation of powers clause in state constitution); State ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Comm., 213 W.Va 255, 580 S.E.2d 869 (2003) (laws requiring governor to appoint members of grant committee from lists provided by legislature violated separation of powers).

The bill similarly violates separation of powers by prohibiting the Governor from requesting funds for construction or capital expenditures for correctional facilities without Commission's approval. Article VII, section 8, of the Hawai’i State Constitution specifies that the Governor shall submit to the Legislature, "a budget in a form provided

by law setting forth a complete plan of proposed expenditures of the executive branch." Although the Legislature may specify the "form" of the budget, this bill dictates the substance of the Governor's budget by prohibiting any requests for construction or capital expenditures for correctional facilities that have not been approved by the Commission.

To address these constitutional concerns, we recommend amending the bill to make Commission approvals advisory, rather than mandatory requirements.

Thank you for the opportunity to provide comments on this bill.

JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
HAWAII PAROLING AUTHORITY
Ka 'Ākena Palola o Hawai'i
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN
CHAIR

GENE DEMELLO, JR.
CLAYTON H.W. HEE
MILTON H. KOTSUBO
CAROL K. MATAYOSHI
MEMBERS

COREY J. REINCKE
ACTING ADMINISTRATOR

No. _____

TESTIMONY ON HOUSE BILL 861
RELATING TO CORRECTIONS

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

House Committee on Corrections, Military & Veterans
Representative Mark J. Hashem, Chair
Representative Cory Chun, Vice Chair

Friday, February 3, 2023 – 9:00 a.m.
Conference Room 430

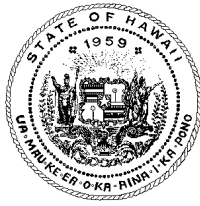
Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Hawaii Paroling Authority (HPA) strongly supports HB 861, which seeks to extend the term of the Oversight Coordinator for the Correctional System Oversight Commission and to also broaden the Coordinator's authority with the following recommendations.

The HPA recommends the legislature consider amending Section 1 to a four-year term, which is more in line with other boards and commissions such as the Chairman of the Hawaii Paroling Authority (HRS 353-63). It is also recommended that the legislature consider requiring the Coordinator to be confirmed by the Senate.

Thank you for the opportunity to provide comments supporting HB 861.

JOSH GREEN, M.D.
GOVERNOR



TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William F. Oku
Deputy Director
Law Enforcement

LATE

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF PUBLIC SAFETY
Ka 'Oihana Ho'opalekana Lehulehu
1177 Alakea Street
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON HOUSE BILL 861
RELATING TO CORRECTIONS
by
Tommy Johnson, Director

House Committee on Corrections, Military and Veterans
Representative Mark J. Hashem, Chair
Representative Cory M. Chun, Vice Chair

Friday, February 3, 2023; 9:00 a.m.
Conference Room 430 Via Video Conference

Chair Hashem, Vice Chair Chun, and members of the committee:

The Department of Public Safety (PSD) **opposes** House Bill (HB) 861 and respectfully provides clarifying comments on several points raised in the measure.

HB861 seeks to provide the Hawaii Correctional System Oversight Commission (HCSOC) with the authority to approve or disapprove development or expansion of any new or existing correctional facility. It also prohibits funds for construction or capital improvements from being requested or expended by the department unless it has been first approved by HCSOC. HB861 also would appropriate an unspecified amount of funds for the HCSOC to hire an unspecified number of new staff to perform these oversight duties, including evaluating all construction and capital improvement plans and expenditures for correctional facilities statewide, while appropriating an unspecified amount of funds to PSD to “begin planning new or redeveloped correctional facilities in each county.”

While we respect the role of the HCSOC, it is not feasible nor practical to require PSD to obtain the approval of the HCSOC on new construction or capital improvements or funding before moving forward on any project. The HCSOC was created in part to be in an advisory role and make recommendations to PSD, not to be in a position to approve or deny any facet of PSD's operations, including decisions regarding correctional facilities or budgetary needs. Doing so would increase costs and jeopardize implementation by adding another entity to the already cumbersome and time-consuming review and approval process. In addition, PSD has qualified staff with a thorough understanding of the department's capital improvement program needs and priorities and for the HCSOC to hire its own staff would duplicate this function.

PSD has worked closely with the HCSOC since its formation in 2019, including more recently with its new coordinator, Christin Johnson, who was appointed last year. We regularly participate in HCSOC public meetings to provide updates, present reports and data, answer questions and engage in meaningful discussions to address critical issues to improve Hawaii's correctional system including modernizing our overcrowded and dilapidated correctional facilities and improving offender reentry and rehabilitation programs. As it relates to OCCC planning, Commission members were invited to participate during critical workshop sessions with PSD to assess the nature, scale and scope of this much-needed project but they declined the invitation. PSD and our team of national experts and advisors will continue to make ourselves available to the HCSOC.

In addition to opposing the purpose of HB 861, the department respectfully disagrees with several statements in this bill, including "plans [for the new OCCC] had been developed without meaningful input or guidance from the community and the facility planners had failed to identify factors driving the State's correctional facility population."

The fact is, PSD and its team of experts and advisors has been conducting public outreach and community engagement throughout the planning process via numerous communication channels, including attending more than 55 neighborhood board meetings and 25 community associations meetings to provide updates and solicit input from the public in addition to several island-wide public meetings, distributing more than 45 monthly newsletters to key stakeholders including government officials, community and business leaders, Native Hawaiian groups, members of the judiciary, the media and the general public; participating in HCSOC public meetings; posting regular updates, information and reports on the OCCC Future Plans website (dps.hawaii.gov/occc-future-plans); and conducting informational workshops.

As for the incorrect statement that “facility planners have failed to identify factors driving the State’s correctional facility population,” it is important to remember that PSD is constitutionally required to house and care for offenders by order of the Courts and based on Hawaii laws. That said, Pulitzer/Bogard & Associates, a leading national criminal justice consulting firm, prepared a population forecast report for the state that indicated that there are opportunities to reduce the OCCC average daily population through policy changes and legal reforms that would divert defendants from detention in OCCC. The report, which was shared with the HCSOC and the legislature in 2021 and is available on the OCCC Future Plans website, took into account factors such as legislative efforts to reduce or eliminate monetary bail for minor offences. The report also addressed other public policy changes that could divert individuals who commit certain low-level, non-violent felonies as well as technical probation violations from detention in OCCC, as intended by existing programs such as Hawaii’s Opportunity Probation with Enforcement (HOPE) and Substance Use Disorder Assessment-Fast (SUDA-Fast).

We also are perplexed by the statement in this bill that “the legislature believes that planning for new or renovated correctional facilities in every county must begin now,”

when in fact PSD has been working for years with the legislature, HCSOC, Judiciary, county prosecutors and other key stakeholders throughout the state to address the outdated and dilapidated conditions of our correctional facilities.

In addition to continued planning for the replacement and relocation of the current OCCC, which remains a top priority for PSD, the department is moving forward with CIP projects, approved by the legislature, that will add beds to the jails on Maui, Hawaii Island, and Oahu to provide desperately needed significant relief to existing conditions. PSD has kept the legislature, HCSOC and the community updated on the need for these and other correctional facilities projects, including:

- The Maui Community Correctional Center (MCCC) New Housing project broke ground in November 2022 with an estimated 16-month construction schedule.
- The Hawaii Community Correctional Center (HCCC) New Housing project's target completion date is March 2023.
- Women's Community Correctional Center (WCCC) has two projects presently under construction. The new housing will add up to 172 beds and the renovation to the Ho'okipa Cottage will add up to 65 beds. The new housing's target completion date is October 2023 while the Ho'okipa Cottage is in its last phase of construction.

A plan to add new housing at the Kauai Community Correctional Center (KCCC) was placed on indefinite hold due to a lack of funds for construction.

Prohibiting PSD from proceeding with new construction and capital improvements to existing facilities like these and prohibiting the department from requesting funding for

improvement projects without HCSOC approval will only further delay the urgent need to modernize our overcrowded, outdated and dilapidated facilities and will further increase costs.

We will continue to collaborate with HCSOC and all stakeholders in these efforts as we work toward our common goal of modernizing our correctional facilities to ensure the health and safety of inmates, corrections staff and the public, while providing the inmate population with a physical environment and the tools to improve their lives.

Thank you for this opportunity to present this testimony.

LATE Testimony submitted late may not be considered by the Committee for decision making purposes.



LATE

STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
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CHRISTIN M. JOHNSON
OVERSIGHT COORDINATOR

COMMISSIONERS
HON. MICHAEL A. TOWN
(ret.)
HON. RONALD IBARRA
(ret.)
TED SAKAI
MARTHA TORNEY

TO: The Honorable Rep. Mark J. Hashem, Chair
The Honorable Cory M. Chun, Vice Chair
House Committee on Corrections, Military and Veterans

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 861, Relating to Corrections
Hearing: Friday, February 3, 2023; 9:00 a.m.
State Capitol, Conference Room 430

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC) **supports the intent** of House Bill 861, Relating to Corrections. This bill would require the HCSOC to oversee the development of new and existing correctional facilities, in effect giving us veto power over capital improvement projects involving correctional facilities. Also, this bill proposes that funds be appropriated to, and staff be authorized for the HCSOC to perform its expanded duties, and that moneys be appropriated to begin the planning and for facilities in each county.

The HCSOC appreciates the confidence in our work that is expressed in this bill. However, we believe that the planning and construction or redevelopment of correctional facilities must clearly be an operational responsibility of the Department of Public Safety and its successor departments. Nevertheless, we believe that we provide a focused review of plans that can ensure that correctional facilities in Hawaii are consistent with the rehabilitative and therapeutic model. While we do not believe veto power is appropriate, our role can be strengthened if we clarify our responsibility regarding the Department’s capital improvements and operating budgets. We therefore recommend:

1. Section 2 of HB 861 should be deleted.
2. Section 3 of HB 861 should be amended by deleting the proposed amendment and adding in its place,

“Review and recommend amendments to the department of public safety’s operation budget request and any capital improvement project appropriation requests prior to each legislative session to ensure that funding and budget allocations align with the State’s firm commitment to the correctional system’s transition to a rehabilitative and therapeutic model. The commission shall inform the legislature if its recommendations were not accepted;”

With these amendments, responsibility for planning, development, and construction of new or redeveloped facilities remains the responsibility of the Department, but the Governor and the Legislature will have the perspective of the HCSOC before approving the Department's proposals.

The HCSOC strongly supports Section 5 of HB 861, which would appropriate funds for planning of new or redeveloped correctional facilities in each county. This section requires that the HCSOC be consulted and provide oversight in the planning and design process. In the past three years, the HCSOC has necessarily focused on the plans for the new OCCC. However, we have found that the Hawaii Community Correctional Center, the Maui Community Correctional Center, and the Kauai Community Correctional Center are equally in need for replacement or redevelopment. The planning for replacement or redevelopment of these facilities needs to commence forthwith. The HCSOC will certainly do its best to assure that this planning is in keeping with the rehabilitative and therapeutic model.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

TESTIMONY IN OPPOSITION TO HB 861

LATE

TO: Chair Hashem, Vice-Chair Chun, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 23, 2023 (9:00 AM)

Hawaii Health & Harm Reduction Center (HHRC) **opposes** HB 861, which would require the Hawaii Correctional System Oversight Commission to oversee the development or expansion of new or existing correctional facilities. This task falls outside of the scope of its current important functions and role.

We support efforts to renovate existing facilities to improve dismal conditions, there are a range of policy options to reduce the number of persons in jail before new facilities are constructed. Prevailing prosecutorial practices, along with the continued absence of substantive bail reform, sentencing reform, and probation reform, set the stage for perennially overcrowded carceral facilities. [Notably, former Department of Public Safety Director Max Otani told Honolulu Civil Beat last year that measures to reduce the number of people entering Hawaii's carceral facilities would be "good for the department."](#)

Incarceration, even for short periods, is latently injurious to a person's health. The Robert Wood Johnson Foundation [issued a report in 2018 that surveyed the deleterious long-term effects of incarceration on a person's health](#):

People who are incarcerated face greater chances for chronic health conditions, both while confined and long after their release. Incarceration exposes people to a wide range of conditions, such as poor sanitation and ventilation and solitary confinement, that are detrimental to long-term physical and mental health.

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawaii and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions. Many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.

HB-861

Submitted on: 2/2/2023 12:44:46 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

The Department of Public Safety has repeatedly failed in its duties to keep committed individuals safe. It has failed to properly manage its facilities and it is failed to properly administer the state's commitment to transition to the more effective rehabilitative and therapeutic model of criminal justice called restorative justice. In particular, the department's previous insistence on the development of a massive, new incarceration facility, against the recommendations of criminal justice experts tasked with guiding that transition, demonstrate the need for increased oversight, and particularly when it comes to budgets and capital improvements. Please pass HB861.

LATE

HB-861

Submitted on: 2/2/2023 2:41:20 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Marilyn Mick	Individual	Support	Written Testimony Only

Comments:

The Department of Public Safety has repeatedly failed in its duties to keep committed individuals safe. It has failed to properly manage its facilities and it is failed to properly administer the state's commitment to transition to the more effective rehabilitative and therapeutic model of criminal justice called restorative justice.

In particular, the department's previous insistence on the development of a massive, new incarceration facility, against the recommendations of criminal justice experts tasked with guiding that transition, demonstrate the need for increased oversight, and particularly when it comes to budgets and capital improvements. Please pass HB861.