

STAND. COM. REP. NO.

280

Honolulu, Hawaii

Feb 9, 2007

RE: H.B. No. 1440
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Public Safety & Military Affairs, to which was referred H.B. No. 1440 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC SAFETY,"

begs leave to report as follows:

The purpose of this bill is to clarify that the Office of the Ombudsman has the authority to investigate the contractual acts of any correctional facility with which the Department of Public Safety has contracted to hold persons committed to the Director of Public Safety.

More specifically, the measure requires the Ombudsman to investigate any complaint submitted by a family member of a Hawaii inmate, including one held at a contracted correctional facility. In addition, the Ombudsman would be required to investigate any incident where a death or riot has occurred at a correctional facility, or where a Hawaii inmate, including one held at a contracted facility, has sustained serious bodily harm as a result of actions by a correctional officer, employee, or other person held in custody.

The Department of Public Safety submitted testimony in opposition to the measure. The American Civil Liberties Union of Hawaii, Community Alliance on Prisons, and a private citizen submitted testimony in support. The Office of the Ombudsman offered comments.



Your Committee finds that chapter 96, Hawaii Revised Statutes, does not preclude a family member of a Hawaii inmate from filing a complaint with the Ombudsman. The jurisdiction of the Ombudsman is defined against whom the complaint is made, not by whom the complaint is made.

Your Committee also finds that requiring the Ombudsman to investigate every complaint prevents the Ombudsman from exercising discretion to determine whether a complaint is appropriate for investigation. These include complaints that are better resolved with another remedy or through another channel and complaints that are trivial, frivolous, not made in good faith, or too long delayed to justify current investigation.

Your Committee further finds that requiring the Ombudsman to investigate any incident at a correctional facility that results in an inmate's death or serious bodily harm could hinder possible prosecution by alerting potential criminal defendants, particularly since, under section 96-9, Hawaii Revised Statutes, information obtained by the Ombudsman cannot be used in court.

Your Committee amended this measure by:

- (1) Deleting the requirement that the Ombudsman investigate complaints filed by a family member of a Hawaii inmate, as this is already authorized under existing law;
- (2) Deleting provisions that require the Ombudsman to investigate incidents at a correctional facility resulting in death or riot, thus retaining the Ombudsman's authority to decide which complaints against an agency or contracted facility should be investigated;
- (3) Requiring the Department of Public Safety to include in all contracts entered into between the Department and a contracted correctional facility language that clarifies the authority of the Ombudsman to investigate complaints against the contracted facility;
- (4) Adding a definition of "contractual act" and clarifying notification issues; and
- (5) Limiting the unspecified appropriation to fiscal year 2007-2008.



As affirmed by the record of votes of the members of your Committee on Public Safety & Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1440, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1440, H.D. 1, and be referred to the Committee on Legislative Management.

Respectfully submitted on
behalf of the members of the
Committee on Public Safety &
Military Affairs,

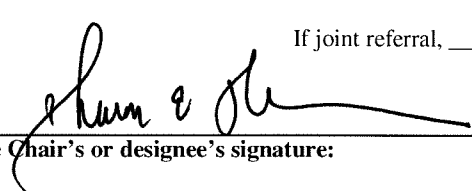
Cindy Evans

CINDY EVANS, Chair



HSLP 280

Record of Votes of the Committee on Public Safety & Military Affairs

Bill/Resolution No.: <p style="text-align: center;">HB 1440</p>	Date: <p style="text-align: center;">Thursday, February 1, 2007 8 8:11</p>			
Committee Referral: <p style="text-align: center;">PSM, IMG, FIN</p>	<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.			
The recommendation is to: <input type="checkbox"/> Pass, unamended <input checked="" type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommitment for further consideration				
PSM Members	Ayes	Ayes (WR)	Nays	Excused
1. EVANS, Cindy (C)	✓			
2. HAR, Sharon E. (VC)	✓			
3. LEE, Marilyn B.	✓			
4. LUKE, Sylvia				✓
5. McKELVEY, Angus L.K.	✓			
6. NAKASONE, Bob	✓			
7. NISHIMOTO, Scott Y.	✓			
8. SONSON, Alex M.	✓			
9. SOUKI, Joseph M.				✓
10. TAKAMINE, Dwight Y.	✓			
11. TAKUMI, Roy M.				✓
12. FINNEGAN, Lynn				✓
13. PINE, Kimberly Marcos	✓			
TOTAL	9	-	-	4
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – Clerk's Office				