



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i

BY EMAIL

November 18, 2020

Hawai'i Correctional Systems Oversight
Commission

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**Re: Recommendations for the Hawai'i Correctional Systems Oversight
Commission's annual report to the 31st Hawai'i State Legislature,
2021**

Dear Chair Patterson and Commission Members:

The ACLU of Hawai'i Foundation ("**ACLU of Hawai'i**") respectfully requests that the Hawai'i Correctional Systems Oversight Commission ("**Commission**") consider the below recommendations for inclusion in the Commission's annual report to the 31st Hawai'i State Legislature. While many of the recommendations are related to the ongoing COVID-19 pandemic, some are not.

Recommendations Related to the COVID-19 Pandemic

The ACLU of Hawai'i continues to believe that the threat posed by the COVID-19 pandemic has not meaningfully subsided for people incarcerated in Hawai'i State Department of Public Safety ("**DPS**") jails and prisons. This reality is borne out by the stress, heartbreak, and hopelessness that so many Hawai'i families are experiencing right now, whose myriad stories we have received in a steady stream over the past half-year. This reality is also borne out by recent events, including the ongoing outbreak among people from Hawai'i incarcerated at

Saguaro Correctional Center¹ and—*just this afternoon*—a new outbreak at Waiawa Correctional Facility.² All of this makes painfully clear that DPS is still utterly failing to meet its obligation to keep people safe. Because DPS has not taken sufficient steps to address this ongoing crisis and to adequately protect people in DPS custody, the ACLU of Hawai‘i requests that the Commission consider making the following recommendations³ related to the COVID-19 pandemic:

- (1) The State should prioritize the release of incarcerated people who are medically vulnerable or have disabilities.
- (2) The State should implement a presumption of release under least-restrictive conditions for pretrial detainees.
- (3) The Commission should *establish* and *enforce* design bed capacity as the mandatory, upper population limit for each DPS facility.⁴
- (4) The State should immediately implement a plan to increase and regularize *proactive* COVID-19 testing in DPS jails and prisons.⁵

¹ See, e.g., Jolanie Martinez, *Over 400 Hawaii inmates infected with COVID-19 at private Arizona prison*, Hawaii News Now (Nov. 9, 2020), <https://www.hawaiinewsnow.com/2020/11/09/over-hawaii-inmates-infected-with-covid-private-arizona-prison>.

² See, e.g., KHON2, *8 inmates test positive for COVID-19 at Waiawa Correctional Facility*, KHON2 (Nov. 18, 2020), <https://www.khon2.com/coronavirus/8-inmates-test-positive-for-covid-19-at-waiawa-correctional-facility>.

³ The ACLU of Hawai‘i made identical or similar requests to the Commission and/or DPS throughout the pandemic, including through our June 16, 2020 letter to the Commission, and through several *amicus* briefs filed in SCPW-20-0000200, SCPW-20-0000213, and SCPW-20-0000509. For your convenience, we enclose the June 16, 2020 letter and the April 13, 2020 and October 27, 2020 briefs here.

⁴ We understand that the Commission published a report on “Infectious Disease Emergency Capacities” in September 2020. See Oversight Commission, *Hawai‘i Correctional Facilities: Infectious Disease Emergency Capacities* (Sept. 2020), <https://ag.hawaii.gov/wp-content/uploads/2020/09/FINAL-REPORT-091120.pdf>. However, the report appears only to make “recommendations” regarding capacities, rather than “[e]stablish” them, as mandated by Act 179, SLH 2019, § 3(b)(2). Additionally, the report does not specify the procedures by which such capacities, even if established, are to be enforced.

⁵ Currently, DPS conducts COVID-19 testing *reactively*—that is, in response to a detected outbreak within a facility or detectable physical symptoms. But as Dr. Pablo Stewart—a prison conditions expert who is also the attending psychiatrist at OCCC and therefore has intimate and current

- (5) The State should hire an outside public health expert to inspect and establish a permanent, tailored population limit for each DPS facility, and to monitor implementation of the State’s pandemic response and testing plans.

Time is of the essence. The public health concerns presented by COVID-19 in confined spaces creates an urgent need to ensure the health of those incarcerated. And for months, the ACLU of Hawai‘i has advocated for the State to act swiftly and responsibly to ensure that its carceral system, which incarcerates over 3,000 people, is safe, especially for those who are over 60 years old, have chronic health conditions and disabilities, or are otherwise medically vulnerable. We implore DPS and the State to act in conjunction with judges, probation officers, law enforcement, and public health professionals to release those most vulnerable to COVID-19 and to reduce new admissions and intakes to reduce the dangerously unsafe overcrowding.

Ongoing Recommendations (to address issues exacerbated by but independent of the COVID-19 pandemic)

Additionally, the ACLU of Hawai‘i requests that the Commission consider making the following recommendations:

- (6) The State should fund the Commission’s Oversight Coordinator position.
- (7) The Commission should require DPS to take immediate and meaningful steps to come into compliance with its reentry-related statutory mandates, including its responsibility to obtain civil identification documents for people returning to the community.⁶
- (8) The State should divert funds away from the construction of the large new jail and towards community reentry programs, transitional housing, and other rehabilitative services.

knowledge of DPS—testified in support of our October 27, 2020 amicus brief, DPS’s screening process is “inadequate,” its approach to testing is “slow and static” and is characterized by a complete “lack of transparency.” DPS should be required to conduct proactive, regular mass testing.

⁶ The ACLU of Hawai‘i made a similar request in a May 12, 2020 letter to Special Master Judge Foley filed in SCPW-20-0000200 and SCPW-20-000213. This letter describes DPS’s failures to comply with its statutory mandate to assist people returning to the community from Hawai‘i jails and prisons with reentry planning. For your convenience, we enclose the May 12, 2020 letter here.

- (9) The State should require criminal legal system stakeholders to use unsecured bail under HRS § 804-9.5 (as opposed to secured bail).
- (10) The State should eliminate medical co-payments for physician visits, medications, and testing for people incarcerated in DPS jails and prisons.⁷
- (11) The State should expeditiously implement the recommendations of the House Concurrent Resolution 85 Task Force on Prison Reform, as embodied in its final report (“HCR 85 Report”), including that the State should:
- (a) “transition from a punitive to a rehabilitative correctional system.” HCR 85 Report at xiv.
 - (b) “adopt a comprehensive strategy to address the overrepresentation of Native Hawaiian in the correctional system.” HCR 85 Report at xiv.
 - (c) “set numerical goals and a timetable to significantly reduce our prison population.” HCR 85 Report at xiv.
 - (d) “develop a plan to eliminate the use of private prisons and bring Hawai‘i’s prisoners home [within] a reasonable time” that is “developed collaboratively by government and community stakeholders.” HCR 85 Report at xvi-xvii.
 - (e) “immediately stop planning a large new jail to replace OCCC and establish a working group of stakeholders and government officials to rethink the jail issue and create a jail that is smaller, smarter, and less expensive than the one now under consideration.” HCR 85 Report at xvii-xviii.
 - (f) “[p]repar[e] prisoners to reenter the community . . . the day they enter prison” via “an individualized reentry plan” that, among other things, remedies “gaps in education and employment skills.” HCR 85 Report at xv-xvi.

⁷ The ACLU of Hawai‘i made a similar request in our June 16, 2020 letter to the Commission.

- (12) The State should expeditiously implement the recommendations of the House Concurrent Resolution 134 Criminal Pretrial Task Force, as embodied in its final report ("HCR 134 Report"), including that the State should:
- (a) "Reinforce that law enforcement officers have discretion to issue citations, in lieu of arrest." HCR 134 Report at 2.
 - (b) "Expand diversion initiatives to prevent the arrest of low-risk defendants." HCR 134 Report at 2.
 - (c) "Expand attorney access to defendants to protect defendant[s'] right to counsel" by expanding "attorney visiting hours and phone calls from county jails." HCR 134 Report at 3.
 - (d) "Ensure a meaningful opportunity to address bail at the defendant's initial court appearance." HCR 134 Report at 3.
 - (e) "Establish a court hearing reminder system for all pretrial defendants released from custody." HCR 134 Report at 3.
 - (f) "Inquire and report on the defendant's financial circumstances." HCR 134 Report at 4.
 - (g) "Provide consistent and comprehensive judicial education." HCR 134 Report 5.
 - (h) "Eliminate the use of money bail for low level, non-violent misdemeanor offenses." HCR 134 Report at 6.

* * *

No one in DPS's custody was sentenced to endure this life-threatening virus or otherwise face the real possibility of death. Yet that is what so many people incarcerated in Hawai'i jails and prisons are confronting right now. Adopting the above recommendations would meaningfully improve public safety and public health, by protecting both people incarcerated in Hawai'i jails and prisons and the broader community, both during the ongoing COVID-19 pandemic and beyond.

ACLU Letter re: Recommendations for the Hawai‘i Correctional Systems Oversight
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We thank you for the opportunity to submit this written testimony, and for your continued work in overseeing DPS. We look forward to submitting further testimony in the future. If you have questions or comments, please contact Wookie Kim at 808-522-5905 or wkim@acluhawaii.org, or Mateo Caballero at 808-522-5908 or mcaballero@acluhawaii.org.

Sincerely yours,



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