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PRISON PRIVATIZATION IN ARIZONA
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Aloha Honored Elected Officials and Community Leaders:

My name is Carrie Ann Shiota, and I am submitting comments that underscore the problems associated with prison privatization and interstate prisoner transfers. These comments are based upon my experience as an attorney and justice advocate in Hawai`i.¹ Specifically, I would like to share background information about Hawai`i's experiment with prison privatization and address two issues: 1) lack of safety and 2) lack of oversight. Finally, I will end with policy recommendations to increase accountability and transparency within private prisons that house prisoners from other jurisdictions.

Hawai`i's Failed Experiment with Privatization and Banishment

Although Hawai`i's prison population pales in comparison to other U.S. jurisdictions, its criminal justice policies and outcomes pose unique challenges that should be of interest to the rest of the county. Hawai`i has earned the dubious distinction of exporting the largest percentage of its prison population to out-of-state private prisons. In 1995, Hawai`i "temporarily" transferred 300 prisoners to private prisons in Texas, and later banished more inmates to private prisons in Arizona, Colorado, Kentucky, Minnesota, Mississippi, New Mexico and Oklahoma. In 2007, Hawai`i exported 2,009 prisoners to out-of-state facilities. Most recently, the State of Hawai`i joined a handful of states in contracting with Corporations Corporation of America (CCA) to build a prison in another state entirely for the purpose of warehousing Hawai`i prisoners. Currently, Hawai`i has a contract with CCA to house a majority of its adult male prisoner population at CCA's Saguaro and Red Rock facilities in Arizona. However, Hawai`i's relationship with Arizona and prison privatization began in 2000, when prisoners were transferred to Florence Correctional Center and Arizona Detention.

Track Record of Escapes, Riots, Violence, Sex Assaults & The Rise of Prison Gangs

The alleged cost-savings of housing inmates at private prisons has obscured a more fundamental issue – whether private prisons are secure?

¹ In 2009, I was awarded a Soros Justice Advocacy Fellowship by the Open Society Institute. My research project underscores the problems associated with interstate transfers, primarily to private-for-profit prisons. Although I examined this practice within all fifty states, my research focused on Hawai`i's experience. Prior to my fellowship, I worked as an enforcement attorney for the Hawaii Civil Rights Commission, as a public defender, and as the director of Maui Economic Opportunity's Being Empowered and Safe Reintegration (BEST) Program.

Since 1995, Hawai'i's experience with prison privatization has illustrated a dismal track record of insecure facilities and unsafe conditions. Here are the facts:

- Dec. 1995 - Citing cost savings, Hawai'i sends 300 prisoners to the Dickens and Newton county correctional centers in Texas, both operated by the Bobby Ross Group.
- Feb. 1996 - Hawai'i prisoner Larry Pagan escapes from Newton Correctional Center in Texas, kidnaps and sexually assaults a woman two miles from jail, forcing her to drive him to Mexico. Pagan is recaptured and sentenced to life without parole.
- Aug. 1996 - Hawai'i and Montana inmates protest food portions, low wages and other issues at Dickens; guards fire weapons, injuring a Montana inmate. The Warden is dismissed and a U.S. Department of Justice investigation finds guards were poorly trained.
- May 9, 1997 - A Montana inmate is killed and others injured when 100 prisoners from Montana and Hawai'i brawl at Newton County prison. Nightly protests, fires and property damage follow, with a U.S. Department of Justice report later blaming guards for inadequate response.
- May 27, 1997 - Hawai'i sends another 300 prisoners to Texas, including the first 64 female prisoners to Crystal City Correctional Center.
- Aug. 1997 - Hawai'i inmate Mathew Treu escapes from Newton, but is quickly recaptured.
- Dec. 1997 - Hawai'i prisoners take control of a portion of Newton prison and release 300 prisoners, resulting in a riot that causes \$300,00 in fire damage.
- Jan. 1998 - Newton's warden is fired after a disturbance in which Hawai'i inmates set fire to the prison commissary after being tear gassed.
- Feb. 1998 - Three Hawai'i inmates at Newton kidnap and assault a corrections officer during an escape attempt.
- March 1998 - The Newton facility is cited by the Texas Jail Standards Commission for violating minimum prison standards due to overcrowding.
- July 1998 - A U.S. Department of Justice Investigation finds conditions at the Dickens facility amount to "cruel and unusual punishment."

- Aug. 1998 - Hawai'i transfers female inmates to Central Oklahoma Correctional Facility because of sanitation problems and lack of programs at Crystal City.
- July- Oct. 1998 - Hawai'i sends two groups of 300 inmates each to private prisons in Oklahoma, Tennessee, and Minnesota run by **Corrections Corporation of America (CCA)**. Hawai'i now has 1,2000 inmates on the Mainland at a cost of \$20 million per year.
- June 1999 - Two dozen Hawai'i and Indiana inmates fight at CCA's Diamondback Correctional Facility in Watonga, Oklahoma.
- Aug. 1999 - Fires set during a two hour melee between CCA's Diamondback, OK, guards and 25 Hawai'i prisoners cause \$200,000 in damage. Five guards and four inmates are hurt.
- 2000 – CCA's West Tennessee Detention Facility Staff use tear gas to quell a two-hour disturbance started when 11 Hawai'i inmates refuse to move to another cellblock.
- Sept. 12, 2000 - Three guards are injured when 20 Hawai'i inmates at CCA's Florence Correctional Center smash windows, computers, TVs and food carts in the so called Rice Riot to protest the way rick is cooked.
- Nov. 2000 - Three Hawai'i women inmates file lawsuits alleging sexual assaults by Oklahoma prison staff, the complaints are later settled for an undisclosed sum.
- April 1, 2001 - A riot in the recreational yard by 23 Hawai'i inmates leaves two CCA Florence guards and an inmate injured.
- April 16, 2001 - Iulani Amani, 23 dies of a drug induced heart attack after packets of crystal methamphetamine burst in his stomach, prompting a management review of CCA's Florence prison.
- April 30, 2001 - Hawai'i prison monitors report lax security, widespread drug use, gang activity, and failure to provide required educational and rehabilitation programs at Florence. The warden is replaced and suspected gangs members are sent to other prisons.
- April/June 2001 - Total of 41 inmates suspected of gang involved were shipped from Florence to a CCA prison in New Mexico. Two of those prisoners were later moved to a "supermax" prison in Colorado.

- June 2001 - According to the Hawai'i monitor's report, Florence was failing to conduct random urinalysis of inmates, which would indicate the scopes of drug smuggling into the facility. A testing program was required under the CCA contract with Hawai'i, but was not being conducted. Florence official also admitted that the prison medical unit is "grossly understaffed."
- June 2003 – CCA's Diamondback officials suspect smuggling of crystal methamphetamine by female guards "in love" with Hawai'i inmates. Six are fired for "inappropriate relationships."
- June 2003 - Monitors urge removal of women inmates from the Oklahoma prison because required programs are not being provided.
- June 20, 2003 - A riot by Hawai'i inmates at CCA's Diamondback prompts an investigation and results in a three-week lockdown of 119 inmates.
- 2004 - Male Hawai'i inmates transferred to CCA's Tallahatchie prison in Mississippi. Hawai'i contract monitors described the staff as young and inexperienced. Most had never worked in a prison before. CCA requires five weeks of training, compared with eight weeks for correctional officers in Hawai'i.
- May 14, 2004 - About 500 Arizona inmates riot for several hours at Diamondback; Hawai'i inmates are not involved. An investigation by Arizona officials finds inadequate staffing.
- Aug. 2004 - More than a year after monitors urged transfer, women prisoners in Oklahoma are moved to GRW's Corporation's Brush Correctional Facility in Colorado.
- Nov. 2004 - According to Hawai'i Contract monitor reports, in the first six months after Hawai'i inmates arrived in Mississippi, several employees were fired for smuggling cigarettes and having inappropriate relationships with inmates. Hawai'i prison monitors also warned CCA the prison failed to meet National Commission on Correctional Health Care Standards because a doctor was onsite only eight hours a week to care for almost 1000 prisoners. Monitors also warned dental services were insufficient because a dentist was available only eight hours a week.
- July 17, 2005 - Cell doors in Mississippi's SHIP unit "accidentally" opened around 2:45am, freeing inmates. Ronnie J. Lonaea, 32, of Hawai'i was severely beaten in his cell before guards released tear gas and restored order about 90 minutes later. Scott Lee of Hawai'i also suffered a broken jaw in the incident. A CCA investigation concluded that cell doors probably opened because a corrections sergeant hit the wrong control button.

- Feb. 2005 – GRW's Brush Warden in Colorado resigns in the wake of sexual misconduct allegations involving guards and eight inmates, including two Hawai'i women.
- March 2005 - Colorado investigators discover seven Brush employees had arrest records or felony convictions; GRW admits background checks were not done.
- Sept. 2005 - Hawai'i moves 80 women inmates from Brush to CCA's Otter Creek Correctional Center in Wheelwright, KY.
- Dec. 31, 2005 - Sarah Ah Mau, a 43 year old inmate from Hawai'i dies at CCA's Otter Creek Facility in Kentucky. Her family alleges that Sarah failed to receive adequate medical care. After Ah Mau died, Hawai'i prison officials sent a team to assess the medical treatment being given to inmates at Otter Creek. They never publicly released the results of that inquiry.
- June 2007 - CCA opens 1896 bed Saguaro Prison in Eloy, Arizona, solely to house Hawai'i prisoners.
- Aug. 25, 2009 - *The New York Times* publishes a story about the epidemic of sexual assaults at CCA's Otter Creek Facility in Kentucky. "Hawaii investigators found that at least five corrections officials at the prison, including a chaplain, had been charged with having sex with inmates in the last three years, and four were convicted.
- Nov. 2009 - The Eloy Police Depart. Is investigating allegations that a CCA employee sexually assaulted an inmate at CCA-Saguaro.
- Feb. 18, 2010 - Bronson Nunuha, a 26 year old prisoner from Hawai'i, is fatally stabbed in his cell at CCA's Saguaro Correctional Facility in Arizona. Bronson was scheduled to be released in October 2010.
- June 8, 2010 – Clifford Medina, a 23 year old prisoner from Hawai'i is murdered in his cell at CCA's Saguaro Correctional Facility in Arizona. His roommate strangled him.
- July 30, 2010 - 30 inmates from CCA Saguaro's high security unit are involved scuffle over an Xbox owned by one inmate. When prison staff members intervened to stop 13 inmates beat up the facility's gang intelligence officer. The prison employee suffered a broken nose, broken cheekbones and eye socket damage. Clayton Frank, Director of Public Safety Hawaii, said gang involvement and injury of a staff member have led to fears the violence could bleed into the general prison population.

Proponents of prison privatization argue that bad things occur at both public and private prisons. Indeed, that is true. However, numerous studies confirm that private prisons have higher levels of assaults (on inmates and staff),² escapes, disturbances, and drug use.³ They also have higher levels of operational problems and a comparative lack of inmate programs, such as educational, vocational, and counseling programs, which lead to inmate idleness and a lack of preparation for reentry.⁴ Private prisons have long-term hidden costs estimated to be 20-30% above per diem costs (increased liability, increased worker compensation costs, increased law enforcement costs that are due to escapes).⁵

These statistics are overshadowed by real life stories – such as the recent escape at the for-profit prison in Kingman that resulted in the tragic deaths of an Oklahoma couple, the brutal murders of Bronson Nunuha and Clifford Medina and the severe assault on the gang intelligence officer at CCA’s Saguaro prison. While these incidents captured media attention, there are many untold stories by prisoners from Hawai`i and other jurisdictions confirming that private prisons are unable to ensure the security of its facilities.

Lack of Oversight Fueled by Increasing Dependence on Private Prisons

The United States is one of the ONLY Western nations without a formal independent oversight mechanism for inspecting all places of detention. Although a few states have varied forms of oversight, the vast majority of states do not have any independent oversight mechanism to routinely inspect and report publicly on conditions in correctional facilities. This lack of oversight is exacerbated when private prisons are involved, and even more so, when inmates are transferred out-of-state to for-profit prisons – such is the case of Hawai`i.

Despite a track record of insecure facilities and unsafe conditions of confinement, Hawai`i continues to contract with prison prisons. We are considered one of CCA’s best customers, in part, because we have become “dependent” on them.

As Professor Michele Deitch, Adjunct Professor of Public Policy at the University of Texas, and a nationally recognized expert on prison oversight has pointed out:

The greater the percentage of beds that are privatized, the less leverage the state has to demand improved conditions in facilities, to pull out its prisoners when conditions deteriorate, or to step in and take back a contracted facility. There is simply nowhere to put them and no trained staff to take over. The state

² James Austin and Garry Coventry, *Emerging Issues on Private Prisons*, Monograph: US Department of Justice, Bureau of Justice Assistance, NCJ 181249 (February 2001), p. 57 (Table 20).

³ Scott Camp and Gerald Gaes, Federal Bureau of Prisons, Office of Research and Evaluation, *Growth and Quality of U.S. Private Prisons: Evidence from a National Survey* (2001).

⁴ Judith Greene, “Lack of Correctional Services,” in *Capitalist Punishment: Prison Privatization and Human Rights*, Andrew Coyle, et al., eds. Atlanta: Clarity Press, 2003.

⁵ Austin and Coventry, *Emerging Issues on Private Prisons*, p. 23.

is losing its capacity for providing this service, and the implications are truly troubling for the protection of human rights.⁶

The record shows that Hawai`i officials have continued to house its incarcerated population in private facilities in Arizona and other states where conditions have seriously deteriorated. This occurred as early as 2001 in CCA's Florence Correctional Facility, and more recently, at CCA's Saguaro prison. These conditions continue to deteriorate due to minimal regulations on private prisons in Arizona, and a lack of oversight by Hawai`i and Arizona correctional staff.

Private Prisons Fiercely Block Oversight Regulations

There is a pervasive criminal justice myth that "Receiving states" have oversight over prisoners imported from other jurisdictions. The truth, however, is that most states do not have any oversight over prisoners confined to private prisons within its geographical boundaries. While this may be good news for private prisons that wish to operate without any oversight, this is bad news for the citizenry of Arizona.

In 2002, some Arizona lawmakers and public officials, including the Arizona Corrections Director Terry Stewart, argued for tighter regulations on private prisons.⁷ These proposals included giving the state regulatory authority over private prisons – such as limited the types of inmates imported from other states; requiring all contracts with out-of-state jurisdictions be approved by a state committee and the Department of Corrections; setting construction and operational standards; fining private prisons \$10,000 for every escape, and requiring private prisons to file a \$10 million insurance policy with the Arizona Department of Administration.

Fearing that tighter regulations would cut into their profits, private prisons hired lobbyists to successfully kill most of these legislative proposals. Of the various proposals introduced, only two became law – imposing penalties for escapes and requiring a \$10 million insurance policy, unless a private prison has a net worth of more than \$15 million (which CCA does).

As a result of these limited regulations, Arizona's Department of Corrections has nearly zero oversight over private prisons that house out-of-state inmates. Arizona Attorney General Goddard has emphasized that:

"They don't have to show proof of financial responsibility, they don't have to comply with the Arizona prison construction standards, they don't have to report disruptions ... and both the graining and staff is up the private operator... There were a couple of private prisons that went on lockdown and refused to allow the Department of Corrections to come in."⁸

⁶ Deitch, Michele. "'There are No Bad Prisons in Paradise' and Other Dangerous Criminal Justice Myths," Keynote Presentation, Unlocking Justice Conference, Chaminade University, Hawai`i, October 17, 2009.

⁷ Maass, Dave. "Bar Wars," *Tucson Weekly*, March 7, 2002.

⁸ Levine, D.M. "What's Costlier than a Government Run Prison? A Private One," *Fortune Magazine*, August 18, 2010.

The bottom line is that Arizona's failure to enact regulations over its private prison industry merely benefits private prison shareholders, not the citizenry of Arizona. And when inmates from private prisons escape, cross state lines and commit additional crimes, everyone pays.

Contract Monitors are Ineffective: Out-of-State Means Out of Mind

Over the past fifteen years, Hawai'i has intermittently hired on-site contract monitors or sent contract monitors from its Department of Public Safety "Mainland Branch" to oversee private prison contracts. The list of prison disturbances described previously illustrates that "private facilities that house out-of-state prisoners operate almost entirely without external oversight. They are the MOST closed of all closed institutions, and they defy every effort at increasing transparency and accountability."⁹

The reality is that contract monitors from Hawai'i are physically unable to routinely inspect prisons that are located thousands of miles away from the sending state. And when disturbances or even deaths occur, Hawai'i's contract monitors are unable to respond in an exigent manner that hinders investigative fact-finding.

Furthermore, collusion is a major issue. Hawai'i's Mainland Branch monitors initially failed to pull its female prisoners from CCA's Otter Creek prison in Kentucky despite widespread allegations of sexual abuse by CCA staff. Although the "Mainland Branch" contract monitors made various visits to Otter Creek, Hawai'i only removed its female inmates after the stories of sexual abuse surfaced in *The New York Times*, primarily as a result of an investigation conducted by Kentucky's Department of Corrections.¹⁰

Despite the deaths of Bronson Nunuha and Clifford Medina, and a serious assault against a correctional officer at Saguaro within the past eight months, Hawai'i has failed to publicly disclose its monitor and investigative reports. And they continue to deny requests to review these reports, even though Hawai'i taxpayers are footing the bill for CCA contracts.

To date, Hawai'i have never fined CCA for failing to fulfill the terms of its contract – whether for understaffing, failure to provide programming and treatment services, and failing to ensure secure facilities and safe conditions of confinement. Instead, Hawai'i continues to reward CCA's bad behavior by renewing and expanding its contracts.

Professor Deitch explains why Hawai'i's attempts at contract monitoring has been ineffective: "The lesson here is that independent oversight of all prisons is essential, but there is truly no good solution to creating an effective and meaningful oversight structure for a system that sends so many prisoners out of state. Essentially, out of state is out of mind."

⁹ Deitch, Michele. "'There are No Bad Prisons in Paradise' and Other Dangerous Criminal Justice Myths," Keynote Presentation, Unlocking Justice Conference, Chaminade University, Hawai'i, October 17, 2009.

¹⁰ DePledge, Derrick. 2009, August 19. Hawaii Pulling its Women Inmates out of Troubled Kentucky Prison, *The Honolulu Advertiser*. Urbina, Ian. 2009, August 25. Hawaii to Remove Inmates Over Abuse Charges, *The New York Times*.

In a sense, Arizona is complicit in creating the conditions that allow for Hawai`i's prisoner population to be treated as commodities, not human beings entitled to certain constitutional rights.

Sadly, the majority of prisoners from Hawai`i housed in CCA prisons are Kanaka Maoli or Native Hawaiians, the Indigenous Peoples of Hawai`i.¹¹ The forced exportation of Kanaka Maoli from their ancestral lands, regardless of their conviction record, is an extension of colonial policy that perpetuates cultural genocide.

Policy Recommendations for an Effective Prison Monitoring System

As outlined by Michele Deitch, Adjunct Professor of Public Policy at the University of Texas, and Soros Senior Justice Fellow, the essential elements of an effective prison monitoring system would include the following:

- They must be independent of the correctional agency and able to do their work without interference or pressure from the agency or any other body;
- Monitors must have unfettered and confidential access to facilities, prisoners, staff, documents, and materials, and they should have the ability to visit at any time of the day without prior notice;
- They must be adequately resourced, with sufficient staffing, office space and funding to carry out their monitoring responsibilities, and the budget must be controlled by the monitoring entity;
- They must have the power and the duty to report their findings and recommendations, in order to fulfill the objective of transparency, and they should control the release of their reports and
- They must taken a holistic approach to evaluating the treatment of prisoners, relying on observations, interviews, surveys, and other methods of gathering information from prisoners as well as on statistics and performance based outcome measures.

See Effective Prison Oversight, Michele Deitch, Prepared for the Commission on Safety and Abuse in America's Prisons, 4th Hearing, Los Angeles, February 8, 2006.

For the reasons discussed previously, Hawai`i's current monitoring system of CCA contracts does not contain the essential elements of an effective prison monitoring system. Most notable is the fact that the "Mainland Branch" contract monitors are employees of the Department of Public Safety Hawai`i, and therefore, cannot perform their work independently.

In summary, I recommend that Arizona consider adopting regulations reflective of Professor Deitch's recommendations that will provide greater oversight of private prisons. In addition, I recommend that officials and advocates from Hawai`i and Arizona engage in

¹¹ Keahiolalo-Karasuda, RaeDeen M. 2007. Hawaiians (Ethnic) and Incarceration. *In Battleground: Criminal Justice*, edited by G. Barak. Westport: Greenwood Press; Kassebaum, Gene. 1981. Report on *Crime and Justice Related to Hawaiians and Part-Hawaiians in the State of Hawai`i*. Honolulu (Unpublished): Alu Like, Inc.

meaningful conversations about the full costs and impacts associated with prison privatization and out-of-state prisoner transfers.

Hawai'i's experience with prison privatization and interstate prisoner transfers has demonstrated that this industry is solely focused on profit, and thwarts the interests of government accountability, and integrity of our corrections system and public safety.

Please help to create a mechanism for effective prison monitoring that will foster the twin objectives of transparency and accountability, thereby ensuring the safe and human operation of prisons and jails. Otherwise, everyone pays.

Sincerely,

Carrie Ann Shirota

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