

**LATE**

The Senate  
The Twenty-Fifth Legislature  
Regular Session of 2009

Committee on Public Safety and Military Affairs

Senator Will Espero, Chair  
Senator Robert Bunda, Vice Chair

Committee on Health

Senator David Y. Ige, Chair  
Senator Josh Green, M.D., Vice Chair

DATE: Thursday, February 26, 2009  
TIME: 1:15 p.m.  
PLACE: Conference Room 229

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO  
ON S.B. 1073, RELATING TO CORRECTIONAL FACILITIES.**

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). On behalf of the approximately 2,000 correctional officers and blue collar employees from bargaining unit 1 who work in our correctional facilities, the UPW opposes Senate Bill 1073 which repeals the exemption that allows smoking in correctional facilities.

Last December, I discussed with Director Clayton Frank the use of tobacco products in our correction facilities. It was my understanding that while tobacco products would be considered contraband and prohibited to inmates, use of tobacco products for employees, volunteers, vendors and visitors would be allowed in designated areas. These designated areas were to be identified by the warden of each facility (see attachment: letter dated January 22, 2009).

This measure circumvents this understanding and current policy. While not condoning the use of tobacco products, this practice is a personal decision and I believe our members should have access to designated smoking areas. Unlike other state employees whose designated areas

**HEADQUARTERS** - 1426 North School Street ♦ Honolulu, Hawaii 96817-1914 ♦ Phone: (808) 847-2631  
**HAWAII** - 362 East Lanikaula Street ♦ Hilo, Hawaii 96720-4336 ♦ Phone: (808) 961-3424  
**KAUAI** - 4211 Rice Street ♦ Lihue, Hawaii 96766-1325 ♦ Phone: (808) 245-2412  
**MAUI** - 841 Kolu Street ♦ Wailuku, Hawaii 96793-1436 ♦ Phone: (808) 244-0815  
1-866-454-4166 (Toll Free, Molokai/Lanai only)

are just outside the building, this bill would require the designated area to be entirely outside the gated facility, essentially making it inaccessible to employees. Because of the unique physical nature of correctional facilities, the UPW opposes repealing the exemption and asks that SB 1073 be held.

ANDALINGLE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**CLAYTON A. FRANK**  
DIRECTOR

**DAVID F. FESTERLING**  
Deputy Director  
Administration

**TOMMY JOHNSON**  
Deputy Director  
Corrections

**JAMES L. PROPOTNICK**  
Deputy Director  
Law Enforcement

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

January 22, 2009

Mr. Dayton M. Nakanelua  
State Director  
United Public Workers  
1426 North School Street  
Honolulu, Hawaii 96817

UPW JAN23'09 AM10:40

Dear Mr. Nakanelua:

After discussing the matter with you and your representatives, this is to inform you that we have amended our intent to prohibit tobacco products in our correction facilities and centers. This amends our prior letter to you on the matter dated December 2, 2008.

Effective February 1, 2009, we shall prohibit the access, possession and use of tobacco products for inmates. Inmates shall be notified accordingly.

Further, where inmates are concerned, tobacco products shall be considered to be contraband. Any person found in violation of the above shall be subject to investigation and appropriate action.

Moreover, where employees, volunteers, vendors and visitors are concerned, we are amending our previous intent to allow those who use tobacco products possession and use of tobacco products at designated areas in each correction facility and center. The Wardens of each facility/center shall designate the areas in the facility/center and notify employees, volunteers, vendors and visitors accordingly.

We have attached three (3) Inter-Office Memorandums for your information and use. The documents are intended for All PSD Employees, Volunteers, Vendors, and Visitors; Wardens; and All Inmates.

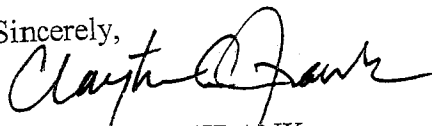
Mr. Dayton M. Nakanelua  
State Director, UPW  
January 22, 2009  
Page 2

For your information, we amended our intent after considering the concerns over our proposed action. We did not wish to argue the technical aspects of this action, specifically whether the issue is subject to negotiation or consultation. We take this action with the understanding that it does not affect the parties position on this matter.

If you have any further questions or concerns, please contact Mr. Roy Yamamoto at 587-1219, to arrange for a meeting to discuss the matter.

Thank you for your cooperation and understanding in this matter.

Sincerely,



CLAYTON A. FRANK  
Director

Attachments (3)

C: DEP C, A & E  
PER

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) [533-3454/kat.caphi@gmail.com](mailto:533-3454/kat.caphi@gmail.com)



## COMMITTEE ON HEALTH

Sen. David Ige, Chair

Sen. Josh green, Vice Chair

## LATE TESTIMONY

## COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Robert Bunda, Vice Chair

Thursday, February 26, 2009

1:15 PM

Room 229

## COMMENTS ON SB 1073

[PSMTestimony@capitol.hawaii.gov](mailto:PSMTestimony@capitol.hawaii.gov)

Aloha Chairs Ige and Espero and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

SB 1073 repeals the exception that allows smoking in correctional facilities.

Community Alliance on Prisons respectfully offers comments on this measure. We have done some cursory research on this issue to see how other jurisdictions have addressed smoking in correctional facilities. Here are the findings from [States With Laws Addressing Inmate Smoking Inside Correctional Facilities](#) (Laws effective as of September 30, 2008) which can be accessed at:

[http://www.sclcd-nci.net/snapshots/Smoking\\_CorrectionFacilities\\_Databyte.pdf](http://www.sclcd-nci.net/snapshots/Smoking_CorrectionFacilities_Databyte.pdf)

- It is estimated at 60-80% of prison inmates in the US are smokers (*Source: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. (2006). The health consequences of involuntary exposure to tobacco smoke: A report of the Surgeon General. Atlanta, GA: Author.*)
- Recent studies have indicated that bans on indoor smoking in correctional facilities can significantly reduce inmate exposure to secondhand smoke (*Source: Proescholdbell, S.K, et al. (2008). Indoor air quality in prisons before and after implementation of a smoking ban law. Tobacco Control 17 (2), 123-127.*)
- In 2004, the Federal Bureau of Prisons banned smoking in all federal facilities

## How Other Jurisdictions Address Smoking:

States that have **banned inmate smoking** in all indoor areas of correctional facilities:

- California (exception for cultural or religious purposes)
- Minnesota (exception for cultural or religious purposes)
- North Carolina (exception for cultural or religious purposes)
- Tennessee
- West Virginia

States that have **restricted inmate smoking to designated areas** within correctional facilities:

- Alaska
- New Hampshire
- Wisconsin

State that **prohibits smoking in all indoor areas** within state correctional facilities:

- Florida (exception for maximum security inmate housing areas)

State that **prohibits indoor smoking in certain facilities while restricting it in others:**

- Ohio

State that **passed a law requiring state governments to adopt smoking policies with restricting or prohibiting smoking** in state correctional facilities:

- Kentucky

States **exempting correctional facilities from smoking prohibitions applicable to other state and public buildings:**

- Connecticut
- Hawai'i (adopted a reso for PSD and DHS to develop a plan to ban smoking in prisons by 2011)
- Louisiana (enacted smoking ban in correctional facilities effective August 5, 2009)
- Nevada

Effective March 1, 2009, **Michigan** will require its state Department of Corrections to make all state correctional facilities tobacco free.

States requiring smoking cessation assistance be made available to inmates:

- Florida (1999)
- Iowa
- Ohio

**West Virginia** authorized its state prison authority to establish smoking cessation programs

**North Carolina** established a 2005 pilot program for the provision of smoking cessation services

In **Michigan**, the State Department of Corrections must make efforts to provide smoking cessation programs in conjunction with the March 1, 2009 ban.

On May 5, 2008, the Correctional Services of **Canada** implemented a total smoking ban in all correctional facilities. Smoking will not be permitted inside federal correctional facilities, including private family visiting units or outdoors within the perimeter of the facility.

The following article, which can be accessed at <http://www.bmj.com/cgi/content/full/331/7527/1228-d> highlights some of Community Alliance on Prisons' concerns:

UK: BMJ 2005;331:1228 (26 November), doi:10.1136/bmj.331.7527.1228-d

## News extra

# Smoking ban in prisons would lead to more assaults on staff

London Adrian O'Dowd

**Doctors and other staff working in prisons would face a greater risk of assault if smoking were to be banned in that environment,** the head of the prison service has told MPs.

Phil Wheatley, director general of the Prison Service told the health select committee inquiry into smoking in public places last week that a complete ban would have serious repercussions and create control problems for staff.

The government's current proposals to introduce a partial smoking ban in enclosed public places by 2007 under its *Health Bill* introduced to parliament last month, could cause problems, he believed.

"I think prisons are special and the circumstances are special," said Mr Wheatley. "It's important we take account of the fact that they are places in which people not only work but live, in many cases for years at a time.

"I would expect to find there was an increase in incidents of assaults on staff, that we ended up with prisoners who were more likely to be troublesome and an increased risk of disorder."

Prisoners' welfare was also a consideration as he added, "We do need to make sure we do not cause significant problems for disturbed people arriving with us with already a multitude of problems, many of them coming off drugs, many of them with serious alcohol problems and many of them potentially suicidal."

Various options were being considered but he expected to have a situation in the future where prisoners could smoke in their own cells, in the open air and they would be segregated into groups of smokers and non-smokers to share cells, even though this could cause some accommodation problems.

**If a complete smoking ban was to be introduced for prisoners, among whom 80% were usually smokers, it would simply drive tobacco underground,** he added, and make it more of an illicit currency than it already was.

**The issue of mental health premises being exempt from the government's plans was not straightforward,** according to Paul Corry, director of campaigns and communications for charity Rethink Severe Mental Illness, who also gave evidence.

**Special considerations had to be made in this area as the antipsychotic drugs people might be on could be affected by giving up smoking.**

"Up to 70% of people with severe mental illness who are in institutional care of one kind or another will smoke," he said.

"I think it's difficult to imagine a situation at the moment where you could introduce a complete smoking ban in all psychiatric units given that a significant proportion of the people using them will be there under compulsion."

Drinks and hospitality representatives said they had been concerned at the less than complete ban on smoking proposed in England. Bob Cotton, chief executive of the British Hospitality Association, said of the 600 000 staff that his members employed, 90% said that they would rather have a comprehensive smoke free environment in which to work. "Quite clearly, a total ban is inevitable," he said.

**In summary, Community Alliance on Prisons is concerned because cigarettes are currency in prison – a ban would just fuel the underground 'market'.**

**If the total ban is passed, however, we assert that it should be a ban for all inmates, staff, and contractors. We have heard stories about ACOs smoking at facilities outside the dorms and blowing smoke in the windows. This is cruel for someone working to kick the habit of smoking.**

**Mahalo for this opportunity to share our findings with the committees.**