

Mark Patterson
Commission Chair



Hon. Ronald Ibarra (ret.)
Commissioner

Hon. Michael Town (ret.)
Commissioner

Christin M. Johnson
Oversight Coordinator

STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

Martha Torney
Commissioner

Theodore Sakai
Commissioner

Mr. Tommy Johnson
Director
Department of Public Safety
Keoni Ana Building
1177 Alakea Street
Honolulu, HI 96813

December 15, 2022

Re: Response to letter from Max Otani, dated October 25, 2022, regarding the recently issued Corrections Working Group Report

Dear Director Johnson:

On October 25th, 2022, Max Otani released a response to the Corrections Working Group report. In this letter, Otani delineates his differences with the findings, conclusions and recommendations contained in the Working Group Report. He also comments on actions or perceived actions of the Commission regarding our position on the development of the New OCCC. These comments appear to be based on misunderstandings of events that led to the Commission's position. As they are written, they appear to be misstatements that should be clarified. Below are Otani's comments and the Commission's concern and response.

PSD Comment: *The HCR 85 Task Force, in part, established the HCSOC, to oversee and work with the Department on facilities' population control and improving offender reentry programs. It must have been difficult for the Commission, until recently, to operate without a budget or staff, as rules and operating procedures have yet to be adopted. This has also placed a hardship on the Department, not having the benefit of thoughtful input from the Oversight Commission on these important areas of concern as mandated in statute. It calls into question the wisdom of the Commission's apparent leap of support for the report's proposal to revamp the OCCC redevelopment project that has been so thoughtfully and meticulously*

researched and consulted, using the nation's foremost correctional experts.
(Emphasis added.) (Pages 3-4)

Concern: This comment undermines the credibility of our Commission by implying that our unput was less than thoughtful until the Oversight Coordinator was hired; and by characterizing our position as a “leap of support”. It disregards the level of expertise of the members of the Commission and of the Commission as a whole. Moreover, The Department seems to have missed the point of our concern. We never addressed the specifications of the project. Our concern has been with how they arrived at these specifications.

Commission Response: We acknowledge that it was difficult to operate without a budget or staff. Yet, we persisted in fulfilling our responsibility to the fullest extent possible and have never hesitated to provide input to the Department. Please understand that although the Commissioners are volunteers, each is a seasoned criminal justice practitioner with decades of experience in different aspects of Hawaii’s criminal justice system. Moreover, members of the Commission have sound experience in program and capital planning, including the development of correctional program services and facilities, and in the State’s capital improvement process.

Chair Patterson is the current Administrator of the Hawaii Youth Correctional Facility and former Warden of the Women’s Community Correctional Center known for his work in Trauma Informed Care within a Correctional Environment. Commissioner Martha Torney is the former Executive Director of the Office of Youth Services and the former Deputy Director of Administration of the Department of Public Safety. Commissioner Ted Sakai has nearly 30 years of experience at the Department of Public Safety, having served as prisons director, deputy director, administrative assistant to the director, and chief of staff. Commissioner Ronald Ibarra was appointed as a Circuit Court Judge in 1989 and was the Third Circuit’s Administrative Judge since 1993 and served as its Chief Judge before retiring in 2017. Commission Mike Town was first appointed the bench in 1979 serving first as District Family Court Judge. He later served as Senior Judge of the Family Court of the First Circuit and served two terms on Hawaii’s Parole Board.

Our concern has never been with the legitimacy of your experts and their ability to “thoughtfully and meticulously” research the jail you have chosen to build. Our concern has been with the process by which you decided that this is the jail that our community needs. Specifically, we do not believe that the department has given enough consideration to several significant factors. These include:

- the impact that community-located health, social services, employment and housing programs can have on the population of the proposed facility, should the State and community decide to invest in such programs.
- the specific proposals developed by the HCR 85 Task Force deserve full consideration. We noted that your own consultant asserted that such reforms can impact the size of the proposed facility. “Unless population reduction (such as the diversion estimates that we

have detailed) can be implemented through policy and legal reforms, the new OCCC will still be a large facility with a large detention and pre-release population.” (See OCCC Forecast, p. 40-41.)

- We do not believe that the Department has provided avenues for participation by community interest groups, including program providers.
- We do not believe that the Department has properly examined its own internal program processes to determine if the Department itself can better manage its population. For example, for at least two years, we have raised the issue of the significant underutilization of your two minimum security facilities which should be playing a significant role in community transition. We have expressed concern with whether inmates are properly prepared for parole release. We need a review of programs and processes that effectively facilitate an inmate’s movement to lower security facilities and then to community programs. Such a review is needed before we commit to an additional 400 beds for this purpose.

Our decision to question the planning for the project was thoughtfully considered. The Commissioners are fully capable of reviewing the plans for the project even if the Coordinator had not been hired. There has been no “apparent leap of support for the report’s proposal to revamp the OCCC redevelopment project. . . .” Our position on the proposed new OCCC was first expressed in December 2020, renewed in December 2021, and has remained unchanged.

PSD Comment: *The Department has stated in several public forums that the current plan is scalable and can be revised to meet the future bed space and program needs if bail reform initiatives and other front-end diversion plans further reduce the projected inmate population. (Page 5)*

Concern: The Department’s stated intent was to issue a design-build-finance RFP. It would see that there should be a high degree of certainty as to what they intend to build.

Commission Response: This assertion was made during a Commission meeting during the discussion related to the proposed community advisory group. The Department’s response was that the community would have the opportunity to provide input during the RFP process. Our concern was that major decisions will have to be made before the RFP can be issued. These decisions would include the number of beds to be developed. We don’t believe that community input can be meaningful at this point. We are skeptical the Department can issue an RFP for which such factors as the number of beds remains undetermined until the community is consulted.

PSD Comment: *PSD has not listened to the recommendations of the Oversight Commission. (Report, page 13)*

This is false. PSD has worked diligently with the Commission to provide requested information and implement recommendations wherever possible. Project Population Forecast Reports (a key area of the Act 179 mandates) and offers to return for follow-up discussion were never followed up on. The team also invited the Commission to attend the OCCC workshop planning sessions, but they declined to attend. (5)

Concern: We appear to be talking about two different phases of the planning process.

Commission Response: We very much appreciate the Department's responsiveness to the requests of the Commission. However, we wish to clarify your point regarding the invitation to participate OCCC workshop planning sessions. Our understanding was that these sessions were more akin to charettes, in which architectural planners met with intended users to identify potential problems and solutions to proposed architectural spaces. We appreciated the invitation but did not feel that it was appropriate for us to participate.

PSD Comment: *Report contends that the Commission's demand, to "immediately pause the planning for the new jail and create an Advisory Committee to review, and if necessary revise, the planning that has been done to date, and to actively participate in the planning process going forward" in 2020 was rejected by DPS (PSD).*

In fact, the Department of Public Safety did not reject the Commission's 2020 recommendations. The Department stated in several oversight meetings that it fully supports the recommendation to create an advisory committee but also made clear that as a State agency bound by laws and strict procurement rules, PSD must avoid the public perception of bias and cannot be the agency that convenes a committee tasked with reviewing its own OCCC redevelopment plan. The Department instead suggested that such a committee would need to be created by an impartial/neutral party such as the Oversight Commission, with a PSD representative appointed to participate on the committee. The Department would undoubtedly face public scrutiny and grievances if it were to create an advisory committee working to revise the OCCC plan.

The one request made by the PSD Director was for the committee to be made up of people in favor of building the jail, since the common goal was to review the plan and determine how best to build adequate space for the current and future populations. In fact, the report even states that the Oversight Commission should convene an Advisory Committee (page 33), and the conclusion, starting on page 34, recommends the Oversight Commission work with an Advisory Committee to develop a "scope of work" ... indicating the report writers' agreement with the Director's comments made at previous Commission meetings. (5)

Concern: The purpose of the advisory committee would be to provide further input. It is not to review the OCCC redevelopment plan. I do not understand how the formation of such a committee would subject the Department to public scrutiny and grievances.

Commission Response: This was discussed in a meeting of the Commission. We do not understand your point that the formation of an advisory committee would create a “public perception of bias”, and that it would subject the Department to “public scrutiny and grievances”. The purpose of the proposed committee is to provide further input that may not have been considered by the Department, not to conduct a critical review of the plans for the new OCCC. In our view, a broad-based advisory committee would dampen any perception of bias. In fact, your planning process has become subject of public scrutiny because of the perception that some segments of the community have been excluded.

Conclusion: Our position is clear. We believe that the community input is in order. This input should be made directly to the Department as you are responsible for planning the new facility. Your proposal would add an unnecessary step. Moreover, we simply do not have the resources to convene such a committee. At this point, our willingness to work with the Working Group is based on their proposal for Legislation to effect any statutory changes to enable the Commission to oversee planning of correctional facilities and for an appropriation to provide us with the resources needed for such a responsibility. We will thoroughly review such legislation before we take a position.

We hope this clarifies our position on the New OCCC proposal.

Respectfully,



Mark Patterson
Chair