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May 9, 2024

Mark Patterson, Chair
Hawaii Correctional System Oversight Commission
235 S. Beretania Street, 16th Floor
Honolulu, Hawaii 96813

RE: Response to Recommendations by the Hawaii Correctional System Oversight Commission from tour of the Kauai Community Correctional Center (KCCC) on March 21, 2024

Dear Chair Patterson:

The following responses to the commission's seven (7) recommendations made following a tour of KCCC on March 21, 2024, is provided for the commission's Information, review, and records:

- 1) Immediately cease any usage of the Restraint Chair and WRAP Chair until, at minimum, a policy is developed and approved by the Attorney General to protect the state from liability.**

If the Department of Corrections and Rehabilitation intends to continue use of such restraint mechanisms, it is imperative that a policy be developed and approved by the Attorney General to protect the State from liability.

The policy must include, at a minimum:

- Under what conditions may the restraint be used (never for punishment);
- Who must approve the use of the restraint (should be Warden, Deputy Warden, Chief of Security);
- Health Care must be informed and determine any medical risk in the use of the restraint;
- Placing an individual in the chair must be filmed, as with cell extraction;

- The individual should be checked on a regular basis (every 10 minutes) to ensure there is no medical problem and blood is circulating;
 - There is a time limit for use of the restraint, such as two hours;
 - An individual placed in the chair due to mental health issues (such as harm to self or others) must have medical and mental health approval;
- and,
- A log maintained for the duration of the restraint.

RESPONSE: See COR.10.11.01 (Restraint and Seclusion (Clinically Ordered)). Three (3 – KCCC, HCF, & WCCC) of DCR's eight (8) facilities have one (1) restraint chair. Last use of a restraint chair was done on October 25, 2023, and ordered by a licensed mental healthcare professional. Both HCF and WCCC have never used their restraint chairs. Staff at all three (3) facilities (KCCC, HCF, and WCCC) with a restraint chair have received appropriate training in the use of the chair. Although, the DCR is not required to obtain approval of the Attorney General's office on any of its policies, out of an abundance of caution, a copy of the above cited policy was provided to the AG's office for review.

- 2) The shipping container units outside Module 5 must not be used until there is a specific post made for that area to ensure there is staff in the immediate vicinity at all times.

The Commission found that the shipping containers in front of the administration area did not have an ACO in the vicinity due to there being a lack of post assignment. Instead, the front gate officer is assigned to watch the shipping containers in addition to their normal duties. The Department places itself at considerable risk by not posting an ACO in the immediate vicinity whenever any of the cells are occupied. The shipping containers must have a designated post and otherwise not be used as an ACO cannot be guaranteed to be in the immediate area whenever a cell is occupied. It is, therefore, recommended that KCCC not use these units unless it can post an ACO in the immediate area whenever any cell is occupied. It should be noted that the Commission posted a similar recommendation one year ago in March 2023, however, the issue has not been addressed.

RESPONSE: There is no module 5 at KCCC. There is normally an ACO posted there near the modular housing units just outside of the facility's main entrance where the Warden's office is located. However, when we are short staffing, we are not always to have an ACO posted directly outside of the modular housing units, but close enough to address issues of concern. This is a temporary measure. What would the commission have the department do. Viable recommended solutions would be best.

3) Immediately prioritize the construction and replacement of the KCCC kitchen as it poses a dangerous threat to individuals or staff being hurt due to its desperate condition.

The floors in the kitchen and mess hall were worn through to bare wood in some areas and completely gone in other areas. Plywood had been temporarily laid down to cover missing floorboards, but they were flimsy and extremely dangerous to walk on. The dangerous condition of the floor in the kitchen and mess hall could easily result in serious injury to staff and people in custody. A new floor must be laid as soon as possible.

RESPONSE: The department has already prioritized the KCCC kitchen floor replacement. DAGS Job No. 14-27-5728 in the amount of \$4,469,698.00 was awarded to Kitsap Construction, LLC (contractor is MEI construction) and work will begin shortly.

4) Remove the window covers of the shipping container windows to allow natural light.

The Commission found that the shipping container cells had a slab of material completely blocking the windows to ensure women in the cells were not seen by men in custody. In accordance with American Correctional Association (ACA) Standard 4-ALDF-1A-16: All inmate rooms/cells provide the occupants with access to natural light by means of at least three-square feet of transparent glazing, plus two additional square feet of transparent glazing per inmate in rooms/cells with three or more inmates. Therefore, the Commission recommends removing the window covers to ensure access to natural light. It should be noted that the Commission posted a similar recommendation one year ago in March 2023, however, the issue has not been addressed.

RESPONSE: The modular housing units were outfitted with window covers to safeguard the privacy of the women in our custody, in compliance with normal and acceptable standards. When there is no male movement near and/or around the female occupied modular housing units, the window coverings can be removed. This decision was made to prevent any potential visual intrusion from male inmates.

We take the Commission's recommendations seriously and have made efforts to address them within the scope of our capabilities and limited housing space.

5) Ensure individuals in the facility are receiving the most out-of-cell time possible in alignment with a rehabilitative and therapeutic environment.

Individuals in Module B claimed to be locked in their cells for 22-hours per day. This, by definition, is considered restrictive housing, also sometimes referred to as solitary confinement. Additionally, it was unclear if women who are housed within the shipping containers get any type of recreational time outside of their cells.

If the Department of Corrections and Rehabilitation is serious about the transition to a therapeutic and rehabilitative system, it is imperative to ensure individuals are not locked down within their cells for such extended periods of time.

Therefore, daily schedules should be posted in all housing units for transparency regarding programming and out of cell time. This allows individuals in custody to anticipate what is to come, and to hold the staff accountable and ensure programming is completed in a consistent manner.

RESPONSE: The Module B incident appears to be an isolated occurrence and not reflective of KCCC standard practices. We are committed to ensuring the safety and well-being of all individuals in our custody and care, and we will monitor and enforce protocols to prevent such incidents from recurring moving forward

I understand HSCOC's concerns regarding out-of-cell time, particularly for female inmates housed in the Q modular housing unit. While the specific details provided in the report may not fully represent the reality of our programming, I assure you that we prioritize out-of-cell time as part of our rehabilitative and therapeutic approach.

6) Ensure that incarcerated women in Cabin C have access to outdoor space, specifically, the Cabin C lanai that was built for that exact purpose.

Due to overcrowding, Cabin C's lanai was enclosed to increase the number of beds to house women, leaving the women no dayroom or outdoor space. Men housed in Cabin A and B, however, still have an open and functioning lanai that they can use at their leisure. Per the Commission's recommendation after the last visit in March 2023, a small lanai was added to Module C to ensure that women are afforded a dayroom/outdoor space comparable to the men. The Commission applauded this effort; however, the Commission was informed by the women housed in the Cabin and staff, that the women are given limited access (if any) to the lanai since male work lines sometimes pass by in the surrounding areas. The facility must ensure incarcerated women have the same access to dayroom and recreation space as men.

RESPONSE: The decision to enclose Cabin C's lanai was driven by overcrowding concerns, necessitating the optimization of available space to accommodate the housing needs of female inmates.

While we acknowledge the importance of outdoor recreation for all individuals in our custody, it's crucial to consider the unique dynamics of KCCC. Cabin C's proximity to Cabins A & B (Male Housing) and the maintenance shop presents logistical challenges in providing unrestricted access to the lanai, especially given our strict communication policy between male and female inmates.

Despite these constraints, we are committed to ensuring that women in Cabin C have opportunities for outdoor recreation. While it is true that their access may be limited compared to male inmates, efforts have been made to facilitate their use of the lanai and pavilion for outdoor space whenever feasible. However, it's essential to balance safety and security concerns with providing recreational opportunities.

The facility has been instructed to consider installing some type of portable and moveable barrier that can be used to temporarily block the view of the lanai when in use by female offenders, such as a large weather resistant curtain type barrier.

7) Ensure that individuals who work on the facility work lines are being paid accordingly, by Department policy.

The Commission was informed that KCCC is not paying individuals to work on work lines. Although the Commission agrees that wages are extremely low per policy, it is not acceptable to deviate from policy, particularly when the deviation may affect an individual's opportunity to buy commissary, phone calls, or video visits. Additionally, this places an added burden on the community members as they will be the ones who send in money for people in custody to purchase commissary or make phone calls or video visits. Therefore, KCCC must pay individuals who work on the work line their appropriate wage per Department policy.

RESPONSE: DCR Director, Tommy Johnson has instructed the Deputy Director for Correctional Institutions to immediately ensure inmates participating on facility work lines receive the appropriate hourly compensation. It should be noted, all inmates are provided with 1 free 5-minute phone call per week, which includes video visits regardless of if they have funds in their account or not.

Following the Commission's review of the department's responses should the commission have any questions and/or request additional information, please don't hesitate to contact me.

Sincerely,



Tommy Johnson
Director