



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. NO. 1058, S.D. 2, RELATING TO CONTROLLED SUBSTANCES.

BEFORE THE:

HOUSE COMMITTEES ON JUDICIARY AND PUBLIC SAFETY

DATE: Thursday, March 19, 2009 **TIME:** 2:00 PM

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Lance M. Goto, Deputy Attorney General

Chairs Karamatsu and Hanohano and Members of the Committees:

The Department of the Attorney General opposes this bill.

This bill would convene a task force coordinated by the Attorney General to review the impact that diversion of minor drug possession offenders into drug treatment would have on the criminal justice system, drug treatment program resources, and public safety. The bill defines "minor drug possession offenders" as persons charged with a class B or C felony drug possession offense. The bill defines "diversion" as placement of the offender into drug treatment in lieu of charging the offender, or allowing the offender to plead to a misdemeanor offense and be placed in treatment.

This project would require significant resources and expertise, yet the bill provides no funding. Given the current fiscal difficulties, it would not be prudent to undertake this project at this time.

Moreover, the purpose of the project is unclear. Many forms of diversion are already available to class B and C drug offenders, including (1) Drug Court; (2) first-time drug offender sentencing under section 706-622.5, Hawaii Revised Statutes (HRS), which results in probation, treatment, and possible expungment of the conviction record;

(3) deferred pleas under chapter 853, HRS, which do not result in convictions; and (4) conditional discharge under section 712-1255, HRS, which may result in dismissal of the charge without an adjudication of guilt.

With respect to the proposal that felony offenders plead to a misdemeanor offense and undergo treatment, it is a concern that a misdemeanor can only result in a six-month period of probation. Six months generally is not an adequate period for drug treatment.

Finally, we are concerned that B and C felony drug offenses are characterized in this bill as "minor" offenses.


We respectfully request that this bill be held.




HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

MEMORANDUM

TO: Representative Jon Riki Karamatsu, Chair
House Judiciary Committee
Representative Faye P. Hanohano, Chair 
House Public Safety Committee

FROM: Representative Joe Bertram III 

DATE: March 18, 2009

RE: Senate Bill 1058 SD2
Proposed House Draft 1

Attached please find a proposed house draft for SB 1058 SD2, which is being heard before the House Judiciary and Public Safety Committees, Thursday, March 19th at 2:00pm in room 325, for your perusal and input. I will be submitting this as my testimony.

If you have any questions please call Rep. Joe Bertram III at 586-8525

Mahalo.

attachment

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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PART I

SECTION 1. (a) The attorney general shall coordinate a review of the impact that diversion of minor drug possession offenders into drug treatment would have on the criminal justice system, drug treatment program resources, and the public's safety. For purposes of this review:

- (1) "Diversion" means placement of an offender into drug treatment either in lieu of charging the offender or allowing the offender to plead to a misdemeanor and be placed in treatment in lieu of imprisonment; and
- (2) "Minor drug possession offenders" means offenders accused of felony marijuana possession offenses of any grade and class B or C felony possession offenses involving other drugs.

(b) The review required by subsection (a) shall address the following issues:



1 (1) The number of offenders that could be diverted if
2 diversion occurred before charging and the number that
3 could be deferred post-charging;

4 (2) The affect of diversion on law enforcement;
5 prosecution, judicial, and correctional resources;

6 (3) The type, cost, and availability of treatment services
7 that would be needed under a diversion program; and

8 (4) The impact on the public's safety by diverting minor
9 drug possession offenders and whether the impact could
10 be reduced by, for example, excluding offenders with a
11 history of violent offenses.

12 (c) The attorney general shall conduct the review required
13 by subsection (a) in consultation with, and using the problem-
14 solving abilities, of a broad range of public and private
15 stakeholders including:

16 (1) Police;

17 (2) Prosecutors;

18 (3) Judges and other court officials;

19 (4) Corrections administrators;

20 (5) Public health experts;

21 (6) Drug treatment providers;

22 (7) Legal service providers;



- 1 (8) A representative of the office of the public defender;
- 2 (9) A representative of the American Civil Liberties Union
- 3 of Hawaii;
- 4 (10) A representative of a community advocacy group with at
- 5 least fifteen years of experience, research, and
- 6 statistical data to provide to the attorney general;
- 7 and
- 8 (11) A criminologist or researcher who can analyze the most
- 9 current statistical data.

10 SECTION 2. The attorney general shall submit a report of
11 the findings and recommendations of the review required by this
12 Act to the legislature, no later than twenty days prior to the
13 convening of the regular session of 2010.

14 PART II

15 SECTION 3. Section 329-121, Hawaii Revised Statutes, is
16 amended by amending the definition of "adequate supply" to read
17 as follows:

18 ""Adequate supply" means an amount of marijuana jointly
19 possessed between the qualifying patient and the primary
20 caregiver that is not more than is reasonably necessary to
21 [~~assure~~] ensure the uninterrupted availability of marijuana for
22 the purpose of alleviating the symptoms or effects of a



1 qualifying patient's debilitating medical condition; provided
2 that an "adequate supply" shall not exceed [~~three mature~~
3 ~~marijuana plants, four immature~~] seven marijuana plants[7] and
4 one ounce of usable marijuana per each mature plant."

5 SECTION 4. Section 329-123, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) Primary caregivers shall register with the department
8 of public safety. Every primary caregiver shall be responsible
9 for the care of [~~only one~~] no more than five qualifying
10 [~~patient~~] patients at any given time."

11 SECTION 5. (a) There is created a temporary medical
12 marijuana farm plan working group to be facilitated by the
13 Legislative Reference Bureau, and whose members shall consist of
14 the following:

15 (1) One representative from each of the following standing
16 committees of the senate and the house of
17 representatives, to be selected by the respective
18 chairpersons of those committees:

19 (A) Senate committee on:

20 (i) Water, land, agriculture, and Hawaiian
21 Affairs;

22 (ii) Ways and means;



- 1 (iii) Economic development and technology;
- 2 (iv) Safety and military affairs;
- 3 (v) Judiciary and government operations; and
- 4 (vi) Health; and
- 5 (B) House of representatives committee on:
 - 6 (i) Agriculture;
 - 7 (ii) Finance;
 - 8 (iii) Economic revitalization, business, and
 - 9 military affairs;
 - 10 (iv) Public safety;
 - 11 (v) Judiciary; and
 - 12 (vi) Health;
- 13 (2) One representative from the legislative reference
- 14 bureau;
- 15 (3) One representative from the Self Sustainability group;
- 16 (4) One marijuana researcher/patient; and
- 17 (5) Four representatives from the Small Farmer
- 18 Organization, one each representing the counties of
- 19 Hawaii, Kauai, and Maui and the city and county of
- 20 Honolulu.
- 21 (b) The working group shall develop a model farm plan for
- 22 the cultivation of marijuana for medical use for at least four



1 thousand qualifying patients, as defined in section 329-121,
2 Hawaii Revised Statutes, using the substance of House Bill No,
3 1191, H.D. 1, introduced during the regular session of 2009, as
4 a guide. The model farm plan shall also take into account small
5 farm sustainability.

6 (c) The working group shall report its findings and
7 recommendations and present its model farm plan to the
8 legislature within one hundred twenty days after the effective
9 date of this Act. The working group shall terminate on June 30,
10 2010.

11 PART III

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on July 1, 2050;
15 provided that sections 3 and 4 of this Act shall not take effect
16 unless House Bill 1191, H.D. 1, (2009), in any form, is enacted.



Report Title:

Controlled Substances; Diversion; Treatment

Description:

Directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice system into treatment. Clarifies the type of marijuana plants a qualifying patient may have. Creates temporary working group to develop a farm plan to cultivate marijuana for at least 4,000 qualifying patients according to the contents of H.B. No. 1191, HD1, 2009. Designates membership of working group. (HD1 Proposed)



DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
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THE HONORABLE JON RIKI KARAMATSU, CHAIR
HOUSE COMMITTEE ON JUDICIARY
THE HONORABLE FAYE HANOHANO, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

March 19, 2009

RE: S.B. 1058, S.D. 2; RELATING TO CONTROLLED SUBSTANCES.

Chair Karamatsu and members of the House Committee on Judiciary, Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 1058, S.D. 2.

The purpose of S.B. 1058, S.D. 2 is to convene a task force to review the impact diversion of minor drug offenders into drug treatment would have on the criminal justice system, drug treatment programs and public safety. S.B. 1058, S.D. 2 defines "minor drug offenders" to be persons charged with a class B or C felony drug possession offense. The bill further proposes that the "minor drug offender" be allowed to plead to a misdemeanor and be placed in treatment in lieu of imprisonment.

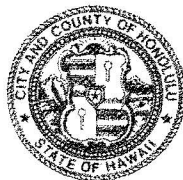
We oppose this bill since we believe that the concept to be studied by the task force will not assist persons to enter and remain in drug treatment. First of all, probation for a misdemeanor offense can only be for a maximum period of six months, which will generally be insufficient to get into and complete drug treatment. In contrast, probation for a class B or C felony is for a maximum period of five years which allows for sufficient time for defendants to get into and complete drug treatment programs and obtain supervision to assist in maintaining sobriety. In addition, we observe that are multiple avenues of diversion already extant in the criminal justice system that are available to class B and C drug addicted offenders; these include Drug Court, drug treatment as a condition of probation or parole, and mandated probation with drug treatment under Hawaii Revised Statutes sections 706-622.5 and 706-622.9.

For these reasons, we feel that conceptual basis of the task force is flawed and we therefore respectfully oppose the passage of S.B. 1058, S.D. 2. Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUFU HÄNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARL A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE LH-TA

March 19, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
The Honorable Faye P. Hanohano, Chair
and Members
Committee on Public Safety
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Karamatsu and Hanohano and Members:

Subject: Senate Bill No. 1058, S.D. 2, Relating to Controlled Substances

I am Lester Hite, captain of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 1058, S.D. 2, Relating to Controlled Substances.

The bill defines "minor drug possession offenders" as persons charged with a class B or C felony drug possession offense. The bill also defines "diversion" as placement of the offender into drug treatment in lieu of charging the offender or allowing the offender to plead to a misdemeanor offense and be placed in treatment.

We oppose the bill because persons who possess enough illegal drugs to be charged with a class B or C felony drug offense have committed a serious crime. These criminals should not be considered as "minor drug possession offenders." In addition, the criminal justice system currently provides several diversion programs to class B and class C drug offenders, including Drug Court and first-time drug offender sentencing. This can result in probation, treatment, and the possible expungement of the conviction record.

The Honorable Karamatsu and Hanohano, Chairs
and Members
Page 2
March 19, 2009

The Honolulu Police Department urges you to oppose Senate Bill No. 1058, S.D. 2,
Relating to Controlled Substances.

Thank you for the opportunity to testify.

Sincerely,

L. Hite
LESTER HITE, Captain
Narcotics/Vice Division

APPROVED:

for: *Paul Putzulu*
BOISSE P. CORREA
Chief of Police



Via E-mail: JUDTestimony@Capitol.hawaii.gov
Committee: Committee on Judiciary and Committee on Public Safety
Hearing Date/Time: Thursday, March 19, 2009, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Support of S.B. 1058, SD2, Relating to Controlled Substances

Dear Chair Karamatsu and Members of the Committee on Judiciary and Chair Hanohano and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in strong support of S.B. 1058, SD2, which directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice into treatment.

The ACLU of Hawaii supports every effort to develop diversion programs and health-based solutions to individuals with drug addictions. In general, these types of programs are far more cost-effective – and far more effective at reducing recidivism – than incarceration and deserve the Legislature’s full support.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
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COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

Rep. Ken Ito, Vice Chair

COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, March 19, 2009

2:00 PM

Room 325

SB 1058 SD2

STRONG SUPPORT

JUDTestimony@capitol.hawaii.gov

Aloha Chairs Karamatsu and Hanohano 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 the 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 1058 SD2 directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice system into treatment.

Community Alliance on Prisons applauds the committees for hearing this important bill and we are in strong support. The rising costs of prison and the pitiful outcomes demand that we rethink what we are doing and explore other options. During times of fiscal austerity businesses try a number of things to cut costs and improve efficiency - getting a bigger bang for the buck, so to speak. In this same vein, the state can look upon these trying times as an opportunity to take a close look at what we are doing, how we are doing it, and ask if there is some way to do it better and at a lower cost that we can accomplish our goals. My Mom used to say that necessity is the mother of invention, and she was right.

A study, if it is independent, will take an unbiased look at diverting nonviolent drug lawbreakers and do a cost-benefit analysis of our current system and projections for law changes. It's the unintended consequences of policies enacted into law that cause many problems. In these lean times, we need to explore every option to promote justice, protect public safety, and preserve precious resources.

Community Alliance on Prisons urges passage of SB 1058 SD2. Mahalo for this opportunity to testify.


OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony
SB 619, SD2
Relating to Voting

Date: March 19, 2009
Room: 309

Time: 8:30 am

The Office of Hawaiian Affairs **supports SB 619, SD2.**

The purpose of bill SB 619, SD 2 would bring to discussion the possibilities of diverting individuals to drug treatment, and reducing criminalization. Currently, our criminal justice system holds non-violent drug offenders behind bars.

In general, many tax payers may feel that those who are serving time will learn from their mistakes and receive punishment. However, it has been reported that limited treatment options exists, and it is difficult to meet the rigid eligibility requirements when someone is offered treatment. Therefore, other alternatives that leads to wellness and recovery needs to be discussed. These recommendations and decision making that emerge from the discussions can prepare an inmate to successfully exit the criminal justice system, and reduce recidivism.

The current drug policy of the United States greatly impacts those who are minority and marginalized. Hawaii drug policies are no different. To move forward, Hawaii needs to explore viable solutions that will address the root cause of substance use which treatment, not punishment, can address. If passed, this meaningful bill can provide support and opportunities to those who want help.

OHA would like to support SB 619, SD2. Mahalo nui loa for allowing us to provide testimony.



TO: HOUSE COMMITTEES ON JUDICIARY & PUBLIC SAFETY

FROM: PAMELA LICHTY, MPH, PRESIDENT

RE: SB 1058, SD 2 RELATING TO CONTROLLED SUBSTANCES – **IN SUPPORT**

DATE: MARCH 19, 2009

The Drug Policy Action Group supports the existing language of this bill which would direct the Attorney General to coordinate a review of the impact of diverting minor drug offenders out of the criminal justice system into treatment. We also have some suggested amendments to address another issue relating to controlled substances.

In these constrained financial times we should explore every possible means of saving the state money, improving recidivism rates by addressing underlying drug and alcohol problems, and finally acting smart on drugs and crime.

The approach described in the SD 2 of this bill has been recently adapted by many other states including Texas and Alabama. Research elsewhere has demonstrated that diversion programs for the kinds of offenses enumerated here make a great deal of economic and social sense and do not negatively impact public safety.

Having done research on similar issues, I suspect some of the data may be hard to come by, but it is worth the difficulty if such a study could point the way for Hawai'i to move forward in reducing our prison population - especially those housed on the mainland. Diversion would place offenders in the least restrictive environment where they are assisted with their problems and stand a far better chance of becoming productive and successful members of our communities. Perhaps even more significantly, in today's dismal economic milieu, the kinds of diversion programs the AG is requested to examine have the potential for saving our state hundreds of thousands of dollars and utilizing those dollars for programs with far more productive outcomes than incarceration.

Secondarily, the Drug Policy Action Group wants to call to the committees' attention the fact that all of this session's substantive bills for improving the state's medical marijuana program have stalled. Thus we urge the committees to use this measure, which has an appropriate title, to initiate a study of problems with the existing program and to propose recommendations to address them. As an advocacy group for those using, or seeking to use the program, we get calls and emails daily from patients, caregivers, and (less often) from physicians. The problems they identify can be broken out as follows:

1. No legal access to seeds, starter plants, or useable medical marijuana (by far the biggest concern)

2. Inadequate number of plants permitted (with confusing mature/immature designations)
3. An inadequate amount of useable marijuana permitted.
4. Difficulty in acquiring the services of a caregiver
5. Difficulty in finding a physician to certify eligibility.
6. Lack of clarity about the legality of interisland travel with medical marijuana.

We ask the committee to add an additional study to this measure that would examine these and other problems experienced by participants in the program and make recommendations for means – including legislation – to address these issues.

We would be pleased to lend our expertise to such a study in the hopes that in the 2010 session, improvements to the eight year old program could finally be instituted. The new Attorney General Eric Holder has already made statements about a change in course on the part of the federal government vis a vis state laws on medical marijuana (**see attachment**). These changes should give the 13 medical marijuana states increasing autonomy to amend their programs to better suit the needs of their citizens.

The more than 4,000 legally registered patients in the state have been struggling with an unworkable, distinctly non user-friendly program, and they deserve something better. This body saw fit to pass this compassionate legislation in 2000. We urge you now to take action to make it truly workable for the people who are suffering, who rely on the program, and who need your kokua to make it work as it was intended to.

Thank you for hearing this bill today and for the opportunity to testify.

[Attachment to Drug Policy Action Group testimony re SB1058, SD2, March 19,2009]

Attorney general signals shift in marijuana policy

March 19, 2009 - 12:41am

Attorney General Eric Holder speaks at the National League of Cities conference, Monday, March 16 2009, in Washington. (AP Photo/Manuel Balce Ceneta)

By DEVLIN BARRETT

WASHINGTON (AP) - Attorney General Eric Holder signaled a change on medical marijuana policy Wednesday, saying federal agents will target marijuana distributors only when they violate both federal and state law.

That would be a departure from the policy of the Bush administration, which targeted medical marijuana dispensaries in California even if they complied with that state's law.

"The policy is to go after those people who violate both federal and state law," Holder said in a question-and-answer session with reporters at the Justice Department.

Medical marijuana advocates in California welcomed the news, but said they still worried about the pending cases of those already in court on drug charges.

California law permits the sale of marijuana for medical purposes, though it still is against federal law.

Holder did not spell out exactly who no longer would face the prospect of raids by the Drug Enforcement Administration. But he was quick to add that law enforcement officers will target anyone who tries to "use medical marijuana laws as a shield" for other illegal activity.

"Given the limited resources that we have, our focus will be on people, organizations that are growing, cultivating substantial amounts of marijuana and doing so in a way that's inconsistent with federal and state law," the attorney general said.

Advocates and government officials had been waiting since President Barack Obama was sworn into office for a clear signal on what the new president's drug policy would be toward medical marijuana. As a candidate, he repeatedly promised a change in policy in situations in which state laws allow the use of medical marijuana.

Yet shortly after Obama took office, DEA agents raided four dispensaries in Los Angeles, prompting confusion about the government's plans.

Thirteen states have laws permitting medicinal use of marijuana. California is unique among them for the presence of dispensaries, which are businesses that sell marijuana and even advertise their services. Legal under California law, such dispensaries are still illegal under federal law.

Kris Hermes, a spokesman for national medical marijuana advocacy group Americans for Safe Access, said he welcomed Holder's perspective.

"It signals a new direction and a more reasonable and sensible direction on medical marijuana policy," he said.

Still, Hermes said his Oakland-based organization was concerned about the fate of more than two dozen California medical marijuana cases currently pending in federal court.

"There remains a big question as to what the federal government's position is on those cases," Hermes said. He pointed specifically to the case of Charles Lynch, who was federally convicted for running a medical marijuana dispensary collective in San Luis Obispo County last year.

Hermes said Lynch could face decades in prison when he is sentenced Monday even though his clinic had been compliant with state law.

According to the government's sentencing recommendation for Lynch, which says the five-year mandatory minimum prison term is an appropriate one, Lynch had violated California state law because his "operation was rife with activities having more to do with business and casual drug distribution than anything medical."

U.S. attorney's office spokesman Thom Mrozek declined to comment on what would happen to the outstanding marijuana cases in the Los Angeles area.

The 13 states that permit medical use of marijuana are Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington.

Associated Press writer Thomas Watkins in Los Angeles contributed to this report.

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the
**Drug Policy
Forum**

March 19, 2009

To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
And Members of the Committee on Judiciary

Representative Faye Hanohano, Chair
Representative Henry Aquino, Vice Chair
And Members of the Committee on Public Safety

From: Jeanne Ohta, Executive Director

RE: SB1058 SD 2 Relating to Controlled Substances
Hearing: March 19, 2009, 2:00 p.m., Room 325

Position: Support with Amendments

I am Jeanne Ohta, Executive Director of the Drug Policy Forum of Hawaii. Thank you for this opportunity to testify in support of SB 1058 SD2 which directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level and felony drug offenders out of the criminal justice system into treatment.

Suggested Amendment

DPFH requests that the committee consider amending this measure by adding a taskforce or committee to review the medical marijuana program and look into possible solutions to concerns of patients. The taskforce should also make recommendations for a distribution system so that Hawai'i would have a system in place when federal policy changes. There are indications that federal policy is changing. The Justice Department's new enforcement policy is now restricted to traffickers who falsely masquerade as medical dispensaries and use medical marijuana laws as a shield.

This bill is the last appropriate vehicle this legislative session for a study on the medical marijuana program.

Diversion Program Study

Since 1993 the Drug Policy Forum of Hawai'i has advocated for safe, responsible, humane, and effective drug policies. DPFH supports using a public health approach to the issue of drug use, rather than continuing to resolve drug abuse problems through the criminal justice system which results in severe prison overcrowding and warehousing of Hawai'i prisoners on the U.S. continent.

Board of Directors

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A study on would help determine the treatment needs under a diversion program; how costs would change for law enforcement, prosecution, judicial and correctional resources.

Current drug policies, as applied and enforced, have taken a particularly hard toll on economically disadvantaged communities through the disproportionate incarceration of Native Hawaiians and the poor, disrupting families and interfering with or denying educational, employment and housing opportunities, thereby exacerbating the social conditions that gave rise to the drug abuse in the first place.

It is time that an independent study be conducted so that policy makers can determine where to shift public resources and how diversion of low-level and felony drug offenders into treatment programs can impact the criminal justice system.

Please pass SB1058 SD2 with amendments.

Harrison Kawate

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2009 3:25 PM
To: JUDtestimony
Cc: richfigel@gmail.com
Subject: Testimony for SB1058 on 3/19/2009 2:00:00 PM

Categories: Red Category

Testimony for JUD/PBS 3/19/2009 2:00:00 PM SB1058

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Rich Figel
Organization: Individual
Address: 801 Kainui Drive Kailua, HI 96734
Phone: 808-262-5073
E-mail: richfigel@gmail.com
Submitted on: 3/17/2009

Comments:

As a recovering alcoholic/drug addict, who has been clean and sober for over 20 years, I can personally tell you that our current War on Drugs approach is a disaster. By criminalizing all drugs, including marijuana, the government has only succeeded in creating a thriving black market that benefits criminals, gangs and the prison industry.

The fact is that millions of Americans have smoked pot or tried cocaine, and the vast majority have NOT become addicted. There is nothing inherently different about pot than alcohol, other than the arbitrary policy to use Prohibition tactics against pot, while allowing adults to drink alcohol.

Why not establish the same kind of legal limitations on pot, and control it the same way was alcohol? The truth is it's easier for kids to score pot than booze because legal sellers of alcohol have good reason to follow the laws!

Please think logically about the irrational fear of marijuana. By the way, when I went into rehab in 1988, I met some of the very first crystal meth addicts. They were average blue collar workers who started using ice so they could work overtime and double shifts. Meth became a popular alternative to pakalolo because it was cheaper -- so the government crackdown on local pot actually backfired and created a far worse problem than stoned potheads.

Prohibition doesn't work. Treatment and education does.

Sincerely,
Rich Figel

Harrison Kawate

From: Andrea Tischler [andreatischler@yahoo.com]
Sent: Tuesday, March 17, 2009 9:30 PM
To: JUDtestimony
Subject: Support S.B. No. S.D 2

Andrea Tischler, Chair
Americans for Safe Access, Big Island Chapter

Committee on Judiciary, Jon Riki Karamatsu, Chair Committee on Public Safety, Faye Hanohano,
Chair Thursday, March 19, 2009 2:00 p.m.
Conference Room 325

Measure SB 1058 S.D. 2

SUPPORT WITH AMENDMENT

This is testimony which supports S.B.1058 S.D.2 with an amendment.

My name is Andrea Tischler. I am the chairperson of the Americans for Safe Access, Big Island Chapter. We are part of a national organization composed of over 40,000 patients and activists. On the Big Island there are over 2000 patients who have a recommendation for medical cannabis from a licensed physician.

Patients on the Big Island are very concerned that our plight is not being heard by our elected officials in Honolulu or in Washington. There are many conditions for which cannabis is efficacious that include life threatening diseases such as HIV/AIDS, MS and cancer.

I urge your support of S.B.1058 SD 2 for the following reasons.

1. Jails and prisons in Hawai'i are filled to overflowing, many with non violent first time cannabis offenders. There is no reason why these people need to go to prison. A system that diverts them from criminal prosecution and places them in a treatment program is far better than putting them in prison where they come into contact with hardened and violent criminals.
2. The diversion program already exists in states such as California where it has worked for decades. It will save precious taxpayer money and will alleviate overcrowded prison conditions.
3. Medical cannabis patients in Hawai'i either need to grow their own cannabis or buy it on the black market. Cannabis is very difficult to grow and a patient who grows it himself often must begin the growing cycle with more than the seven allotted by law in order to provide the amount of medicine necessary to provide relief from their disease or symptoms. A diversion program will protect the patient who is growing in excess of the limits of the program with a way out of jail.

I would, also urge that SB 1058 S.D. 2 include an amendment to create a medical cannabis task force to discuss secure growing facilities for medical cannabis and other improvements to the program with the idea to make recommendations to address the shortcomings of the current law. Updating this antiquated law is long overdue and urgently needed for the increasing number of cannabis patients in Hawai'i.

Respectfully submitted,

Andrea Tischler

Harrison Kawate

From: Scott Foster [fosters005@hawaii.rr.com]
Sent: Tuesday, March 17, 2009 11:44 PM
To: JUDtestimony
Subject: Testimony supporting SB1058 SD2 with amendments

Joint hearing of Judiciary and Public Safety Committees
Committee on Judiciary, Jon Riki Karamatsu, Chair
Committee on Public Safety, Faye Hanohano, Chair

Thursday, March 19, 2009
2:00 p.m.
Conference Room 325

SB 1058, SD2 Relating to Controlled Substances
Directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice system into treatment.

Aloha Chairs Karamatsu & Hanohano,

The over 5,000 participating state-wide members of *Hawai`i Advocates For Consumer Rights* who supported the original Medical Marijuana legislation in 2000, support SB1058 SD2. However, we respectfully suggest that it should be amended to establish a task force to study possible changes and recommendations to address several known patient concerns regarding the existing medical marijuana program.

We also suggest that SB1058 SD2 be amended to transfer jurisdiction from the Department of Public Safety to the Department of Health where it should have been all along. Surely we have come far enough along this path to understand that Medical Marijuana is a health issue and not an issue of public safety and that sick and dying people in pain have enough problems without having to deal with a state department openly hostile to the very existence of the law.

Those of you who participated in hearing and passing the landmark legislation in 2000, might remember that purview was originally given to the Department of Public Safety due to the wishes of the then Chair of the Department of Health because of the existing budget constraints imposed during the last recession. The DOH did not have the money to implement the program and this was a trade off to get the law, then considered the "model" legislation for the nation, passed. It is also worth knowing that Hawai`i was the first state in the nation to pass such a law through a legislature. The earlier state laws had been achieved through ballot initiative and this remains a testimony to the wisdom of the Hawai`i State Legislature.

Currently, 31 states and the District of Columbia have laws on the books that recognize marijuana's medical value. Nine of the 13 effective medical marijuana laws were enacted through the ballot initiative process -- in Alaska, California, Colorado, Maine, Michigan, Montana, Nevada, Oregon, and Washington. The other four effective laws were passed by the state legislatures of Hawaii, New Mexico, Rhode Island, and Vermont. Hawaii and New Mexico's laws were enacted with the governors' signatures. The Rhode Island law was enacted over the governor's veto, and Vermont's governor allowed the medical marijuana legislation to become law without his signature.*

Please consider taking action this year and let's be done with this and save all concerned valuable time and energy.

Mahalo for your kind consideration of our suggested amendments.

Sincerely,
/s/
Scott Foster

*State-By-State Medical Marijuana Laws
2008

<http://www.mpp.org/assets/pdfs/download-materials/SBSR_NOV2008.pdf>

HAWAII ADVOCATES FOR CONSUMER RIGHTS

<www.scottfoster.org/afer>

Scott Foster, Communications Director

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fosters005@Hawaii.rr.com

Harrison Kawate

From: Jeff Crawford [ExecDevelopment@hawaii.rr.com]
Sent: Wednesday, March 18, 2009 5:38 AM
To: JUDtestimony
Subject: Judiciary Committee, Bill SB1058 SD2, Thursday, March 19, 2009, 2:00 p.m. Conference Room 325

Dear Jon Riki Karamatsu, Chair & Faye Hanohano, Chair,

Regarding SB 1058, SD2 Relating to Controlled Substances

Please include an amendment that would set up a task force to study changes and make recommendations to address patient concerns with the current medical marijuana program.

Thank you,

--

Jeff Crawford, Ph.D.
Consulting Psychologist
Executive Assessment & Development
2269 Okoa Street
Honolulu, Hawaii 96821
Voice 808-373-1172
Fax 1-800-346-7512
ExecDevelopment@Hawaii.rr.com <<mailto:ExecDevelopment@Hawaii.rr.com>>

Harrison Kawate

From: Walter Hillinger [walter16@mac.com]
Sent: Wednesday, March 18, 2009 10:58 AM
To: JUDtestimony
Subject: Medical Marijuana

Dear Committee,

I do not represent a organization but I do represent myself and other card holding members that hold medical marijuana blue cards that are issued by the state and prescribed by a practicing doctor licensed in the state of Hawaii. I do feel that directing low level felony convictions to treatment centers is a good idea and will help free up the jail system. I also would like an amendment attached to this bill to set up a study of the medical marijuana laws and address the shortcomings of the present law. This will go a long way to set up the mechanism to provide medical marijuana to anyone who has a prescription for the drug Thanking you in advance,

Walter Hillinger
Island of Maui

Harrison Kawate

From: Stuart Hirotsu [kotonk544@yahoo.com]
Sent: Wednesday, March 18, 2009 11:05 AM
To: Rep. Jon Karamatsu
Cc: JUDtestimony
Subject: SB 1058

HOUSE OF REPRESENTATIVES, THE TWENTY-FIFTH LEGISLATURE, REGULAR SESSION OF 2009

COMMITTEE ON JUDICIARY
COMMITTEE ON PUBLIC SAFETY

NOTICE OF HEARING

DATE: Thursday, March 19, 2009

TIME: 2:00 p.m.

PLACE: Conference Room 325, State Capitol, 415 South Beretania Street

A G E N D A

SB 1058, SD2 / (SSCR634)

RELATING TO CONTROLLED SUBSTANCES.

Directs the attorney general to coordinate a review of the impact of diverting marijuana and low-level felony drug offenders out of the criminal justice system into treatment. (SD2)

aloha from Maui

Please apply common sense and compassion to your decision and consider passing SB 1058. The days of ignorant fears and draconian punishments need to end.

I spent seven days in jail recently for the "crime" of answering phones in a medical marijuana support office. Six others were arrested in that "sweep" - estimates range at around \$4,000 in cost for each arrest. Add in the costs of two phone taps, an undercover investigation over two years, incarceration & processing, and legal fees the State is paying (several public defenders) as these indictments are heading to trial, and you can see how wasteful these enforcement practices are. When all is said and done (and more will be said than done), how much will be wasted on these cases alone? \$100,000? A quarter of a million? Whatever it is, we cannot afford to waste so much money that does nothing other than generate hostility towards our public servants.

If reason and intelligence do not persuade us to do the right thing, perhaps our economic challenges might inspire us. In any event, do you want to be remembered as legislators who allowed a medicine and simultaneously denied patients access to that medicine? Are you willing to take a place in history along with the jurors of the Salem Witch Trials, the jurors of the Scottsboro Boys Case, and Eugene McCarthy as symbols of cruelty, stupidity, and hatred?

Please do the right thing. The people of Hawaii have responded in poll after poll that we all support the right of Medical Marijuana patients to safe access to their medicine. Please do what we need to make this a reality.

mahalo
Stuart Hirotsu
808 280-5424
stuart@IsseiProductions.com
www.IsseiProductions.com

From: Cathryn Smith [smithhaiku@gmail.com]
Sent: Wednesday, March 18, 2009 6:50 PM
To: Rep. Jon Karamatsu
Subject: Constitutional Right

Hi, Thank you for the opportunity to submit testimony regarding SB1058. SD1. Equality before the law for people who use marijuana is the last major unaddressed civil rights issue in America. Life, liberty, and the pursuit of happiness demand that the rights of American adults who choose to use marijuana, either medicinally or for recreation, are protected by the Declaration of Independence and the Constitution. Remember the 4th amendment was added to the Bill of Rights because British soldiers were invading colonists' home and seizing rum and tea. If adults have the right to drink and use pharmaceuticals which alter consciousness or even endanger life, they certainly have the right to use marijuana.

Thank you,
Cathryn K. Smith
14 Kau'i Pl
Kula, HI 06790

karamatsu3-Leanne

From: Bill Best [bestb002@hawaii.rr.com]
Sent: Wednesday, March 18, 2009 7:00 PM
To: JUDtestimony
Subject: my email wouldn't send saying "@Capitol.hawaii.gov" is not a valid address - below is what we tried to send & hearing is Thursday 3/19 at 2pm

From: Bill Best <bestb002@hawaii.rr.com>
Date: March 18, 2009 6:55:49 PM HST
To: repkaramatsu@Capitol.hawaii.gov, repluke@Capitol.hawaii.gov, repwaiiai@Capitol.hawaii.gov, repmarumoto@Capitol.hawaii.gov, "Rep. Angus McKelvey" <repmckelvey@Capitol.hawaii.gov>, repthielen@Capitol.hawaii.gov, repmizuno@Capitol.hawaii.gov
Cc: rephanohano@Capitol.hawaii.gov, [@Capitol.hawaii.gov](mailto:repito), repherminam@Capitol.hawaii.gov, repbelatti@Capitol.hawaii.gov, repmorita@Capitol.hawaii.gov, repcarroll@Capitol.hawaii.gov, repcabanilla@Capitol.hawaii.gov, reposhiro@Capitol.hawaii.gov, repsouki@Capitol.hawaii.gov, reptsuji@Capitol.hawaii.gov, repherkes@Capitol.hawaii.gov, repmizumo@Capitol.hawaii.gov
Subject: We are in favor of SB 1058, SD2 (SSCR634)

This bill makes so much sense in terms of the overburdened economy and use of taxpayer monies, civil liberties, overcrowded prisons, humane treatment of citizens. Please know we support it.

This is Relating to Controlled Substances UD/PBS, FIN

Mahalo from private citizens, plain voters.

Mr. and Mrs. Bill Best

280 Hauoli St.

Wailuku, HI

Would you please make sure our input gets noted? MAHALO NUI

karamatsu3-Leanne

From: Jbrhawaii1@aol.com
Sent: Wednesday, March 18, 2009 9:21 PM
To: JUDtestimony; bmurphy420@msn.com; Rep. Joe Bertram III; Joe Bertram; rc@honoluluasa.org
Cc: Cc@; Rep. Faye Hanohano; greenfigital@hotmail.com; IsseiProductions@aol.com; Stuart Hirso; WallyB41@aol.com; Walter Hillinger; Sen. Suzanne Chun Oakland; sendige@c.apitol.hawaii.gov; sendrgreen@capitol.hawaii.gov; Sen. J. Kalani English; "senespero@capiotl"@hawaii.gov; seng@gregoryhouse.org; Sen. Brickwood Galuteria; Sen. Josh Green; Sen. Colleen Hanabusa; Sen. Clayton Hee; Sen. Fred Hemmings; senhogue@capitol.hawaii.gov; Sen. Gary Hooser; senkanno@capitol.hawaii.gov; Sen. Michelle Kidani; senkokobun@capitol.hawaii.gov; Sen. Russell Kokubun; Sen. Clarence Nishihara; Sen. Norman Sakamoto; Sen. Sam Slom; sentanaguchi@capitol.hawaii.gov; Sen. Brian Taniguchi; Sen. Jill Tokuda; sentrimble@capitol.hawaii.gov; Sen. Shan Tsutsui; senwhalen@capitol.hawaii.gov; reparakaki@capitol.hawaii.gov; Rep. Joe Bertram III; repbukoski@capitol.hawaii.gov; repbukowski@capitol.hawaii.gov; Rep. Rida Cabanilla; repcaldwell@capitol.hawaii.gov; Rep. Mele Carroll; Rep. Cindy Evans; Rep. Lynn Finnegan; Sen. Josh Green; Rep. Faye Hanohano; rephiraki@capitol.hawaii.gov; repkahikina@capitol.hawaii.gov; repkawakami@capitol.hawaii.gov; Rep. John Mizuno; repnakasone@capitol.hawaii.gov; Rep. Scott Nishimoto; reposhiro@capitol.hawaii.gov; "repkaramatsu@capitol.hawaii.gov.reppine"@capitol.hawaii.gov; All Reps; Rep. Calvin Say; repshimabakuro@capitol.hawaii.gov; Rep. Maile Shimabukuro; repsonson@capitol.hawaii.gov; Sen. Dwight Takamine; reptamayo@capitol.hawaii.gov; Rep. Ryan Yamane; markusfili@yahoo.com
Subject: *****SPAM***** NO VOTE-SB1058 CANNOT YOU USE HB 1191, AND AMEND IT IN TO SB 1058-DON'T YOU DARE

ALOHA RESPECTED MEMBER OF THE SENATE AND HOUSE OF REPRESENTATIVES,

ALL I CAN SAY, IS THAT IF YOUR COMMITTEES AGREES TO ADD HB 1191, WHICH **DIDN'T, AND I DO NOT WANT TO SHOW UP TOMORROW, PROVING HIS BLATANT DISREGARD FOR THE STATE, BUT AS WELL, TO LET YOU KNOW HOW SNEAKY REPRESENTATIVE JOE BERTRAM AND REPRESENTATIVE FAYE HANOHANO REALLY ARE!** WHICH DIDN'T PASS COMMITTEES, IN TO SB 1058, **THAN YOU ARE A CORRUPT AND MONOPOLIZED LEGISLATURE** AND IF IN FACT HEARD TOMORROW, ALL STATIONS, TV, RADIO AND THE WEB, WILL BE FLOURISHED WITH THE OUTRAGE THAT PERSONALITIES CAME BEFORE PRINCIPLES, SO YOU SNEAK BEHIND OUR BACK AND ARE TRYING TO FACILITATE IT WITHIN THE HOUSE.

I DON'T THINK SO!!!!!!

JIM MENDOZA,(KGMB) OLENA RUBIN (KHON) AND THE **MAUI LEAD PROSECUTER** IN BRIAN MURPHY'S PENDING ALLEGED FELONY CASE, (EVEN THOUGH HE IS ALREADY A CONVICTED FELON) WILL ALL BE KEPT A BREAST TO THIS HEARING TOMORROW. IT'S NICE TO KNOW THAT FRESHMAN HOUSE MEMBERS AND IGNORANT LEGISLATURES LIKE YOU WHO HAVE ALLOWED THIS TO EVEN COME CLOSE TO THIS WONDERFUL, WELL THOUGHT OUT SENATE BILL, SB 1058, BY MY FRIEND AND COLLEUGUE SENATOR WIL ESPERO, CHAIR OF PUBLIC SAFETY AND MILITARY AFFAIRS, AND SUPPORTED MY OWN MEDICAL CANNABIS DISTRIBUTION BILL, SB 418 (WHICH WOULD HAVE MADE \$5-\$6 MILLION FOR THE STATE PER YEAR WITH NO TAX STAMP **{BECAUSE IT IS ILLEGAL TO SELL CANNABIS UNDER ANY CIRUMSTANCES}**) AND ONLY \$84.00 A MONTH FOR EACH PATIENT, SPONSORED BY SENATOR DAVID IGE, SEN ROBERT BUNDA AND SUPPORTED BY SEN WIL ESPERO, SEN BRICKWOOD GALUTERIA ,SEN MICHELLE KIDANI, AND IT'S COMPANIONS THAT THE HOUSE'S PBS/HTH COMMITTEES(REP HANOHANO{fake lead sponsor of my House Bills 967 and 1194/1191} & REP AQUINO[FRESHMAN] SCREWED UP, WHICH ARE HB 967 & HB 1194 (DEFERRED BY COMMITTEES BECAUSE OF CHAIRS OF PBS - FAYE HANOHANO, AND HEALTH REP[FRESHMAN] HENRY AQUINO, PUTTING THE HUGE KIBOSH ON MY BILLS CLAIMING **NO SALE OR TAXING ON CANNABIS [WHICH IS NOT TRUE FOR SERVICE OR DISPENSING FEES WHEN GIVING THE MEDICINE{CANNABIS} AWAY.** BRIAN MURPHY TOOK THE BODY AND OUTLINE FROM HB 1194 AND THEN TOOK TEXT FROM IT, EVEN IF IN IDEA, FOR 1191) (WHICH HB 967 SHOULD HAVE BEEN ALL ALONG, ONE BILL LIKE THE ORIGINAL IN THE SENATE SB 418 (**WHERE OUR AMENDMENTS WERE ACCEPTED AND CLEARLY VOTED YES ON**), BUT

Joseph B. Rattner, O. D., CSAC
West O`ahu Hope For A Cure Foundation
Founder and Executive Director
HIV, Hepatitis, STD's and Addiction
Testing, Counseling & Referral Specialists
Certified HIV and Hepatitis Educator

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PO Box 2487
Ewa Beach, Hawai`i 96706
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FAX: (808) 685-6840
24-hour Hotline: (808) 781-3663
Foundation Web Site: www.WestOahuHopeForACure.org
Director's Email: jbr@WestOahuHopeForACure.org

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Dear Representatives,

My name is Brian Igersheim. I have been a medical marijuana patient for five years and have served as the caregiver for many other patients over the course of that time. Collectively, we have all had great difficulty maintaining a supply of the medicine that the legislature has deemed us legal to possess and acquire.

As written the medical marijuana law, HRS 329-121 through HRS 329-128, is a classic "Catch 22." The law states that patients may "acquire" their medicine, but does not clarify or in any way address how this can legally be done. Therefore, although it is legal for registered patients to possess marijuana, they, or their caregiver, must commit an overtly illegal act to do this.

I write this from personal experience. For over four years I was a member and participant deeply invested in the efforts of Patients Without Time, a patient advocacy group in Pa'ia, Maui. I dedicated much of my time and energy to assisting other patients in the maintenance of their adequate supply. As patients, we believed that the collective acquisition of marijuana among our patients was not only morally correct, but legal within the constraints of the Statute.

After a two year investigation coined "Operation Weedkiller," supported by the Narcotics Enforcement Division, the Maui County Department of Police deemed this process of patients acquiring marijuana together as illegal; as patients, it was the only way that we knew how to safely acquire our medicine within the guidelines of the law. Individually dealing with street thugs and drug dealers would only add to our debilitating conditions.

The problem is that the law is vague, and affords too much interpretation. We at Patients Without Time believed that we were right, and law enforcement believes that they are right. At this point after hundreds of thousands, even millions of dollars worth of investigative resources and our ridiculous bail and lawyer fees, a jury will ultimately decide the truth. In the meantime, I strongly urge the legislature to clarify the statute so that this sort of interpretation is clarified and patients who can legally possess marijuana may also acquire it. Otherwise, more medical marijuana patients will face the same sort of ambivalent criminal charges in the future even though they believe they are abiding by the statute.

SB1058 allows the possibility of clarification of this vague and dangerous law by addressing the issues raised in the Legislative Reference Bureau's Report: In Search of a Viable Distribution System for Medical Marijuana. The Medical Marijuana law as written violates federal law, so of course a viable system will as well. Federal Law will never change if individual states do not do what is right. Slavery would have never ended 150 years ago if individual states had not made the decision to end it and therefore influence the federal system, and likewise with the prohibition of medical marijuana on a federal level. I urge you to do what is pono.

My proposed amendments:

Create a working Group, to report back within 120 days of enactment of SB1058 with a model Farm Plan for the cultivation of medical Marijuana for the over 4000 medical marijuana patients. This Farm Plan will take into account Small Farm Sustainability. This working group will use HB1191 to formulate a Farm Plan. The working group will be made up as followed

Chair Ag.	(1)
Attorney Gen. Office	(1)
Chair Economic development	(1)
Chair of Finance	(1)
Chair PS	(1)
Chair JUD	(1)
Self Sustainability Group	(1)
Small Farmer Organization	(1 from each Island)
Marijuana Researcher/Patient	(1)

120 days after enactment of SB1058 this working group will report back with a Model Family farm Plan

Thank you for the opportunity to testify,
Brian Igersheim