



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1818, H.D. 1, RELATING TO COGNITIVE RESTRUCTURING.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 19, 2010 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Darcy H. Kishida, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill requires the Department of Public Safety (PSD) to include "cognitive behavioral therapy with native Hawaiian holistic interventions" in all of its reentry/reintegration programs.

The bill does not define "native Hawaiian holistic interventions." Given the lack of a definition, the term is problematic because it is too vague to interpret, implement, and, if necessary, defend. For example, it is unclear whether the term refers to native Hawaiian religious practices, cultural practices, or something else entirely. If the term is interpreted in any way as religious in nature, the bill could infringe on an inmate's constitutional right to equal protection or freedom of religion. See Inouye v. Kenma, 504 F.3d 705, 713 (9th Cir. 2007) (holding that the Hawaii Paroling Authority's requirement that a parolee participate in a treatment program with a religious component was unconstitutional because the "government may not coerce anyone to support or participate in religion or its exercise"). The bill may also raise concerns over the separation of church and state by appearing to favor one religion over another. See McCreary County, Ky. v. American

Testimony of the Department of the Attorney General
Twenty-Fifth Legislature, 2010
Page 2 of 2

Civil Liberties Union of Ky., 545 U.S. 844, 875-76 (2005)

(holding that "the government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals under the Free Exercise Clause").

If the term is interpreted as cultural in nature, rather than religious, it may nevertheless present equal protection problems by appearing to favor one ethnicity over another. See Regents of University of California v. Bakke, 438 U.S. 265, 291 (1978) (noting that "ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination").

These constitutional concerns are exacerbated by the bill's mandate that all of PSD's reentry/reintegration programs contain a native Hawaiian component and that PSD may not enter into any new contracts for reentry/reintegration programs unless they are designed to achieve this goal.

Consequently, we request that this bill be held.



HB 1818 HD 1
RELATING TO COGNITIVE RESTRUCTURING
House Committee on Finance

February 19, 2009

2:00 p.m.

Room: 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB 1818 HD 1, which would ensure that re-entry and reintegration programs in Hawai'i's correctional facilities offer cognitive behavioral therapy with cultural interventions to address the multi-faceted issues associated with incarceration, such as domestic violence, substance abuse, cultural identity and community reintegration after release.

In 2008, Native Hawaiians were the second largest ethnic group in arrests for the City and County of Honolulu. Disturbingly, Native Hawaiians comprise the highest percentage (close to 40 percent) of the state's total prison population.

In the *Unlocking Justice* conference, Dr. Tom Lengyel estimated that the social and economic costs to incarcerate a person for 39 months was \$123,000. Transitional programs, such as those cited in HB 1818 HD 1, would cost much less, and programming would place an emphasis on wellness and independent living.

OHA and the Department of Public Safety recently engaged in an agreement to develop a culturally appropriate trauma informed care system and staff training at the Women's Community Correctional Center. The Hawai'i prison system would greatly benefit from improved and coordinated, culturally competent trauma informed care programs to address the over representation and historical trauma of Native Hawaiian women in prison. Researchers have found that many of these women are left untreated from physical and sexual abuse in the past.

OHA has supported many transitional programs to assist in community reintegration, such as TJ Mahoney, the Maui Economic Opportunity BEST Program, Alu Like, Inc., and many more. These programs are recognized for their land- and water-based cultural interventions, which yield high retention rates in programming, an increase in positive behaviors and quality family strengthening and reunification.

HB 1818 HD 1 would assure that adequate program and evaluation will be implemented to measure the success of individuals re-entering into the community; and recidivism rates after three months, six months, nine months and one year. Accurate data is needed to improve quality programming and to develop policies for successful transition.

Education, job employment, housing, and access to treatment are the necessities of our society, and hold the great potential to prevent a person from being incarcerated. Once in prison, if these opportunities are afforded to individuals while serving their time, they may grow exponentially into productive citizens after release.

Therefore, OHA urges the committee to PASS HB 1818 HD1. Thank you for the opportunity to testify.



Committee: Committee on Finance
Hearing Date/Time: Friday, February 19, 2010, 2:00 p.m.
Place: Room 308
Re: Testimony of the ACLU of Hawaii in Support of H.B. 1818, H.D.1,
Relating to Cognitive Restructuring

Dear Chair Oshiro and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in strong support of H.B. 1818.

The ACLU of Hawaii supports every effort to develop a comprehensive reentry system. In general, these types of programs are far more cost-effective – and far more effective at reducing recidivism – than incarceration, and we support efforts to make these reentry programs more culturally sensitive and individualized.

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,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
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the
**Drug Policy
Forum**
of hawaii

February 19, 2010

To: Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair and
Members of the Committee on Finance

From: Jeanne Y. Ohta, Executive Director

RE: HB1818 HD1 Relating to Cognitive Restructuring
Hearing: February 19, 2010, 2:00 p.m., Agenda #4

Position: Strong Support

The Drug Policy Forum of Hawai'i writes in strong support of HB 1818 HD1 Relating to Cognitive Restructuring which requires the Department of Public Safety to ensure that reentry and reintegration programs in Hawaii's correctional facilities combine cognitive behavioral theory with native Hawaiian holistic interventions that address domestic violence, addictions, self mastery through identity, and community connections for successful transitions back into the community.

Since such a large portion of our inmate population is native Hawaiian, it makes sense to include the restorative practices of that culture with cognitive restructuring and offer such programs in our prisons.

We must require that our prisons focus on reentry and successful reintegration in order to reduce recidivism rates which would then help bring our skyrocketing prison budget under control.

Our prisons should be program intensive and offer a variety of programs, since not everyone will respond to the same program. Culturally-based programs can be effective and should be among the programs offered in Hawaii's prisons.

We urge the committee to pass this measure so that more focus is placed on successful reentry back into the community. Thank you for this opportunity to provide testimony.

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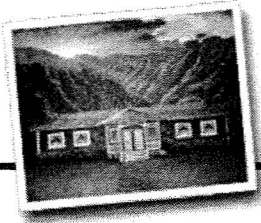
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The Institute For Family Enrichment, LLC

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February 18, 2010

Representative Marcus Oshiro
Finance Chairman
Room 306

Dear Representative Marcus Oshiro;

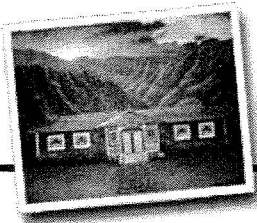
My name is Thomas K. Naki, Co-owner and program manager for the Nurturing Fathers of Hawai'i programs at The Institute for Family Enrichment. (Tiffe). I am also the author of the culturally relevant *Nurturing Fathers of Hawai'i curriculum*. I support H.B. 1818 to insure reentry/reintegration Programs with Hawaii's correctional facilities offer cognitive behavioral therapy with native Hawaiian holistic interventions to address domestic violence, addictions, self mastery through identity, and community connections to promote the successful transition from incarceration to the community.

Over the past years, Tiffe (The Institute For Family Enrichment) has designed, implemented and participated in two highly successful parenting programs for incarcerated men. REACH program established by the Department of Public Safety was comprised of 5 five agencies coming together to provide the following components:

PACT	Domestic Violence Education
Hina Mauka	Substance Abuse Evaluation
TIFFE	Nurturing Parenting (Nurturing Fathers of Hawaii)
Mitzi Simonelli, Ph.D	Cognitive Restructuring
CFS	Domestic Violence Education

From 2002 to 2006, REACH program served 176 incarcerated men. The Nurturing Fathers of Hawai'i Program is a culturally relevant program using Hawaiian and English concepts in teachubg men the attitudes, skills and knowledge necessary to change from being abusive to being nurturing men in their roles as fathers, spouses, partners. The program ended due to loss of funding.(see attached final report) The Office of Hawaiian Affairs funded the Nurturing Fathers of Hawai'i Program for incarcerated men until 2008. A total of 64 incarcerated men were enrolled in the program. 59 were Hawaiian/Part Hawaiian Men. Only 6 were Non-Hawaiian Men. (See final report). Again, the program was terminated due to lack of funding.

As a Hawaiian and Masters prepared health educator working in this field since 1960's. I have seen and continue to see the overwhelming number of Hawaiian and Part-Hawaiian men and women incarcerated in Hawai'i and across the mainland. It is heart warming to know we have created successful programs and services that works to prevent men, women and their children from the world of intimidation, threats and violence. We know that without funding, we



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are limited in our effectiveness in addressing to lower the recidivism rate. There needs to be accountability of data that reflect the need for follow-up care of service delivery outcome.

House Bill 1818 will give some assurance that few resources we do have will be culturally relevant for the people they serve.

Mahalo,

Thomas K. Naki, MPH
The Institute For Family Enrichment

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

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



COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair

Rep. Marilyn Lee, Vice Chair

Friday, February 19, 2010

2:00 p.m.

Room 308

STRONG SUPPORT HB 1818 HD1 - Cognitive Restructuring & Cultural Interventions

FINTestimony@capitol.hawaii.gov

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee!

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 by supporting smart justice policies. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that almost 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 1818 HD1 requires the Department of Public Safety to establish a reintegration pilot program that combines cognitive behavioral theory with native Hawaiian holistic interventions that address domestic violence, addictions, self mastery through identity, and community connections for successful transitions back into the community.

Community Alliance on Prisons is in STRONG SUPPORT of HB 1818 HD1. The disproportionate number of incarcerated individuals of Hawaiian ancestry should make all people of good will ask, why *are* we criminalizing the aboriginal population?

Cognitive Restructuring:

Using cognitive restructuring in concert with cultural interventions can be an important strategy for the rehabilitation of Hawai'i's incarcerated individuals.

Cognitive theory is a proven technique that has been shown to have positive results for many. The **Evaluation of the Efficacy of a Cognitive Behavioral Program for Offenders on Probation: *Thinking for a Change*** (Lori Golden, Ph.D. University of Texas Southwestern Medical Center at Dallas, 2002.) found that *Thinking for a Change* group completers differed from untreated probationers, with about a 33% reduction in new offense charges.

An article that appeared on February 14, 2010 in a Tampa Bay, FL newspaper entitled, "Christ backs rehab for inmates" reported that, "If state prison officials trim recidivism by just 1 percent, they will save \$8 million a year."

An article by the head of Federal Probation in Nevada that appeared in Federal Probation in September 2008 talked about cognitive restructuring:

"CBT (Cognitive Behavioral Therapy) has been found to be one of the more promising methods of rehabilitative treatments for offenders. Offenders have been found to distort cognition, which impairs their ability to correctly read social clues, accept blame, and morally reason. This creates a greater sense of entitlement on the part of the offender (Lipsey, Landenberger, & Wilson, 2007). This distorted thought process can lead them to demand instant gratification, misperceive harmless situations as threats, and confuse wants with needs (Ross & Fabiano, 1985). CBT programs use behavioral learning techniques to alter the general adaptive behavior of offenders. This allows them to return to their natural environment with a bank of new skills that they can reinforce in socially acceptable ways instead of in their prior illegal ways (Pearson, Lipton, Cleland, & Yee, 2002).

Conclusion

Cognitive-behavioral programs have been shown to reduce recidivism as long as the programs are implemented well. As with any program, intensive planning about the program to use, logistics of providing the service, quality assurance, and evaluation of effectiveness should occur prior to actual implementation. Such planning will increase the likelihood of successful implementation, while evaluation of the program allows districts to address problems that may occur, particularly around program fidelity. With good cognitive-behavioral programming, districts can increase their effectiveness in addressing offender issues."

Source: http://www.uscourts.gov/fedprob/September_2008/07_cognitive_behavior.html

Cultural Interventions:

Cultural interventions have proven to be successful in program such as MEO's BEST Reintegration Program where recidivism is 10-20% lower than the state has been able to achieve.

There are more and more studies and articles emerging about the power of restorative practices to heal victims, communities, and wrongdoers themselves from the impacts of crime. These practices are based on those of aboriginal peoples who understood that much wrongdoing develops when connections are broken or lost. Restorative practices like ho'oponopono help reconnect people. They help heal those broken connections. These kinds of strategies are successful, especially in Hawai'i, as the majority of our incarcerated population is comprised of individuals of Hawaiian ancestry. The process of helping someone connect to who they really are is nothing short of transformative. I have seen many miracles, for which I am grateful and optimistic.

The research and experiences of those who have been involved in these processes is a strong call for Hawai'i - especially Hawai'i - to implement culturally competent interventions to help individuals understand the thinking that created their pathway to incarceration.

The Restorative Circles process, codified in Act 8 is an example of a restorative practices program that assists people in understanding their own behavior. An article entitled, "*Rights, religion, and community: Approaches to violence against women in the context of globalization*" in the Law and Society Review by Sally Merry Engle (2001) discusses Restorative justice practices, such as ho'oponopono. (http://findarticles.com/p/articles/mi_qa3757/is_200101/ai_n8940957/pg_25/)

"During the 1980s and 1990s, there were also efforts to develop ho'oponopono as an alternative to the criminal justice system. In the 1980s, the Neighborhood Justice Center in Honolulu suggested ho'oponopono as an alternative to mediation (Shook 1985). However, it is different from mediation, which focuses more on compartmentalizing problems and less on a holistic approach (Meyer & Davis 1994).

In 1994, the Native Hawaiian Bar Association (NHBA), concerned with the rising population of incarcerated Native Hawaiians, set up a program to divert some family court cases out of the judicial system (Meyer & Davis 1994: 5). Encouraged by an enthusiastic group of family court judges, the NHBA sponsored the training of a cadre of ho'oponopono practitioners for court and Neighborhood Justice Center referrals by experts taught originally by Pukui. This included attorneys, people from the Neighborhood Justice Center, and from the community. One radical group protesting prison construction in 2000 suggested ho'oponopono as an alternative to incarceration for Native Hawaiians.

Ho'oponopono is now being incorporated into a burgeoning global movement to promote forms of restorative justice, many of which are based on indigenous peoples' judicial mechanisms. For example, New Zealand developed the family group conference in response to complaints by Maori people that the legal system was alienating and did not respond to their values or kinship system and that children were being removed from homes too often (Hassall 1996: 22). It emphasizes the central role of community elders and was mandated for all juvenile offenders in New Zealand in 1989 (Hudson et al. 1996: { 13).

The family group conference was adopted in parts of Australia in 1993 because of concern about the high rates of youth arrest and detention among Aboriginal peoples (Wundersitz & Hetzel 1996: 134-37) and has been tried in some parts of Canada, primarily for aboriginal communities (Longclaws et al. 1996: 195; see also McGillivray and Comaskey 1999).²² Although the family group conference was developed for juvenile cases, some in New Zealand have argued that its emphasis on restorative justice and the importance of the wider community could provide a more culturally appropriate mechanism in gender violence cases as well, eliciting the support of the wider community in shaming the offender and facilitating his reintegration into the community. This approach may provide better protection than the adversarial system (Carbonatto 1995: 13).

The emphasis on healing and reconciliation within ho'oponopono conforms to the core features of restorative justice, as does its location within an indigenous community. This idea converged with Braithwaite's emphasis on shaming and experiments with sentencing circles in aboriginal communities in Canada (see Roberts & LaPrairie 1996; Crnkovich 1996).

The Restorative Circles program has been hailed nationally and internationally as another successful strategy for reentry and it was born in Hawai'i.

A July 2008 press release from the University of Cambridge in England cited several studies that found that restorative practices have reduced recidivism and crime by 27%.

The report includes seven experiments designed and directed by the Wolfson Professor of Criminology at Cambridge, Lawrence Sherman, and his co-director Dr Heather Strang, who directs the Centre for Restorative Justice at the Australian National University. The experiments began in 2001 and were conducted in collaboration with the Justice Research Consortium, under the chairmanship of Sir Charles Pollard, former Chief Constable of Thames Valley Police and former Chairman of the Youth Justice Board for England and Wales.

The experiments compared almost 400 cases where offenders had attended restorative justice conferences to some 400 cases where they had not. During the conferences offenders listened to victims describe the harm the crimes had caused. Each conference lasted from one to three hours, often in prison settings. Victims found the process helpful and positive, while some offenders have described the meetings as "traumatic", as well as life-changing.

The Sheffield report estimates that £9 of costs to victims and the criminal justice system was saved for every £1 spent on delivering these conferences. The study examined whether offenders within the restorative justice group were reconvicted within a two-year period. It also shows the percentage by which the rate of reconviction within that period fell among different types of criminal in different parts of the country following the restorative justice programme.

The rate of reconviction for violent offenders sentenced to supervision by the Probation Service under a community sentence in Thames Valley, for example, fell by 55%. The rate of reconviction among career burglars in London fell by 15.5%.

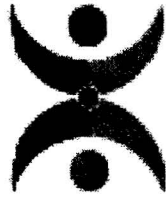
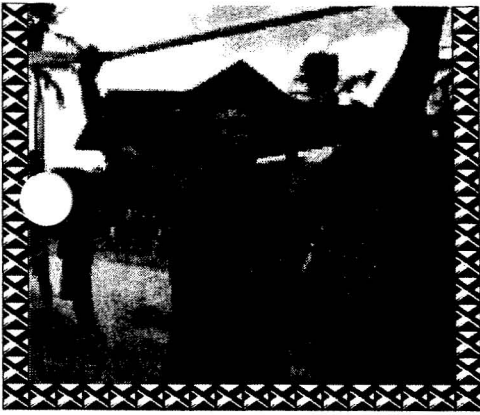
The report notes that while the results of each experiment were uncertain if taken in isolation, the likelihood of the pattern of reductions in the frequency of crime for the seven Cambridge-led tests having occurred by chance was one in 100. These results show consistent benefits across many different stages of the criminal justice process.

(Source: University of Cambridge, July 1, 2008, <http://www.admin.cam.ac.uk/news/dp/2008070103>)

Hawai'i needs to go back to what works. Our host culture offers many strategies for reducing crime, closing the revolving door of our correctional facilities, and developing interventions that directly address individuals' pathways to crime and incarceration.

Community Alliance on Prisons urges passage of HB 1818 HD1.

Mahalo for this opportunity to share our thoughts with the committee.



Kanu Hawaii
our kuleana calls

Committee on Hawaiian Affairs
Rep. Chair Marcus Oshiro ,
Rep. Vice Chair Marilyn Lee
Wednesday, February 10, 2010

Strong Support
HB 1818– Cognitive Restructuring with Native Hawaiians

Dear Chair Oshiro and Members:

My name is Keala Paleka and I am in full Support of HB 1818.

I am a true testimony that cognitive restricting with Native Hawaiians is successful. I was in prison for 2 years for addiction. While being locked up, I taught myself the Hawaiian Language by memorizing a Hawaiian Dictionary. Studying different sentencing structures to improve my Hawaiian Language. Many of the old timers helped me learn our language and guided us through our culture practices. Chanting, sentence structures and Hawaiian values were rooted in us while being locked up. I felt more in touch with my native roots and it had made me accountable for my actions.

HB 1818 requires the Department of Public Safety to establish a reintegration pilot program that combines cognitive behavioral theory with Hawaiian holistic intervention that address domestic violence, addictions, self mastery through identity and community connections for successful transitions back into the community.

I was one of the few braddahs that had made it out. I am currently in rolled at University of Manoa and studying Hawaiian for my undergrad. There is a yearning for this type of program because we have so many kanaka maoli in the prisons. Once your in prison you have a lot to think about, banding together as Hawaiians made the transitional easier. I ask this bill to be passed.

MAHALO KEKUA

KEALA PALEKA

FINTestimony

From: Shawn James Leavey [shawnjamesleavey@gmail.com]
Sent: Wednesday, February 17, 2010 7:02 PM
To: FINTestimony
Subject: Friday 19 2010 2pm #4 agenda

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Friday, February 19, 2010
2:00 p.m. – Agenda #4
Room 308

STRONG SUPPORT of HB 1818 HD1

Chair Oshiro, Vice Chair Lee and Honorable Members of the Committee,

While working as a session staffer in your State House of Representatives last year, I volunteered on a few occasions with the Prison Dharma Program at Halawa State Correctional Facility. Though they might not have put it in the terminology of HB 1818 HD1, the men who voluntarily came to the weekly meditation program were definitely seeking to change their minds and change their behavior for the better; to be more calm, more peaceful, less angry, less volatile less prone to acting in the same ways that landed them in jail. These men who came voluntarily were really at rock's bottom and were sincerely searching for help.

The problem was that DPS was not very helpful in promoting and fostering this program. It took many years of persistence from the Prison Dharma volunteers to gain acceptance and trust from DPS. DPS was sometimes very capricious about allowing the program in and would often cancel at the last minute for whatever their reasons. DPS had one backwards and difficult rule that only volunteer programs which inmates requested could be established at the prisons and jails. Only when the opportunities for betterment and rehabilitation which HB 1818 HD 1 mandates are actively promoted and really offered by DPS will things like Prison Dharma at Halawa reach more of the inmates in need. Last year, only a handful out of a prison of hundreds attended.

mahalo for your consideration,
Shawn James Leavey
46-3767 Old Mamalahoa Hwy
Honokaa, HI 96727

HB 1818 HD1 – PBS,HAW,FIN

Cognitive Restructing and native Hawaiian interventions

Requires

the Department of Public Safety to ensure that reentry/ reintegration programs in Hawaii's correctional facilities combine cognitive behavioral theory with native Hawaiian holistic interventions that address domestic violence, addictions, self mastery through identity, and community connections for successful transitions back into the community. (HB1818 HD1)

AWANA, BROWER, HANO HANO, M. LEE, MANAHAN, Pine, Souki

FINTestimony

From: diasohana1@hawaiiintel.net
Sent: Thursday, February 18, 2010 1:46 PM
To: FINTestimony
Subject: Support of HB 1818 HD1

COMMITTEE ON FINANCE

Rep. Marcus Oshiro,
Chair
Lee, Vice Chair

Rep. Marilyn

Friday, February 19,
2010
Agenda #4
308

2:00 p.m. –
Room

STRONG SUPPORT of **HB 1818 HD1**

Those of us listed below are registered voters and we each strongly support **HB 1818 HD1** – PBS,HAW,FIN - Cognitive Restructuring and native Hawaiian interventions

- Combining cognitive restructuring and the restorative practices of our native culture makes good sense
- Polynesians are over-represented in our prisons and jails
- It is crucial that PSD implement programs that relate to our people

Mahalo,

Na Koa Ikaika

Lela Hubbard, Pres.

Mary K.

Dias

A.K. Dias

A.W. Dias

Margaret Dias Pilago

Regina Dias

Tauala

Peahi Jr.

W. Sterling Reid

Kekoa
Keoki

Earl

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 19, 2010 10:15 AM
To: FINTestimony
Cc: annie@schha.org
Subject: Testimony for HB1818 on 2/19/2010 2:00:00 PM

Testimony for FIN 2/19/2010 2:00:00 PM HB1818

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Annie K. Au Hoon
Organization: Individual
Address: 2136 Kapahu St. Honolulu HI 96813
Phone: 808.529.1627
E-mail: annie@schha.org
Submitted on: 2/19/2010

Comments: