



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Tuesday, March 22, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 986, S.D. 2, H.D. 1, Relating to the Criminal Justice System.

Purpose: Establishes a task force to lessen the instances of the people of Hawaii, especially Native Hawaiians, becoming entangled in the criminal justice system.

Judiciary's Position:

In September 2010, the Office of Hawaiian Affairs ("OHA") produced a report entitled "The Disparate Treatment of Native Hawaiians in the Criminal Justice System." In his introduction at the beginning of the report, OHA's Chief Executive Officer, Clyde Namu'o states that "[I]t is clear that when a Native Hawaiian person enters the criminal justice system, they serve more time in prison and more time on probation than other racial or ethnic groups. Native Hawaiians are also likely to have their parole revoked and be returned to prison compared to other racial or ethnic groups." He also states that the results and recommendations of this study are needed to initiate policy reform and systemic change for Hawai'i.

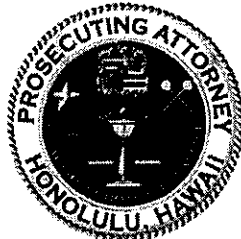
These are important issues that should be carefully reviewed. In its continued commitment to improving the judicial system, the Judiciary is open to participating in efforts to assess these issues through the process envisioned by this measure.

Thank you for the opportunity to testify on Senate Bill No. 986, S.D. 2, H.D. 1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

March 22, 2011

RE: S.B. 986, S.D. 2, H.D. 1; RELATING TO CRIMINAL JUSTICE SYSTEM.

Chair Keith-Agaran, Vice-Chair Rhoades, members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 986, S.D. 2, H.D. 1.

Although disproportionate representation of Native Hawaiian people in the criminal justice system is certainly of great concern, there is absolutely no indication of any disparate treatment—of Native Hawaiian people nor any other ethnicity—within the criminal justice system. Nevertheless, it appears that the current bill fails to recognize the distinct difference between disproportionate representation and disparate treatment, and attempts to "correct" something that does not exist.

S.B. 986, S.D. 2, H.D. 1 is based on a study conducted by the Office of Hawaiian Affairs and representatives from other organizations, which was expressly formulated to "examine[] the impact of the criminal justice system on Native Hawaiian[people,] with the purpose of effecting policy change...and serving as a tool for communities to advocate for change within the criminal justice system." Based on this predisposition, the study apparently found disproportionate representation of Native Hawaiian people in the criminal justice system, and automatically concluded that this was due to disparate treatment of these individuals. Although the study compiled a wide array of statistics and other information regarding the number of Native Hawaiian people in the criminal justice system, there was no basis to conclude that this is due to any type of disparate treatment—of any ethnicity—in Hawaii's criminal justice system.

In particular, this study neglected to incorporate two of the most important factors considered for sentencing-purposes, within the criminal justice system: criminal history and

specific facts of the case. Aside from one (1) national juvenile court analyses discussed on page 68, none of the other analyses discussed in this study controlled for the criminal histories of any of the perpetrators, and none of the analyses—including the national juvenile court analyses—reviewed the specific facts and circumstances of each crime for which each person was imprisoned. Thus, even if we accept the study's findings that there is disproportionate representation of Native Hawaiian people within the criminal justice system, disproportionate representation does not amount to disparate treatment.

Aside from any disproportionate representation of Native Hawaiians in prison, statistics kept by our Victim Witness Kokua Services suggest that Native Hawaiians are also the second (or first) most prevalent ethnicity among our crime victims, with 22% of all crime victims identifying themselves as Hawaiian/Part-Hawaiian.¹ Such disproportionate representation among victims is also of great concern to us, as these statistics are most likely due to a number of complex societal factors, rather than anything occurring within the criminal justice system.

Because the study referenced in S.B. 986, S.D. 2, H.D. 1 was unable to draw any actual connections to indicate disparate treatment of Native Hawaiians in the criminal justice system, the Department strongly believes that it would be very premature, or perhaps even misguided, to formulate a task force to "fix" a system that may not even be "broken" in the manner put forth. In a prior hearing on this bill, there were comments that many people are currently in prison for drug offenses, as these types of convictions often come with mandatory sentencing. Should OHA or any other organization wish to establish drug treatment centers that cater specifically to Native Hawaiian drug offenders—thereby placing them into treatment and diverting them from the criminal justice system—our Department would certainly be willing to work with those programs and dismiss any pending criminal charges as appropriate.

For all of these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 986, S.D. 2, H.D. 1. Thank you for this opportunity to testify.

¹ VWAD statistics indicate that 26% of our clients/crime victims were "Caucasian," but no further specification or breakdown of "Caucasian" was requested, so this category is likely comprised of numerous ethnicities. Aside from Hawaiian and Caucasian, approximately 18% of our clients/crime victims identified themselves as Mixed or Other, and the rest were reported in decreasing amounts as Filipino, Asian/Pacific Islander, Japanese, Black, Samoan, Korean, Chinese, Hispanic, Other Polynesian, Vietnamese and Other Asian.

ASSOCIATION OF HAWAIIAN CIVIC CLUBS
TESTIMONY OF PRESIDENT SOULEE STROUD

SENATE BILL 986,SD2,HD1
RELATING TO THE CRIMINAL JUSTICE SYSTEM

Before the
HOUSE COMMITTEE ON JUDICIARY
Tuesday; March 22, 2011; 2:00 p.; Rm. 325

Aloha Chairman Keith-Agaran, vice chairman Rhoads and members of the House Committee on Judiciary. I am Soulee Stroud, President of the Association of Hawaiian Civic Clubs here to lend support to SB986, SD2, HD1.

On January 22, 2011 the Board of Directors of the Association of Hawaiian Civic Clubs, representing sixty component clubs, including eleven states on the continent, voted to support the legislative package of the Office of Hawaiian Affairs, of which this is one.

Those of us in the Hawaiian community are painfully aware of the dismal arrest and incarceration statistics of Hawaiians in the criminal justice system. A recent study conducted by the Office of Hawaiian Affairs revealed astounding new research of a high percentage of incidents of disparate treatment as well as a other negative behavioral factors.

This bill would create a task force to examine OHA's research with the intent to make corrective recommendations that can be implemented to alleviate the conditions that are currently occurring. We would hope that the recommendations would include some cultural training to build self-esteem, pride and a change in behavior eliminating recidivism.

Thank you for the opportunity to testify today.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Tuesday March 22, 2011

Room 325

2:00 p.m.

SB 986 SD2, HD1 - SUPPORT

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and justice issues in Hawai`i for more than a decade. We respectfully offer our testimony always being mindful that Hawai`i has some 6,000 people behind bars with almost 1,800 individuals serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, their ancestral lands.

SB 986 SD2, HD1 establishes a task force to reduce the unnecessary involvement of individuals, particularly Native Hawaiians with the criminal justice system.

Community Alliance on Prisons is in support of this measure, which builds upon the September 2010 OHA report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* www.oha.org/disparatetreatment that builds upon prior research. The findings in the report are not a surprise to anyone who works within the criminal justice system:

- Native Hawaiians are 24% of the population
- Native Hawaiians are no more likely than any other group to commit crime
- In 2009 Native Hawaiians made up the largest percentage (32%) of the people admitted to prison for drug offenses
- Native Hawaiians do not use drugs at drastically different rates from other races or ethnicities
- Native Hawaiians go to prison for drug offenses more often than people of other races or ethnicities
- Majority of defendants plead guilty
- Given a determination of guilt, Native Hawaiians are more likely to get a prison sentence than other any other group
- Native Hawaiians serve longer prison terms than most other racial or ethnic groups
- Native Hawaiians are the largest group of people incarcerated in out-of-state facilities
- Hawai`i has the largest population of women in prison with Native Hawaiian women comprising the largest a disproportionate number of women in prison
- Parole revocations contribute to the number of Native Hawaiians in prison in Hawai`i

Martin Luther King said it best when he opined that *we as a nation must undergo a radical revolution of values. A radical approach to the criminal justice system means we must go to the root of the problem. Not reform. Not better beds in better prisons. We are not called to only trim the leaves or prune the branches, but rip up this unjust system by its roots.*

It is important that we have a criminal justice system that is truly blind, just and respected by the community. Sadly the war on drugs has compromised the integrity of the system while mass incarceration has become a rite of passage in some communities. A clarion call for us was to hear some of our keiki say that they believe they will serve prison time like other members of their families. This is the norm for them. This is the shame on us.

We need to rip up this unjust system by its roots.

Reviewing policing and sentencing policies and recommending policy changes for our legislature to pass will be crucial to reduce interaction with the criminal justice system while reducing the number of individuals that Hawai'i imprisons.

We are proud that Hawai'i's leaders (Governor Abercrombie, Senate President Tsutsui, Speaker Say, Chief Justice Recktenwald, and Interim PSD Director Jodie Maesaka-Hirata) have submitted a letter to the Department of Justice asking to be considered for Justice Reinvestment Initiative technical assistance to analyze our system, make recommendations and evaluate the changes made.

Hawai'i can be a model for rehabilitation and reentry that build strong, healthy, and safe communities. But first we must ask ourselves the hard questions:

- *If Native Hawaiians comprise 24% of the general population and the data show that they are no more likely to commit crimes than any other group, why is at least 40% of our prison population Native Hawaiian?*
- *Are Native Hawaiians being targeted?*
- *Why do Native Hawaiians serve longer terms than other groups?*
- *Why are we imprisoning individuals with substance abuse problems when the research is clear that community-based treatment is more effective and less costly?*

We need to rip up this unjust system by its roots. This report is a call to action for all of us to speak out for this injustice to be addressed or the phrase... AND JUSTICE FOR ALL ...means nothing.

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



Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, March 22, 2011, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Support of S.B. 986, SD2, HD1,
Relating to The Criminal Justice System

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of S.B. 986, SD2, Relating to the Criminal Justice System.

The ACLU of Hawaii supports every effort to reduce prison overcrowding and develop a comprehensive reentry system. The ACLU of Hawaii also supports efforts to address the disparate treatment of Hawaiians in the criminal justice system. In furtherance of those goals, we support legislation like S.B. 986 that seeks research-based information that can better inform our state's criminal justice policies.

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 45 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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SB986 SD2 HD1
RELATING TO THE CRIMINAL JUSTICE SYSTEM
House Committee on Judiciary

March 22, 2011

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB986 SD2 HD1, which is a bill in OHA's 2011 Legislative Package. This bill establishes a task force to lessen the instances of the people of Hawai'i, especially Native Hawaiians, becoming entangled in the criminal justice system. The bill also appropriates funds.

OHA's recent report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," shows that the number of Native Hawaiians in the criminal justice system accumulates at each stage from arrest through parole. While Native Hawaiians are arrested at a comparable rate to other populations, they are more likely to be incarcerated, have longer sentences and have their parole revoked.

Existing task forces and groups such as the Interagency Council on Intermediate Sanctions and Corrections Population Management Commission focus their efforts on sentenced offenders. The proposed task force would fill a different need by approaching the issue of pre-incarceration.

OHA's study indicates that early intervention will decrease the need for incarceration and lighten the impact on the judiciary and other stakeholders in the criminal justice system. The task force members, who will be key stakeholders, can create internal policy shifts without increasing the need for resources. They will bring the expertise required to make decisions that will balance the need to protect public safety with the need to ensure the Native Hawaiians are treated fairly.

Therefore, OHA urges the committee to PASS SB 986 SD2 HD1. Mahalo for the opportunity to testify on this important measure.

Testimony for SB986 on 3/22/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 22, 2011 8:08 AM

To: JUDtestimony

Cc: info@schha.org

Testimony for JUD 3/22/2011 2:00:00 PM SB986

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Michael Kahikina

Organization: Sovereign Councils of the Hawaiian Homelands Assembly

Address:

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Submitted on: 3/22/2011

Comments:

If there are any questions or comments, please contact Annie Au Hoon, SCHHA Executive Assistant, at 529-1627.

SB986: Relating to the Criminal Justice System

Testimony in Support of SB986

Hearing: 3/22/11 at 2:00 PM

Aloha~

As a private citizen in the state of Hawai'i, I appreciate the opportunity to submit my testimony regarding SB986.

I have taken an interest in the Native Hawaiian population and some of the social issues surrounding the population. Particularly, SB986 seeks to take action on the findings of the study released by OHA, which is the ethically responsible step for the government to take. The study found alarming rates of disparity in the system, and the government is responsible to investigate possible solutions to the now known disparity. The bill seeks to lessen criminal involvement of ALL people; the focus on Native Hawaiians is specifying which target group would create the most change in the statistics of the criminal system.

An investigation into the strategies outlined in Section 2(b) will result in a thorough analysis of the possible solutions to address the disparity. The strategies have the potential to produce long-term effects that will be more cost effective and also allow for more effective treatment of criminals.

For the above stated reasons, I SUPPORT SB986 and am grateful for the opportunity to submit my testimony.

Sincerely,

Erin Henderson