

HB 218, HD1

Measure Title:

**RELATING TO THE CORRECTIONS POPULATION
MANAGEMENT COMMISSION**

Description:

Adds the OHA administrator and a member of the public who is knowledgeable about issues relating to the criminal justice system and has substantial experience or expertise in traditional Native Hawaiian practices to the corrections population management commission. (HB218 HD1)

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
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TESTIMONY ON HOUSE BILL 218, HOUSE DRAFT 1
RELATING TO
THE CORRECTIONS POPULATION MANAGEMENT COMMISSION

by
Ted Sakai, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Tourism and Hawaiian Affairs
Senator Brickwood Galuteria, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

Thursday, March 14, 2013; 2:45 p.m.
State Capitol, Conference Room 224

Chairs Espero and Galuteria, Vice Chairs Baker and Keith-Agaran, and Members of the Committee:

The Department of Public Safety (PSD) **supports** House Bill 218, House Draft 1, relating to the Corrections Population Management Commission (CPMC), which adds two new commission members to represent the Native Hawaiian community. This measure is a recommendation of the Native Hawaii Justice Task Force (Task Force).

In 2010, the Office of Hawaiian Affairs (OHA) produced a report entitled *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* which concluded that Native Hawaiians are overrepresented at every stage of the criminal justice system. The same conclusion had been reached in earlier studies on Native Hawaiians and the criminal justice system (Kassebaum, 1981 and 1994).

In response to the report's findings, Act 170, Session Laws of Hawaii 2011, established the Task Force to recommend policies and strategies to "reduce or prevent individuals' unnecessary involvement with the criminal justice system." The Task Force has reported its findings and recommendations to the 2013 Hawaii State Legislature.

During the course of its work, the Task Force held Pae 'Aina Summits across the State in order to engage the Native Hawaiian Community and the community at large in discussions of the 2010 OHA report findings. Those in attendance often addressed the historic social and economic context that contributes to the overrepresentation of Native Hawaiians in the criminal justice system. Poverty, educational achievement, employment opportunities, substance abuse, and mental illness experienced by Native Hawaiians were seen as contributing factors. Many testified that the focus of incarceration should be on rehabilitation and preparing offenders for their successful return to the community, using Native Hawaiian culture and values as the vehicle to provide programs and services.

The purpose of this measure is to ensure the active voice of the Native Hawaiian community is heard when addressing criminal justice policies and programs. The Task Force recommends this is best achieved by expanding the membership of the CPMC through the addition of the OHA administrator and a member of the public knowledgeable about the criminal justice system and who possesses expertise in traditional Native Hawaiian practices.

The CPMC is charged with making recommendations to the Legislature and appropriate authorities concerning a broad array of criminal justice issues, including sentencing policy, pre-trial release, intermediate punishments and alternatives to incarceration, and probation, corrections, and parole programs.

The Department concurs with the recommendation of the Task Force and requests your favorable consideration of this bill.

Thank you for the opportunity to present this testimony.



**HB218 HD1
RELATING TO THE CORRECTIONS POPULATION MANAGEMENT
COMMISSION**

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senate Committee on Tourism and Hawaiian Affairs

March 14, 2013

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB218 HD1, which is a bill in OHA's 2013 Legislative Package. This bill continues the work of the Native Hawaiian Justice Task Force (Act 170, 2011) by adding two members to the Corrections Population Management Commission (CPMC), which we hope will lead to the development of appropriate and effective cultural programs.

In 2010, OHA produced a comprehensive report detailing the disparate treatment of Native Hawaiians in the criminal justice system. Since then, OHA has administered the Native Hawaiian Justice Task Force (NHJTF), which was tasked by the Legislature to address this multi-faceted issue. A copy of the NHJTF 2012 legislative report and related materials are available at:
www.oha.org/nativehawaiianjusticetaskforce

This bill would further the findings and recommendations of the NHJTF report. Foremost, this bill would allow the continuation of the vital interagency relationships between OHA and other state agencies that started with the NHJTF. The CPMC is an interagency body whose primary function is to address overcrowding and reentry issues in Hawai'i's criminal justice system. Secondly, as a member of CPMC, a Native Hawaiian cultural expert could assist and inform agencies to develop appropriate and effective cultural programs that are responsive to the unique needs of pa'ahao (prisoners).

Therefore, OHA urges the committee to **PASS** HB218 HD1. Mahalo for the opportunity to testify on this important measure.

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Rosalyn Baker, Vice Chair

COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS

Sen. Brickwood Galuteria, Chair

Sen. Gil Keith-Agaran, Vice Chair

Thursday, March 14, 2013

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STRONG SUPPORT FOR HB 218 HD1- CPMC + OHA & HAWAIIAN PRACTITIONER

Aloha Chairs Espero & Galuteria, Vice Chairs Baker & Keith-Agaran and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 218 HD1 adds the OHA administrator and a member of the public, who is knowledgeable about issues relating to the criminal justice system and has substantial experience or expertise in traditional Native Hawaiian practices, to the corrections population management commission.

Community Alliance on Prisons is in strong support of this measure which expands the CPMC to 13 members.

The Corrections Population Management Commission (CPMC) was established through Act 343, Session Laws of Hawaii 1993. It expanded from eight to eleven members representing all three branches of state government, the county prosecuting attorney, and two community representatives.

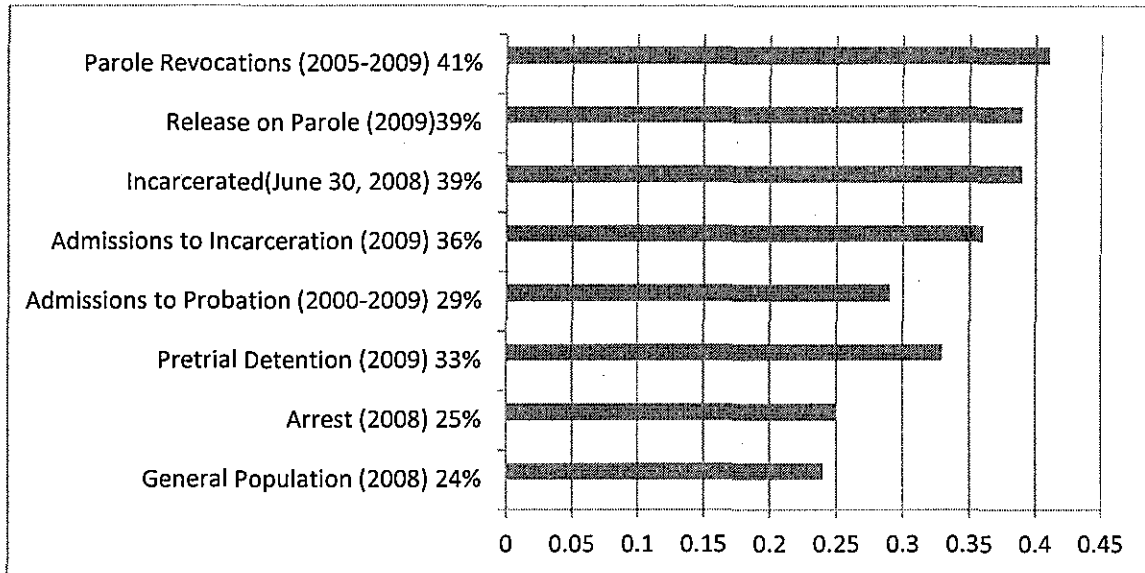
The objective for the CPMC is "establish maximum inmate population limits for each correctional facility and to formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility" (Section 353F-4, Hawaii Revised Statutes). The CPMC is administratively attached to the Department of Public Safety.

It is no secret that Hawaiians are disproportionately represented in Hawai'i's criminal justice system which is due to the disparate treatment they receive at almost every stage of Hawai'i's justice system. It, therefore, is important to have Hawaiian input on this important commission.

In 2010, OHA commissioned the Justice Policy Institute to research the disparate treatment of Hawaiians in the criminal justice system. The findings of that report are revealing and should be disturbing to all people of good will.

The Disproportionate Impact of the Criminal Justice System on Native Hawaiians Accumulates at Each Stage.

*Native Hawaiians are more likely to receive a sentence of incarceration over probation.
Native Hawaiians as a Percentage of Total*



Given a determination of guilt, Native Hawaiians are more likely to get a prison sentence than all other groups

An analysis of data from the Hawai'i Criminal Justice Data Center, controlling for age, gender, and type of charge, found that for any given determination of guilt, Native Hawaiians are much more likely to get a prison sentence than almost all other groups, except for Native Americans. Importantly, the other major group of defendants after Native Hawaiians, Whites, are only about 67 percent, or two-thirds, as likely as Native Hawaiians to be incarcerated if judged guilty.¹

Native Hawaiians receive longer prison sentences than most other racial or ethnic groups.

Controlling for severity of charge, age at arrest and gender of the person charged, Native Hawaiians are sentenced to 119 days more in prison than Tongans, 73 more days than Native Americans, 68 days more than Hispanics, and 11 days more than Whites.

Native Hawaiians are sentenced to longer probation terms than most other racial or ethnic groups.

A multivariate analysis controlling for severity of the charge, age, gender and race shows that Native Hawaiians also serve more time on probation than other racial and ethnic groups, except for Hispanics. On average, a Japanese person is sentenced to 14 fewer days of probation than a Native Hawaiian person, and Whites are sentenced to nearly 21 fewer days of probation than Native Hawaiians.²

¹ Hawai'i Criminal Justice Data Center, 2000-2008.

² Ibid

Native Hawaiians make up the highest percentage of people incarcerated in out-of-state facilities.

In 2005, of the 6,092 people who were under the custody of the Public Safety Department, which includes people in jails, 29 percent (1,780) were in facilities operated by other states or private companies on behalf of states. Of the people in out-of-state facilities, 41 percent are Native Hawaiians.³

Hawai'i has the largest proportion of its population of women in prison,⁴ with Native Hawaiian women comprising a disproportionate number of women in the prison.

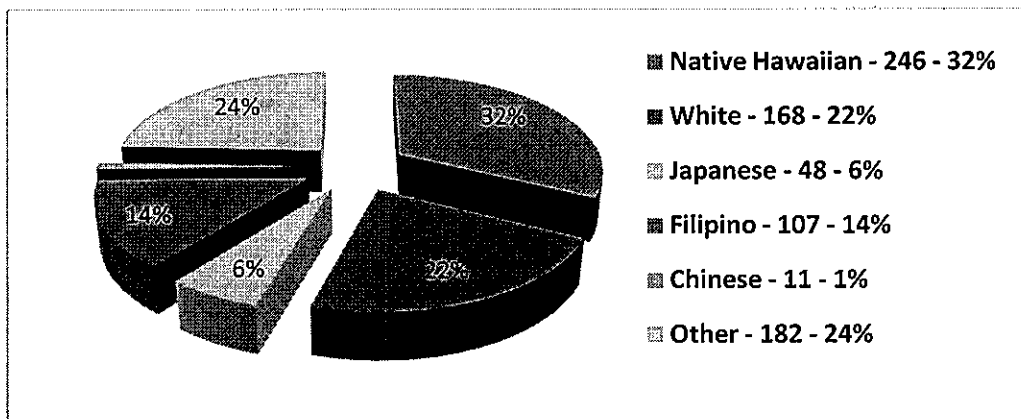
While Native Hawaiian men and women are both disproportionately represented in Hawai'i's criminal justice system, the disparity is greater for women. Forty-four percent of the women incarcerated under the jurisdiction of the state of Hawai'i are Native Hawaiian. Comparatively, 19.8 percent of the general population of women in Hawai'i identify as Native Hawaiian or part Native Hawaiian.⁵

Parole revocations contribute to the number of Native Hawaiians in prison in Hawai'i.

Although Hawai'i released 644 people from prison to parole in 2009, 249 people were also returned to prison by revoking parole. Native Hawaiians had one of the lowest ratios of release to revocations. For every five Native Hawaiians released, two Native Hawaiians had their parole revoked (2.5:1 ratio). Japanese people have a slightly lower ratio (2.4:1) and Chinese people having the highest, with eight people being released for every one person returning to prison on a parole revocation.⁶

Native Hawaiians bear a disproportionate burden of the punitive response to drug use.

Hawai'i's criminal justice approach to drug use was a significant contributor to the total number of people admitted to prison or jail in 2009 (762 or about 13 percent), but has even greater significance for Native Hawaiians. As seen in the pie chart, Native Hawaiians made up the largest portion (32 percent) of the people admitted to prison for drug offenses in 2009.⁷



³ Office of Hawaiian Affairs, "Databook 2006: Public Safety," March 2006. www.oha.org/pdf/databook/2006/DataBook2006PublicSafety.pdf

⁴ Heather C. West, William J. Sabol, and Matthew Cooper, Prisoners in 2008 (Washington, DC: Bureau of Justice Statistics, December 2009).

⁵ U.S. Census Bureau, "Hawai'i, S0201. Selected Population Profile, Native Hawaiian alone or in any combination, 2006-2008 American Community Survey," December 31, 2009.

⁶ Hawai'i Criminal Justice Data Center, 2009.

⁷ Ibid

This concentrated impact of incarceration for Native Hawaiians is most evident when considering that approximately 80,000 people in Hawai'i over the age of 12 reported using illicit drugs in the previous month. Compared to numbers of people that report using drugs, a relatively small number are arrested and then sent to prison or jail; about 2,000 were arrested for drug offenses in 2009 and 726 were admitted to prison or jail, 32 percent of whom were Native Hawaiian.⁸

In 2011, the Legislature passed and the Governor enacted Act 170 creating a Native Hawaiian Justice Task Force⁹ to make recommendations to the Legislature.

In December 2012, the Native Hawaiian Justice Task Force Report was released. Some of the recommendations relevant to the Corrections Population Management Commission and this bill are:

B. The disproportionate representation of Native Hawaiians in the criminal justice system

B. 7. The Office of Hawaiian Affairs and Native Hawaiian community stakeholders should collaborate with State agencies for the further development of culturally-based standards and evaluations that may be applied to Native Hawaiians who come into contact with the criminal justice system. The legislature should assist in funding this effort.

B.10. The legislature should develop guidelines for the Hawai'i Paroling Authority concerning the setting of the minimum term and factors to be considered for parole. One such consideration is access to programs.⁽⁴⁵⁾¹⁰

D. Impact of the state's contracting with non-state facilities on Native Hawaiians

D.1. The State of Hawai'i should increase oversight of non-state facilities pursuant to best practices.

D.2. The Department of Public Safety should develop criteria regarding the transfer of inmates between facilities that promote the access and completion of programs prior to an inmate's minimum sentence date.

D.4. The Department of Public Safety should ensure that inmates scored classification is not overridden for the purposes of placing him or her in specific programs or facilities.

⁸ Substance Abuse and Mental Health Services Administration, "Appendix C: Tables of Change between the 2005-2006 and the 2006-2007, Model-Based Estimates (50 States and the District of Columbia), by Measure," February 11, 2010. www.oas.samhsa.gov/2k7State/AppC.htm#TabC-1; Federal Bureau of Investigation, "Uniform Crime Report," Crime in the United States, Table 69 Arrests by State, www.fbi.gov/ucr/ucr.htm; Hawai'i Criminal Justice Data Center, 2008.

⁹ NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT, December 2012.
http://www.oha.org/sites/default/files/2012NHJTF_REPORT_FINAL_0.pdf

¹⁰ (45) Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "The specific bases and parameters for this recommendation are unclear." Department of the Attorney General, "Additional time is needed to review this issue due to the breadth of the recommendation. In addition, completing this Recommendation could not be expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."

D.5. The Department of Public Safety should determine the number of prisoners placed in private facilities who have been reclassified after out-of-state transfer, the basis for reclassification, including infractions, and the amount of time added to his or her sentence as a result of such reclassification.

D.6. The Department of Public Safety should ensure that prisoners who are housed in non-state facilities, and who are eligible by classification for pre-release transitional programs such as work furlough, are returned to Hawai'i with sufficient time to complete programs prior to their tentative parole date.

D.7. The Office of Hawaiian Affairs and Native Hawaiian community stakeholders should collaborate with State agencies for the further development of culturally-based standards and evaluations that may be applied to Native Hawaiians who come into contact with the criminal justice system. The legislature should assist in funding this effort.

In summary, it is crucial that Hawaiians (OHA CEO and a practitioner) participate as full members of the Corrections Population Management Commission bring the cultural perspective so desperately needed on this Commission.

Community Alliance on Prisons urges the committee to pass this important legislation to address the growing problems of Hawaiian overrepresented in our correctional system

Mahalo for this opportunity to testify.

HB218

Submitted on: 3/12/2013

Testimony for PSM/THA on Mar 14, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
beverly zigmond	Individual	Support	No