

HB 52, HD 1

MEASURE TITLE

RELATING TO CIVIL RIGHTS

DESCRIPTION:

Prohibits biased-based policing by law enforcement agencies and agents. Establishes the Department of the Attorney General as the enforcing agency. (HB52 HD1)

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Keith Kamita
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL (HB) 52, HOUSE DRAFT (HD) 1
A BILL FOR AN ACT RELATING
TO CIVIL RIGHTS

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

Tuesday, March 12, 2013, 2:45 p.m.
State Capitol, Room 224

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Department of Public Safety (PSD) **supports** the intent of HB 52, HD1 which makes it a civil rights violation for law enforcement agencies and agents to practice biased-based policing; however, PSD would defer to the Department of the Attorney General in regards to the proposed language being proposed by HB 52, HD1.

PSD feels that the passage of HB 52, HD1 would send a strong message to the public that PSD will not stand for any of its law enforcement officers who practice any type of biased-based enforcement activities.

Thank you for the opportunity to testify on this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:
H.B. NO. 52 , H.D. 1, RELATING TO CIVIL RIGHTS.

BEFORE THE:
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY
AFFAIRS

DATE: Tuesday, March 12, 2013 **TIME:** 2:45 p.m.
LOCATION: State Capitol, Room 224
TESTIFIER(S): David M. Louie, Attorney General, or
Earl R. Hoke, Jr., Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill to increase civil rights protections by making it a civil rights violation for law enforcement agents and agencies to practice biased-based policing. However, we oppose this bill for practical reasons.

In summary, as will be discussed more fully below, our review of this bill finds that the prohibitions are somewhat vague as to what in fact constitutes biased based policing, which may lead to problems in enforcing the statute. Further, the bill is duplicative of other statutes that prohibit improper discrimination.

Section 1 of this bill adds a new section to chapter 52, Hawaii Revised Statutes (HRS), which establishes the various county police departments to set forth prohibitions against biased-based policing. Section 2 of this bill adds a new section to chapter 353C HRS, which establishes the Department of Public Safety, by setting forth prohibitions against biased-based policing. In both sections, the responsibility for enforcing the prohibitions against biased-based policing has been placed with the Department of the Attorney General, which shall enforce the prohibitions pursuant to its prosecutorial, investigative, and public education powers under chapter 28, HRS. As a practical matter, this measure puts the entire oversight prosecution and investigation for any and all alleged civil rights violations, be it civil or criminal, involving all of the county police officers and all law enforcement officers employed by the Department of Public Safety under the jurisdiction of the Department of the Attorney General without any consideration as to the practical implications of such an endeavor. At the county level, in the case of county police

officers, resources and mechanisms already exist to deal with a number of issues raised by this bill. The county police commission provides oversight over the county police departments. Internal affairs divisions investigate improprieties by police officers. County prosecutors prosecute criminal violations involving police officers. This bill would require the Department of the Attorney General to assume all of the responsibilities currently handled by each of the counties without regard for the limited resources and budget available to the Department of the Attorney General. Moreover, the Legislature is silent as to exactly what remedy or penalty is intended by the bill for any violation by the police or public safety officers.

We note that a mechanism exists at the federal level to address issues raised by this bill. Law enforcement agency violations of civil rights fall under the enforcement jurisdiction of the U.S. Department of Justice (USDOJ) Civil Rights Division. Protection of the rights of people who interact with state and local police and sheriff's departments is within the purview of the USDOJ Civil Rights Division. In addition, existing federal law provides civil relief from civil rights violations of the type contemplated by this bill. 42 U.S.C. § 1983, is a law that allows people whose constitutional rights may have been violated by government officials the right to sue those officials in court.

In addition, both sections of this bill prohibit the, "detainment of an individual based on any **noncriminal factor or combination of noncriminal factors, unless pursuant to court order.**" See page 1, lines 7-9 (emphasis added). This wording may have the unintended consequence of hampering police in conducting numerous investigations that are noncriminal in nature. A broad reading of this bill would preclude officers from conducting traffic stops for traffic violations absent a court order. Police often are involved in investigating matters that are noncriminal in nature. Such investigations include violations of the traffic code and portions of the penal code that are classified as violations for which the penalty is the payment of a fine.

Accordingly, due to the complexities involved in the implementation and application of this bill, we respectfully ask that this bill be held in Committee.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 -PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 12, 2013
2:45 p.m.
Room 224

To: The Honorable Will Espero, Chair
and Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 52, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.B. No. 52, H.D.1, would prohibit bias-based policing based on race, ethnicity, national origin, immigration or citizenship status, sexual orientation, gender identity or religion, or use of state and county law enforcement agency resources for the purpose of detecting or apprehending any person solely for being a noncitizen residing in the United States in violation of federal immigration laws, except as required by federal law.

The HCRC supports the intent of H.B. No. 52, H.D.1, prohibiting law enforcement agencies from engaging in bias-based policing and supports the placement of this prohibition outside of HRS Chapter 368 and HCRC jurisdiction.

Federal Protections Against Bias-Based Policing

On the federal level, law enforcement agency violations of civil rights fall under the enforcement jurisdiction of the U.S. Department of Justice (USDOJ) Civil Rights Division. Protection of the rights of people who interact with state and local police and sheriff's departments is within the purview of the USDOJ Civil Rights Division, not the HCRC's counterparts who investigate complaints of discrimination in employment (the U.S. Equal Employment Opportunity Commission (EEOC)) or housing (the U.S. Department of Housing and Urban Development (HUD)). For more information on the scope of USDOJ Civil Rights jurisdiction over the conduct of law enforcement agencies, see the USDOJ website at: <http://www.justice.gov/crt/about/spl/police.php>.

An example of USDOJ Civil Rights Division action on bias-based policing can be found at on its website at: "Deputy Assistant Attorney General Roy L. Austin Jr. Speaks at the East Haven Police Department Investigative Findings Announcement", New Haven, Conn., Monday, December 19, 2011, <http://www.justice.gov/crt/opa/pr/speeches/2011/crt-speech-111219.html>.

Others States' Protections Against Bias-Based Policing

USDOJ Civil Rights Division jurisdiction over state and local law enforcement agency deprivations of people's civil rights is not exclusive and does not preempt state protections and enforcement.¹ A number of state and local governments have enacted prohibitions against bias-based policing.

For example, California statute prohibits law enforcement agencies and officers from engaging in a pattern or practice of conduct that deprives any person of rights, privileges, or immunities secured or protected by state or federal law. Under the California statutory scheme,

¹ However, H.B. No. 52, on page 2, at line 22, includes in the definition of "law enforcement agency" any *federal* public body that employs law enforcement officers. Inclusion of federal law enforcement agencies is beyond the scope of state authority and jurisdiction. Similarly, on page 3, line 4, the definition of "law enforcement officer" includes those employed by the United States. This too falls beyond the scope of state authority and jurisdiction.

the California Attorney General is authorized to bring a civil action for equitable or declaratory relief to eliminate an unlawful pattern or practice. CA Civil Code §§ 52.3 and 52.1, and CA Constitution Article V, Section 13.

In addition, the California Penal Code specifically prohibits “racial profiling” by law enforcement officers, and requires every law enforcement officer to participate in training on racial and cultural diversity, which includes gender and sexual orientation issues. CA Penal Code § 13519.4.

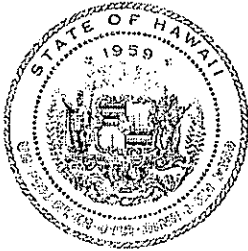
The California Department of Justice, Office of the Attorney General, requires exhaustion of local remedies before requests for intervention by its Civil Rights Enforcement Section.

Hawai‘i Law

In Hawai‘i, complaints of police misconduct fall under the purview and jurisdiction of the county police commissions. There is no state law or policy specifically prohibiting bias-based policing.

While the HCRC supports prohibitions against bias-based profiling and other police practices that violate the constitutional rights of persons in targeted communities, it has neither the resources nor the criminal justice expertise to investigate policing practices. The HCRC does not have jurisdiction over constitutional claims and this new civil rights protection is different in kind from the discrimination complaints that fall under the HCRC statutory jurisdiction. Therefore, the HCRC supports the placement of this new protection under the jurisdiction of an agency that has the appropriate expertise, as has been done in the H.D.1,

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
ADRIENNE KING
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH
CAROL ANNE PHILIPS

Executive Director
Catherine Betts, JD

Email:
DHS.HSCSW@hawaii.gov
Visit us at:
humanservices.hawaii.gov
/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

March 12, 2013

Testimony in Support of HB 52, HD1, Relating to Civil Rights

To: Honorable Will Espero, Chair
Honorable Rosalyn H. Baker, Vice-Chair
Members of the Senate Committee on Public Safety, Intergovernmental and
Military Affairs

From: Cathy Betts, Executive Director, Hawai'i State Commission on the Status of
Women

Re: Testimony in Support of HB 52, HD1, Relating to Civil Rights

On behalf of the Hawai'i State Commission on the Status of Women, I would like to thank the committee for this opportunity to provide testimony. The Commission supports HB 52, HD1 and believes that the practice of discrimination based on race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability has no place in law enforcement.

In the past few years, instances of unlawful detainment of immigrant victims of domestic violence have increased. Rather than deterring criminal activity, this practice creates a culture of fear in which victims of violent crime do not report abuse for fear of being targeted based on their national origin. Many women from immigrant backgrounds already have a severe mistrust of police and law enforcement, which makes it even more difficult for victims to access services and safety.

Further, bias based policing based on sexual orientation or perceived gender identity often results in violence. Requests for identification, which may not match a person's gender identity, often lead to false presumptions about transgendered individuals, leading to homophobic and discriminatory treatment of transgendered people and gender "non-conforming" individuals.¹

Bias based policing is a violation of civil rights and should be treated as such under the law. The Commission respectfully urges this Committee to pass HB 52, HD1.

Sincerely,

Cathy Betts
Executive Director
Hawai'i State Commission on the Status of Women

¹ See AMNESTY INT'L USA, STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. 16 (2005).

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) 533-3454, (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Roz Baker, Vice Chair

Tuesday, March 12, 2013

2:45 p.m.

Room 224

STRONG SUPPORT FOR HB 52 HD1- CIVIL RIGHTS - BIAS-BASED POLICING

Aloha Chair Espero, Vice Chair Baker and Members of the Committee!

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 52 HD1 prohibits biased-based policing by law enforcement agencies and agents and establishes the Department of the Attorney General as the enforcing agency. (HB52 HD1)

Community Alliance on Prisons strongly supports this measure. Every citizen regardless of race, ethnicity, gender, sexual orientation, religion, economic status, background, age, or culture deserves the highest level of service available and equal treatment under the law.

Bias-based profiling is the use of race, ethnicity, gender, sexual orientation, religion, economic status, background, age, or culture as the sole basis for police activity. The absence of facts, suspicious activity, or specific criminal information is what separates bias-based profiling from legitimate criminal profiling.¹

Bias-based policing erodes the trust between law enforcement and the community. Many agencies have been working to address this ongoing issue.

The Maine legislature established a committee² that attempted to structure a three-step process to address the issue of bias-based profiling. Those three steps include: 1.) Data collection; 2.) Addressing any identified problem by establishing policies and working with law enforcement to develop basic and continuing training to redress any identified problems; and 3.) Fostering a meaningful dialogue between members of the public and representatives of law enforcement regarding bias-based profiling and perceptions about that practice.

¹ Winter Park Police Department, Bias-based policing <http://www.wppd.org/about/bbp.htm>

² Report of the Advisory Committee on Bias-Based Profiling by Law Enforcement Officers and Law Enforcement Agencies, February 2, 2012. <http://www.maine.gov/dps/Documents/Report%20of%20the%20Advisory%20Committee%202-2-12.pdf>

Implicit Bias

The implicit bias phenomenon is being explored in many phases of the criminal justice system and is not limited to law enforcement. Specifically, implicit bias is being studied in judicial decision making (for example, jury selection, jury instruction, and sentencing decisions), as well as in hiring and promotion decisions within criminal justice agencies. Outside of the criminal justice field, the topic has been examined in the fields of education and medicine, as well as in CEO selection at Fortune 500 companies.

A discussion on implicit bias must start with a brief explanation of how the brain sorts, relates, and processes information. Much of the day-to-day processing is done at an unconscious level as the mind works through what Professor Kang calls schemas, which are “templates of knowledge that help us organize specific examples into broad categories. A stool, sofa, and office chair are all understood to be ‘chairs.’ Once our brain maps some item into that category, we know what to do with it—in this case . . . sit on it. Schemas exist not only for objects, but also for people. Automatically, we categorize individuals by age, gender, race, and role. Once an individual is mapped into that category, specific meanings associated with that category are immediately activated and influence our interaction with that individual.”³

Properly defining bias-based profiling is essential for the advancement of civil rights. First the term must acknowledge that there are forms of discrimination beyond race, which can degrade civil rights. The term “racial profiling” fails to address adequately other forms of discrimination. The term “bias-based profiling” acknowledges the underlying motivations that promote unlawful police practices and broadens the understanding of this important issue.⁴

This is an important issue in Hawai‘i, as evidenced by the 2010 OHA report, “The Disparate Treatment of Native Hawaiians in the Criminal Justice System”⁵ and the Native Hawaiian Justice Task Force Report⁶.

The task force found that disproportionate representation of Native Hawaiians in prisons suggests **implicit, unconscious bias** against the Native population by law enforcement, courts and corrections employees – which led to the recommendation of additional training in ways to mitigate treatment.⁷

Robert J. Smith, Visiting Assistant Professor of Law at DePaul University and Justin D. Levinson, Associate Professor of Law and Director of the Culture and Jury Project at the William S. Richardson School of Law, University of Hawai‘I co-authored a paper in 2012 entitled, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*. In Section IV. ADDRESSING THE EFFECTS OF IMPLICIT RACIAL BIAS ON PROSECUTORIAL DISCRETION⁸, they state:

“As we have demonstrated, there are compelling reasons to believe that prosecutors unwittingly display implicit racial bias at a variety of

³ Americans for American Values, “What Is Implicit Bias?,” 2009, <http://americansforamericanvalues.org/unconsciousbias>

⁴ Bias-based Profiling in Vermont, Brian R. Jones, J.D.

⁵ www.oha.org/disparatetreatment/

⁶ http://www.oha.org/sites/default/files/2012NHJTF_REPORT_FINAL_0.pdf

⁷ Addressing the Native Hawaiian Inmate Issue by Cliff Matias, January 23, 2013.

<http://indiancountrytodaymedianetwork.com/2013/01/23/addressing-native-hawaiian-inmate-issue-147136>

⁸ ADDRESSING THE EFFECTS OF IMPLICIT RACIAL BIAS ON PROSECUTORIAL DISCRETION, Robert J. Smith and Justin D. Levinson, April 24, 2012.. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045316

decision points. One could expect that in the aggregate, the harms of these biases are quite substantial. It is important to note, however, that empirical studies have yet to test prosecutors directly or prove that prosecutors act automatically in bias-influenced ways. We therefore encourage researchers to take on the charge of pursuing our hypotheses empirically. Although we expect to pursue some of these hypotheses ourselves, the best science is collaborative, transparent, and forward-looking. We thus specifically encourage researchers to test precisely where and how implicit bias operates in the context of prosecutorial decision-making and provide here several examples of potential starting points.

(...)

Each of the potential remedies we discuss above would benefit from empirical testing, yet we do not believe, considering the likely ongoing harms, that waiting for a perfect scientific answer to the debiasing question is the best response. It is true that there are no easy answers for remedying the influence of implicit racial bias on prosecutorial discretion. **Yet, justice should not wait, and the search for fairness in the criminal justice system must continue with both a moral compass and a thirst for emerging social-scientific knowledge.**" (emphasis added)

There have also been studies on Maui that were commissioned by the Mexican government regarding bias-based policing. An article on October 1, 2012 entitled, *UH professor: Mexican immigrants targeted in HI*⁹, states:

HONOLULU (AP) — An ethnic studies professor at the University of Hawaii at Manoa says state and federal immigration officials have disproportionately targeted Mexicans in Hawaii for detention and deportation.

Professor Monisha Das Gupta told the Honolulu Star-Advertiser in a report published Monday that the number of immigration cases in Hawaii involving Mexicans goes against demographics in the state.

Das Gupta says roughly 10 percent of the 40,000 illegal immigrants in Hawaii are Mexican. But of the 767 cases handled by Honolulu Immigration Court during fiscal 2011, 22 percent involved Mexicans. Cases involving Chinese nationals make up 24 percent of the cases, while Filipinos are involved in 20 percent of the cases. The Department of Homeland Security says nearly 7,300 foreign nationals were granted legal permanent residence in Hawaii in fiscal 2011.

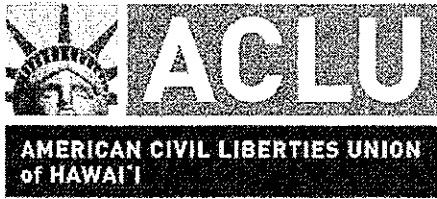
Although we find it incredibly sad that Hawai'i would need such a law, we have witnessed bias at several levels of law enforcement in Hawai'i and again, promote the need for implicit, unconscious bias training for all levels of law enforcement.

Mahalo to the committee for hearing this important bill. We encourage its passage. As Professors Smith and Levinson have said, "**...Justice should not wait, and the search for fairness in the criminal justice system must continue with both a moral compass and a thirst for emerging social-scientific knowledge.**"

Mahalo for the opportunity to testify.

⁹ *UH professor: Mexican immigrants targeted in HI*, October 1, 2012.

http://www.northjersey.com/news/education/172136591_UH_professor_Mexican_immigrants_targeted_in_HI.html



Committee: Committee on Public Safety, Intergovernmental and Military Affairs
Hearing Date/Time: Tuesday, March 12, 2013, 2:45 pm
Place: Conference Room 224
Re: Testimony of the ACLU of Hawaii in Support of H.B. 52, H.D. 1, Relating to Civil Rights

Dear Chair Espero and Members of the Committee on Public Safety, Intergovernmental and Military Affairs:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 52, H.D. 1, which makes it a civil rights violation for law enforcement agencies and agents to practice biased-based policing.

Bias-based policing practices - the targeting of people based not on evidence of criminal activity but on an individual’s perceived race, ethnicity, nationality or religion not only goes against our Constitution and our country’s value for equality — but it also hinders law enforcement officials from doing an effective job.

Already, too many people in Hawaii have been victimized by bias-based policing practices. We have heard that Filipino, Micronesian, Hispanic and Tongan communities are frequently the victims of racial profiling and that members of the LGBT community are harassed because of their sexual orientation and/or gender identity. Victims of bias-based policing include not just those who are harassed or detained, but those who fear being harassed or detained and restrict their activities as a consequence of that fear, including victims and witnesses of crimes (which has been reported by domestic violence victims in Maui shelters).

Bias-based policing practices hurt and humiliate these individuals, and do irreparable damage to the relationships between law enforcement and the community. Further, these practices undermine the trust and mutual respect between the police and communities that are essential to successful police work.

Racial profiling is at odds with our shared American values of fairness and justice.

- Racial profiling occurs when police target people for humiliating and often frightening interrogations, searches and detentions based not on any evidence of criminal activity but on individuals’ perceived race, ethnicity, nationality or religion.

American Civil Liberties Union of Hawai’i
P.O. Box 3410
Honolulu, Hawai’i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Espero and Members of the Committee on
Public Safety, Intergovernmental and Military Affairs
March 12, 2013
Page 2 of 7

- Racial profiling violates the U.S. Constitution by betraying the fundamental American promise of equal protection under the law and infringing on the 4th Amendment guarantee that all people be free from unreasonable searches and seizures
- Racial profiling violates the human rights to fair treatment and freedom from discrimination. It is also a violation of the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination, to which the U.S. is a party.

Despite claims that we have entered a “post-racial” era, racial profiling remains a troubling nationwide problem.

Although normally associated with African Americans and Latinos, racial profiling also affects Native Americans and, increasingly after 9/11, Arabs, Muslims and South Asians. In Hawaii, we are concerned that the Filipino, Micronesian, Hispanic and Tongan communities are targeted by the police. Racial profiling can and does occur in a variety of public and private spaces, including highways, airports, sidewalks, shopping centers, workplaces, private homes and more. Recent data documents the persistence of racial profiling in communities throughout the country. A 2008 report by the ACLU of Arizona found that Native Americans were 3.25 times more likely, and African Americans and Hispanics were each 2.5 times more likely, to be searched during traffic stops than whites. It also found that whites were more likely to be carrying contraband than Native Americans, Middle Easterners, Hispanics and Asians on all major Arizona highways.ⁱ

- A 2008 report by the ACLU of Louisiana found that people of color were arrested at higher rates than their representation in the population in every town, city and parish examined.ⁱⁱ
- A 2008 report by Yale Law School researchers (commissioned by the ACLU of Southern California) found that black and Hispanic residents were stopped, frisked, searched and arrested by Los Angeles Police Department officers far more frequently than white residents, and that these disparities were not justified by local crime rates or by any other legitimate policing rationale evident from LAPD’s extensive data.ⁱⁱⁱ

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

- A 2009 report by the ACLU and the Rights Working Group documented racial and ethnic profiling in 22 states and under a variety of federal programs.^{iv}

Racial profiling is based on false assumptions about crime and people of color. As a result, police who stop or search individuals based on race rather than evidence of criminal activity are less effective at protecting public safety.

“Hit rate” reports of traffic stops and searches show that people of color, including African Americans and Latinos, are *no more likely*, and very often *less likely*, to have drugs or weapons than whites. Even government agencies have documented the ineffectiveness of relying on race as a proxy for criminal activity.

An analysis of the data collected during 2008 under the Illinois Traffic Stops Statistics Act revealed that minority drivers were more than twice as likely as white drivers to be the subjects of consent searches, but that police were significantly more likely to find contraband in the vehicles of white drivers (the contraband “hit rate” was 24.37% for white drivers compared to 15.14% for minority drivers).^v

A 2001 Department of Justice report found that, although blacks and Latinos were *more* likely to be stopped and searched by police, they were *less* likely to be in possession of contraband. On average, searches and seizures of white drivers yielded evidence 17 percent of the time, compared to only 8 percent of the time for black drivers and only 10 percent of the time for Latino drivers.^{vi}

A 2000 GAO report on the activities of the U.S. Customs Service found that, among U.S. citizens, black women were nine times more likely than white women to be x-rayed after being frisked or patted down. Nevertheless, black women were less than half as likely as white women who were U.S. citizens to be found carrying contraband.^{vii}

Several other studies document similar findings.^{viii}

- Contrary to popular perception, research shows that that African Americans use illegal drugs in roughly the same proportion as people of other races and ethnicities.^{ix}
- Although the overwhelming majority of Latinos in the United States are U.S. citizens or legal permanent residents,^x Latinos have frequently been singled out for immigration

stops and inquiries by local law enforcement.^{xi} Research by the ACLU of North Carolina and testimony by the ACLU before Congress document the ways in which 287(g) agreements (that permit local police departments to enforce immigration law) in particular have facilitated racial profiling by encouraging police officers to stop anyone who looks “foreign.”^{xii}

Racial profiling is an ineffective law enforcement tool that wastes police officers' time and taxpayer dollars and is detrimental to public safety

- Racial profiling diverts police attention away from more effective law enforcement techniques, thereby wasting police resources.
- Racial profiling causes resentment in targeted communities and makes people in those communities less likely to cooperate in investigations.
- When individuals and communities fear the police, they are less likely to call law enforcement when they are the victims of crime or in emergencies. Creating a climate of fear compromises public safety.

Our nation's highest officials have condemned racial profiling as unjust and counterproductive.

- In 2001, then-President George W. Bush said about racial profiling: “It’s wrong, and we will end it in America. In so doing, we will not hinder the work of our nation’s brave police officers. They protect us every day -- often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve.”^{xiii}
- In 2002, then-Attorney General John Ashcroft said: “Using race... as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence that people can have in law enforcement.”^{xiv}
- During a recent hearing before a Senate Appropriations Subcommittee, Attorney General Eric Holder stated that ending racial profiling was a “priority” for the Obama administration and that profiling was “simply not good law enforcement.”^{xv}

Chair Espero and Members of the Committee on
Public Safety, Intergovernmental and Military Affairs
March 12, 2013
Page 5 of 7

- In response to the arrest of Harvard Professor Henry Louis Gates, President Barack Obama said: “there’s a long history in this country of African-Americans and Latinos being stopped by law enforcement disproportionately. That’s just a fact... And even when there are honest misunderstandings, the fact that blacks and Hispanics are picked up more frequently and oftentimes for no cause casts suspicion even when there is good cause. And that’s why I think the more that we’re working with local law enforcement to improve policing techniques so that we’re eliminating potential bias, the safer everybody is going to be.”^{xvi}

Passing state and federal legislation to eradicate racial profiling is imperative.

- Half of all U.S. states have enacted legislation addressing racial profiling.^{xvii}
- The federal End Racial Profiling Act, sponsored by President Barack Obama when he was a senator, expands the federal ban on racial profiling to state and local law enforcement and permits people to take legal action if they feel their rights have been violated.

Requiring law enforcement to collect demographic data in police-civilian encounters is an important tool in the fight against racial profiling.

- Independent data collection and reporting about evidence of racial profiling show openness and build trust, thereby increasing public safety.
- Data collection is becoming common practice. Thirteen U.S. states have required the collection of demographic data at traffic stops. Thousands of police departments across the country collect such data, some voluntarily.^{xviii}
- Data collection costs can be minimal, particularly when jurisdictions make modifications to existing technologies (like Mobile Data Terminals) in order to collect data.^{xix}

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Espero and Members of the Committee on
Public Safety, Intergovernmental and Military Affairs
March 12, 2013
Page 6 of 7

The American Civil Liberties Union ("ACLU") is our nation's guardian of liberty – working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country

ⁱ ACLU of Arizona, *Driving While Black or Brown* 3 (2008), available at <http://www.acluaz.org/DrivingWhileBlackorBrown.pdf>.

ⁱⁱ ACLU of Louisiana, *Unequal Under the Law: Racial Profiling in Louisiana* 5 (2008), available at www.la.aclu.org/PDF_documents/unequal_under_law_web.pdf.

ⁱⁱⁱ ACLU of Southern California, *Racial Profiling & The LAPD: A Study of Racially Disparate Outcomes in the Los Angeles Police Department I* (2008), available at <http://www.aclu-sc.org/documents/view/47>.

^{iv} ACLU and Rights Working Group, *The Persistence Of Racial And Ethnic Profiling In The United States: A Follow-Up Report To The U.N. Committee On The Elimination Of Racial Discrimination* (2009), available at http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf.

^v Alexander Weiss and Dennis P. Rosenbaum, The University of Illinois at Chicago, Center for Research in Law and Justice, *Illinois Traffic Stops Statistics Study 2008: Annual Report* (2008), available at <http://www.dot.state.il.us/travelstats/ITSS%202008%20Annual%20Report.pdf>.

^{vi} Patrick A. Langan, Lawrence A. Greenfeld, Steven K. Smith, Matthew R. Durose, and David J. Levin. *Contacts between Police and the Public: Findings from the 1999 National Survey*, Bureau of Justice Statistics February 2001, NCJ 184957.

^{vii} U.S. General Accounting Office. *Testimony Before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and House of Representatives*, April 2001, available at <http://www.gao.gov/archive/2000/p100150t.pdf>.

^{viii} See, e.g., Minnesota Department of Public Safety (MDPS), *2003 Minnesota Racial Profiling Report* (finding that blacks and Hispanics are more likely to be searched than whites during a traffic stop, but searches of whites are more likely to produce contraband). McCorkle, R.C. 2003 A.B. 500: *Traffic Stop Data Collection Study*. Carson City, NV: Office of the Attorney General (finding that blacks searched at more than twice the rate of white drivers but the hit rate for blacks and Hispanics was lower than for whites and Asians). Lamberth, J., *Racial Profiling Data Analysis, final report for the San Antonio Police Department* (2003) (finding that black and Hispanic drivers are more likely to be searched than white or Asian drivers yet contraband is consistently found at lower rates for black and Hispanic drivers). Washington State Police, (WSP), *Report to the Legislature on Routine Traffic Stop Data* (2001) (finding that nonwhite minorities are searched at a disproportionately higher rate than whites).

^{ix} The 2007 National Survey on Drug Use and Health showed that 9.5% of African Americans, 8.2% of whites, 6.6% of Hispanics and 4.2% of Asians. Substance Abuse and Mental Health Services Administration, *Results from the 2007 National Survey on Drug Use and Health: National Findings* 25 (2008), available at <http://oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.cfm>. The National Institute of Health found that African American youth use illegal drugs and alcohol and smoke cigarettes at substantially lower rates than white youth. National Institute on Drug Abuse, *Monitoring the Future national results on adolescent drug use: Overview of key findings, 2006* (2007), available at <http://monitoringthefuture.org/pubs/monographs/overview2006.pdf>.

^x Aaron Terrazas & Jeanne Batalova, Migration Policy Institute, *US in Focus: The Most Up-to-Date Frequently Requested Statistics on Immigrants in the United States* (2008), available at <http://www.migrationinformation.org/USFocus/display.cfm?ID=714#8> (last visited June 22, 2009).

^{xi} See, e.g., ACLU and Rights Working Group, *The Persistence Of Racial And Ethnic Profiling In The United States: A Follow-Up Report To The U.N. Committee On The Elimination Of Racial Discrimination* (2009).

^{xii} ACLU of North Carolina Legal Foundation and Immigration & Human Rights Policy Clinic, UNC at Chapel Hill, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina* (2009), available at http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf. "The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws," ACLU Written Statement submitted to U.S. House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights and Civil Liberties (April 2, 2009), available at http://www.aclu.org/images/asset_upload_file968_39242.pdf.

^{xiii} U.S. Dept. of Justice, *Fact Sheet: Racial Profiling I* (2003), available at http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.

^{xiv} *Id.*

^{xv} Press Release, ACLU, Attorney General Says Ending Racial Profiling Is Priority For Obama Administration (May 7, 2009), available at <http://www.aclu.org/racialjustice/racialprofiling/39542prs20090507.html>.

^{xvi} Press Release, The White House Office of the Press Secretary, News Conference By The President (July 22, 2009), available at http://www.whitehouse.gov/the_press_office/News-Conference-by-the-President-July-22-2009/.

^{xvii} States with racial profiling-related legislation include Arkansas, California, Colorado, Connecticut,

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Espero and Members of the Committee on
Public Safety, Intergovernmental and Military Affairs
March 12, 2013
Page 7 of 7

Florida, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana,
Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Rhode Island, Tennessee, Texas, Utah,
Washington and West Virginia.

^{xvii} See, e.g., Racial Profiling Data Collection Resource Center at Northeastern University, Background and Current Data Collection Efforts: Jurisdictions Currently Collecting Data, <http://www.racialprofilinganalysis.neu.edu/background/jurisdictions.php>.

^{xix} See, e.g., Racial Profiling Data Collection Resource Center at Northeastern University, Planning, Training, and Implementation: Using Technology, <http://www.racialprofilinganalysis.neu.edu/planning/technology.php>.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

HB52

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position Present at Hearing	
Daphne Barbee-Wooten	African American Lawyers Association	Support	No

TESTIMONY IN SUPPORT OF HB 52

TO; Honorable Senators

FROM; African American Lawyers Association

The African American Lawyers Association Supports this bill which makes racial profiling a civil rights violation. There is a need for this bill as racial profiling still exists. In Hawaii, there was racial profiling of Mexican Americans at the Airport which received public attention and disapproval. There has been racial profiling or "driving while Black" cases here, where African American drivers were stopped for no reason other than the color of their skin. There is a recent high profile case where Academy award winning actor Forrest Whitaker was stopped while in a New York Deli and searched, wrongfully accused of shoplifting. In Hawaii, several persons have complained of being stopped in Waikiki by police when they were doing nothing wrong, only because of skin color. The complaints to the Police Commission have not resulted in a satisfactory resolution. By enacting this bill, it is a step to ensure police and other law enforcement agents do not engage in action based upon racial stereotypes. Let us put into practice Dr. Martin Luther King's philosophy that a person should be judged by the content of their character, not the color of their skin. Please pass this bill. Thank you.

Daphne Barbee-Wooten
Secretary/Treasurer
African American Lawyers Association of Hawaii

HB52

Submitted on: 3/9/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
TROY ABRAHAM	Individual	Support	No

Comments: i support civil rights equality

HB52

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jory Watland	Individual	Support	No

HB52

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 10, 2013 1:34 PM
To: PSMTestimony
Cc: ~~harwood.lillian@gmail.com~~
Subject: *Submitted testimony for HB52 on Mar 12, 2013 14:45PM*

HB52

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Lillian Harwood-Wakinekona	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB52

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Sue Haglund	Individual	Support	No

Comments: I support the measure HB52 HD1. Please pass this measure to ensure the protection of our civil rights and to prevent the bias-based policing that occurs in all the counties in State of Hawaii. Please pass HB52 HD1, thank you.

HB52

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Rev. Stanley Bain	Individual	Support	Yes

To: The Honorable Senator Will Espero, Chair and Senator Rosalyn Baker, Vice-Chair and Committee members,
Senate Committee on Public Safety, International and Military Affairs

From: Rev. Stanley Bain, Staff Organizer, Faith Action for Community Equity (FACE)
for Hawai'i Coalition for Immigration Reform
Testifying as an individual citizen

Re: HB52, HD1 RELATING TO CIVIL RIGHTS
Testimony in SUPPORT

Thank you for the opportunity to testify in support of protection of civil rights for all people. I am a United Methodist pastor, a founding member of FACE and a persistent advocate for Comprehensive Immigration Reform -- which includes respect for the civil rights of all people regardless of their national identity and immigrant status.

The following experience of a clergy colleague who is a naturalized U.S citizen and a person of color will suffice to illustrate how Hawai'i law enforcement agents are illegally victimizing innocent residents in our state. My colleague went to the local police station to provide pastoral support to a congregation member, a minor who was in custody due to a traffic violation.

Upon arrival at the police station, the minor youth was handed over to my colleague without being asked to show identification. After dropping off the youth at his car and returning home, my colleague received a message to return to the police station and upon arrival was accused of kidnapping the youth under false pretenses. It so happened that the police officer who had handed over the youth had falsely assumed that my colleague was the social worker from the Youth Offender Service. Furthermore, when my colleague returned to the station the same officer blurted out, "that's what I hate about you _____s (ethnicity/country of origin)."

My colleague was then required to be finger printed and take a lie detector test. Later when a fellow pastor went to police headquarters to determine whether our colleague had a record it was determined to be so. To this day my colleague in ministry has not been able to expunge the police record.

Such police action is intimidating, illegal and inhumane. Surely our laws need to be upheld rather than infringed upon -- particularly by those whose primary responsibility is to do so. Our local police need to be relieved from enforcement of federal immigration laws. Our state and counties need to cancel 287g and secure communities agreements so that our police officers can devote their attention to protecting our communities and all residents in Hawai'i nei.

Therefore, I request you to pass HB 52, HD1 with assurance that it will be well enforced.

b

HB52

Submitted on: 3/8/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Adam Lipka	Individual	Oppose	No

Comments: If this passes you will have written a law that prohibits Immigration enforcement officers from enforcing immigration laws in the State Of Hawaii. Federal law already prohibits biased based policing and it is strictly enforced. This law is unnecessary and will only serve to hurt the people of Hawaii when who knows how many illegal aliens move here to escape enforcement of immigration laws. As a taxpayer and a registered voter I agree that police shouldn't single people out based on religion or race or whatever other applicable related things only but if they are in the country illegally that is a violation of federal law, which last time I checked is a criminal act. Please I urge you to take a second look at this proposed legislation it could hurt us all.

HB52

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
T. Merrill	Individual	Oppose	No

Comments: This is insane. Any grievances covered by this law, are covered relevant Federal law. The most insane part? '52 D (2). The detainment of an individual based on any non-criminal factor or combination of non-criminal factors, unless pursuant to a court order'. How exactly is it that you folks believe an LE patrol officer goes out and stops crime in a community at the deterrence level? Or respond to a crime where a possible suspect is in the area of a crime committed? With just the one section that I've highlighted, you've stopped a patrol officer from stopping and talking to the 'suspicious person' that you or your neighbors have just called 9-1-1 about, because they are unfamiliar and walking through your neighborhood. Now a patrol cop will just drive by someone merely walking, in the vicinity of a crime or potential crime. That's helpful. Way to go, whoever thought this up. OPPOSE.

HB52

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jan Schwarzenberg	Individual	Oppose	No

Comments: This is a stupid waste of time for my elected officials to even be considering. A) Discrimination by gov't officials, such as police officers, is already covered under federal law, it is not needed to have an additional state law. B) If this law passes, why don't we just close the police dept and hand our communities over to the criminals? All this law will do is provide every criminal with an additional excuse to sue the police dept, claiming discrimination as opposed to their criminal activity being the cause of their incarceration. The unintended consequence will be that police officers will ignore or avoid confrontations just to avoid the paperwork and harassment of surviving a discrimination complaint. And the legislature's attempt to "do something" for the people will result in more harm than good.

HB52

Submitted on: 3/10/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Reed	Individual	Oppose	No

Comments: I am strongly opposed to this bill as the section 52D-(2) will make it impossible for officers to stop and interview suspicious persons that people call 911 about. This will in effect handcuff officers and prevent them from doing their job. It is worded poorly and way to general. Thank you.

HB52

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Nishihara	Individual	Oppose	No

Comments: This bill, in my opinion, is unnecessary and redundant. The Honolulu Police Department, the largest law enforcement agency in the State already has a policy in place prohibiting bias based profiling and conducts annual training on the subject. There are already federal laws in place to guard against "civil rights" violations by law enforcement agencies as well as civil ramifications. Imposing another law, especially one that can be construed as purely "subjective" will not make better policing, but rather demoralize those who do the policing. One must understand the process within a law enforcement agency. When an officer is accused of any mis-conduct, especially commission of a crime, which this bill's intent seems to be, that officer is placed on restrictive duties, stripped of his/her gun and badge and demoralized until the investigation is complete. That is not a matter of days, but weeks or even several months before the matter is resolved. In the mean time, there is no re-course for false accusations and as stated, this subject is extremely subjective. All it takes is someone to suggest that he/she is being targeted because of their race, etc. and an investigation will have to be initiated. Again, there are already criminal, administrative and civil avenues for anyone to pursue should bias based profiling be employed by any law enforcement agency in the State of Hawaii.

HB52

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Shelton Yamashiro	Individual	Oppose	No

OPPOSE HB52

If I call a Police Officer about a suspicious person hanging out around my neighbors front gate or on the corner I want the policeman to be able to question that person. I don't care what they look like or who they are.

There are already 8000 or so felons on parole and who know how many other repeat felons with 20 to 30 convictions wandering the streets looking for more opportunities to recommit crimes.

If someone is here illegally I want them to be arrested and deported I don't care why or where they came from, they are breaking the law. There are people trying to immigrate legally who spend years waiting in line for their turn even those with higher educations and skills.

Enough with the progressive stuff lets protect our citizens and enforce the current laws. We have more than enough laws already. Perhaps you could spend some time going through all of the outdated laws and get our system streamlined.

Perhaps you could spend more time keeping repeat felons in prison or build some more Arizona Tent cities like Sheriff Joe Apio in Arizona. Crime should be a punishment not a rewards program.

Ken Archer

HB52

Submitted on: 3/11/2013

Testimony for PSM on Mar 12, 2013 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Lee Aldridge	Individual	Oppose	No

Comments: I wish to thank the PSM committee for this opportunity to submit testimony on HB52. I OPPOSE HB52. Despite all the politically correct "civil rights" declarations and admonitions in this bill, it is nevertheless a thinly veiled restriction on police activities against illegal aliens. Illegal aliens are by definition criminals as they have broken the law because of their illegal presence and residence in the United States. If the police are prevented from arresting or detaining illegal aliens on that basis, then the State of Hawaii is de facto instructing all law enforcement officers in the State to break US law by ignoring illegal aliens who are themselves breaking the law by the very fact of their illegal presence in our State.