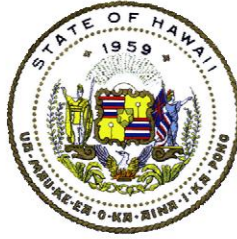


NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Blvd. 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813

**TED SAKAI**  
INTERIM DIRECTOR

**MARTHA TORNEY**  
Deputy Director of  
Administration

Deputy Director  
Corrections

**KEITH KAMITA**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 52  
A BILL FOR AN ACT RELATING TO CIVIL RIGHTS

By

Ted Sakai, Interim Director  
Department of Public Safety

House Committee on Judiciary  
Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair

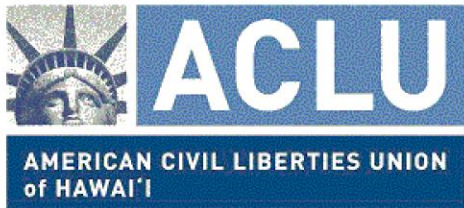
Friday, January 25, 2013, 2:00 PM  
State Capitol, Room 325

Chair Rhoads, Vice Chair Har and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of House Bill 52 that 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 House Bill 52.

The Department feels that the passage of House Bill 52 would send a strong message to the public that the Department 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.



Committee: Committee on Judiciary  
Hearing Date/Time: January 25, 2013, 2:00 pm  
Place: Conference Room 325  
Re: Testimony of the ACLU of Hawaii in Support to H.B. 52, Relating to Civil Rights

Dear Chair Rhoads and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support to H.B. 52, 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. They 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. Bias-based policing practices hurts and humiliates these individuals, and does irreparable damage to the relationships between law enforcement and the community. Bias-based policing 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.
- Racial profiling violates the U.S. Constitution by betraying the fundamental American promise of equal protection under the law and infringing on the 4<sup>th</sup> Amendment guarantee that all people be free from unreasonable searches and seizures

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- 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. 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.<sup>i</sup>

- 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.<sup>ii</sup>
- 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.<sup>iii</sup>
- 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.<sup>iv</sup>

*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).<sup>v</sup>

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.<sup>vi</sup>

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.<sup>vii</sup>

Several other studies document similar findings.<sup>viii</sup>

- 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.<sup>ix</sup>
- Although the overwhelming majority of Latinos in the United States are U.S. citizens or legal permanent residents,<sup>x</sup> Latinos have frequently been singled out for immigration stops and inquiries by local law enforcement.<sup>xi</sup> 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.”<sup>xii</sup>

*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."<sup>xiii</sup>
- 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."<sup>xiv</sup>
- 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."<sup>xv</sup>
- 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."<sup>xvi</sup>

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

- Half of all U.S. states have enacted legislation addressing racial profiling.<sup>xvii</sup>
- 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.<sup>xviii</sup>
- Data collection costs can be minimal, particularly when jurisdictions make modifications to existing technologies (like Mobile Data Terminals) in order to collect data.<sup>xix</sup>

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple  
Staff Attorney  
ACLU of Hawaii

*The ACLU of Hawaii has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.*

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

<sup>ii</sup> ACLU of Louisiana, *Unequal Under the Law: Racial Profiling in Louisiana* 5 (2008), available at [www.laclu.org/PDF\\_documents/unequal\\_under\\_law\\_web.pdf](http://www.laclu.org/PDF_documents/unequal_under_law_web.pdf).

<sup>iii</sup> 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>.

<sup>iv</sup> 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](http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf).

<sup>v</sup> 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>.

<sup>vi</sup> 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.

<sup>vii</sup> 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/g100150t.pdf>.

<sup>viii</sup> 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).

<sup>ix</sup> 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>.

<sup>x</sup> 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).

<sup>xi</sup> 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).

<sup>xii</sup> 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](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](http://www.aclu.org/images/asset_upload_file968_39242.pdf).

<sup>xiii</sup> 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](http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf).

<sup>xiv</sup> *Id.*

<sup>xv</sup> 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>.

<sup>xvi</sup> 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/](http://www.whitehouse.gov/the_press_office/News-Conference-by-the-President-July-22-2009/).

<sup>xvii</sup> States with racial profiling-related legislation include Arkansas, California, Colorado, Connecticut, 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.

<sup>xviii</sup> 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>.

Hon. Rep. Rhoads, Chair, Committee on Judiciary and Members Thereof  
January 23, 2013  
Page 7 of 7

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<sup>xix</sup> 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>.

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# HAWAI‘I CIVIL RIGHTS COMMISSION

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

January 25, 2013  
2:00 pm  
Room 325

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Judiciary

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

Re: H.B. No. 52

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 would prohibit bias-based policing, or racial profiling, as well as use of state and county law enforcement agency resources for the purpose of detecting or apprehending any person solely for 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, prohibiting law enforcement agencies from engaging in bias-based policing, but opposes the placement of this prohibition in H.R.S. Chapter 368 and assignment of jurisdiction to the HCRC. The HCRC supports prohibitions against racial profiling and other police practices that violate the constitutional rights of persons in targeted communities, but has neither the resources nor the criminal justice expertise to investigate policing practices. The HCRC does not have jurisdiction over constitutional claims;

the new civil rights protection is different in kind from the discrimination complaints that fall under the HCRC statutory 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.<sup>1</sup> A number of state and local governments have enacted prohibitions against bias-based policing.

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<sup>1</sup> 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.

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, 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.

The Hawai‘i AG Civil Rights Litigation Division, as described on the Office of the Attorney General website, defends the state against constitutional and civil rights claims, rather than pursuing or prosecuting violations.

### **HCRC Opposition to Placement of Prohibition Against Bias-Based Policing in Chapter 368 Under HCRC Jurisdiction**

The basis for the HCRC’s opposition to placement of this prohibition against bias-based policing in H.R.S. Chapter 368 under HCRC Jurisdiction is two-fold:

1. The HCRC does not have the resources to take responsibility for and jurisdiction over complaints of law enforcement agency violation of people’s rights. Since 2008, the HCRC



has lost 8 of 22 permanent positions and 3 of 11 permanent investigator positions. This loss of enforcement capacity has resulted in delays in processing and investigating complaints and nearly a doubling of the HCRC investigation case inventory. The HCRC's highest priority is to restore capacity in order to effectively enforce the civil rights protections under our current jurisdiction.

2. The HCRC does not have expertise in criminal justice or standards for good policing (law enforcement activities listed in the definition section of the bill as including “non-custodial questioning, interview, traffic stops, check point or roadblock stops, pedestrian stops, frisks and other types of body searches, consensual and nonconsensual searches of persons or the property of persons, home searches, and contact with potential victims of and witnesses to crimes”) required to effectively enforce the proposed prohibition of bias-based policing. Without this expertise, it would be difficult for the HCRC to review enforcement activities to determine whether they are practices that rely on bias-based selection, rather than “reliance on trustworthy individualized information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, sexual orientation, gender identity, or religion to an identified criminal incident or scheme” as allowed by the definition of “bias-based policing.”

For these reasons, the HCRC urges this Committee to amend H.B. No. 52 to take the new protections against bias-based policing out of H.R.S. Chapter 368 and HCRC jurisdiction, and place this regulation under the jurisdiction of an agency that has appropriate expertise. Thank you for considering the HCRC's concerns.

# hscadv



## HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

To: HOUSE OF REPRESENTATIVES COMMITTEE ON JUDICIARY

From: Veronika Geronimo, Executive Director  
Hawaii State Coalition Against Domestic Violence

Hearing Date and Time: January 25, 2013, 2:00 pm

Place: Conference Room 325

RE: HB52 - SUPPORT

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Dear Chair Rhoads and Members of the Committee on Judiciary:

The Hawaii State Coalition Against Domestic Violence writes in support of H.B. 52, which makes it a civil rights violation for law enforcement agencies and agents to practice biased-based policing.

Crime victims from marginalized communities are made more vulnerable from bias-based policing practices, which targets individuals on their perceived race, ethnicity, nationality, religion, or immigration status, and not on evidence of criminal activity. Over the past year, a series of community forums brought together members from the Latino community in Maui. At these forums, community members, mostly Spanish-speaking, shared that they did not feel safe calling the police, even when they were victims of crime, for fear of being harassed or detained by law enforcement. This leaves domestic violence survivors in particular, more isolated and vulnerable, and fearful of seeking safety and protection.

While we support prohibiting law enforcement agencies from engaging in bias-based policing, we are concerned with the enforcement mechanism in HB52. We respectfully request that the enforcement jurisdiction be assigned to a state entity with the resources and criminal justice expertise to investigate policing practices.

Thank you for your consideration.

Hawaii State Coalition Against Domestic Violence  
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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

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January 24, 2013

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

**To:** Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice-Chair  
Members of the House Committee on Judiciary

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

**Re:** Testimony in Support of HB 52, 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 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.

Although we in Hawai'i like to pride ourselves on our respect for diversity, the practice of bias based policing and law enforcement is quite common. Often when we experience an increase in immigrant populations, people react out of fear and contempt. 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 presumptions that transgendered individuals are untruthful and lying, leading to homophobic and discriminatory treatment of transgendered people and gender "non-conforming" individuals.<sup>1</sup>

Bias based policing is a violation of civil rights and should be treated as such under the law. I respectfully urge you to pass HB 52.

Sincerely,

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

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<sup>1</sup> 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

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## COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon Har, Vice Chair

Friday, January 25, 2013

2:00 p.m.

Room 325

## STRONG SUPPORT FOR HB 52 - CIVIL RIGHTS

Aloha Chair Rhoads, Vice Chair Har 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 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 makes it a civil rights violation for law enforcement agencies and agents to practice bias-based policing.

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.<sup>1</sup>

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 committee<sup>2</sup> 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

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

<sup>2</sup> 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>

members of the public and representatives of law enforcement regarding bias-based profiling and perceptions about that practice.

### **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.”<sup>3</sup>

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.<sup>4</sup>

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”<sup>5</sup> and the Native Hawaiian Justice Task Force Report<sup>6</sup>.

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

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*

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

<sup>4</sup> Bias-based Profiling in Vermont, Brian R. Jones, J.D.

<sup>5</sup> [www.oha.org/disparatetreatment/](http://www.oha.org/disparatetreatment/)

<sup>6</sup> [http://www.oha.org/sites/default/files/2012NHJTF\\_REPORT\\_FINAL\\_0.pdf](http://www.oha.org/sites/default/files/2012NHJTF_REPORT_FINAL_0.pdf)

<sup>7</sup> Addressing the Native Hawaiian Inmate Issue by Cliff Matias, January 23, 2013.

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

<sup>8</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045316)



*Bias on the Exercise of Prosecutorial Discretion.* In Section IV. ADDRESSING THE EFFECTS OF IMPLICIT RACIAL BIAS ON PROSECUTORIAL DISCRETION<sup>8</sup>, they state:

“As we have demonstrated, there are compelling reasons to believe that prosecutors unwittingly display implicit racial bias at a variety of 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*<sup>9</sup>, 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.

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.

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<sup>9</sup> [http://www.northjersey.com/news/education/172136591\\_UH\\_professor\\_Mexican\\_immigrants\\_targeted\\_in\\_HI.html](http://www.northjersey.com/news/education/172136591_UH_professor_Mexican_immigrants_targeted_in_HI.html)



To: Chair Karl Rhoads  
Vice Chair Har  
Members of the Committee on Judiciary

Fr: Nanci Kreidman, M.A.

RE: HB 52

Good afternoon. Thank you for the opportunity to raise issues of significance impacting safety of victims and effectiveness of system response. This testimony is in support of the measure.

There is no doubt that domestic violence occurs in families and love relationships involving immigrant members of our community. The police response to these crimes plays a crucial role in safety, creating a pathway to pertinent support for survivors and accountability of abusers. The Domestic Violence Action Center assists many immigrant survivors, who face significant barriers to their safe escape and who have a limited understanding of the complex system in place.

Any bias based policing has the effect of silencing and endangering survivors of domestic abuse and prevents them from receiving effective law enforcement protection and likely, accessing services that are often referred by law enforcement when they respond to a domestic violence crime.

Your favorable action on HB 52 advances the safety and access to the system all members of our community deserve.

Thank you..



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

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## TESTIMONY FOR HOUSE BILL 52, RELATING TO CIVIL RIGHTS

House Committee on Judiciary  
Hon. Karl Rhoads, Chair  
Hon. Sharon E. Har, Vice Chair

Friday, January 25, 2013, 2:00 PM  
State Capitol, Conference Room 325

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing the IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in strong support of House Bill 52, relating to civil rights.

Bias-based policing occurs when an officer initiates police action based upon personal biases or social stereotypes, rather than relying on evidentiary facts or observation that would lead a reasonable person to believe that an individual has been, is currently, or is about to commit, aid, or otherwise facilitate criminal activity. In the absence of legal facts, bias-based profiling employs such categories as race, ethnicity, gender, sexual orientation, religion, economic status, national origin, age, or culture as the sole or primary basis for police activity. For law enforcement officials, bias-based policing precipitates public distrust, elevated media scrutiny, and the possibility of legal action to redress constitutional and civil rights violations. Effective law enforcement can only be achieved when officers maintain the public's trust and cooperation. Thus, bias-based policing has no place in local law enforcement and should be explicitly prohibited.

That said, we note that impoverished and youthful persons are disproportionately and sometimes erroneously targeted by law enforcement officers because of perceived behavioral risk correlations and crime patterns. Accordingly, we urge the committee to amend the enumerated identity categories in Sections 1, lines 1-7, and Section 3, lines 5-11, to include "age" and "economic status," thereby protecting our state's young and indigent from unfair policing practices. Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,  
Kris Coffield  
*Legislative Director*



IMUAlliance

**har2-Vincent**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 24, 2013 6:05 AM  
**To:** JUDtestimony  
**Cc:** margaretwille@mac.com  
**Subject:** Submitted testimony for HB52 on Jan 25, 2013 14:00PM

**HB52**

Submitted on: 1/24/2013

Testimony for JUD on Jan 25, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Margaret Wille	Individual	Support	No

Comments: I am in support of this legislation. Margaret Wille, attorney at law County of Hawaii District 9 Councilperson

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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## har2-Vincent

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 24, 2013 6:18 PM  
**To:** JUDtestimony  
**Cc:** inunyabus@gmail.com  
**Subject:** Submitted testimony for HB52 on Jan 25, 2013 14:00PM

### HB52

Submitted on: 1/24/2013

Testimony for JUD on Jan 25, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Elaine D.	Individual	Support	No

Comments: Aloha Legislators, This bill did not state what commission will make determinations. You do not identify the "Commission". Is it the Police Commission and if so what kind of determination do you think will be rendered ten times out of ten. This has no teeth but is good that at least it will be on the books. Relating to biased-based policing, the charge of routine or spontaneous investigatory activities of law enforcement agents or agencies have also had a disparate impact on individuals with priors. Individuals that have paid their due to society yet are routinely detained based solely on theirs priors and how they are treated when a license plate has been called before or during a routine stop and a prior record is revealed. These are the individuals who receive the most biased treatment from law enforcement because they are easy targets and the police consider them fair game. If legislators intend to get people back into the workforce and productive members of society, this cannot continue. This is a discriminatory practice by police that is more prevalent than bias against race, ethnicity, national origin, immigration/citizenship status, sexual orientation, gender identity or religion. Individuals that have priors, have paid their due to society and have nothing recent or pending should not be made to pay for charges of crimes over and over for the rest of their lives. I believe legislators should be capable of relating to this or know someone who encounters this. The criminal background checks are so common and penetrating it is a wonder that any of these individuals are able to find work or if they have, in the case of routine stops, even get to their place of work without having to be detained 'just because'. Please fix this and you may begin to fix society.

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