



**SB406 SD2
RELATING TO TRAINING**

House Committee on Ocean, Marine Resources, and Hawaiian Affairs

March 11, 2013

10:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB406 SD2, which is a bill in OHA's 2013 Legislative Package. This bill would require certain board and commission members to attend a Native Hawaiian Law training course developed or approved by OHA. SB406 SD2 represents an opportunity for OHA to work with the State of Hawai'i to empower these members with information so that they can make decisions that are consistent with the state's fiduciary obligations to the Native Hawaiian people.

A training course in Native Hawaiian law for relevant board and commission members is **necessary to honor the trust obligation and responsibility owed by the State of Hawai'i to the Native Hawaiian people**. The boards and commissions listed in SB406 SD2 administer resources and programs that directly impact Native Hawaiian traditional and customary rights, natural and cultural resources, and the public trust. As state entities, these boards and commissions have a duty to protect and preserve Native Hawaiian rights and to administer the public trust in the interest of the state's beneficiaries, including Native Hawaiians.

Given the broad range of expertise and experience of the individuals selected to serve on these state councils, boards, and commissions, many members of these key policy-making entities do not possess knowledge of the unique rights and responsibilities that relate to the Native Hawaiian community. Despite their affirmative duties, the board and commission members are not provided with any related training. Unfortunately, this has likely contributed to expensive and unnecessary litigation as well as distrust by the Native Hawaiian community. The training course would be a significant step towards addressing these problems.

OHA partnered to conduct the first Native Hawaiian Law Training Course on January 12, 2013. At least one member from each board and commission listed in SB406 SD2 RSVP'd along with members of other boards and commission and associated staff members. In total, over 100 individuals RSVP'd for the course. The **attendees overwhelmingly indicated that after the course that they have a better understanding of the State's legal responsibilities, Hawai'i's political history, and Native Hawaiian traditional and customary practices**.

As the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians, **OHA is the appropriate agency to create and administer a**

Native Hawaiian Law training course. In creating OHA, the people of Hawai‘i specifically recognized their obligations pursuant to the “public trust which includes among other responsibilities, betterment of conditions for” Native Hawaiians. HRS § 10-1(a). OHA’s kuleana to serve as the agency responsible for the 1) performance, development, and coordination of programs and activities relating to Native Hawaiians, as well as 2) the assessment of policies and practices of other agencies impacting Native Hawaiians, is clearly consistent with SB406 SD1. Moreover, requiring relevant board and commission members to attend is also consistent with HRS § 10-1(b), which requires state agencies that “provid[e] services and programs which affect” Native Hawaiians “to cooperate with and assist wherever possible the office of Hawaiian affairs.”

Finally, in anticipation of questions by this committee, OHA would like to clarify that **it is not OHA’s intention for the State to incur expenses related to the development or the administration of the proposed training course. Nor is it OHA’s intention for the general fund budget to be impacted.**

OHA strongly urges this committee **PASS** SB406 SD2. Mahalo nui loa for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS

Monday, March 11, 2013
10:30 A.M.
State Capitol, Conference Room 325

In consideration of
SENATE BILL 406, SENATE DRAFT 2
RELATING TO TRAINING

Senate Bill 406, Senate Draft 2, proposes to require the Office of Hawaiian Affairs (OHA) to establish, design, and administer a training course in Native Hawaiian matters for specified members of boards, councils, and commissions and requires those members to take the course within six months of their respective appointments, and charge fees to participants of the course as needed to fund costs of the course. **The Department of Land and Natural Resources (DLNR) prefers the original version of this measure and offers the following comments and concerns on Senate Bill 406, Senate Draft 2.**

DLNR is acutely aware of the need for members of its boards and commissions to be properly educated and sensitive to the important subject of Native Hawaiian matters. DLNR also notes that OHA's presence before the various councils, boards and commissions to offer guidance on Native Hawaiian matters has been very beneficial and we continue to urge an OHA presence.

DLNR is committed to increasing capacity and knowledge among its staff on Native Hawaiian rights. At a recent volunteer training Saturday workshop that OHA conducted last month on Native Hawaiian rights, there were many DLNR staff who attended, including the Chair and First Deputy. All felt that it was a productive introduction on important key Hawaiian issues. We would also encourage that OHA offer abbreviated workshops directly to different agencies, like DLNR, so that more staff can attend during the work week.

Senate Bill 406, Senate Draft 2 proposes to place fees on participants, whereas in the original version of the measure OHA absorbed the costs associated with the training. DLNR is concerned with the imposition of fees for mandatory training on to DLNR and all of the members of these boards and commissions that serve on a volunteer basis, and often have limited time.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



Association of Hawaiian Civic Clubs

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JOINT HOUSE COMMITTEES ON OCEAN, MARINE RESOURCES AND HAWAIIAN AFFAIRS AND WATER AND LAND

SENATE BILL 406, SD2(SSCR659) RELATING TO TRAINING

Monday, March 11, 2013; 10:30am; Room 325

Aloha Madame Chair Hanohano and Madame Chair Evans of the joint committees on Ocean, Marine Resources and Hawaiian Affairs and Water and Land. I am Soulee Stroud president of the Association of Hawaiian Civic Clubs(AHCC) here to support SB406SD2 Relating to Training.

The Board of Directors of the Association of Hawaiian Civic Clubs met in their quarterly meeting on January 19, 2013 and among other business discussed the legislative package introduced by the Office of Hawaiian Affairs(OHA). The Board agreed that the type of training proposed by OHA could be helpful to certain state and county councils, boards, commissions and authorities.

It is suggested that the list of mandated organizations in section 10-A of the bill be kept somewhat flexible to enable the inclusion of currently unidentified entities as they are created by the legislature and/or counties.

We also suggest that it may be appropriate to amend section 10-A to include the Burial Councils, the Corrections Population Management Commission and the Hawaii Community Development Authority. There may be others who deal with Hawaiian traditional and customary rights, Native Hawaiian natural resource protection and access rights and other state obligations under the public trust. The National Park Service and agencies with jurisdiction over the Northwest Hawaiian Islands come to mind.

Thank you for the opportunity to testify.

Jalna.keala2@hawaiiantel.net

omhtestimony

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SB406

Submitted on: 3/8/2013

Testimony for OMH on Mar 11, 2013 10:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Nahoopii	Oahu Council, Assn. of Hawaiian Civic Clubs	Support	No

Comments: On behalf of its Board of Directors and membership, we strongly support the SB 406, SD2 which requires OHA to either administer or approve a third party to administer a mandatory training course in native Hawaiian and Hawaiian matters to members of certain state councils, boards, and commissions. Requires those members to take the course within one year of their respective appointments.

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COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Faye Hanohano, Chair

Rep. Ty Cullen, Vice Chair

Monday, March 11, 2013

10:30 a.m.

Room 325

SUPPORT with AMENDMENT - SB 406 SD2 - OHA CULTURAL TRAINING

Aloha Chair Hanohano Vice Chair Cullen 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.

SB 406 SD2 requires OHA to establish, design, and administer a training course in native Hawaiian matters for specified members of boards, councils, and commissions and requires those members to take the course within six months of their respective appointments. The amendments to this measure allow OHA to offer abbreviated training once a year.

Community Alliance on Prisons supports this measure and respectfully asks for the following amendment our experience informs is sorely needed in criminal justice agencies and related boards:

AMENDMENT

OHA shall be required to provide cultural training to all agencies, boards, and commissions within the criminal justice system. And each agency, board, and commission in the criminal justice system shall have ongoing implicit, unconscious bias training.

Our request for this amendment is informed by our attendance at the Native Hawaiian Justice Task Force meetings where we (as well as a legislator and other members of the community) were stunned by the insensitivity of the designees of the Attorney General's office and the Honolulu Prosecutor's office. It became clear to us that there is a vacuum of information about Hawaiian history in these agencies. Despite the data cited in the 2010 OHA report, *The Disparate Treatment of Native Hawaiians in the*

Criminal Justice System,¹ the circumstances of Native Hawaiians and the ignorance that the cultural trauma their history presents today appeared to be irrelevant to the two agencies cited above.²

The task force, created by the Hawai'i Legislature and spearheaded by the Office of Hawaiian Affairs, builds on the 2010 study that confirmed what many had long feared: Hawaiians are more likely to be sent to prison for longer periods than nearly every other racial or ethnic group in the islands.³

The task force was charged with making recommendations to the 2013 Legislature. Pursuant to Act 170, the Native Hawaiian Justice Task Force ("Task Force") was formed and consisted of nine members:

1. designee of the attorney general, Paul Perrone;
2. designee of the director of public safety, Martha Torney, M.A.;
3. chief executive officer of the Office of Hawaiian Affairs, Dr. Kamana'opono Crabbe;
4. administrator of the adult client services branch, Cheryl Marlow;
5. circuit court judge, the Hon. Richard K. Perkins;
6. criminologist, selected by the Governor, RaeDeen Keahiolalo-Karasuda, Ph.D.;
7. representative from the prosecuting attorney for the City and County of Honolulu, Tricia Nakamatsu, Esq.;
8. representative of the Office of the Public Defender, John M. Tonaki, Esq.; and
9. member representing the public, selected by the Governor, the Hon. Michael Broderick (ret.).

Pursuant to Act 170, at the selection of Task Force members, Michael Broderick served as the Chair of the Task Force.

The above-referenced Civil Beat article reported: The task force's 28-page report⁴ is the next step in ameliorating that over-representation. It followed a series of community meetings across the state in July and August where task force members heard from almost 160 people, including those in prisons. "They shared their mana'o," said Broderick who described the stories as "tragic and inspiring."

¹ **The Disparate Treatment of Native Hawaiians in the Criminal Justice System**, Justice Policy Institute, UH Myron B. Thompson School of Social Work, Georgetown Law, UH Department of Urban and Regional Planning, September 2010. www.oha.org/disparatetreatment

² **Task Force Recommendation: B.3. Training regarding implicit, unconscious bias is to be mandatory and ongoing for all employees who have contact with individuals in the criminal justice system.** The Judiciary has recently held such a training for judges. (43) Vote taken. One vote against the Recommendation: Department of the Prosecuting Attorney for the City and County of Honolulu, "**The specific bases for this recommendation are unclear.**"

³ **Task Force Demands Action On Hawaiian Incarceration**, Civil Beat, By Chad Blair, December 27, 2012. <http://www.civilbeat.com/articles/2012/12/27/17988-task-force-demands-action-on-hawaiian-incarceration/>

³ **Native Hawaiian Justice Task Force Report**, December 2012. http://www.oha.org/sites/default/files/2012NHJTF_REPORT_FINAL_0.pdf
(45) Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "The specific bases and parameters for this recommendation are unclear." Department of the Attorney General, "Additional time is needed to review this issue due to the breadth of the recommendation. In addition, completing this Recommendation could not be expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."

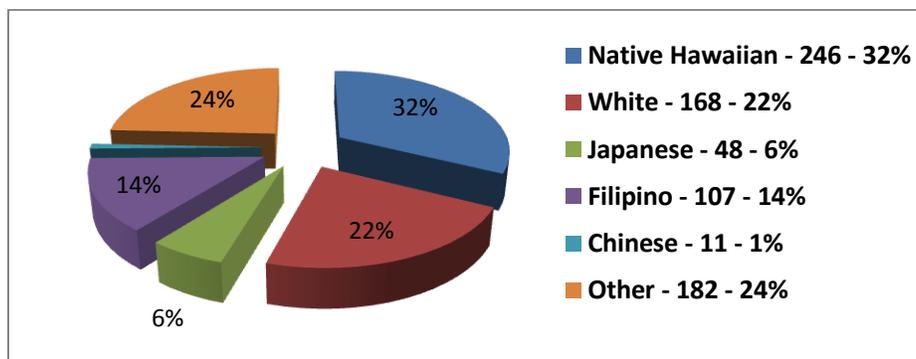
Among the report's 48 findings and 38 recommendations:

- the state needs better data regarding incarcerated Hawaiians
- the state should create an inventory of support services (e.g., mental health, substance abuse, job training)
- the Legislature needs to increase funding for various agencies and programs across the system
- the Legislature should reintroduce and pass bills based on Justice Reinvestment initiatives
- the Department of Public Safety should take steps right now to improve things without legislative consent
- DPS should allow for greater visitation and allow inmates to possess Hawaiian cultural practice items
- the state should bring more local inmates home from Arizona prisons ("a top priority," said Broderick)
- **correctional facility staff should be trained in trauma care and understanding of "unconscious bias"**
- the state should stop contracting with for-profit private prison companies as it does in Arizona with CCA

One glaring example of the disparate treatment of Native Hawaiians is from the 2010 OHA report:

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

Hawai'i's criminal justice approach to drug use was a significant contributor to the total number of people admitted to prison or jail in 2009 (762 or about 13 percent), but has even greater significance for Native Hawaiians. As seen in the pie chart, Native Hawaiians made up the largest portion (32 percent) of the people admitted to prison for drug offenses in 2009.⁵



It is common knowledge that substance abuse is even across the socioeconomic spectrum, however, this data show what is actually happening in our criminal justice system.

Community Alliance on Prisons supports the recommendations of the Task Force and asserts the need for unconscious bias training, as the Judiciary has provided for their judges in the interest of improving the quality of justice in Hawai'i. Coupled with OHA's cultural training, the unconscious bias training would be an important step toward addressing the disparities suffered by Native Hawaiians in the justice system.

IMPLICIT, UNCONSCIOUS BIAS⁶

⁵ Hawai'i Criminal Justice Data Center, 2009.

⁶ **The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion**, Robert J. Smith & Justin D. Levinson, April 2012. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045316

The disproportionate incarceration of minorities is one of the American criminal justice system's most established problems. In spite of a societal backdrop in which descriptive claims of a "post-racial" America prosper, the problematic racial dynamics of criminal justice persist. The numbers are stark and clear: one out of every twenty-nine black adult women and men are currently incarcerated compared with only one out of every 194 whites.⁷

(...)

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.

DO RACE AND ETHNICITY MATTER IN PROSECUTION?⁸

Relative to the attention that police and the courts have received from researchers analyzing disproportionate minority contact with the criminal justice system, there has been little study of prosecution. Given prosecutors' broad discretionary power, understanding the impact of their decisions on the higher incarceration rates of blacks and Latinos is crucial to determining whether, or how, race and ethnicity influence outcomes in the criminal justice system. This review of the existing literature examining the relationship of race and ethnicity to prosecutorial decisionmaking suggests that defendants' and victims' race affect prosecutorial decisions. Most of the 34 studies reviewed here found influences on case outcomes, even when a host of other legal and extra-legal factors are taken into account.

THE ANATOMY OF DISCRETION: An Analysis of Prosecutorial Decisionmaking⁹

Prosecuting attorneys enjoy broader discretion in making decisions that influence criminal case outcomes than any other actors in the American justice system. They make pivotal decisions throughout the life of a case—from determining whether to file charges, to crafting plea offers and recommending sentences. That they do so with little public or judicial scrutiny generates questions about the justice and fairness of the process.

HAM SANDWICH NATION: DUE PROCESS WHEN EVERYTHING IS A CRIME ¹⁰

⁷ **ONE IN 100: BEHIND BARS IN AMERICA** 2008 34 tbl.A-6 (2008), JENIFER WARREN, THE PEW CENTER ON THE STATES, PUBLIC SAFETY PERFORMANCE PROJECT, http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf (aggregating numbers for all fifty states). For younger adults, the numbers are similarly startling. *See id.* One out of every nine black males between ages twenty and thirty-four are incarcerated. *Id.*

⁸ **Do Race and Ethnicity Matter n Prosecution?**, Vera Institute of Justice, Besiki Kutateladze, Vanessa Lynn, Edward Liang, June 2012, <http://www.vera.org/pubs/do-race-and-ethnicity-matter-prosecution-review-empirical-studies>

⁷ **THE ANATOMY OF DISCRETION: An Analysis of Prosecutorial Decisionmaking**, Vera Institute of Justice, Bruce Frederick, Don Stemen, December, 2012. <http://www.vera.org/pubs/anatomy-discretion-analysis-prosecutorial-decision-making>

⁹ **HAM SANDWICH NATION: DUE PROCESS WHEN EVERYTHING IS A CRIME**
Glenn Harlan Reynolds, Beauchamp Brogan Distinguished Professor of Law, University of Tennessee, January 2013.

Attorney General (and later Supreme Court Justice) Robert Jackson once commented: “If the prosecutor is obliged to choose his cases, it follows he can choose his defendants.” The result is “The most dangerous power of the prosecutor: that he will pick people he thinks he should get, rather than pick cases that need to be prosecuted.” Prosecutors could easily fall prey to the temptation of “picking the man, and then searching the law books ... to pin some offense on him.”¹¹ In short, prosecutors’ discretion to charge – or not to charge – individuals with crimes is a tremendous power, amplified by the huge number of laws on the books.

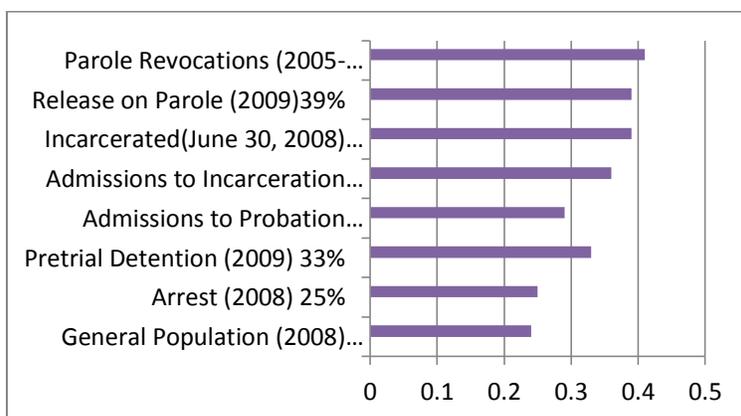
(...)

Overcriminalization has thus left us in a peculiar place: Though people suspected of a crime have extensive due process rights in dealing with the police, and people charged with a crime have even more extensive due process rights in court, the actual decision whether or not to charge a person with a crime is almost completely unconstrained. Yet, because of overcharging and plea bargains, that decision is probably the single most important event in the chain of criminal procedure.

It is no secret that Hawaiians are disproportionately represented in Hawai‘i’s criminal justice system which is due to the disparate treatment they receive at almost every stage of Hawai‘i’s justice system.

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

Native Hawaiians are more likely to receive a sentence of incarceration over probation.



Native Hawaiians as a Percentage of Total

Community Alliance on Prisons urges the committees **to amend this measure** to include ongoing cultural and implicit, unconscious bias training for all agencies, boards, and commissions in the criminal justice system.

Mahalo for this opportunity to share our thoughts and research on this measure.

¹¹ **Three Felonies A Day**, Harvey Silverglate, xxxv---xxxvi, 2011.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2203713

omhtestimony

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SB406

Submitted on: 3/9/2013

Testimony for OMH on Mar 11, 2013 10:30AM in Conference Room 325

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

Comments: i support people in seeking work

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SB406

Submitted on: 3/8/2013

Testimony for OMH on Mar 11, 2013 10:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Chang	Individual	Support	No

Comments: Aloha honorable legislators, My name is Kevin Chang and I personally support SB 406 SD 2 which allows for the development of training modules on native Hawaiian rights and issues that affect the Hawaiian community for members on state councils, boards, and commissions. It is a small step in the right direction. In my work life as the executive director of Kua āina Ulu Auamo (KUA) I am privileged to work with a movement of rural and Native Hawaiian communities working across pae āina o Hawai i to protect and renew the environmental and cultural legacy passed down to the many generations of these islands. A task for our collective communities in the years ahead will be to build the bridges we need to collectively fulfill our kuleana to preserve Hawai'i for present and future generations as we boldly stated in 1978. Educating those who serve our community through various councils, boards and commissions will be of help to kua āina on the ground exercising their rights and fulfilling the obligations passed down over generations. Your choice to begin bridging the looming gap between our collective aspirations and the current reality is not just an improvement in environmental governance it is a step towards rebuilding our community well-being. Aloha Kevin

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SB406

Submitted on: 3/9/2013

Testimony for OMH on Mar 11, 2013 10:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments: Knowledge is empowerment to make informed decisions in the best interest of the people of Hawaii and to comply with constitutional provisions concerning Native Hawaiians. Fully support this legislation.

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