

SB 406

Measure Title: RELATING TO TRAINING.

Report Title: OHA Package; Mandatory Training

Description: Requires OHA to establish, design, and administer a training course in native Hawaiian matters for specified members of boards, councils, and commissions. Requires those members to take the course within six months of their respective appointments.

Companion:

Package: OHA

Current Referral: THA/JDL, WAM

Introducer(s): KIM (Introduced by request of another party)

Sort by Date		Status Text
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to THA/JDL, WAM.
1/30/2013	S	The committee(s) on THA/JDL has scheduled a public hearing on 02-05-13 9:30AM in conference room 016.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of

WILLIAM J. AILA, JR.

Chairperson

SUPPORT

Before the Senate Committees on
TOURISM AND HAWAIIAN AFFAIRS
and
JUDICIARY AND LABOR

Tuesday, February 05, 2013
9:30 AM
State Capitol, Room 016

In consideration of
SENATE BILL 406
RELATING TO TRAINING

Senate Bill 406 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. The Department of Land and Natural Resources (DLNR) **supports this bill** and also offers the following comments.

DLNR is acutely aware of the need for the members of its boards and commissions to be properly educated and sensitive to the important subject of Native Hawaiian matters. However, DLNR requests that OHA keep in mind that all of the members of these boards and commissions fulfill an important public service by serving on a volunteer basis, and often have limited time. 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 this 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.

Thank you for the opportunity to testify.



SB406
RELATING TO TRAINING

Senate Committee on Tourism and Hawaiian Affairs
Senate Committee on Judiciary and Labor

February 5, 2013

9:30 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB406, 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 by OHA. SB406 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 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.

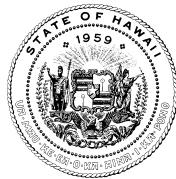
Given the broad range of expertise and experience of the individuals selected to serve on these state councils, boards, and commissions, many members of these key policy-making entities do not possess knowledge of the unique rights and responsibilities that relate to the Native Hawaiian community. Despite 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 a Native Hawaiian Law Training Course on January 12, 2013. At least one member from each board and commission listed in SB406 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 they better understood 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. 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 of the proposed training course. Nor is it OHA’s intention for the general fund budget to be impacted.

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



STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN DESIGNATE
HAWAIIAN HOMES COMMISSION
TO THE SENATE COMMITTEES ON TOURISM AND HAWAIIAN AFFAIRS &
JUDICIARY AND LABOR
IN SUPPORT OF

SB 406, RELATING TO TRAINING

February 5, 2013

Chair Galuteria, Chair Hee, and Members of the Committees:

The Department of Hawaiian Home Lands (DHHL) supports this bill that equips members of certain state boards and commissions with information to assist them in their decision making and performance of duties.

We support this manager because many fair-minded individuals who sit on these boards and commissions are not aware that Native Hawaiians as a group have distinct rights that must be considered separate from the public at large. A mandatory training course would ensure that those in position of decision-making authority over natural resources are informed of these rights.

Mahalo for the opportunity to testify on this measure.

Leimana DaMate, Commissioner – West Hawaii

Hawaiian Homes Commission

Testimony IN SUPPORT

of SB 406 – Relating to Training

Senate Committee of Tourism & Hawaiian Affairs

February 5, 2013

Senate Committee on Judiciary and Labor

9:30 a.m., Room 016

Aloha Senator Galuteria and members of the Committee of Tourism & Hawaiian Affairs,

Aloha Senator Hee and members of the Committee on Judiciary and Labor;

Thank you for the opportunity to testify in support of SB 406 which requires that the Office of Hawaiian Affairs (OHA) administers a training course in native Hawaiian matters for specified members of boards, councils, and commissions. As stated in Chapter 10-1(b) HRS, it is specified that it shall be the duty and responsibility of all state departments of state government who provide services which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate and assist OHA wherever possible. The only exception to this rule is the Hawaiian Homes Commission Act, 1920, as amended, which shall be administered by the Hawaiian Homes Commission.

However, even Commissioners on the Hawaiian Homes Commission must be aware of the rules, regulations and policies of the other state agencies who impact native Hawaiians, many of whom are homesteaders on Hawaiian Home Lands. For example, we must often work with the State Water Commission, Dept. of Land and Natural Resources, Dept. of Transportation, Dept. of Agriculture and County Planning Departments. All impact our homesteads in one way or another.

I had the privilege of being invited to a training workshop sponsored by OHA in January, 2013 on the various laws and policies, practiced by different government agencies that impact native Hawaiians. It was enormously helpful to me in carrying out my duties and responsibilities to our beneficiaries in the Hawaiian Homes Trust by better understanding the different relationships between the various state and county agencies.

I support SB 406 and urge you to pass it.

Mahalo,

Leimana DaMate, Commissioner – West Hawaii

Hawaiian Homes Commission

P.O. Box 1879, Honolulu, HI 96805 Phone: 808-497-0800 Email: Leimana@fastnethi.com



Association of Hawaiian Civic Clubs

P. O. Box 1135
Honolulu, Hawai`i 96807

JOINT SENATE COMMITTEES ON TOURISM & HAWAIIAN AFFAIRS AND JUDICIARY AND LABOR

Jalna Keala

SENATE BILL 406 RELATING TO TRAINING

Tuesday; February 5, 2013; 9:30am; Room 016

SUPPORT

Aloha Chairman Galuteria of the Tourism and Hawaiian Affairs Committee and Chairman Hee of the Judiciary and Labor Committee. Aloha to members of the joint committee.

The Association of Hawaiian Civic Clubs (AHCC) is currently comprised of sixty nine component member clubs in Hawaii and fifteen states on the continent. The first civic club was organized in 1918 by Prince Kuhio and a group of prominent Hawaiian men when Kuhio was a Delegate to the US Congress. Kuhio recognized the need for Native Hawaiians to become more involved in the passage of the Hawaiian Homes Act then before the Congress, and to further become engaged in the intricacies of federal and local government.

The Board of Directors of the Association of Hawaiian Civic Clubs met in their quarterly meeting on January 19, 2013 and among other Association business, discussed the package introduced by the Office of Hawaiian Affairs(OHA). The Directors 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, or others, 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 comes and agencies with jurisdiction over the Northwest Hawaiian Islands come to mind.

Thank you for the opportunity to testify.

Jalna.keala2@hawaiiantel.net



Ko`olau Foundation

P. O. Box 4749
Kane`ohe, HI 96744

February 5, 2013

S.B. 406 – Relating to Training

Testimony in Support

The Ko`olau Foundation offers its strong support for Senate Bill 406, which would require the Office of Hawaiian Affairs to establish, design and administer a training course in native Hawaiian matters for specified members of boards, councils and commissions, and would require this training within six months of their appointments.

Our foundation's purpose is to preserve, perpetuate and raise awareness of our rich cultural heritage, our traditions, our history and our customary practices.

We believe this training will greatly enhance the knowledge and ability of state and county decision-makers, those who make policies and regulations, when it comes to acknowledging their legal obligations to support Hawaiian cultural practices and the rights of the kanaka maoli.

One of our board members recently attended a similar training held at the University of Hawai`i law school, where Hawaiians with expertise in the legal history of traditional and customary Hawaiian rights and practices offered presentations. She said this training was extremely helpful because it provided the foundational knowledge needed to make wise decisions when it came to matters that may affect Native Hawaiians.

We urge your support for this legislation.

Mahalo,
/s/ **Lawrence Akina, Jr.**
President

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

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



COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS

Sen. Brickwood Galuteria, Chair
Sen. Gil Keith-Agaran, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair
Sen. Maile Shimabukuro, Vice Chair

Tuesday, February 5, 2013
9:30 a.m.
Room 016

SUPPORT with AMENDMENTS - SB 406 - OHA CULTURAL TRAINING

Aloha Chairs Galuteria & Hee, Vice Chairs Keith-Agaran & Shimabukuro and Members of the Committees!

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

SB 406 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.

Community Alliance on Prisons supports this measure and respectfully asks for the following amendment:

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

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."

and August where task force members heard from almost 160 people, including those in prisons. "They shared their manao," said Broderick who described the stories as "tragic and inspiring."

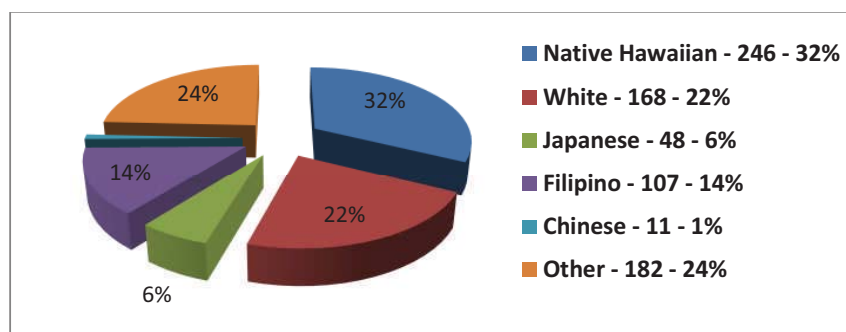
Among the report's 48 findings and 38 recommendations:

- 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.

⁵ Hawai'i Criminal Justice Data Center, 2009.

IMPLICIT, UNCONSCIOUS BIAS⁶

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.

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

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 in 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.

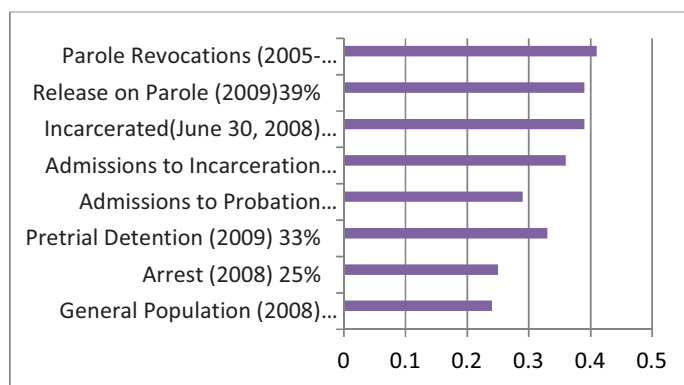
(...)

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 Hawaiï’s criminal justice system which is due to the disparate treatment they receive at almost every stage of Hawaiï’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

SB406

Submitted on: 2/4/2013

Testimony for THA/JDL on Feb 5, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Penny Levin	Individual	Support	No

Comments: This is one of the most practical pieces of legislation this year and long overdue. There are many qualified people and well-intentioned citizens that serve on boards and commissions each year but often they are uninformed regarding traditional Hawaiian customary rights protected by law or the laws that govern decisions that affect Hawaiian rights. I urge you to support this bill. mahalo.

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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Tel/Fax (808) 247-7942

Kenneth R. Conklin, Ph.D. Executive Director
e-mail Ken_Conklin@yahoo.com



Unity, Equality, Aloha for All

To: THA/JDL, WAM
From: Kenneth R. Conklin, Ph.D.
Re: SB406
Date: January 30, 2013

TESTIMONY IN OPPOSITION

There are many reasons for opposing this bill. In this testimony I will focus on two reasons.

1. The bill places one state agency, OHA, in a position of authority over other state agencies by requiring employees to pass a course whose purpose is to brainwash them with the political views of OHA.
2. The bill would require government employees to learn about, and give deference to, the ancient Hawaiian religion as the justification for various state laws and practices regarding water rights for taro, protection of ancient burials, etc. This would be an establishment of religion contrary to the the First Amendment of the U.S. Constitution; and it would also force employees who have no Hawaiian blood to kow-tow to a religion which portrays people who do have Hawaiian blood as possessing an inherent God-given right to rule these islands.

1. This bill authorizes OHA to exercise power over all or most state agencies.
It elevates OHA to a position of superiority over other agencies of the State of Hawaii, by forcing employees of those agencies to place themselves under the authority of OHA, where OHA will determine the contents of the courses they are required to take, and OHA will be the sole judge of whether those

employees have learned the subject matter and have shown proper deference to the political views of OHA. This bill forces government employees to submit to political indoctrination -- brainwashing -- in the views of OHA, many of which are highly controversial, morally reprehensible, and probably unconstitutional.

For example, OHA has certain views regarding who owns the ceded lands and whether the state has a right to sell parcels of ceded lands. The Hawaii Supreme Court made a 5-0 decision upholding OHA's views. But on appeal, the U.S. Supreme Court ruled 9-0 that OHA's views are wrong. Can we expect OHA to teach correct information about who owns the ceded lands and whether the state can sell them?

For example, OHA has certain views about the Hawaiian revolution of 1893 that overthrew the monarchy, and points to the Blount Report of 1893 and the U.S. apology resolution of 1993 to bolster OHA's views. But those views are controversial, and are disproved by the Morgan Report issued by the U.S. Senate in 1894 and by the majority report of the Native Hawaiians Study Commission issued by a joint Senate/House commission in 1996. Can we expect OH to provide both sides of this controversy, or will OHA brainwash state employees by teaching only the views OHA endorses?

2. This bill requires government employees to learn about "traditional and customary rights" of Native Hawaiians to ensure that in carrying out their duties, the employees will give respect and deference to Native Hawaiian beliefs and cultural values. For example, we might expect employees to be trained regarding sacred places, the reasons why taro patches are given special guarantees of access to water, the reasons why ancient burials must not be disturbed, etc.

Those topics, and many others, are based in the ancient Hawaiian religion, which has a creation legend which today's sovereignty activists (incorrectly) describe as portraying Native Hawaiians (and only Native Hawaiians) as genealogically the children of the gods and the brothers to these islands in a way nobody ever can be who lacks a drop of native blood.

The Hawaiian religion is the only one to be given special deference under the terms of this bill; thus this bill would be an establishment of religion. Under

terms of this legislation, government money will be used to indoctrinate government employees with a religious belief. Furthermore, the way that belief is likely to be taught can best be described as religious fascism because it justifies giving governmental authority over land-use decisions to a particular racial group.

In 1819, the year before the American missionaries came to Hawaii, the sovereign King Liholiho Kamehameha II, with his regent stepmother Queen Ka'ahumanu, and with Kahuna Nui (High Priest) Hewahewa, exercised sovereignty on behalf of all native Hawaiians to abolish the ancient religion, and ordered the destruction of the heiaus and burning of idols. Today's ethnic Hawaiians disrespect the decision of their ali'is and ancestors by trying to resurrect the ancient religion for political purposes. By seeking to elevate that ancient religion above all other religions, they disrespect the right to freedom of religion possessed by all Americans. This committee should not disrespect the multiracial, multicultural people of Hawaii by passing this bill.