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

TESTIMONY ON HOUSE BILL 1246, HOUSE DRAFT 2  
RELATING TO ALTERNATIVES TO INCARCERATION

By  
Nolan P. Espinda, Director

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Tuesday, March 14, 2017; 1:15 p.m.  
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) offers the following comments on the House Bill (HB) 1246, House Draft (HD) 2, which proposes to amend subsection (d) by making electronic monitoring and surveillance a stand alone alternative to incarceration in PSD facilities. The Department appreciates the clarifications included in the proposed amendments and will strategize to best utilize the opportunities it provides.

Thank you for the opportunity to present this testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawai`i**

March 14, 2017

**RE: H.B. 1246, H.D. 2; RELATING TO ALTERNATIVES TO INCARCERATION.**

Chair Nishihara, Vice-Chair Wakai, members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in opposition to H.B. 1246, H.D. 2.

The purpose of H.B. 1246, H.D. 2 is to address various methods of alternative programs in lieu of incarceration, specifically the use of electronic home monitoring and surveillance.

While the Department appreciates the amendments proposed in H.B. 1246, H.D. 2, we still have concerns over subsection (d)(1) that proposes one form of alternative programs to include “home detention, curfew” while striking out electronic monitoring or surveillance. Without any form of an electronic home monitoring or surveillance in place, this section appears to lack accountability for the offender, and is comparable to being released on recognizance. In addition, this committee may want to clarify if “electronic monitoring and surveillance” includes Global Positioning System (GPS) devices or limited strictly to electronic monitoring devices which are intended to ensure an individual is within the allowed parameters rather than exact location.

Although our Department understands that overcrowding is of great concern for the Department of Public Safety, public safety should always stand alone as a top priority. For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1246, H.D. 2. Thank you for the opportunity to testify on this matter.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, and MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, March 14, 2017

1:15 pm

Room 229

### SUPPORT FOR HB 1246 HD2 w/ AMENDMENT - ALTERNATIVES TO INCARCERATION

Aloha Chair Nishihara, Vice Chair Wakai 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 in Hawai'i for two decades. This testimony is respectfully offered on behalf of the almost 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,700 of Hawai'i's imprisoned people 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.

Community Alliance on Prisons is in strong support of this measure. Our facilities are bursting at the seams with low level lawbreakers who do not pose significant risk and who would be better served in community programs, with supervision, and if deemed necessary, by electronic monitoring.

We therefore, respectfully ask the committee to reinstate the original version of this bill to allow for release of certain individuals.

Hawai'i should be saving our beds for those who do pose a significant risk to the community. A robust array of community programs to address mental health and substance misuse issues, houselessness, and poverty are far better options than sending an individual on the path to the criminal processing system.

In July 2016, a letter<sup>1</sup> signed by David LaBahn, President, Association of Prosecuting Attorneys; Ronal Serpas, Chairman, Law Enforcement Leaders to Reduce Crime and Incarceration; J. Thomas Manger, President, Major Cities Chiefs Association; William Fitzpatrick, President, National

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<sup>1</sup> The full text of the letter can be found here: <http://lawenforcementleaders.org/wp-content/uploads/2016/07/LawEnforcement-Letter.pdf>

District Attorneys Association; and Jim Bueermann, President, Police Foundation was sent to Presidential candidates, Donald Trump and Hillary Clinton.

Here is an excerpt:

*As the next president of the United States, we respectfully urge you to make the public safety of this country a top priority. Specifically, we request that you:*

- Prioritize funding for local law enforcement to eradicate serious and violent crime in our communities. Stopping violence should be our number-one priority. Too many resources go toward arresting, prosecuting and imprisoning low-level offenders, and those suffering from mental illness and drugs or alcohol addiction, making it difficult for law enforcement to address more serious crime. This leaves us without the appropriate tools to bring the most dangerous criminals to justice. We urge you to commit to making reducing violent crime a priority in your Administration and to target resources for local law enforcement accordingly.*
- Support policy changes that appropriately address the burgeoning prison population through thoughtful and sensible measures that protect public safety. These include modifications to sentencing laws that carefully filter out the truly dangerous individuals who belong in prison and out of our communities, while allowing lower level offenders a chance for redemption through alternative punishments that are proven to reduce recidivism and rehabilitate. Such measures allow law enforcement to more effectively protect and serve our country.*

*By committing to these principles and solutions, you can show your strong support for the law enforcement officials of this country. We also would like to request a meeting with you to discuss how to best keep our country safe. We appreciate your time and attention to this matter.*

The “tough on crime” policies that have been created over the last two decades have led to this severe overcrowding, yet has not produced the promised outcomes.

In 2015 law enforcement officials called for the reduction of incarcerated persons calling the correctional system “crime schools”.

As former U.S. Attorney General Eric Holder said, “**Getting smart on crime requires talking honestly about which policies have worked and have not, without fear of being labeled as too hard or, more likely, as too soft on crime. Getting smart on crime means moving beyond useless labels and instead embracing science and data, and relying on them to shape policy. And it means thinking about crime in context – not just reacting to the criminal act, but developing the government’s ability to enhance public safety before the crime is committed and after the former offender is returned to society.**”

Community Alliance on Prisons urges the committee to restore the original version of HB 1246 and include the section of releasing individuals who pose little risk to the community.

Mahalo for this opportunity to testify.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 12, 2017 1:37 PM  
**To:** PSMTestimony  
**Cc:** maukalani78@hotmail.com  
**Subject:** \*Submitted testimony for HB1246 on Mar 14, 2017 13:15PM\*

**HB1246**

Submitted on: 3/12/2017

Testimony for PSM on Mar 14, 2017 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

Comments:

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

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 14, 2017 8:18 AM  
**To:** PSMTestimony  
**Cc:** lady.flach@gmail.com  
**Subject:** Submitted testimony for HB1246 on Mar 14, 2017 13:15PM

**HB1246**

Submitted on: 3/14/2017

Testimony for PSM on Mar 14, 2017 13:15PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri Heede	Individual	Support	No

Comments: Support WITH Amendments: RESTORE the original version that includes release from overcrowded facilities!

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**HB1246 HD2**  
**RELATING TO ALTERNATIVES TO INCARCERATION**  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

March 14, 2017

1:15 p.m.

Room 229

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees offer **COMMENTS** on HB1246 HD2. The current draft of this measure lacks critical provisions included in previous drafts, which would have expanded the Department of Public Safety (PSD) Director’s authority to release certain pretrial detainees and sentenced offenders into programs that provide alternatives to incarceration. **OHA urges the Committee to consider reviving the stronger and more constructive language of HB1246 HD1.**

Decades of a traditional criminal justice approach have led to the highest prison population in Hawai‘i’s history. Between 1977 and 2008, the number of people incarcerated in Hawai‘i has increased by more than 900 percent,<sup>1</sup> and by 1,400 percent between 1977 and the present. The Native Hawaiian community has been particularly impacted by this increase, making up 40% of our prison population today.<sup>2</sup>

Allowing the PSD Director greater discretion to release certain low-level offenders into supervision programs as alternatives to incarceration—as previously provided in HB1246 HD1—will afford the Director some degree of control over inhumane prison overcrowding, while potentially saving substantial state resources and mitigating the disproportionate impacts of the criminal justice system on Native Hawaiians. **OHA therefore urges the restoration of language in the previous HD1 draft, found on page 1, lines 3-17; page 2, line 2; and the entire Section 2 on pages 2-5 of that draft.**

OHA recognizes that the safety of the pa‘ahao and the public are of paramount importance and that the logistics of implementation of such a proposal can be complex. Therefore, on these matters, we defer to the Department of Public Safety.

Mahalo nui for the opportunity to testify on this measure.

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<sup>1</sup> THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010), [http://www.oha.org/sites/default/files/ir\\_final\\_web\\_rev.pdf](http://www.oha.org/sites/default/files/ir_final_web_rev.pdf).

<sup>2</sup> In contrast, Native Hawaiians only represent 24% of the general public in Hawai‘i. *Id.* at 36. OHA’s 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage noting that Native Hawaiians made up “24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population.” *Id.* at 10. Moreover, controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. *Id.* at 28-38.



I would like to submit testimony in support of HB 1246 in order to promote Alternatives To Incarceration.

My name is Raelyn Reyno Yeomans and my contact information is:

355 Aoloa Street, Apt. A-203  
Kailua, HI 96734  
702-443-1253 (cell)

Hawaii has a severely overcrowded correctional system and an extremely underdeveloped system of Alternatives to Incarceration. Over 50% of the population at OCCC are pre-trial. Why? Because our system of Alternatives To Incarceration is behind the times and alternatives must be utilized! It is only by authorizing these alternatives and appropriately funding these alternatives will the necessary networks of community-based programs also spring into place.

The entire network is necessary to address the pathways to crime and imprisonment. Its obvious that the current situation is NOT WORKING!

We are looking at building a new correctional facility and are currently spending many millions just to contemplate this new facility. This facility will cost many hundreds of millions and we do not have strong ALTERNATIVES TO INCARCERATION programs in place. We must take care of the root of the problem! This is much more cost effective than a new correctional facility at an exorbitant cost to the taxpayers.

In addition, the conditions at our correctional facilities are absolutely horrible and inhumane as has been noted by the ACLU. Overcrowding must be alleviated so that upgrades and repairs can take place. ALTERNATIVES TO INCARCERATION will be a step in that direction.

Also, I believe that the original version of this bill should be reinstated so that the severe over crowding can be addressed immediately in our Community Correctional Centers..

Thank you.  
Raelyn Reyno Yeomans