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

By
Nolan P. Espinda, Director

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Tuesday, March 28, 2017; 1:30 p.m.
State Capitol, Conference Room 211

Chair Tokuda, Vice Chair Dela Cruz, 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 in addition to its use in home detention and curfew. The Department appreciates the clarifications included in the proposed amendment and will strategize to best utilize the opportunities it provides.

Thank you for the opportunity to present this testimony.



HB1246 HD2 SD1
RELATING TO ALTERNATIVES TO INCARCERATION
Senate Committee on Ways and Means

March 28, 2017

1:30 p.m.

Room 211

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees offer **COMMENTS** on HB1246 HD2 SD1. 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,¹ 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.²

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.

¹ 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.

² 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.

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THE HONORABLE JILL N. TOKUDA, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

March 28, 2017

**RE: H.B. 1246, H.D. 2, S.D. 1; RELATING TO ALTERNATIVES TO
INCARCERATION.**

Chair Tokuda, Vice-Chair Dela Cruz, and members of the Senate Committee on Ways and Means, 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, S.D. 1, with suggested amendments.

The purpose of H.B. 1246, H.D. 2, S.D. 1, 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, S.D. 1, we are still concerned that the current language could create the unintended consequence of releasing a defendant solely on electronic monitoring and surveillance, under subsection (4). The Department is not opposed to allowing for electronic monitoring and surveillance concurrent with any programs listed in subsections (2) and (3), but believes this would be better accomplished by simply adding the words, “with or without electronic monitoring and surveillance” at the end of subsections (2) and (3).

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, S.D. 1. Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 24, 2017 5:24 PM
To: WAM Testimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for HB1246 on Mar 28, 2017 13:30PM

HB1246

Submitted on: 3/24/2017

Testimony for WAM on Mar 28, 2017 13:30PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We STRONGLY SUPPORT this bill.

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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