



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, March 1, 2017, 12:00 PM
State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

By
Calvin Ching
Deputy Chief Court Administrator, First Circuit

Bill No. and Title: House Bill No. 1501, House Draft 1, Relating to Drug Paraphernalia.

Purpose: Reclassifies drug paraphernalia possession and delivery offenses from felonies to civil violations. (HB1501 HD1)

Judiciary's Position:

The Judiciary takes no position on the merits of House Bill No. 1501, House Draft 1. However, the Judiciary is concerned about how it will process a new and distinct case type called a “civil violation.” Currently, the District Court processes certain traffic cases as civil in nature, and these “civil infractions” are adjudicated pursuant to Hawai‘i Revised Statutes (HRS), Chapter 291D. There is no similar court procedure for processing a criminal case as civil in nature. However, the purpose of this bill may be achieved without the necessity of creating a “civil violation.” There is already a category of offense for which no jail can be imposed. HRS Section 701-107 (5) provides that:

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction or if it is defined by a statute other than this Code, which provides that the offense shall not constitute a crime. **A violation does not constitute a crime, and conviction of a violation shall not give rise to any civil disability based on conviction of a criminal offense.** (Emphasis added)



House Bill No. 1501, House Draft 1, Relating to Drug Paraphernalia
House Committee on Judiciary
March 1, 2017 12:00 PM
Page 2

Although a violation does not constitute a crime, it constitutes a penal offense. These cases would be processed through the courts in the same manner as a crime. A defendant would be required to appear in court, be arraigned, enter a plea, and if found guilty, be sentenced. The District Courts would prefer to process these cases as violations within its current procedures.

If the Legislature decides to create a "civil violation"-- as opposed to a violation under the Hawai'i Penal Code -- and envisions that it be processed in the same manner as a civil traffic infraction under Hawaii Revised Statutes Chapter 291D, it will be necessary to enact a statutory framework for the processing of such cases. As it did when Chapter 291D was implemented, the District Courts would be required to create new forms, schedule civil violation calendar sessions and train staff to process these cases. The Judiciary would also need to create a new case type, change codes in the Judiciary Information Management System (JIMS) and create new processing requirements. It is estimated that this undertaking would take approximately 6-7 months for design, development and testing at a cost of about \$850,000. Considering all these things, the Judiciary requests that the effective date be changed to no earlier than January 1, 2019 to accommodate the need for these changes.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1501, H.D. 1, RELATING TO DRUG PARAPHERNALIA.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 1, 2017

TIME: 12:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General respectfully opposes this bill.

This bill seeks to decriminalize the possession of drug paraphernalia in an effort to reduce the financial impact the offense places on the Department of Public Safety and the Judiciary.

Possession of drug paraphernalia currently constitutes a Class-C Felony punishable by up to 5 years in prison and a \$10,000.00 fine. By way of this bill such conduct would amount to a civil, not criminal, violation punishable by a fine of \$100.00.

This bill will likely not accomplish its intended purpose. In practice, the possession of drug paraphernalia is rarely, if ever charged without a companion count for Promoting a Dangerous Drug in the Third Degree, Section 712-1243, Hawaii Revised Statutes (HRS), (also a Class-C Felony). The companion Dangerous Drug charge, defined as possession of any amount, continues to maintain its Class-C Felony status. Therefore, in practice, this bill will likely not negate the perceived burdens on the Department of Public Safety and the Judiciary.

More significantly, it is highly unlikely that an individual would receive the maximum five-year prison term solely for the possession of drug paraphernalia. Such a sentence is typically ordered only to those defendants who have had repeat offenses for similar conduct or have violent criminal histories. Also, drug offenders are already afforded a myriad of specialized sentencing considerations. This comes by way of

Deferrals (HRS § 853-4), First Time Drug Offender sentencing (HRS § 706-622.5), Drug Court, and Conditional Discharges (HRS § 712-1255). Under each of these provisions, satisfactory compliance during a four-year term of probation-type supervision can lead to expungement of drug offenses from one's criminal record. Moreover, these provisions are written in a manner that allows the same offender to benefit from each one of these considerations despite repeated conduct.

Finally, we note that this statute does not apply to legal users or distributors of medical marijuana, because it has been specifically exempted by the statute. See HRS § 329-43.5(e).

**Testimony of the Office of the Public Defender
State of Hawaii to the House Committee on
Judiciary**

LATE

March 1, 2017

H.B. No. 1501 HD1: RELATING TO DRUG PARAPHERNALIA

Chair Nishimoto and Members of the Committee:

We support passage of H.B. No. 1501 HD 1 which seeks to reduce the punishment for possession of drug paraphernalia from its current status as a Class C felony to that of a civil violation punishable by a fine.

With respect to drug offenses, the actual harm to the person is caused by possession or distribution of the detrimental, harmful or dangerous drug itself. Drug paraphernalia merely facilitates the use or distribution of the drug. Therefore, possession of the drug should be punished more severely than possession of the paraphernalia. This bill would accomplish that goal.

Moreover, in the vast majority of drug prosecutions, the offender is charged with possession or distribution of the drug itself in addition to possession of drug paraphernalia. Thus, it is unlikely that a large number of drug offenders will be getting away without possible prison sentences if this measure is passed.

Thank you for the opportunity to provide testimony in this matter.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION OF HOUSE BILL 1501, HD1

A BILL FOR AN ACT RELATING TO DRUG
PARAPHERNALIA

COMMITTEE ON JUDICIARY
Rep. Scott Y. Nishimoto, Chair
Rep. Joy A. San Buenaventura, Vice Chair

Wednesday, Marcy 1, 2017, 12:00 P.M.
State Capitol, Conference Room 325

Honorable Chair Nishimoto, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in opposition of House Bill No. 1501, HD1.

This measure changes drug paraphernalia possession and delivery offenses from felonies to civil violations.

HB No. 1501 is a bad bill based on a flawed premise and a seriously flawed Civil Beat Article suggesting this bill would save the State millions of dollars. Nothing could be further from the truth. And, this bill, if enacted will cost the State millions of dollars. Frankly, this bill misses the boat and the ocean of flawed logic it is floating on.

When Section 329-43.5 was enacted in 1988, Senator Hee recognized: "This bill will also allow the law enforcement community to act swiftly, decisively, in moving to now cease and secure machinery such as dryers and other kinds of processing equipment in the absence of drugs that may have been flushed away, and will allow the law enforcement community with the ability to prove beyond a reasonable doubt that the equipment would now be considered paraphernalia and would be a felony." (1988 Senate Journal at p.441).

In 1988, the House Judiciary Committee made it clear that prosecutors were not to separate the marijuana from the crutch and thereby make what was petty misdemeanor activity into a felony paraphernalia offense:

"The bill, as received from the Senate, modifies several provisions of the model act. Your Committee, however, does not intend that the provisions of this bill, as amended, be construed as allowing felony prosecution of offenses which would otherwise be misdemeanors under existing law." (1988 House Journal SCRep. 4-88 at p.850).

Even the most rudimentary investigation behind the alleged 167 persons sitting in jail because of a Prohibited Acts Related to Drug Paraphernalia conviction, would show that virtually no one is charged only with a drug paraphernalia charge. Almost always there is a felony drug charge such as promoting a dangerous drug or other felony offenses. Prior to 2016, when promoting a dangerous drug in the third degree was removed from Section 706-606.5, a conviction under 712-1243 would trigger a mandatory minimum prison sentence whereas a section 329-43.5 conviction would not trigger a minimum mandatory prison sentence and Defendants if given a choice by the prosecution would opt to plead to the latter, and hope for a probation sentence.

Since there is now no special benefit to pleading to a drug paraphernalia charge as opposed to a promoting a dangerous drug charge, from a mandatory prison sentence under state law point of view, it is likely that felony drug paraphernalia convictions are likely to decline, although astute defense attorneys, eyeing federal sentencing guidelines, would still prefer the drug paraphernalia charge if given the option by the prosecuting attorney.

The past interaction between Section 706-606.5, HRS and Section 329-43.5 convictions not being an enumerated felony in Section 706-606.5, and the “bad” criminal histories of the 167 alleged prisoners sitting in prison, is the real cause of their sitting in prison. Decriminalizing drug paraphernalia offenses will result in more expensive trials, more drug offenses, and more crime of all kinds and thus more expense and more threat to community safety than this bill hopes, without any scientific study whatsoever, to save.

The Office of the Prosecuting Attorney, County of Hawai‘i opposes the passage of House Bill No. 1501, HD1. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

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THE HONORABLE SCOTT NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai'i

March 1, 2017

RE: H.B. 1501 H.D. 1; RELATING TO DRUG PARAPHERNALIA.

Chair Nishimoto, Vice Chair San Buenaventura and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai ("Office") submits the following testimony expressing concerns regarding H.B. 1501 H.D. 1, Relating to Drug Paraphernalia.

The purpose of this Bill is to reduce the offense of illegally possessing drug paraphernalia from a class 'C' felony to a civil violation.

While we understand and appreciate, to an extent, the intent of this Bill, it could have the unintended consequence of potentially leading to an INCREASE in prosecutions for drug paraphernalia offenses. First, it has been the longstanding practice of our Office (and I believe most, if not all, others in Hawai'i) to not charge felony drug paraphernalia offenses for non-felony drug possession cases (e.g. a simple petty misdemeanor marijuana possession charge (HRS 712-1249) would not carry an associated felony drug paraphernalia charge). This means that felony drug paraphernalia possession charges are only filed where there is an associated felony drug possession or distribution charge. Reducing the offense to a civil violation could lead to the filing of drug paraphernalia charges in all drug cases including those where such charges are not currently filed. Second, our State remains mired in the grip of devastating methamphetamine and opiate epidemics and reducing penalties for offenses associated with DISTRIBUTION of those dangerous drugs would not benefit public health or public safety.

For all of the foregoing reasons, the Office of the Prosecuting Attorney of the County of Kaua'i has concerns regarding the passage of H.B. 1501, H.D. 1. Thank for you the opportunity to testify on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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CHRISTOPHER D.W. YOUNG
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE SCOTT NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

March 1, 2017

RE: H.B. 1501, H.D. 1; RELATING TO DRUG PARAPHERNALIA.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in opposition to H.B. 1501, H.D. 1.

The purpose of H.B. 1501, H.D. 1 is to reduce the prison population and re-divert state funds to community-based programs by reducing the penalty of §329-43.5, H.R.S., Prohibited Acts Related to Drug Paraphernalia from a class C felony offense to a violation. This offense encompasses any item which would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce in to the human body a controlled substance. For at least the past three (3) years, our Department, has not come across an instance where we have charged §329-43.5, H.R.S. as the sole offense without a concurrent drug type offense. Most frequently §329-43.5, H.R.S will be charged concurrently with §712-1243, H.R.S., Promoting a Dangerous Drug in the Third Degree but not exclusively. For this reason, the implementation of this bill would have little or no positive effect on the prison population, and a reduction to a violation for §329-43.5, H.R.S offenses would be ineffective.

“Isn’t it the definition of insanity – you try the same solution and expect a different result.” This commentary published in the article on the Civil Beat website on November 5, 2015 attempts to imply that a sentence of incarceration creates or perpetuates the problem of substance abuse. However, this bill fails to take into account the fact that defendants charged with drug paraphernalia in conjunction with other drug type offenses have already been given numerous chances and opportunities to participate in and seek community-based help.

Although relapse is a common occurrence for drug offenders, defendants are routinely partnered with a probation officer who understands the intricacies of drug use and makes continuous attempts to steer defendants to programs that will help in their rehabilitation process. Courts also understand that relapse is part of the rehabilitation process, and thus, defendants are given many opportunities to seek the help that is required. Early on, a defendant will generally take advantage of first time drug offender provisions and plea deferrals. If that fails, a revocation of a defendant's deferral and a term of probation may be imposed. If a defendant consistently has difficulties complying with probation, courts will often turn to HOPE probation as a last ditch attempt to provide more oversight of the defendant's actions while on probation. It is only when all of these tools have been thoroughly exhausted that a court has no choice but to impose incarceration. Therefore, incarceration is not and has never been the go-to solution for low-level drug offenders but rather it is the last resort for repeat offenders who have not been accountable for their actions.

For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1501, H.D. 1. Thank you for this opportunity to testify.

TESTIMONY OF THE HAWAI`I POLICE DEPARTMENT

HOUSE BILL 1501, HD1

RELATING TO DRUG PARAPHERNALIA

BEFORE THE COMMITTEE ON JUDICIARY

DATE : Wednesday, March 1, 2017

TIME : 12:00 P.M.

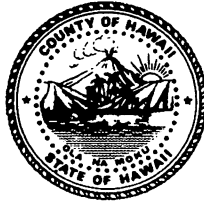
PLACE : Conference Room 325
State Capitol
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Paul K. Ferreira
Hawai`i Police Department
County of Hawai`i

(Written Testimony Only)

Harry Kim
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado Jr.
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

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February 27, 2017

Representative Scott Y. Nishimoto
Chairperson and Committee Members
Committee on Judiciary
415 South Beretania Street, Room 325
Honolulu, Hawai`i 96813

Re: House Bill 1501, HD1 Relating To Drug Paraphernalia

Dear Representative Nishimoto:

The Hawai`i Police Department strongly **opposes** the passage of House Bill 1501, HD1, relating to Drug Paraphernalia. The purpose of this Bill is to reduce the offense of possession and delivery of drug paraphernalia from a felony to a civil violation.

First of all, the establishment of the felony drug paraphernalia statute was to remove/reduce the means of facilitation of use and supply by an illicit drug user **as well as illicit drug manufacturers and illicit drug dealers/suppliers**. We are hard-pressed to understand how the threat of a \$100 civil fine will stop manufacturers and dealers/suppliers from continuing to prey upon our society.

Secondly, the bill proposes that this law in its current state serves as a double jeopardy treatment of immigrants who are convicted for possession of drug paraphernalia, as they could be exposed to deportation. This proposed bill fails to take into consideration that the only immigrants exposed to deportation are in fact illegal immigrants. Further, here in Hawai`i we in law enforcement have on many occasions investigated illegal immigrants who entered the state for the sole purpose of illicit drug distribution, the proposed legislation may in fact remove a tool currently used to remove such individuals from our state.

Thirdly, this bill fails to take into account that law enforcement will not, for all intents and purposes, initiate cases where paraphernalia is not present without an attendant illicit drug and that the possession of both may be subject to plea negotiations whereby a higher level drug case is reduced to the drug paraphernalia charge. The currently

Representative Scott Y. Nishimoto

Re: House Bill 1501, HD1 Relating To Drug Paraphernalia

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existing drug courts and other judicial diversion remedies are available to aid those who seek or need treatment. That without remaining within the "system" due to the existing law many of those individuals will neither be forced nor will they actively seek the assistance of community programs and rehabilitation and thus resulting in the loss of another law enforcement "Tool".

We are concerned about the costs to society at the hands of those who willingly choose the illicit drug use lifestyle. The even greater cost is steeped in the loss of stolen property, and the loss of safety and security that is posed by those who prey upon the community at large in order to be able to afford the use of illicit drugs. Indeed, the cost to society will greatly outweigh a \$100 civil fine.

For these reasons and based upon our firsthand experience with this matter, we strongly urge this committee to **oppose** this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 1501, HD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Ferreira", with a long horizontal line extending to the right.

PAUL K. FERREIRA
POLICE CHIEF



Committee: Committee on Judiciary
Hearing Date/Time: Wednesday, March 1, 2017, 12:00p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in **Support H.B. 1501, H.D. 1 Relating to Drug Paraphernalia**

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 1501, H.D. 1, which would change drug paraphernalia possession and delivery offenses from felonies to civil violations.

Decriminalization of drug paraphernalia possession and delivery is a safe and smart alternative approach to address the use of drugs in Hawaii. Hawaii’s drug laws, especially Hawaii’s marijuana laws, have damaged civil liberties in many ways – eroding protections against searches and seizures, putting large numbers of nonviolent individuals behind bars, and targeting people of color. Eliminating criminal penalties for low-level drug-related offenses will prevent nonviolent individuals from becoming entangled needlessly in the criminal justice system, eliminate many collateral consequences that flow from drug paraphernalia arrests and allow Hawaii to reinvest the money it saves for important community needs.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

American Civil Liberties Union of Hawaii
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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 6:21 AM
To: JUDtestimony
Cc: hlusk@chowproject.org
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	The CHOW Project	Support	No

Comments: Thank you for the opportunity to testify. The CHOW Project strongly supports HB 1501 HD!. - The costs of enforcing these drug paraphernalia offenses as felonies are astronomical. Locking up the current 167 nonviolent offenders is costing the State more than \$20,000,000. - These tax dollars are better spent on community programs and rehabilitation of nonviolent, low-risk drug offenders. - Immigrants convicted of class C felonies are potentially deportable under current immigration laws. I do not believe that someone should be deported for possessing a pipe or a needle. - President Obama has recently released numerous non-violent drug offenders from federal prisons, stating that the "punishments simply didn't fit the crimes". Hawai'i should heed lessons from this, and stop punishing people in this manner. Changing this law is a beginning. Thank you Heather Lusk

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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To: JUDtestimony
Cc: Fosters005@hawaii.rr.com
Subject: *Submitted testimony for HB1501 on Mar 1, 2017 12:00PM*

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Foster	Hawaii Advocates For Consumer Rights	Support	No

Comments:

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COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Scott Nishimoto, Chair

Rep. Joy San Buenaventura, Vice Chair

Wednesday, March 1, 2017

12:00 noon

Room 325

SUPPORT FOR HB 1501 HD1 - CIVIL VIOLATION FOR DRUG PARAPHERNALIA

Aloha Chair Nishimoto, Vice Chair San Buenaventura 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 approximately 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. 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 supports HB 1501 HD1 that changes drug paraphernalia possession and delivery offenses from felonies to civil violations.

This is common sense legislation. I have attended national conferences with judges and prosecutors and I always make it my business to ask them how they charge drug offenses in their jurisdiction. I illustrate my question with a story of a person who had 2 arrests for drugs that resulted in 15 convictions - all non-violent (residue in a pipe, residue in a baggie, rolling papers, a small amount of cannabis, etc.). Even prosecutors from the most conservative states have told me that in their jurisdictions these offenses would count as one because they are all related to drugs. Not so in Honolulu. This is why our facilities are bursting at the seams.

The research we have done recommends that decriminalization of offenses such as drug paraphernalia is a better approach to substance mis-use in our community.

The prevailing wisdom has shown that prison beds should be reserved for those we are afraid of, not those we are mad at. We need to be more prudent with our precious resources and we need to stop feeding the very hungry and unsustainable criminal processing system.

Mahalo for this opportunity to testify.



Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: House Committee on Judiciary
FROM: Carl Bergquist, Executive Director
HEARING DATE: 1 March 2017, 12PM
RE: HB1501 HD1, Relating to Drug Paraphernalia, **STRONG SUPPORT**

Dear Chair Nishimoto, Vice Chair San Buenaventura, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to help turn the tide of the War on Drugs' criminalization and incarceration regime. Across the country and at the federal level, we are seeing the beginnings of a humane drug policy that does not lock up non-violent offenders for years on end. Hawaii's drug laws in general, and its drug paraphernalia laws, in particular, are harsh, punitive and costly. Reducing the sentences for use or possession of drug paraphernalia from a class C felony to a civil violation would help hundreds of people, save the state precious funds and showcase Hawaii's sense of fair justice for the nation.

As [the Office of Hawaiian Affairs \(OHA\) has demonstrated](#), native Hawaiians are the community of color, like other minority groups on the mainland, who are most disparately impacted by these laws. Yet, their drug use is not drastically different than that of other groups. The effects of incarceration on families and the community are well-documented, and as a society, we need to ask if the use of a pipe or possession of a spoon justifies a multi-year sentence with such consequences. We submit that it does not. As then President Obama said in 2016 upon ordering the release of hundreds of non-violent drug offenders, "their punishments did not fit the crime".

Another disparately impacted community are **immigrants**, who face the double jeopardy of dealing with both the broken immigration system and the anachronistic War on Drugs. Recently the Supreme Court ruled in [Mellouli v. Lynch \(2015\)](#) that [an immigrant was wrongly deported](#) for a Kansas drug paraphernalia offense involving prescription pills stored in a sock. Unfortunately, it was too late for this immigrant, and the **federal government continues to be able to ignore the spirit of this type of ruling due to the existence and enforcement of state drug laws like Hawaii's paraphernalia law.**¹ Children are just as traumatized by the deportation as by the incarceration of a parent - changing this law can also keep those families together. Finally, last session we heard testimony from the Hawai'i County Police Department that only "illegal immigrants" are affected by

this law. Any immigration attorney worth their salt will strongly refute that claim. As the aforementioned Supreme Court case (involving a misdemeanor offense not a class C felony like Hawaii's law and a legal permanent resident) shows along with countless others, this law affects immigrants regardless of status.

In reviewing the County Prosecutors' testimony for the previous iteration of this bill in 2016, as well as this year's, we note that they make repeated references to this offense being a "serious criminal act" (Hawai'i County) and how it normally charged concurrently with more serious offenses. Regarding the latter, they provide no statistical proof to back up their claim that changing the law would have "little to no impact" (City and County of Honolulu) on the prison population. In fact, it seems like the prosecutors use this offense to get suspects to plead guilty in hopes of a lesser sentence or probation. In all honesty, we have to ask ourselves if this non-violent offense, either legal or decriminalized in a majority of states, merits the moral opprobrium that a felony carries. Again, only Hawai'i believes this to be the case.

We are **very amenable to the Judiciary's suggestion of achieving the purpose of this bill using the current category of offense "violation"** rather the creation of a new category "civil violation". However, if the Committee chooses to also hear and pass HB107 (decriminalization of marijuana), which also envisions creating a "civil violation", it might make more sense for the Judiciary to create a framework similar to the civil infraction processing for certain traffic offenses under Hawaii Revised Statutes Chapter 291D.

Mahalo for the opportunity to testify.

ⁱ In its amicus brief, the National Immigration Justice Center (NIJC) and the American Immigration Lawyers Association (AILA) write: "nearly every state considers the conduct at issue here—the mere possession or personal use of drug paraphernalia to conceal or store a controlled substance—to be either a minor misdemeanor or not a crime at all." Hawaii's law is the harshest in the country.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 8:31 PM
To: JUDtestimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

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. 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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Sent: Monday, February 27, 2017 7:24 PM
To: JUDtestimony
Cc: purebliss4all@icloud.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Brittain, LCSW	Effective Change, LLC	Support	No

Comments: As a mental health and substance abuse counselor, with Forensic expertise, I can say as a professional in the field that paraphernalia laws are archaic and regressive tools of a failed drug policy. Their intention was to sentence suspected drug users/dealers to a much more severe degree than the actual drugs that were found and entered into evidence. Citizens have been handed multi-year sentences, for instance, for having a ziploc baggie, as paraphernalia, when it held less than a gram of cannabis. The paraphernalia laws were created by drug war proponents in the 1980s during a period of heightened persecution of citizens based on fear-mongering, often with the expectation that minorities or other marginalized individuals would be sentenced at a higher rate. Paraphernalia laws drive a great deal of corruption, in that prosecutors and police officers can threaten an otherwise minimally-criminal citizen with harsher punishment in order to extract greater value of various forms from the citizen. The harm caused by paraphernalia laws has stripped otherwise-law-abiding citizens of the right to vote, educational opportunities, work opportunities, and psycho-social integration. The common result of citizens forced into the status of Felon is to create criminal behavior, in that citizens who are denied access to work, education and social integration often have crime as a new career. Overall cost to society is hence multiplied many times through the use of paraphernalia laws. Public safety officials as well as public health officials should recognize these facts, and support the eradication of the paraphernalia laws, if they truly support the purpose of their agencies. I STRONGLY SUPPORT this bill. Matthew Brittain, LCSW, DCSW, DABFSW Clinical Forensic Social Worker

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HB1501 HD1
RELATING TO DRUG PARAPHERNALIA
House Committee on Judiciary

March 1, 2017

12:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1501 HD1. This measure may save the state millions of taxpayer dollars and mitigate the disproportionate impacts of the criminal justice system on Native Hawaiians, by reducing drug paraphernalia possession offenses to civil violations.

The War on Drugs and 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%,¹ and by 1,400% 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 Moreover, Native Hawaiians are disproportionately penalized with imprisonment for drug-related offenses.³

OHA has long advocated for criminal justice reform that examines and implements evidence-based incarceration alternatives, which could improve public safety, effectively rehabilitate pa‘ahao, reduce recidivism, and save taxpayer dollars. Reducing the penalty for the mere possession of drug paraphernalia from a felony to a civil violation is a step in the right direction, and will reduce prison overcrowding, save state resources, and mitigate the life-long harms that could otherwise result from the commission of a non-violent and relatively harmless act.

Therefore, OHA urges the Committee to **PASS** HB1501 HD1. 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), available at http://www.oha.org/wp-content/uploads/2014/12/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.

³ *Id.* at 45.

**African American Lawyers Association
1188 Bishop St. #1908
Honolulu, HI 96813**

February 28, 2017

**Judiciary Committee
Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair**

**Hearing: HB1501
March 1, 2017 at noon
Conf. Room 325**

RE: African American Lawyers Association In Support of HB1501

Dear Judiciary Representative Scott Y. Nishimoto, Chair, Representative Joy A. San Buenaventura, Vice Chair and Committee Members:

The African American Lawyers Association strongly supports of HB1501. HB1501 changes drug paraphernalia possession from a felony to civil violation. This bill decriminalizes possession of items which may be considered drug paraphernalia and will assist in alleviating the overcrowded prison system in Hawaii. Items such as pipes, smoking papers and scales should not be considered a felony especially given that there are legal medical marijuana users who use these items and people who are not drug users may use the same items such as smoking a pipe of tobacco. Please pass this Bill.

By Daphne E. Barbee Wooten
President
African American Lawyers Association

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 3:16 PM
To: JUDtestimony
Cc: maukalani78@hotmail.com
Subject: *Submitted testimony for HB1501 on Mar 1, 2017 12:00PM*

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 3:49 PM
To: JUDtestimony
Cc: rkailianu57@gmail.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments: Strongly support.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 5:01 PM
To: JUDtestimony
Cc: mark.gordon333@gmail.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Gordon	Individual	Support	No

Comments: Aloha ! Please Support HB1501. The costs of enforcing these drug paraphernalia (needles, pipes, bags, containers etc) offenses as felonies are astronomical. Locking up the current 167 nonviolent offenders is costing the State more than \$20,000,000. Possession and delivery of drug paraphernalia certainly does not warrant a charge of a Felony. Taxpayer dollars are better spent on community programs and rehabilitation of nonviolent, low-risk drug offenders. Many nonviolent drug offenders have been released from federal prisons. Their punishments didn't fit the crimes. Please Support HB1501. Respectfully, Mark Gordon Waikoloa HI

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 7:07 AM
To: JUDtestimony
Cc: mattbinder@earthlink.net
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matt Binder	Individual	Support	No

Comments: Aloha Chair and Committee Members, Hawaii's paraphernalia laws with respect to marijuana are insane. I would bet that someone you know has a marijuana pipe. Do they know that they are committing a felony? Despite the fact that prosecutors say they will not apply the law in cases of small amounts of marijuana, the law does not make that distinction at all. That is why it needs to change. We can't have laws that are enforced selectively. The paraphernalia laws must be changed to bring them in line with reality. And while you are at it, please pass HB107 to bring our marijuana possession laws more in line with reality. Do we want to be the last state in the country to do so? After Texas and Mississippi? This is a shame and a huge waste of money and people's lives. Matt Binder, Waimea

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 7:07 AM
To: JUDtestimony
Cc: bmurphy420@mail.com
Subject: *Submitted testimony for HB1501 on Mar 1, 2017 12:00PM*

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Murphy	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 6:56 AM
To: JUDtestimony
Cc: malcolmlmack@yahoo.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Malcolm Mack	Individual	Support	No

Comments: The costs of enforcing these drug paraphernalia offenses as felonies are astronomical. Locking up the current 167 nonviolent offenders is costing the State more than \$20,000,000. - These tax dollars are better spent on community programs and rehabilitation of nonviolent, low-risk drug offenders. - Immigrants convicted of class C felonies are potentially deportable under current immigration laws. I do not believe that someone should be deported for possessing a pipe or a needle. - President Obama has recently released numerous non-violent drug offenders from federal prisons, stating that the "punishments simply didn't fit the crimes". Hawai'i should heed lessons from this, and stop punishing people in this manner. Changing this law is a beginning.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 10:56 PM
To: JUDtestimony
Cc: j.bobich@tcu.edu
Subject: *Submitted testimony for HB1501 on Mar 1, 2017 12:00PM*

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph A. Bobich	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 5:36 PM
To: JUDtestimony
Cc: kit@lava.net
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kit Grant	Individual	Support	No

Comments: Aloha and thank you for hearing this measure, to decriminalize possession of drug paraphernalia in Hawaii. It's time we did this as part of a policy change regarding drugs. Really drugs are best responded to by government as a public health and education issue. Using the criminal justice system to control drug use is a blunt instrument that only overcrowds our prisons and costs us billions of avoidable dollars. I'd rather see precious policing dollars go to stopping violent crimes and dangerous traffic offenses than arresting people over a pipe or papers. I'd rather see investment in local treatment and diversion programs and drop in centers for our mentally ill and homeless. We need some new thinking if the U.S. is to stop having the dubious honor of being the world's largest jailer. Let's start here. No brainer. Thanks!

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 8:29 AM
To: JUDtestimony
Cc: tediousmonkey@gmail.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Support	No

Comments: Aloha Chair Nishimoto, Vice Chair Buenaventura, and the House Judiciary Committee, As a public health professional, I am writing in strong support of HB1501 HD1. This bill will reduce the financial and social costs of incarceration. Please consider the following points: - The costs of enforcing drug paraphernalia offenses as felonies are a burden on Hawaii's public safety infrastructure. Incarcerating the current 167 nonviolent offenders is costing the State more than \$20,000,000. - These tax dollars are better spent on community programs and rehabilitation of nonviolent, low-risk drug offenders. - Immigrants convicted of class C felonies are potentially deportable under current immigration laws. I do not believe that someone should be deported for possessing a pipe or a needle. - President Obama has recently released numerous non-violent drug offenders from federal prisons, stating that the "punishments simply didn't fit the crimes". Hawai'i should heed lessons from this, and stop punishing people in this manner. When considering the financial and social implications of this bill, I strongly support this bill. Thanks for your time and consideration.

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JUDtestimony

From: elizabeth <eublalock@hotmail.com>
Sent: Tuesday, February 28, 2017 7:00 AM
To: JUDtestimony
Subject: HB1501 HD1

Dear Mr Nishimoto,

I am writing to lend my fervent support to the passage of the bill that would decriminalize cannabis possession for adults.

This is a major essential and rational step in stopping the racially based, hugely expensive, widely unpopular, and ineffective war on drugs. Even blue states and the federal government are showing support for more reasonable and fiscally responsible public health policies with regard to citizens who use marijuana responsibly recreationally.

I would have expected The Aloha State to have been ahead of the curve in promoting humanistic responses to those with drug use problems. We have some catching up to do.

Thank you for listening,

Elizabeth Blalock

TO: The House Committee on Judiciary

FROM: Wendy Gibson R.N.

RE: HB1501 HD1

HEARING DATE: Wednesday, March 1, 2017 TIME: 12:00 pm. Conference Room 325

Aloha Honorable Chair, Scott Y. Nishimoto, Vice Chair Joy A. San Buenaventura and Members of the Committee,

I stand in STRONG SUPPORT of HB 1501 HD1 for these reasons:

The United States accounts for only 5% of the world's population, but is responsible for nearly 22% of the world's prison population. More than 2 million people are incarcerated in U.S. prisons as well as local and county jails. It is generally accepted that the international "war on drugs" has had devastating and far-reaching consequences. The "collateral damage" from this war is worse than the damage cause by the actual use of drugs. These damages include public health crises, mass incarceration, corruption, and black market-fuelled violence.

According to International Institute for Strategic Studies, April 2012 report: The global war on drugs is failing and **alternatives to current policies** should be sought to prevent a significant impact on international security.

Unfortunately, Hawaii still has some of the most outdated drug laws of any state as evidenced by our Paraphernalia Laws: Drug paraphernalia, as defined by HRS § 329-1, includes everything from pipes and vaporizers **to cultivation kits and testing equipment**. Use, possession or sale of paraphernalia is a Class C Felony and can lead to these penalties: 5 years in prison and a Maximum \$ 10,000 fine.

I agree that the **benefits of making the offenses** of possession and delivery of drug paraphernalia **into civil violations far outweigh the benefits** of the current **felony** criminal treatment of these offenses.

I agree that state funds are better spent on community programs and rehabilitation of nonviolent, low-risk drug offenders, as envisioned by the diversion program created by Act 149, Session Laws of Hawaii 2014. Please support passage of HB 1501 HD1.

Mahalo,
Wendy Gibson R.N.
(808) 321-4503

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 11:28 AM
To: JUDtestimony
Cc: capitalhawaii.gov-m@eghm.net
Subject: *Submitted testimony for HB1501 on Mar 1, 2017 12:00PM*

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Erik Meade	Individual	Support	No

Comments:

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LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 3:55 PM
To: JUDtestimony
Cc: barbarapolk@hawaiiantel.net
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments: I strongly support this bill. We need to look carefully, as a community, at the behaviors that we criminalize and remove as many as possible. A criminal record has a huge negative impact on an individual, as well as their family. And the tax payers pay a price as well, for the process of adjudicating the "crime" and carrying out sentences. Unfortunately, the State Judiciary seems to have misunderstood the point of this bill. The point, as I understand it, is to STOP treating possession of drug paraphernalia as a crime, but rather to issue a ticket, similar to a speeding ticket. The purpose is to prevent individuals from having a criminal record for this infraction. Please pass this bill.

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LATE

TO: The House Committee on Judiciary

FROM: Casey Potetz

RE: HB1501 HD1

HEARING DATE: Wednesday, March 1, 2017 TIME: 12:00 pm. Conference Room 325

Aloha Honorable Chair, Scott Y. Nishimoto, Vice Chair Joy A. San Buenaventura and Members of the Committee,

I stand in **STRONG SUPPORT** of HB 1501 HD1 for the following reasons:

The United States has the highest incarceration rate in the world. Removing the felony offense and NOT imprisoning people for non-serious offenses could save Hawaii millions of dollars. We need to support reforms to reduce the imprisonment of low-level lawbreakers sentenced for non-serious offenses in our inflated system.

Class C Felons are part of the group that makes up 74% of the prison population. Reducing paraphernalia-violators from this population would help balance our prison system. Funds should be used for rehabilitation and community programs to help our prisoners rehabilitate, heal and eventually no longer qualify as persons needing to be kept in the prison system.

Hawaii's drug paraphernalia laws are outdated. They include everything from pipes and vaporizers to cultivation kits and testing equipment, with a maximum penalty of 5 years in prison and \$10,000 fine. This is excessive. These class c felonies should be made into civil violations.

Please support HB1501 HD1.

Thank You,
Casey Potetz
(860) 836-4890

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 1, 2017 11:30 AM
To: JUDtestimony
Cc: evernw@aol.com
Subject: Submitted testimony for HB1501 on Mar 1, 2017 12:00PM

HB1501

Submitted on: 3/1/2017
Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Evern Williams	Individual	Support	No

Comments: My son was picked for having paraphernalia in his bag. It was not his but it food not matter. He ended up serving several months in OCCC. He was traumatized by his incarceration. He is now completely disabled and is going through PTSD therapy. Please pass this badly needed legislation.

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