

STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Maria C Cook**  
Deputy Director  
Administration

**Jodie F. Maesaka-Hirata**  
Deputy Director  
Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

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

TESTIMONY ON SENATE BILL 1503  
RELATING TO VOTING.

by  
Nolan P. Espinda, Director  
Department of Public Safety

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

Tuesday, February 5, 2019; 1:15 p.m.  
State Capitol, Conference Room 229

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

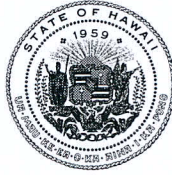
The Department of Public Safety (PSD) supports Senate Bill (SB) 1503 and provides the following comments.

To insure the fidelity of the voting process of incarcerated offenders, PSD respectfully recommends that the Office of Elections be provided with an additional appropriation to afford offenders with an equal opportunity to vote absentee. This would include, but not be limited to, the Office of Elections staff making themselves available to visit each of the facilities to explain the process of registration (including provision for language interpreters (e.g., COFA and/or Naturalized inmates, American Sign Language interpreters), constitutional amendments (if any), and the actual voting process.

PSD already has this process in place for pretrial inmates, however, providing the opportunity for all qualified offenders to vote will substantially increase the volume of absentee ballots transiting through both in-State and out-of-State facilities.

Thank you for the opportunity to present this testimony.





**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782  
elections.hawaii.gov

SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
ON SENATE BILL NO. 1503  
RELATING TO VOTING

February 5, 2019

Chair Nishihara and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, thank you for the opportunity to provide comments on Senate Bill No. 1503. The purpose of this bill is to allow incarcerated persons who were residents immediately prior to incarceration to vote in elections by absentee ballot.

While we take no position on this measure, we believe the amendment to Section 7, HRS §831-2, to remove the prohibition against voting as an incarcerated felon, does not require an amendment to HRS §11-15. Currently, HRS §11-15 requires applicants to provide their name, Hawaii Driver License or State Identification Number, date of birth, and residence address on the voter registration application. The application is not intended to address if an applicant is absent from their permanent residence. Voters may request a ballot be sent to a different mailing address using an Absentee Application, pursuant to HRS §15-2.

Thank you for the opportunity to provide comments on Senate Bill No. 1503.

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, February 4, 2019

1:15 pm

Room 229

### STRONG SUPPORT for SB 1503 - VOTING RIGHTS FOR INCARCERATED PERSONS

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 more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 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 more than 1,600 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 Kanaka Maoli, far, far from their ancestral lands.

SB 1503 allows incarcerated persons who were Hawaii residents immediately prior to incarceration to vote in Hawaii elections by absentee ballot.

Community Alliance on Prisons thanks the committee for hearing this bill that promotes civic engagement for ALL people. The rights of the incarcerated to vote is a growing national movement.

Disenfranchisement of incarcerated persons in the US is as old as the American prison. In 1792, Kentucky's State Constitution became the first to disenfranchise people convicted of a crime, declaring that "Laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors." A flurry of other states would follow. As prisons emerged in the US during the 1820s, a system was already in place to deny representation to those who found themselves within those walls.

President of the Alabama Constitutional Convention, John B. Knox, who stated in his inaugural address that the intention of the convention was "to establish white supremacy in this State." Source: Encyclopedia of Alabama

Formal racial disenfranchisement soon followed. Legal Fellow Scott Novakowski of the New Jersey Institute for Social Justice points out that a number of Northern states used their constitutions to block black participation in civic engagement. In 1844, almost twenty years before the Civil War began, New Jersey excluded free blacks from the electoral realm in its state constitution.

The Reconstruction Era brought a temporary respite when the Fifteenth Amendment endowed the right to vote regardless of “race, color, or previous condition of servitude.” Soon, however, policies that restricted the franchise based on felony conviction emerged, giving birth to laws designed to criminalize blackness and uphold white supremacy.

In 1898’s *Williams vs. The State of Mississippi*, the Mississippi Supreme Court found it “within the field of permissible action under the limitations imposed by the federal constitution” that “Restrained by the federal constitution from discriminating against the negro race” the state could still “discriminate against its characteristics, and the offenses to which its criminal members are prone.” Three years later the 1901 Alabama Constitutional Convention, in addressing “White Supremacy By-Law,” brought forward perhaps the most explicit mention of the racialization of felony disenfranchisement: “The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination.” This strategy would continue through the Jim Crow era, and laid the foundation for the current situation in the era of mass incarceration. A 500% increase in the prison population over the past 40 years, has also meant a 500% increase in incarcerated voter disenfranchisement over the same period of time.

Many countries fully recognize the right of incarcerated citizens to vote. Today,

- 26 European nations at least partially protect their incarcerated citizens’ right to vote, while 18 countries grant prisoners the vote regardless of the offense.
- In Germany, Norway, and Portugal, only crimes that specifically target the “integrity of the state” or “constitutionally protected democratic order” result in disenfranchisement.
- The European Court of Human Rights has forcefully defended the voter franchise, going so far as to condemn in 2005 Britain’s blanket ban on voting rights for prisoners, calling it a violation of human rights. In December of last year, after 12 years of resistance to the ECHR’s decision, the UK partially relented by allowing prisoners on temporary release and at home under curfew to cast their ballots.
- Even our Canadian neighbors acknowledge the right of people in prison to have their voices heard at election time.
- In South Africa, meanwhile, prisoners have participated in the democratic process since 1999, when their Constitutional Court declared that ***“The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and of personhood.”***

Despite this growing international consensus, however, the United States—the self-proclaimed lighthouse of democracy—significantly abridges the voter franchise. Only in Maine and Vermont can prisoners participate in elections; for the vast majority of the people in federal

and state prisons, democracy remains a spectator sport. All told, less than 4,000 prisoners have the right to vote. It is time for this to change.

The effect of incarcerated voter disenfranchisement can be particularly devastating to urban communities of color. “Because prisons are disproportionately built in rural areas but most incarcerated people call urban areas home, counting prisoners in the wrong place results in a systematic transfer of population and political clout from urban to rural areas,” the Prison Policy Initiative explains. This political dynamic effectively commodifies incarcerated people as batteries used to fuel and amplify the votes of people in mostly rural, predominantly white communities – while muting representation in urban communities of color.

The collective concerns of urban communities of color then go unaddressed. “While not all members of a given racial or ethnic group vote as a uniform bloc, there are nonetheless strong patterns of party affiliation or issue identification in such communities,” Marc Mauer points out. “Therefore, to the extent that felony disenfranchisement reduces the scale of the black electorate in particular, it also reduces the political impact of the larger black community, including those who have never been convicted of a felony themselves.”

Prison-based gerrymandering, made possible because of incarcerated voter disenfranchisement, silences and effectively disenfranchises communities of color. As Ronald Pierce put it, “Felony disenfranchisement not only strips the voice of the felon, but it strips the collective voice of the community and limits the community’s efficacy.”

In addition to its effects on community representation, the **disenfranchisement of incarcerated citizens also has generational consequences**. Studies suggest that voting is as much a learned behavior as it is a habit. Children whose parents engage in civic activity and discuss politics and voting are more likely to find value in taking part in the democratic process themselves, Dr. Henry Brady of the Goldman School of Public Policy at the University of California, Berkeley observed. *“If you’ve had the behavior modeled in your home by your parents consistently voting, by political discussion, sometimes by participation, you start a habit formation, and then when you become a little older you’ll feel it’s your duty and responsibility to register and vote,”* Brady says.

When parents are not able to vote, however, children often have no model for civic engagement. This suggests that when parents in prison are disenfranchised, their children are effectively disenfranchised as well. It remains to be seen what sort of ripple effect millions of children with politically silenced incarcerated parents will have on our country’s future. “We’re only now beginning to have a generation of young people who have grown up under mass incarceration,” Mauer says – so considering “the number of people affected, in terms of what it’s done to their vision of the political environment, this is when we’d see those effects. It’s a little hard to say, but it can’t have been a very good effect.”

Novakowski addressed another objection to voting rights for the incarcerated: the fear that if incarcerated people are allowed to vote, they will support “pro-crime” candidates and “pro-crime” policies. “What does that really look like?” Novakowski said. “It’s just not realistic...even if there were this sort of mythical pro-crime candidate running for office, or even someone whose positions on crime are totally different than your own, you can’t not allow people to vote based on your fear that they’re going to vote for someone. That’s not democracy. That’s not what we do.”

American critics who scoff at Europe’s treatment of prisoners say that allowing prisoners to vote would literally be letting the inmates run the asylum. Far from it: Perhaps the most important reason to allow prisoner voting is that prisons, not just prisoners, would benefit. Prisoners need the vote to serve as the “natural defenders” of their own interests. But in defending their own interests, prisoners could substantially improve the prison system itself.

We can start with the issue of prisoner abuse. We already know that prisoners are subject to abusive and inhumane conditions. In a 2011 ruling that held overcrowded California prisons in violation of the Eighth Amendment, Justice Anthony Kennedy wrote that in California alone, an inmate “needlessly dies every six or seven days.” Plenty of other prison practices, such as solitary confinement, are just now receiving public scrutiny, and there are likely more troubling conditions we don’t know about. Under the current system, ending abusive practices requires years of expensive litigation as prisoners sue over maltreatment and prisons adjust to the rulings. We could improve prisons much more quickly and cheaply creating a political constituency of prison voters.

Let’s start developing good citizenship but granting the right to vote to all incarcerated persons. Engaging people in the electoral process where they learn about the issues and the candidates running will not only help Hawai`i’s anemic voting numbers, it will help those inside to think and plan for their release and reintegration back to their communities. Voting would be a great habit for incarcerated people to develop!

In the end, restoring these basic rights is not only the right thing to do constitutionally; it could also present positive solutions to a major national political problem. The prison system would be more effective if it were accountable to its constituents.

Community Alliance on Prisons urges the committee to support this important measure.

Mahalo for this opportunity to testify.





49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

Public Safety, Intergovernmental, and Military Affairs Committee

Tuesday, February 5, 2019, 1:15 PM

**TESTIMONY**

**SB1503 RELATING TO VOTING**

Laurie Tomchak, Legislative Committee, League of Woman Voters of Hawaii

Chair Nishihara, Vice Chair Wakai, and Committee Members:

**The League of Women Voters Supports SB 1503, Relating to Voting. It allows incarcerated persons who were Hawaii residents immediately prior to incarceration to vote in Hawaii elections by absentee ballot.**

We believe that this measure will perfect one of the cherished goals of democracy: universal suffrage. Currently, people who have been incarcerated can vote once they complete their sentences. We would like to add the population of people who are still behind bars. There are around 6,900 people in prison in Hawaii and in private prisons in Arizona, of whom a large portion (40-60%) are Native Hawaiian or Pacific Islanders. These people are given minimal help in rehabilitation and are not allowed to vote on issues that would have an effect on their daily lives.

Currently only two states in the U.S. have instituted voting rights for all incarcerated people, Maine and Vermont. One inmate in Maine, an African-American in the most Caucasian state in the U.S., found that voting and learning about politics while he was in prison greatly enhanced his rehabilitation. This inmate, Joseph Jackson, got involved in petitioning lawmakers on prison reform and founded a prison chapter of the NAACP. When he was released after 19 years served, he earned a master's degree and became involved with an organization that helps inmates and their families. He says of his right to vote and his involvement in political activism: "It committed me to prison reform, to social reform, to work in social justice. Having some sense of community and being part of the society is really necessary." (<https://www.nbcnews.com/politics/politics-news/states-rethink-prisoner-voting-rights-incarceration-rates-rise-n850406>)





49 South Hotel Street, Room 314 | Honolulu, HI 96813  
[www.lwv-hawaii.com](http://www.lwv-hawaii.com) | 808.531.7448 | [voters@lwv-hawaii.com](mailto:voters@lwv-hawaii.com)

If Hawaii's incarcerated people are allowed to vote, it would increase the state's low voting rate, and perhaps influence the high rate of incarceration here in the islands. The Hawaii League of Women Voters believes that it could be a factor in much needed prison reforms and voting rights.

Thank you for allowing us to testify on this issue.

**SB-1503**

Submitted on: 2/2/2019 8:44:43 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Urasaki	Individual	Comments	No

Comments:

Im not sure that all security issues have been addressed.

**SB-1503**

Submitted on: 2/3/2019 6:04:25 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
SUSAN P HUGHES	Individual	Oppose	No

Comments:

I OPPOSE incarcerated persons to vote in Hawaii elections by absentee ballott.

**SB-1503**

Submitted on: 2/3/2019 7:13:59 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chris Wells	Individual	Oppose	No

Comments:

Want to vote, don't be a criminal.

**SB-1503**

Submitted on: 2/4/2019 12:06:01 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Smart	Individual	Oppose	No

Comments:

## ROBERT K. MERCE

---

February 4, 2019

TO: Senate Committee On Public Safety, Intergovernmental, and Military Affairs

RE: SB 1503

HEARING DATE: Tuesday, February 5, 2019

TIME: 1:15 P.M>

ROOM: 229

POSITION: **SUPPORT**

Dear Chair Nishihara, Vice Chair Wakai, and members of the committee:

My name is Bob Merce. I am a retired lawyer and recently served as vice chair of the HCR 85 Task Force on prison reform. I am also on the Board of Directors of the Native Hawaiian Legal Corp. I support SB 1503 for three reasons:

1. As stated in section 1 of the bill, giving prisoners the right to vote facilitates reentry and is a correctional “best practice” endorsed by the American Correctional Association and followed by many countries and two states (Maine and Vermont).
2. The HCR 85 Task Force, like the American Correctional Association, found that retaining the right to vote was part of the normality principle that facilitates reentry and that “[p]risoners should retain . . . **the right to vote.**”<sup>1</sup>
3. The overrepresentation of Native Hawaiians in the prison system means an underrepresentation of Native Hawaiians in the voting population (disenfranchisement) , and HB 1503 would help correct that situation.

Thank you for the opportunity to comment on this bill.

---

<sup>1</sup> Creating Better Outcomes, Safer Communities, Final Report of the House Concurrent Resolution Task Force on Prison Reform to the Hawai'i Legislature, 2019 Legislative Session, (December 2018) p. 24 (emphasis added).

**SB-1503**

Submitted on: 2/4/2019 10:39:37 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	Yes

Comments:

I **strongly support SB1503** which would give incarcerated persons convicted of a misdemeanor or felony the right to vote. There is no good reason for depriving any citizen of the right to vote, and the rehabilitative impact of retaining this right is especially important for incarcerated persons, almost all of whom will reenter society again.

**Please pass SB1503.**