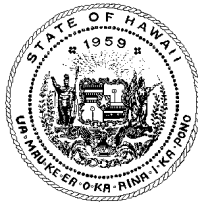


DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
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**Maria C. Cook**  
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Corrections

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

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

TESTIMONY ON HOUSE CONCURRENT RESOLUTION 47/ HOUSE RESOLUTION  
32, REQUESTING THE DEPARTMENT OF PUBLIC SAFETY TO CONDUCT A  
STUDY ON THE EFFECTS OF FELONY DISENFRANCHISEMENT, PARTICULARLY  
THE EFFECTS ON MINORITY GROUPS.

by

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Public Safety, Veterans, and Military Affairs  
Representative Gregg Takayama, Chair  
Representative Cedric Asuega Gates, Vice Chair

Friday, March 13, 2020; 10:00 a.m.  
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates and Members of the Committee:

The Department of Public Safety (PSD) has reviewed House Concurrent Resolution (HCR) 47 and House Resolution (HR) 32 and offers the following comments.

While PSD agrees that the information gathered as part of a study such as that proposed in HCR 47 and HR 32 would be valuable, the department questions if it is the appropriate entity to conduct what we believe should be a thorough, broad-based sociological analysis, involving interested stakeholders, that results in a consensus on conclusions and the development of goals and objectives aimed at effecting meaningful societal and institutional changes.

The department respectfully suggests that the Judiciary's Criminal Justice Research Institute (CJRI), created by Act 179, Session Laws of Hawaii 2019, would be a more appropriate starting point to begin collecting the necessary data. Act 179 mandated that the CJRI examine all aspects of the criminal justice system in a more comprehensive way, ensuring the protection of individual rights, increasing efficiencies, and controlling costs by examining all aspects of the criminal justice system from law

Testimony on HCR 47 and HR 32  
House Committee on Public Safety,  
Veterans, and Military Affairs  
March 13, 2020  
Page 2

enforcement, to the courts, to the correctional system. Following the initial data collection, various stakeholders could be engaged to work on a task force, together with one or more academic criminal justice or sociology programs to flesh out the data- and evidence-driven findings and develop the goals, objectives, and action plans needed to effect the long-desired societal and institutional changes. Of course, PSD would be very pleased to participate in a task force of such importance.

Thank you for the opportunity to present this testimony.

H.C.R. No. 47  
Requesting the Department of Public Safety to Conduct a Study on the Effects  
of Felony Disenfranchisement, Particularly The Effects On Minority Groups

House Committee on Judiciary  
Public Hearing – Tuesday, March 13, 2020  
10:00 am, State Capital, Conference Room 229  
by  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

March 12, 2020

H.C.R. No. 47 requests the Department of Public Safety (“D.P.S.”) to conduct a study on the effects of felon disenfranchisement due to felony criminal convictions as it has a disproportionate impact on communities of color. Decades of studies have shown that disenfranchisement based on felony criminal convictions is rooted in racism against blacks and other people of color.<sup>1</sup> The disproportionate racial impact of disenfranchisement continues to this day.<sup>2</sup> In Hawai’i, Native Hawaiians primarily experience the racial inequity of the criminal justice system and disenfranchisement laws, as evidenced in the 2010 OHA report cited in H.C.R. No. 47. In order to right the historic wrongs experienced by Native Hawaiians and other people of color in Hawai’i, a study on the disenfranchisement and the inequity it produces is in order.

I strongly support this proposal for both personal and professional reasons. I am uniquely qualified to speak on this issue because I am black man, I practiced criminal law as a defense attorney for 18 years, I have been teaching criminal law at the William S. Richardson School of Law for the last eight years where I also serve as the Co-Director of the Hawai’i Innocence Project and most importantly I’m a convicted felon who was precluded from voting while incarcerated. As a former criminal defense attorney, I saw the effects that felony disenfranchisement has on those convicted, their families, and the community. I am a convicted felon who was not allowed to vote when I was incarcerated. Although I was physically isolated from society by bars and bob-wired fencing, the realization that I had no voice in our government by way of a vote, was even more isolating. Instead of inspiring hope, the entire environment made me even more ashamed of myself, and at times becoming convinced that I would always be branded as a bad person, not deserving to participate fully as a citizen in our democracy again. In other words, not only was society through our laws telling me that I was not worthy of voting, but I started to become convinced that they were right. I was not worthy of the right to vote because of the poor decisions I had made. As days went on, I become more convinced that I would never be fit to be a citizen of this country in good standing ever again. This physical and legal isolation did not bring hope; instead, it brought more self-

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<sup>1</sup> Alec C. Ewald, ‘Civil Death’: The Ideological Paradox of Criminal Disenfranchisement Law in the United States, 2002 WIS. L. REV. 1045, 1059-61.

<sup>2</sup> THE SENTENCING PROJECT, 6 MILLION LOST VOTERS: STATE-LEVEL ESTIMATES OF FELONY DISENFRANCHISEMENT, 2016, at 9 (2016).

demoralization. I felt even more isolated from society. In theory, my time in prison should have been the beginning of my rehabilitation, but it wasn't. I vividly remember walking out of prison on March 10, 2010, feeling more ashamed of myself and more disconnected from society than I did when I walked in. While in prison, I had no desire to participate or learn about local or national politics. For what? I wasn't allowed to participate even though I was on the road to rehabilitation. Disenfranchisement due to felony criminal convictions means that I and others, just like me, suffer long after we served our punishment for our crimes. For these reasons, I submit this testimony in strong support of the proposal with some suggestions.

My first suggestion is that a department conducts the research study from the University of Hawai'i, such as the Public Policy, Sociology, Political Science, or similar department. For any study to be credible, it has to be neutral, evidence-based, and impartial. D.P.S. would not be neutral or impartial as they would have a stake in the outcome of the study and also would be required to implement any policy changes that may stem from such a study.

I would also strongly suggest that this resolution be amended to include Hawai'i Revised Statute §612-4, which disqualifies convicted felons from serving on jury duty unless they have been pardoned. Like many felons in Hawai'i, I have served my time both in prison and on parole. I have not been convicted of any new crimes since my release from prison. I have been law-abiding and a productive member of society since my release from prisons ten years ago. There are thousands more women and men just like me in Hawai'i who are law-abiding, productive members of the community but also happen to have a felony conviction. I can't help but find it ironic that I can teach law to future lawyers at the state's only law school, direct a legal clinic, but am not qualified to sit on a jury because of my felony conviction from over a decade ago.

For the reasons provided above, I respectfully submit this testimony in support of H.C.R. No. 47 with recommended suggestions.

With warm aloha and gratitude,

Kenneth Lawson

**ROBERT K. MERCÉ**  
2467 Aha Alina Place  
Honolulu, Hawaii'i 96821

*phone:* (808) 398-9594 (cell)  
*email:* mercer001@hawaii.rr.com

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March 12, 2020

TO: House Committee On Public Safety, Veterans & Military Affairs  
RE: HCR 47  
HEARING: Friday, March 13, 2020  
TIME: 10:00 a.m.  
ROOM: 430  
POSITON: **SUPPORT WITH AMENDMENT**

Chair Takayama, Vice Chair Gates, and members of the committee:

My name is Bob Merce. I am a retired lawyer and recently served as vice chair of the House Concurrent Resolution 85 Task Force on prison reform.

I support HCR 47 but recommend that the study be done by the American Studies Program at the University of Hawaii at Mānoa or other appropriate academic program or department at the University.

About a dozen countries allow all prisoners to vote, regardless of their offense.<sup>1</sup> Other countries allow most prisoners to vote, but disenfranchise prisoners convicted of certain crimes. For example, Norway, Germany, and Portugal disenfranchise prisoners convicted of crimes that target the state or democratic order but allow other prisoners to vote.<sup>2</sup>

Two states, Main and Vermont, allow all prisoners to vote.<sup>3</sup> In Hawaii, convicted felons are disenfranchised from the time sentence is imposed until the person's final

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<sup>1</sup> "Prisoner votes by European country". BBC News. November 22, 2012. Accessed March 12, 2020, <https://web.archive.org/web/20190621184820/https://www.bbc.com/news/uk-20447504>

<sup>2</sup> Ibid.

<sup>3</sup> Christopher Uggen, Ryan Larson, Sarah Shannon, 6 Million Lost Voters: State-Level Estimate of Felony Disenfranchisement, The Sentencing Project, October 6, 2016. Accessed March 12, 2020. <https://www.bbc.com/news/uk-20447504>

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discharge, but convicted felons who are placed on probation, or paroled after commitment to imprisonment, may vote during the period of probation or parole.<sup>4</sup>

As the perambulatory clauses of HCR 47 recite, Native Hawaiians are disproportionately represented in our prison system, and therefore the burden of felony disenfranchisement falls disproportionately on our minority Native Hawaiian population.

Extending the right to vote to incarcerated persons is an ongoing legislative issue in Hawaii. Last year the League of Women Voters, Community Alliance of Prisons, and others testified in support of SB 1503, which would have allowed incarcerated persons to vote by absentee ballot.<sup>5</sup> The HCR 85 Task Force on prison reform also endorsed full voting rights for incarcerated persons.<sup>6</sup>

As discussions about felony disenfranchisement move forward in our community, everyone would benefit from a well-researched and carefully documented study of the effects of felony disenfranchisement on minority populations, particularly Native Hawaiians.

The study called for in HCR 47 requires a high level of scholarship that is not present within the Department of Public Safety. I recommend amending HCR 47 to request the American Studies Program at the University of Hawaii at Mānoa or another appropriate academic program or department at UH to carry out the study.

Thank you for allowing me to testify on this resolution.

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<sup>4</sup> Fact Sheet: Impact of a Felony Conviction, Hawaii Office of Elections, October 26, 2015. Accessed March 12, 2020. <https://elections.hawaii.gov/wp-content/uploads/2015/03/FS509VS001-Impact-of-a-Felony-Conviction.pdf>.

<sup>5</sup> SB 1503, SD 1, 30th Legislature, State of Hawaii, 2019

<sup>6</sup> Creating Better Outcomes, Safer Communities, Final Report of the House Concurrent Resolution Task Force on Prison Reform to the Hawaii'i Legislature, 2019 Legislative Session, (December 2018) 24.

**HCR-47**

Submitted on: 3/12/2020 9:32:52 AM

Testimony for PVM on 3/13/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jen Jenkins	Individual	Support	No

Comments:

# 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)

**LATE**



## COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Friday, March 13, 2020

10:00 AM – Room 430

### SUPPORT with SUGGESTION for HCR 47 – FELONY DISENFRANCHISEMENT

Aloha Chair Takayama, Vice Chair Gates 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 **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 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.

Community Alliance on Prisons supports HCR 47 that calls for a study of the effects of felony disenfranchisement, particularly the effects on minority groups and offers a suggestion.

We suggest that in order to be credible, the study should be independently contracted. We suggest that the department consider proposing this as a project with the UH American Studies Department. This would be a great way to engage undergraduate and/or graduate students in looking at voting in a larger context and researching ways for corrections departments to facilitate democracy.

Only two states allow felons to retain their right to vote unrestricted: Maine and Vermont. The rest of the U.S. takes away voting rights for felons either while they're serving their sentence, until their parole or probation is over, or in some cases, for the rest of their lives. Kentucky, Florida, and Iowa disenfranchise felons forever; Virginia made headlines in 2016 for restoring the right to vote to felons who had served their sentences.

In 2016, The Sentencing Project released a report<sup>1</sup> that opened with this overview:

*The United States remains one of the world's strictest nations when it comes to denying the right to vote to citizens convicted of crimes. An estimated 6.1 million Americans are forbidden to vote because of "felony disenfranchisement," or laws restricting voting rights for those convicted of felony-level crimes.*

In Hawai'i if a convicted felon is incarcerated, they cannot vote until they are released from incarceration. People who are pre-trial or serving sentences for misdemeanors or violations CAN vote right now if it is made available to them.

<sup>1</sup> 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016.

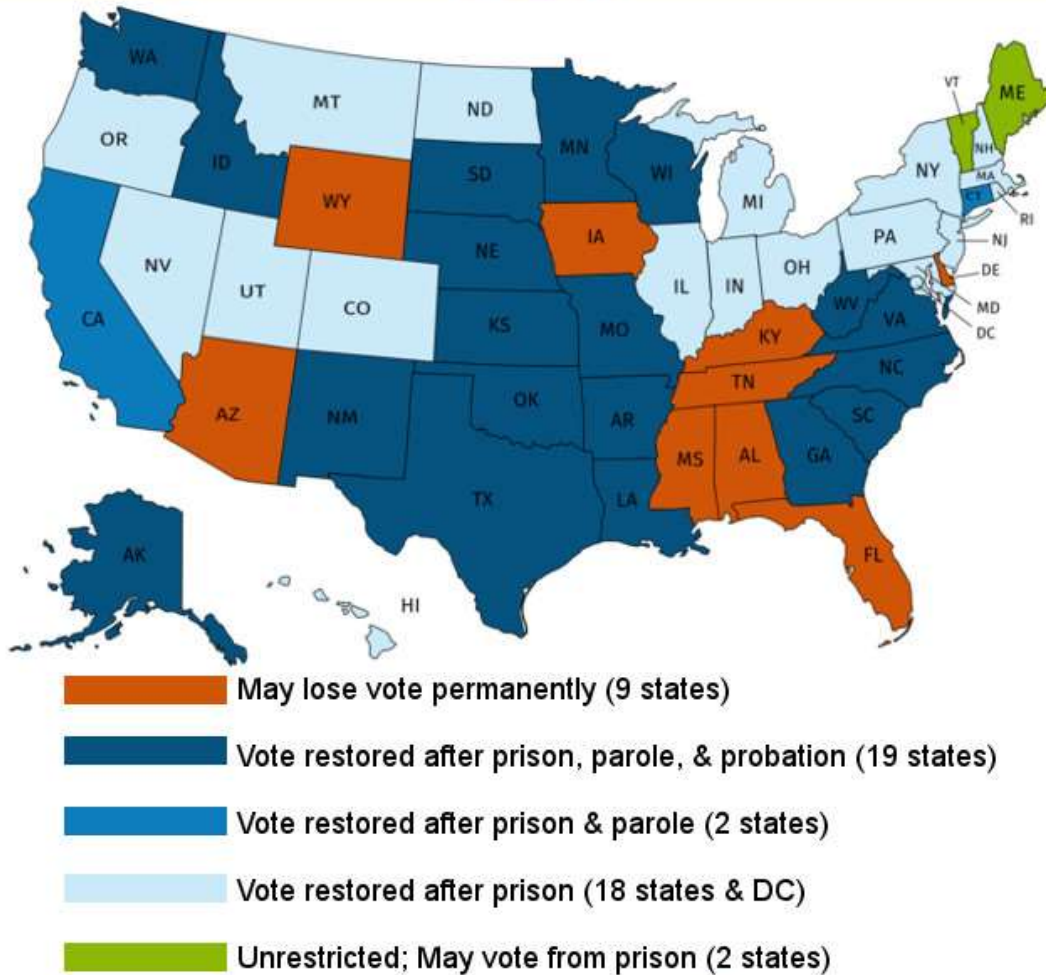
<https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>



ProCon.org has a great site for current information on State Felon Voting Laws<sup>2</sup>:

# State Felon Voting Laws

Dec. 18, 2019



An independent study would show the effects of felony disenfranchisement not only on public policy, but on the right of a person to be considered a full human being. Civic engagement is a crucial element of democracy.

Community Alliance on Prisons urges the committee to pass this resolution and also to consider our suggestion about the study being independently done.

Mahalo for this opportunity to testify.

<sup>2</sup> State Felon Voting Laws, ProCon.org, updated January 16, 2020. <https://felonvoting.procon.org/state-felon-voting-laws/>

**HCR-47**

Submitted on: 3/12/2020 4:01:49 PM

Testimony for PVM on 3/13/2020 10:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mandy Fernandes	ACLU of Hawaii	Support	No

Comments:

Aloha Chair Takayama, Vice Chair Gates, and members of the Committee on Public Safety, Veterans, and Military Affairs:

The American Civil Liberties Union of Hawaii supports HCR47, though we request that the study be conducted by a department within the University of Hawaii system, which may be better equipped to research this important issue.

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes  
Policy Director  
ACLU of Hawaii

**LATE**

**HCR-47**

Submitted on: 3/12/2020 1:30:50 PM

Testimony for PVM on 3/13/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Honda	Individual	Support	No

Comments:

**HCR-47**

Submitted on: 3/12/2020 3:01:32 PM

Testimony for PVM on 3/13/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Justin Levinson	Individual	Support	No

Comments:

I am a Professor of Law at the University of Hawai`i William S. Richardson School of Law, where I teach Criminal Law, among other courses. I conduct research on the topic of implicit racial bias in the criminal justice system, an area in which i have published widely. I have also empirically studied implicit biases in Hawai`i, including negative biases against Native Hawaiians and Micronesians. I was part of the statistical team working on the 2010 OHA report that found significant Native Hawaiian overrepresentation in the criminal justice system.

(note: I am submitting this testimony in my individual capacity and not on behalf of the University.)

I support HCR 47 for several reasons. First, from a criminal justice theory perspective, there is no legitimate penological justification for removing a citizen's right to vote based upon incarceration status. The theories of punishment simply do not offer meaningful support or rationale for it. For example, there is no additional deterrent provided to our already harsh sentencing practices by adding disenfranchisement. Nor does retribution or any of the other recognized theories of punishment provide support for disenfranchisement. Second, from a justice perspective, when the prison population systemically overrepresents a particular racial or indigenous community (as ours does), the legally sanctioned removal of the right to vote for incarcerated citizens has an unacceptable and racialized effect in muting key rights of citizen participation. When that group is an indigenous group, such as our Native Hawaiian community, this already unacceptable consequence becomes even more concerning as we think about what democracy and citizen participation means in our state.

As we think about the future of our great state, it seems to me that we should think deeply about the many ways that our criminal justice system can be improved so that it aligns with a safer and more prosperous future of Hawai`i. Allowing our incarcerated neighbors, family members, and future neighbors the right to vote while incarcerated is one small needed and important step towards achieving that realization. Although this bill does not itself go beyond the investigation of the issue, it is an important first step. I strongly support it.

Thank you for the opportunity to testify on this measure.



**LATE**

My name is Emily McKenna and I am testifying in strong support of this resolution. Canada, Croatia, the Czech Republic, Denmark, Finland, Germany, Ireland, Latvia, Lithuania, Macedonia, Serbia, Slovenia, Spain, South Africa, Sweden, Switzerland, Ukraine – all of these countries allow incarcerated felons to vote. The idea that incarcerated individuals deserve this right is not THAT revolutionary of an idea. There are even two states, Maine and Vermont, that allow felons to vote while incarcerated. I'm hoping that Hawaii will eventually join those two states in restoring that right which I believe is essential to our democracy.

Additionally, we have a unique obligation in Hawaii to recognize the disproportionate impact that felony disenfranchisement has on Native Hawaiians. According to the OHA report cited in the resolution, Native Hawaiians make up 24% of our general population, but comprise 39% of the prison population. This is because Native Hawaiians are more likely to receive a prison sentence than all other groups except Native Americans, NOT because Native Hawaiians are committing crimes at a disproportionate rate. (As Mr. Lawson said) this disenfranchisement creates further disconnect from the community. Prisoners should be able to vote in elections because their elected officials and the laws they subsequently enact WILL affect them, even while imprisoned. They are still citizens of our country and deserve the right to participate in our democracy. I believe this study would help to shed light on this issue and move our state in the right direction. Thank you.