



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the House Committee on Public Safety, Intergovernmental and Military Affairs

February 16, 2020

S.B. 742 RELATING TO POLICING

Chair Clarence Nishihara, Vice Chair J. Kalani English and Members of the Committee:

The Office of the Public Defender supports S.B. 742.

In the wake of recent events, sparked by the deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery, there is a need now more than ever to review racial inequities, police behavior and community policing in this State. Implementing components of Washington D.C.'s Neighborhood Engagement Achieve Results (NEAR) Act, through S.B. 742, moves us in the right direction.

The concerns of racial inequities in the criminal justice system are evident even in Hawai'i. Just recently, the Honolulu Police Commission questioned the disparities in the use of force by the Honolulu Police Department.¹ According to the article, Native Hawaiians/Pacific Islanders were involved in 34% of the total force incidents and counted for 38% of arrests in 2019, even though they make up only 23% of the population on the island of Oahu. Blacks were 7.4% of use of force incidents and 5.2% of the arrest incidents despite being only 4.5% of the population.

In Hawai'i there have been fatalities resulting from the police firing their weapons and using force. Of the eight (8) officer related fatalities in Hawaii in 2019, seven (7) of the dead were either Hawaiian, part Hawaiian or Samoan.²

It has been widely reported that people of color have represented a larger percentage of people detained, arrested, and incarcerated.³

¹ Honolulu Police Commission questions disparities in use of force, February 7, 2021, Star Advertiser, <https://www.staradvertiser.com/2021/02/07/hawaii-news/honolulu-police-commission-questions-disparities-in-use-of-force/>

² Id.

³ The Disparate Treatment of Native Hawaiians in the Criminal Justice System, Office of Hawaiian Affairs (2010),

<https://www.oha.org/criminaljustice#:~:text=Report%3A%20The%20Disparate%20Treatment%20of,system%20accumulates%20at%20every%20stage>

During COVID-19, anecdotally, the lawyers of the Office of the Public Defender have noticed that enforcement of quarantine COVID-19 laws appear to substantially involve, and thus perhaps target, Pacific Islanders.

While there have been studies and reports that confirm racial disparities, perhaps the data has been under reported. One of the major issues with any study related to race and the criminal justice system, particularly in Hawaii, is that Native Hawaiians and Pacific Islanders are often underreported.⁴

This Bill seeks to improve data collection as it relates to policing. It would provide data to allow for better quantitative analysis of police behavior and thus hopefully leading to improved policing. Furthermore, this effort would work toward reducing racial disparities in the criminal justice system. Better understanding of explicit and/or implicit bias affirms the recognition of preventing bias-based policing and increases improved community relations. In the end, the data will work toward safeguarding our communities and law enforcement officers themselves.

This legislative mandate will enhance transparency and provide relevant information to interested parties and decision-making entities. The information will assist in determining what policies, administrative procedures or safeguards, and additional training, if any, are necessary to improve community policing.

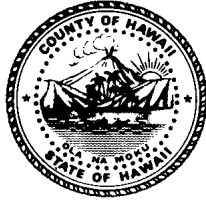
For the foregoing reasons, the Office of the Public Defender supports passage of S.B. 742. Thank you for the opportunity to comment on this Bill.

ACLU Hawai'i, Special Report: Bias Against Native Hawaiians in Hawaii Criminal Justice System, ACLU Hawai'i (2012), https://acluhi.org/en/news/special-report-bias-against-native-hawaiians-hawaii-criminal-justice-system#_ftn4.

Ashely Nellis, The Color of Justice: Racial and Ethnic Disparity in State Prisons, The Sentencing Project (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

⁴ Hawaii Profile, Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/HI.html>.

Mitchell D. Roth
Mayor



Paul K. Ferreira
Police Chief

Kenneth Bugado, Jr.
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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February 12, 2021

Senator Clarence K. Nishihara
Chairperson and Committee Members
Committee on Public Safety, Intergovernmental, and Military Affairs
415 South Beretania Street
Honolulu, Hawai`i 96813

RE : SENATE BILL 742, RELATING TO POLICING
HEARING DATE : FEBRUARY 16, 2021
TIME : 1:20 P.M.

Dear Senator Nishihara:

The Hawai`i Police Department **strongly opposes** Senate Bill 742, which seeks to require each county police department to collect certain data regarding police stops, uses of force, and arrests, and submit to the legislature annual reports.

First and foremost, as written this measure would require police departments to violate individual's privacy rights by requiring the reporting and posting of protected personal information.

The extensive data that is being mandated to be compiled by this measure is unrealistic and currently impossible for departments to capture. Just for traffic citations alone it would be an impossible task for the departments to be in compliance as an example for calendar year 2020, the Hawai`i Police Department issued 43,512 citations, which would have needed to be reported.

If passed this measure would require departments to acquire new or perform upgrades to current records management systems and acquire additional resources (i.e. personnel), just to begin capturing the data that is being mandated. Yet, the legislature fails to include any funding in this measure, thereby, creating another unfunded mandate for the Counties to absorb, more disturbingly during time of financial upheaval as a result of the COVID Pandemic.

It is for these reasons that we urge this committee to not support this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to Senate Bill 742.

Sincerely,

PAUL K. FERREIRA
POLICE CHIEF

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
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info@civilbeatlawcenter.org

Senate Committee on Public Safety,
Intergovernmental, and Military Affairs
Honorable Clarence K. Nishihara, Chair
Honorable J. Kalani English, Vice Chair

RE: Testimony Supporting S.B. 742, Relating to Policing
Hearing: February 16, 2021 at 1:20 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **supporting S.B. 742**.

Disputes persist about whether local police departments disproportionately stop, arrest, and use force against minority groups. *E.g.*, Christina Jedra, *Honolulu Police Chief Denies Racial Disparities Are Proof of Profiling*, Honolulu Civil Beat (July 22, 2020). The Chief of Police for the Honolulu Police Department has questioned the need for police reform and implicit bias training by arguing that in Hawai`i, “we are different.” *E.g.*, Anita Hofschneider, *Honolulu Police Chief Hopes Nationwide Reform Movement Skips Hawaii*, Honolulu Civil Beat (June 19, 2020).

At the same time, the Judiciary expressly recognized that Hawaii’s criminal justice system “is not immune to the types of implicit and explicit bias and prejudice that are found elsewhere.” Statement of Chief Justice Mark E. Recktenwald (June 15, 2020), https://www.courts.state.hi.us/news_and_reports/2020/06/statement-by-chief-justice-mark-e-recktenwald. And the Honolulu Prosecutor recently emphasized the need for more data regarding arrests and race. Blaze Lovell, *Panel: Hawaii Justice System Needs Better Data Collection*, Honolulu Civil Beat (January 29, 2021).

To start to identify and address racial inequity in the criminal justice system, it all starts with the police departments and reliable data.

The Law Center offers the following suggestions:

1. Consistently request both race and ethnicity data. For example, (b)(2)(B) for arrests and (b)(4)(F) and (G) for felony arrests only require race, not ethnicity.
2. Require access to the data on request and an annual report on trends. Currently, the bill requires that police departments provide all of this data to the Legislature

annually as a report. Instead of a massive data dump that will be difficult for the Legislature to independently analyze, departments should report on the trends reflected in the data. The data collected by the department, nevertheless, should be available to the public for independent analysis by request (*i.e.*, not required to be posted on the Internet). One way to achieve this objective would be the following [changes from existing bill marked with underline (additions) and ~~strikeout~~ (deletions)].

Amend first sentence of (a):

The chief of each county police department shall submit to the legislature no later than January 31 of each year an annual report analyzing data regarding ~~of~~ all police stops, uses of force, and arrests.

Amend (b):

The report shall analyze ~~include~~:

Amend (c):

The chief of each county police department shall post a copy of the report submitted to the legislature pursuant to this section on the department's website on an annual basis and shall make available to the public, on request, the data collected for the report.

Thank you again for the opportunity to testify.



Committee: Committee on Public Safety, Intergovernmental, and Military Affairs
Meeting Date/Time: Tuesday, February 16, 2021 1:20 p.m.
Place: Via Videoconference
Re: Testimony of the ACLU of Hawai'i in support of S.B. 742, Relating to Policing

Dear Chair Nishihara, Vice Chair English, and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in support of, with suggested amendments to, S.B. 742, which requires the collection and disclosure of certain data relating to police stops, uses of force, and arrests.

Law enforcement should prioritize the sanctity of human life and treat everyone with dignity, but we know that police too often resort to excessive force in interactions with Black, Indigenous, and people of color and communities, despite being charged with protecting and serving those same people and communities. A recent report by Honolulu Police Department ("HPD") found that between 2015-2019, 34.5% of use of force cases and 38.1% of arrests were made against Native Hawaiians and Pacific Islanders.¹ Further, HPD disproportionately enforced the COVID-19 orders against Black people, Micronesian people (e.g., people from the Federated States of Micronesia, Marshall Islands, Palau, etc.), Samoans, and people experiencing homelessness.² Despite beliefs expressed by HPD Chief Susan Ballard,³ racial bias is a persistent problem in policing here in Hawai'i. S.B. 742 increases transparency in policing, particularly in regard to racial disparities in stops, uses of force, and arrests, which is critical to addressing the ongoing harm to communities of color by police.

To further strengthen this measure, we respectfully suggest the Committee make the following amendments:

¹ Lynn Kawano, *HPD report shows police force used most on Native Hawaiians, Pacific Islanders*, Hawaii News Now (February 4, 2021), https://www.hawaiinewsnow.com/2021/02/05/hpd-report-shows-police-force-used-most-native-hawaiians-pacific-islanders/?fbclid=IwAR2FkEPagWHcM05fSd5T_Z_ZgGrcUJraZn9DGkLcFXmbmU1cuTonWrkKZ5Y.

² Ashley Mizuo, *Racial Disparities Emerge in HPD Enforcement of Stay-At-Home Violations*, Hawai'i Public Radio (June 29, 2020), <https://www.hawaiipublicradio.org/post/racial-disparitiesemerge-hpd-enforcement-stay-home-violations>.

³ Anita Hofschneider, *Honolulu Police Chief Hopes Nationwide Reform Movement Skips Hawaii*, Honolulu Civil Beat (June 19, 2020), <https://www.civilbeat.org/2020/06/honolulu-police-chief-hopes-nationwide-reform-movement-skips-hawaii/>.

American Civil Liberties Union of Hawai'i
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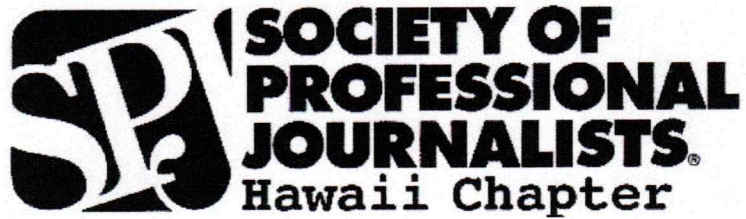
1. Consistently request both race and ethnicity data. Subsections (b)(2)(B) for arrests and (b)(4)(F) and (G) for felony arrests only require race, not ethnicity.
2. Require access to the data on request and an annual report on trends.

For the above reasons, the ACLU of Hawai'i urges the Committee to support this measure.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for over 50 years.



Feb. 16, 2021

Sen. Clarence K. Nishihara
Senate Committee on Public Safety, Intergovernmental and Military Affairs
State Capitol
Honolulu, HI 96813

Re: Senate Bill 742

Chairman Nishihara and Committee Members:

We support this bill because it will help guard against racial bias in the criminal justice system.

We ask that the proposed requirement that the traffic stop data be given in an annual report to the Legislature should be changed to allowing public release of the data upon request.

Thank you for your attention,

Stirling Morita
President
Hawaii Chapter SPJ



Young Progressives Demanding Action
P.O. Box 11105
Honolulu, HI 96828

February 13, 2021

TO: SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
RE: Testimony in support of SB742

Dear Senators,

Young Progressives Demanding Action (YPDA) strongly supports SB742. Data helps police officers and the community. Individual incidents of police abuse or racism may or may not reflect larger problems in a police department. Data opens the door for a discussion based on objective facts.

Data also drives better policies. Without data, policy must depend entirely on whether one believes a police department that claims that all stories of police abuse or racism are isolated incidents or community members who claim that police abuse and racism are rampant throughout the state. With data, there is no reason to pick sides. Data can focus the discussion on concerning trends and areas for potential training.

We need data about Hawai'i specifically. National data identifies important trends in policing, but people dispute whether Hawai'i is different. Local data will help our community adopt appropriate local policies.

Mahalo for the opportunity to testify,

Will Caron
Board President & Secretary, 2020–2021
action@ypdahawaii.org

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence Nishihara, Chair

Senator J. Kalani English, Vice Chair

Tuesday, February 16, 2021

1:20 PM

SUPPORT FOR SB 742 - POLICING DATA

Aloha Chair Nishihara, Vice Chair English, 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 more than 4,100 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 1,000 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 requiring police departments to collect data regarding police stops, uses of force, and arrests and submit annual reports to the legislature.

Recent stories in the press highlight the need for this bill.

Any organization that wants to improve their performance relies on good data. An organization that spouts the rhetoric that they don’t have problems is one that demands scrutiny and underscores the need for this bill.

To avoid a data dump, it would be helpful if the police chiefs submitted trends, after analyzing the raw data in these police stops. Those trends should also be made public on each county police department’s website. The raw data should also be available upon request.

Sharing this kind of information is important because it is about equity and justice. It can increase public trust if the data is timely and useful and it promotes transparency and accountability in our public servants.

Community Alliance on Prisons respectfully asks the committee to pass this measure.

Mahalo for this opportunity to testify.

SB-742

Submitted on: 2/13/2021 10:26:01 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong support!

SB-742

Submitted on: 2/14/2021 10:34:40 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

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

Comments:

Aloha PSM Committee,

As a public health professional and concerned citizen, I am writing in **STRONG SUPPORT** of SB742. With current conversations on law enforcement overreach, this bill is an important step in rebuilding accountability with our local communities and rebuild trust.

Please pass SB742!

Mahalo,

Thaddeus Pham (he/him)

SB-742

Submitted on: 2/15/2021 12:14:55 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ana Tejada	Individual	Support	No

Comments:

Ana Tejada

Re: **Support for SB742**

February 15, 2021

Senators Nishihara and English;

My name is Ana Tejada. I am a constituent of Hawaii County and a concerned Hilo resident of color. I am testifying in support of requiring county police departments to collect data regarding police stops, use of force, and arrests, and to submit the data annually to the legislature.

The senseless murder of George Floyd, Breonna Taylor, Tamir Rice and others by law enforcement galvanized our communities to peacefully protest against police violence and racial disparities. There is ground swell support for police reform that starts here, in our community. Currently, there is little to no data on what our police departments do – stops, arrests, use of force, etc. Collecting comprehensive data on police actions and crime is one step we can take to root out racial bias (whether explicit or latent) in our police departments that leads to more aggressive policing in our communities of color. The data could also be evaluated to determine the efficacy of existing crime fighting measures. It would also go a long way towards building police transparency and accountability particularly in matters of officer-involved shootings and police misconduct.

Thank you for scheduling this hearing and reading my testimony. While this data collecting measure alone will not solve years of racial injustice in our police departments, it is one measure we can implement toward police reform.

SB-742

Submitted on: 2/12/2021 2:05:33 PM

Testimony for PSM on 2/16/2021 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Brown III	Individual	Support	No

Comments:

Aloha Chair, Vice Chair, and members of the Committee,

I write in strong support of this measure. Transparency is one of the bedrock foundations of any democratic society. There can be no accountability without transparency, and that's what makes this bill so important. We (the community) need the data that this bill would require in order to make sound policy decisions that are evidence-based.

Sincerely,

Joey Brown

Kailua, 96734



LATE

**SB742
RELATING TO POLICING**

Ke Kōmike 'Aha Kenekoa o ka Palekana Lehulehu, ka Pilina O Nā Aupuni, a me ke Kuleana Pū'ali Koa

Pepeluali 16, 2020

1:20 p.m.

Hālāwai Keleka'a'ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** SB742, which would improve the collection of police data on stops, arrests, and use of force, and improve governmental transparency. **OHA strongly supports and encourages efforts to improve the consistency, accuracy, and accessibility of data collected by county police departments, especially as they relate to police interactions with Native Hawaiians.**

Good data, particularly data from law enforcement, is critical to the development of well-informed policy that can promote safer communities while reducing the human and financial costs of our criminal justice system. Understanding police activity within Hawai'i's communities is of particular concern for Native Hawaiians who are disproportionately impacted by policing and the criminal justice system. OHA seeks to help improve police collection, reporting, and governance of data, especially as it relates to Native Hawaiians, so that it can help inform policy on policing and crime to better serve its beneficiaries. Likewise, other state and county agencies and policymakers can better address their own communities's needs with more thorough and accessible policing data.

Improving the disaggregation and governance of state and county data, particularly with respect to data on the Native Hawaiian community specifically, will enable policymakers and OHA to best tailor policy and interventions for OHA's beneficiaries. To improve clarity on the specific experiences of the Native Hawaiian community, **OHA urges all governmental entities in Hawai'i, including our police departments, to disaggregate the "Native Hawaiian" race category from "Other Pacific Islander" and to disaggregate the "Native Hawaiian" race category from any "Multiple-Race" category when collecting, managing, and reporting community data.**

Accordingly, OHA respectfully requests an amendment to insert the following language after page 6, line 4, to read as follows:

"provided that all race and ethnicity data collected under this subsection shall disaggregate Native Hawaiian data from all other race and ethnicity categories;"

Additionally, OHA finds that annual reporting of data may not provide sufficient opportunity for policymakers and the community to timely consider and analyze the information collected. To maximize the usefulness of this data, it should be made accessible to the public and public-serving agencies upon request.

Accordingly, OHA requests that the language on page 6, lines 5-7, be amended to read as follows:

"The chief of each county police department shall post a copy of the report submitted to the legislature pursuant to this section on the department's website on an annual basis and shall make available to the public, upon request, the data collected for the report."

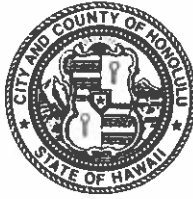
Therefore, OHA urges the Committee to **PASS WITH AMENDMENTS** SB742. Mahalo nui loa for the opportunity to testify on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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LATE

RICK BLANGIARDI
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE **WB-TS**

February 16, 2021

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 214
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 742, Relating to Policing

I am William Beckley, Captain of the Information Technology Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 742, Relating to Policing.

While the HPD supports the efforts to build transparency, increase community trust, and improve internal accountability, providing the required information for all police stops, arrests, and uses of force would be difficult to obtain due to the amount and type of data.

We currently collect and report information such as use of force incidents, officer misconduct, and general arrest data in existing reports which can be readily provided. However, the HPD does not collect a large portion of the information that would be mandated given the capabilities of the department's current Records Management System. For instance, an individual's race or ethnicity is not captured on a traffic citation.

In addition, requiring an annual report to the Legislature that includes highly sensitive information such as an arrestee's date of birth, occupation, marital status, etc., may result in its misuse. Therefore, this could result in the individuals becoming victims of identity theft or other related fraudulent crimes.

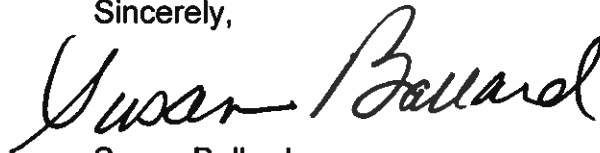
The Honorable Clarence K. Nishihara, Chair
and Members
February 16, 2021
Page 2

Furthermore, requiring the collection of such detailed data will further result in the prolonged restraint of an individual's liberty as brief temporary investigative stops will turn into lengthy detailed intrusive interviews.

The HPD urges you to oppose Senate Bill No. 742, Relating to Policing.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Susan Ballard". The signature is written in a cursive, flowing style.

Susan Ballard
Chief of Police

TESTIMONY IN SUPPORT OF SB 742

TO: Chair Nishihara, Vice-Chair English, & Public Safety, Intergovernmental, and Military Affairs Committee Members

FROM: Nikos Leverenz
Grants, Development, & Policy Manager

DATE: February 16, 2021 (1:20 PM)

Hawai'i Health & Harm Reduction Center (HHRC) **supports** SB 742, which requires county police departments to collect data regarding police stops, uses of force, and arrest, submitting an annual report to the Legislature.

Public access to data regarding police practices, particularly with respect to race and ethnicity, is needed for the purposes articulated in the bill: to help the state identify offenses that should be decriminalized; better determine conditions for situations of interest, such as trends in the use of force; safeguard law enforcement officers from injury; and allow greater overall academic analysis of policing in the State.

Public access to data will also increase the public's trust and confidence in its police departments, which should operate with transparency in furtherance of their missions.

HHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems related to substance use and underlying mental health conditions. The continued criminalization of behavioral health concerns under existing law—and prevailing police and prosecutorial practices—is not conducive to individual or public health.

Thank you for the opportunity to testify on this important reform measure.

SB-742

Submitted on: 2/16/2021 11:00:37 AM

Testimony for PSM on 2/16/2021 1:20:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Emma Ishihara	Individual	Support	No

Comments:

As a lifelong citizen of Hawai'i, I support SB 742, which would increase the transparency of the use of force by police in our state.