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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
PUBLIC SAFETY

March 19, 2009

8:30 AM

SB 560, SD 2

RELATING TO PUBLIC SAFETY.

Chair Hanohano, Vice-Chair Aquino and committee members, thank you for the opportunity to testify on SB 560, SD 2.

The State Procurement Office (SPO) testimony is limited to SECTION 2, subsection (e) on page 5 proposing exempting the task force from the requirements of HRS Chapter 103D. The SPO does not support the language allowing the task force to be exempt from chapter 103D, the Hawaii Public Procurement Code (Code).

Statutory exemptions are contrary to the Code, section 103D-102, HRS, on the applicability of the chapter that states in part “. . . shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, . . .” Any governmental agency with the authority to expend funds should be in compliance with Chapter 103D, which promotes the policy of fair and equitable treatment of all persons who deal with the procurement system; fosters effective broad-based competition; and increases public confidence in public procurement.

SB 560, SD 2
March 19, 2009
8:30 AM
Page 2 of 2

The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly to obtain its requirements. It was the legislature's intent for the Code to be a single source of public procurement policy. If individual agencies are exempted and allowed to develop their own individual processes, it becomes problematic for the administration and vendors/contractors that must comply with a variety of processes. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. For this to be accomplished, we must participate in the process with one set of statutes and rules.

The SPO is against statutorily exempting specific programs from the Code, as it is not in the best interest of government, the business community, and the general public. The Code establishes a time-tested, fair, and reliable set of rules and processes for award of contracts. The competitive procurement processes of the Code are to insure that all potential providers are afforded the opportunity to compete for the required services. To the extent agencies may need specific purchases to be exempted from Code requirements, the Code provides an exemption process.

There is no compelling reason to statutorily exempt the task force from the Code. The SPO recommends SECTION 2, subsection (e) on page 5 be deleted.

Thank you.


OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony
SB 506, S.D. 2
Relating to Public Safety

Date: March 19, 2009 Time: 8:30 am
Room: 309

The Office of Hawaiian Affairs **supports SB 506, S.D. 2 with amendments.**

The Department of Public Safety reports that Native Hawaiians overwhelmingly comprise thirty-nine percent of the prison population. Data shows that Native Hawaiians are arrested less than Caucasians, and yet, they are sentenced more than Caucasians, and other ethnic groups.

Why are Native Hawaiians over-represented in prison? Hawaii State policies may be racially biased as it imprisons large numbers of Native Hawaiians. On the United States continent, African Americans and Latinos are also over-represented in prisons. Claims of racial disparities can be found in the Justice Policy Institute, *The Vortex*, and Barack Obama and Joe Biden, *Strengthening Our Civil Rights and Criminal Justice Laws*. These publications urge for national and state policy reform to an overwhelming, over-crowded, prejudice criminal justice system.

The proposed study will help uncover the root cause of over-imprisonment. A study is imperative to gather necessary data to accurately assess the criminal justice system. The study is also vital to identify improvements needed for programming services, developing alternative rehabilitation programs, reducing recidivism rates, and effective cost-savings policy reform. With accountable data, the study can produce clear recommendations for mandatory minimums, the three strikes law, drug laws, and community re-entry programming. This information is greatly needed for legislation, law makers, and advocates.

When a Hawaiian person is jailed or imprisoned, the impact of incarceration extends far into families and communities. *Keiki* are left without their natural caregivers, *kupuna* must now care for their grandchildren, and the community loses its vitality of productive citizenship. In short, Hawaii's culture begins to deteriorate as its people become displaced, hidden, and removed from its environment.

OHA would like suggest the following amendments for this bill. First, we would like to suggest using the language in the OHA sponsored, HCR 27. In HCR 27, it suggests for the cooperation of all government agencies and organizations to collaborate in sharing data information. We will like to also suggest that

cooperation be conducted in a timely manner to reduce time and cost of the study.

Secondly, clarification on the purpose and intent of SB 506, S.D. 2 to attach a task force would be very helpful. Advocates and supporters of this study effort have expressed their concerns that a task force may influence the study in ways that may impact its research, data gathering, timeline, and sharing of findings. Please note that we have discussed and informed with some of the agencies that are mentioned in this bill, and they have offered their support to assist in the study. We have included a Native Hawaiian Advisory Council which is a core component of the study. This advisory council will have knowledge and expertise in the subject and will be comprised of members who have already made significant contributions to the health and well-being of Native Hawaiians. The Council will help with decision making and guide the research process.

Lastly, SB 560, S.D. 2 states that Justice Policy Institute and the William S. Richardson School of Law as taskforce members. Currently, these two organizations are identified as research collaborators for the study who will gather, analyze, and present information and data. The bill language currently states that the taskforce members will not receive compensation, and we ask consideration to modify language in this section so that their roles as research collaborators will not be negatively impacted inclusive of compensation for their time and work to implement and complete this study.

OHA would like to support SB 506, S.D. 2 with amendments. Mahalo nui loa for allowing us to provide testimony.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Public Safety

From: Paul T. Tsukiyama, Director

Date: March 19, 2009, 8:30 a.m.
State Capitol, Room 309

Re: Testimony on S.B. 560, S.D. 2
Relating to Public Safety

Thank you for the opportunity to submit testimony on S.B. 560, S.D. 2.

The Office of Information Practices ("OIP") takes no position on the substance of this bill, which would establish a task force on disparate treatment of ethnic groups within the criminal justice system. However, OIP has concerns and seeks clarification of a provision on page 5 of the bill, lines 8-13, which states that

The task force shall be exempt from chapter 92, Hawaii Revised Statutes; provided that the task force shall make a good faith effort to make its proceedings and work products accessible and available to the general public in a manner consistent with the intent of chapter 92, Hawaii Revised Statutes.

The Sunshine Law is only part I of chapter 92. Parts II through IV of chapter 92 relate to non-Sunshine Law issues, such as boards' general powers and quorum requirements, copy charges for public records, and publication of legal notices. If the intent of this provision is to exempt the Task Force from the Sunshine Law, OIP recommends that the bill state that the Task Force "shall be exempt from part I of chapter 92."

OIP would, however, recommend that this Committee carefully consider whether it is good policy to exempt the Task Force from the Sunshine Law in light of the express policy and intent of the statute.

In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and actions of government agencies - shall be conducted as openly as possible.

Haw. Rev. Stat. §92-1 (1993).

The issues on the issue on which the Task Force is charged with making recommendations are important to and will directly affect the public at large. Although the bill calls for the Task Force to make a good faith effort to make its proceedings accessible to the public, the way in which it chooses to do so will be entirely within the Task Force's discretion and members of the public will have no recourse if they feel shut out of the proceedings. For instance, if it is exempt from the Sunshine Law, the Task Force will not be required to post notice of its meetings or allow the public to testify at its meetings.

Thank you for the opportunity to testify.



WOMEN'S CAUCUS

DEMOCRATIC PARTY OF HAWAII

Hawai'i State Democratic Women's Caucus 1050 Ala Moana Blvd #D-26, Honolulu, HI 96814 Email: hidemocraticwomenscaucus@yahoo.com

March 19, 2009

To: Representative Faye Hanohano, Chair
Representative Henry Aquino, Vice Chair and
Members of the Committee on Public Safety

From: Jeanne Ohta, Chair of Legislative Committee, Hawai'i State Democratic Women's Caucus

Re: SB 560 SD2 RELATING TO PUBLIC SAFETY
(Thursday, March 19, 2009, 8:30 a.m., Conference Room 309)

Position: STRONG SUPPORT

Thank you for hearing this bill and for allowing me to present testimony today, in strong support of SB 560 SD2 which establishes a taskforce in the Office of Hawaiian Affairs to conduct a study on the disparate treatment of Native Hawaiians and other ethnic groups in the State's criminal justice system.

The Hawai'i State Democratic Women's Caucus (HSDWC) is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. It is because of this mission, the Women's Caucus strongly supports this measure.

HSDWC suggests that the work of the taskforce may not be completed in the time proposed by SD2 and requests that the committee consider giving the taskforce more time to complete the study. Also, the taskforce may need to contract with more than one consultant and provisions should be made for them to contract with more than one contractor so that they make seek out contractors with different expertise as needed..

A resolution supporting this study was adopted by the Hawai'i State Democratic Party at its 2008 convention. That resolution also urges that legislation be introduced to reduce disparities in the state and federal criminal justice systems. The resolution (HLTH 08-07) is attached.

The HSDWC believes that all citizens are entitled to a fair and just judicial system. Disparities in the criminal justice system foster mistrust in the system, which also impedes the promotion of public safety. This study would be a first step to reducing disparity. The purpose of this study is to determine points in the system where disparities occur and identifying the causes. Then, appropriate intervention and action can be taken to reduce disparities.

The Sentencing Project recently released a report "Reducing Racial Disparity in the Criminal Justice System a Manual for Practitioners and Policymakers." (The report is available at: <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=626>). This report defines racial

disparity as “when the proportion of a racial or ethnic group within the control of the system is greater than the proportion of such groups in the general population.

Native Hawaiians make up between 40% and 60% of the incarcerated population; but account for 20% of the state’s population; and are twice as likely to be incarcerated as any other group. High rates of incarceration have profound social impacts on families and communities; have long-term negative impacts on health, family instability, diminished lifetime wages, social stigma, and educational limitations.

The Justice Policy Institute in a 2007 report “The Vortex” also found racial disparities in incarceration rates for drug offenses. Although reports such as this have been done on a national level, policy makers would be able to make better policy decisions and enact legislation to reduce racial disparities with a report on Hawai`i’s criminal justice system. Hawai`i has a unique and multi-cultural population and understanding those nuances requires its own report.

There are many causes of racial disparity; some are institutionalized and long-standing, some are unintended consequences of policies. The study will help determine how we will make the necessary changes.

I urge the committee to pass SB 560 SD2 so that we may take the first step in making our criminal justice system fair for everyone. Thank you for allowing me to testify.

HLTH 08-07 URGING THE REDUCTION IN DISPARITIES IN TREATMENT IN HAWAII'S CRIMINAL JUSTICE SYSTEM

Whereas, the Hawai'i State Democratic Party believes that all citizens of Hawai'i are entitled to a fair and just judicial system; and

Whereas, the country's foremost researchers on race and the criminal justice system have analyzed the impact of race on policing, arrests, prosecution, and sentencing; the studies have uniformly found overwhelming disparities based on race; and

Whereas, Native Hawaiians make up only 9.1% of the total population of the State, yet many correctional facility workers estimate the Native Hawaiian inmate population to be close to 60%; Native Hawaiians average 23% of all arrests in Hawai'i and are twice as likely to be incarcerated as any other group in the State; and

Whereas, studies suggest that incarceration-related risks are more problematic in families where a mother has been incarcerated; adult children of incarcerated mothers are two and one-half times more likely to be incarcerated than adult children of incarcerated fathers; 95% of the 120 female Hawai'i inmates incarcerated at a single mainland prison facility are mothers and 71% of the female participants in an O'ahu furlough program are mothers of minor children; and

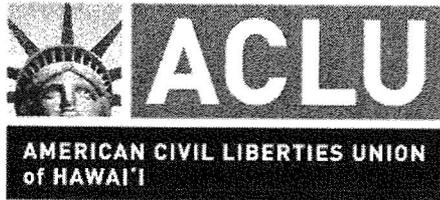
Whereas, Native Hawaiian families are greatly impacted, as almost 60% of children who are placed in child protective services are of Native Hawaiian descent and of those children, 8% to 33% of their parents are incarcerated; and

Whereas, a study would be helpful in determining the extent, nature, and impact of disparate treatment of Native Hawaiians and other ethnic groups in Hawai'i's criminal justice system; now, therefore

Be It Resolved by the Democratic Party of Hawai'i that it shall support a study of disparate treatment in Hawai'i's criminal justice systems; and

Be It Further Resolved that legislation be introduced to reduce disparities in the state and federal criminal justice systems; and

Be It Further Resolved that copies of this resolution be transmitted to members of Hawai'i's Congressional Delegation and the Democratic members of the Hawai'i State Legislature.



Via E-mail: PBSTestimony@Capitol.hawaii.gov
Committee: Committee on Public Safety
Hearing Date/Time: Thursday, March 19, 2009, 8:30 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in Support of S.B. 560, SD2, Relating to Public Safety

Dear Chair Hanohano and the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 560, SD2, which establishes a task force within the Office of Hawaiian Affairs (“OHA”) to study the disparate treatment of native Hawaiians and other ethnic groups in the State’s criminal justice system and includes a provision directing the Department of Public Safety, the Judiciary, the Hawaii Criminal Justice Data Center and other state agencies as requested to cooperate with the directive of the task force. However, it appears that a task force may be unnecessary so long as OHA is willing to conduct the study and so long as the bill continues to contain a provision mandating that state government agencies provide information to OHA in a timely manner.

As evidenced in a recent informational briefing, native Hawaiians are disproportionately represented in prison. Studying the reasons why these disparities exist is the first step towards ensuring that our criminal justice system operates in an even-handed and objective manner.

Among other things, this study will help lawmakers identify subjective, rather than objective, points of decision-making in law enforcement.¹ Differences in incarceration may have their inception because of differences in law enforcement officers’ decisions to arrest an individual or issue a warning; detain the individual or let the individual go free; prosecute the individual for all crimes, lesser-included offenses, or no crimes at all. Differences could arise in the types of sentences sought (probation, community custody, or incarceration). Differences can arise in sentencing reports, transfer decisions, and availability of prison-based programs. Examining these points of disparity – and then taking concrete steps to make law enforcement decision-making as objective as possible – has reduced racial disparities in other jurisdictions² and can do so here in Hawaii.

¹ See, e.g., Building Blocks for Youth Initiative, *No Turning Back Summary: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Justice System* (2005), available at http://www.buildingblocksforyouth.org/noturningback/ntb_summary.pdf.

² See *id.*

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Hon. Rep. Hanohano, PBS Committee,
and Members Thereof
March 19, 2009
Page 2 of 2

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 over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair
Rep. Henry Aquino, Vice Chair
Thursday, March 19, 2009
8:30 AM
Room 309

**SB 560 SD2 - OHA STUDY - DISPARATE TREATMENT OF NATIVE HAWAIIANS
COULD SUPPORT IF AMENDED**
PBSTestimony@capitol.hawaii.gov

Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance the quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

SB 560 SD2 establishes a task force within the Office of Hawaiian Affairs (OHA) to study the disparate treatment of native Hawaiians and other ethnic groups in the State's criminal justice system.

Community Alliance on Prisons strongly supports a study to look at the disparate treatment of native Hawaiians in the criminal justice system. The racism in the criminal justice system is of national concern. Several states have passed legislation regarding the racial disparities in the system and are finding ways to address this inequity. Several national studies have been published directly addressing this issue including Pew Center and The Sentencing Project.

Since OHA has agreed to pay for the study, what is needed now is not a task force, but for the legislature to mandate that agencies in the criminal justice system cooperate with the study's data requests and provide requested information in a timely manner.

Community Alliance on Prisons respectfully requests that the bill be amended to mandate the cooperation of criminal justice agencies in providing data to the study's researchers in a timely manner.

Mahalo for this opportunity to testify.



COMMITTEE ON PUBLIC SAFETY

Rep. Faye P. Hanohano, Chair

Rep. Henry J.C. Aquino, Vice Chair

Thursday, March 19, 2009

8:30am in Room 309

SB 560 SD2 Relating to Public Safety – Support with Amendments

Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Carrie Ann Shirota, and I am writing to provide comments on SB 560 SD2. My experiences as a former Public Defender and staff member of a reentry program on Maui, as well as a member of Community Alliance on Prisons have shaped my advocacy efforts to promote rehabilitation, accountability and transparency within our correctional system, and focus on alternatives to prisons.

The purpose of SB 560 SD2 is to require the Office of Hawaiian Affairs to conduct a study on the disparate treatment of native Hawaiians and other ethnic groups in the State's criminal justice system. As a general principle, I believe that it is important to obtain accurate data about the number of Native Hawaiians that are detained and incarcerated in State (whether at home or in private prisons on the American continent) and federal prisons. The Department of Public Safety's ethnographic data is outdated, and appears to be inaccurate. For example, CCA is still categorizing Native Hawaiians under the category "Asian Pacific Islanders." This is misleading. Moreover, in order to explore solutions and significantly reduce the number of Native Hawaiians in prison, we must have a better understanding of the factors that contribute to their over-representation.

However, I have two overarching concerns regarding the proposed bill.

Concern #1. In 1995, the 18th Legislature was presented with an Action Plan Regarding Native Hawaiians in the Criminal Justice System with the goal of "reducing the proportion of Native Hawaiians in the criminal justice system to below its proportion in the population of 2005." My concern is that we will conduct another study that will get buried in the archives, without a plan of action and actual implementation. In light of these economic times, it may be more cost effective to create a working group to review the action plan, and implement some of its recommendations.

Concern #2. Rather than requiring the Office of Hawaiian Affairs to conduct the study, I believe the study should be conducted by a non-governmental entity. To ensure the integrity of the study, an independent consultant must be able to do conduct the study without the interference or pressure from the Department of Public Safety or any governmental entity. In addition, the Consultant must have access to facilities, prisoners, staff, documents and materials. The Consultant should be required to take a holistic approach to evaluating this issue, relying on observations, interviews, surveys, and other methods of gathering information from prisoners as well as on statistics.

However, if this Committee decides that OHA should be the lead agency in conducting this study, I suggest the following amendments:

- 1) Add: (7) criminologists/researchers familiar with Hawai'i's criminal justice system
- 2) Add Section 3 mandating that all agencies across the criminal justice system cooperate and supply data to researchers involved with this OHA-funded study in a timely manner,
- 3) Add Section 4 saying that this Act takes effect upon approval.

Mahalo for this opportunity to submit testimony in support of SB 560 SD2 with the suggested amendments.

Respectfully submitted,
Carrie Ann Shirota, Esq.
Wailuku, Hawai'i
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