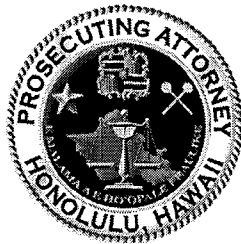


**SB 986**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE DAVID Y. IGE, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Twenty-sixth State Legislature**  
**Regular Session of 2011**  
**State of Hawai'i**

February 25, 2011

**RE: S.B. 986, S.D. 1; RELATING TO CRIMINAL JUSTICE SYSTEM.**

Chair Ige, Vice-Chair Kidani, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 986, S.D. 1. While disproportionate representation of Native Hawaiian people in the criminal justice system is certainly of great concern, there is absolutely no indication of any disparate treatment within the criminal justice system.

S.B. 986, S.D. 1 is based on a study conducted by the Office of Hawaiian Affairs and representatives from other organizations, which was expressly formulated to "examine[] the impact of the criminal justice system on Native Hawaiian[ people,] with the purpose of effecting policy change...and serving as a tool for communities to advocate for change within the criminal justice system." Based on this premise, S.B. 986 aims to appropriate funds for and establish a task force "to formulate policies and procedures to eliminate the disparate treatment of all peoples in Hawaii's criminal justice system, with particular focus on Native Hawaiian[ people]." Although the study compiled a wide array of statistics and other information, there was ultimately no basis to conclude that there is disparate treatment of people—from any ethnic background—in Hawaii's criminal justice system.

In particular, this study neglected to incorporate two of the most important factors considered for purposes of sentencing within the criminal justice system: criminal history and specific facts of the case. Aside from one (1) national juvenile court analyses discussed on page 68, none of the other analyses discussed in this study controlled for the criminal histories of any of the perpetrators, and none of the analyses—including the national juvenile court analyses—reviewed the specific facts or severity of circumstances for each individual crime committed.

Thus, even if we accept the study's findings that there is disproportionate representation of Native Hawaiian people within the criminal justice system, disproportionate representation is not tantamount to disparate treatment.

We feel that a number of other factors may contribute to the disproportionate representation indicated by the study, aside from anything in the criminal justice system. Statistics kept by our Victim Witness Kokua Services Division suggest that Native Hawaiian may also be the second (or first) most prevalent ethnicity among our crime victims, with 22% of all crime victims identifying themselves as Hawaiian/Part-Hawaiian.<sup>1</sup> Such disproportionate representation among victims is also of great concern to us.

Because the study referenced in S.B. 986, S.D. 1 was unable to draw a clear connection to indicate any disparate treatment of Native Hawaiians in the criminal justice system, the Department strongly believes that it would be very premature, or perhaps even misguided, to formulate a task force to "fix" a system that may not even be "broken" in the manner put forth. In a prior hearing on this bill, there were comments that many people are currently in prison for drug offenses, as these types of convictions often come with mandatory sentencing. Should OHA or any other organization see fit to establish a drug treatment center that caters specifically to Native Hawaiians drug offenders, thereby placing them into treatment and diverting them from the criminal justice system, our Department would certainly be willing to work with that program and dismiss any pending criminal charges as appropriate.

For all of these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 986, S.D. 1. Thank you for this opportunity to testify.

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<sup>1</sup> VWAD statistics indicate that 26% of our clients/crime victims were "Caucasian," but no further specification or breakdown of "Caucasian" was requested, so this category is likely comprised of numerous ethnicities. Aside from Hawaiian and Caucasian, approximately 18% of our clients/crime victims identified themselves as Mixed or Other, and the rest were reported in decreasing amounts as Filipino, Asian/Pacific Islander, Japanese, Black, Samoan, Korean, Chinese, Hispanic, Other Polynesian, Vietnamese and Other Asian. All ethnicities were self-reported, self-identified, and approximately 45% of all clients provided no response regarding their ethnicity.



**SB 986 SD1**  
**RELATING TO THE CRIMINAL JUSTICE SYSTEM**  
Senate Committee on Ways and Means

February 25, 2011

9:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** SB 986 SD1, which is a bill in OHA's 2011 Legislative Package. This bill establishes a task force to lessen the instances of the people of Hawai'i, especially Native Hawaiians, becoming entangled in the criminal justice system. The bill also appropriates funds.

OHA's recent report, "The Disparate Treatment of Native Hawaiians in the Criminal Justice System," shows that the number of Native Hawaiians in the criminal justice system accumulates at each stage from arrest through parole. While Native Hawaiians are arrested at a comparable rate to other populations, they are more likely to be incarcerated, have longer sentences and have their parole revoked.

Existing task forces and groups such as the Interagency Council on Intermediate Sanctions and Corrections Population Management Commission focus their efforts on sentenced offenders. The proposed task force would fill a different need by approaching the issue of pre-incarceration.

OHA's study indicates that early intervention will decrease the need for incarceration and lighten the impact on the judiciary and other stakeholders in the criminal justice system. The task force members, representing key stakeholders, can create internal policy shifts without increasing the need for resources. They will bring the expertise required to make decisions that will balance the need to protect public safety with the need to ensure the Native Hawaiians are treated fairly.

Therefore, OHA urges the committee to PASS SB 986 SD1. Mahalo for the opportunity to testify on this important measure.