
Is There an Uneven Administration of Justice for Native Hawaiians in Hawai‘i?

**A Report of the Hawai‘i Advisory Committee to the
United States Commission on Civil Rights**

September 2011

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State Advisory Committees

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees study and advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; and forward advice and recommendations to the Commission, as requested.

The Hawai'i Advisory Committee to the U.S. Commission on Civil Rights

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Letter of Transmittal

Hawai'i Advisory Committee to the U.S. Commission on Civil Rights

Kimberly A. Tolhurst
Delegated the Authority of the Staff Director

The Hawai'i Advisory Committee to the U.S. Commission on Civil Rights submits this report, *Is There an Uneven Administration of Justice for Native Hawaiians in Hawai'i?*, as part of its responsibility to study and advise the Commission on civil rights issues in Hawai'i that are under the jurisdiction of the Commission. This report was adopted by a vote of 12 yes and 1 no.

Information and testimony received by the Hawai'i Advisory Committee from numerous sources to include officials of the state's criminal justice system show a serious disparity affecting Native Hawaiians in the state's criminal justice system. Though Native Hawaiians comprise approximately 20 percent of state's population, they comprise more than 40 percent of the state's prison population, which I have confirmed by personal observation during many visits to all of Hawai'i's prisons over the last 35 years.

The reasons for the disparity, however, are complex, and have seemed intractable for a number of decades. In its briefing on the issue, the Hawai'i Advisory Committee heard that seven major characteristics contribute to criminal behavior to include: poverty, unemployment, lack of education, single parent families, substance abuse, youth, and a family member in the criminal justice system. Native Hawaiians in the state, as a group, disproportionately possess these characteristics. However, such explanations may not adequately explain the particular disparity with respect to Native Hawaiians as the Hawai'i Advisory Committee also heard testimony that commonly accepted reasons for criminal behavior may not accurately account for such disparities in the particular case of Native Hawaiians.

To its credit the State of Hawai'i recently commissioned a study of this issue, and in 2010 the Office of Hawaiian Affairs (OHA) released a first study that examined disparities in the criminal justice system and Native Hawaiians. Of noteworthy interest, the OHA study pointed out that it is a relatively recent phenomenon for Native Hawaiians to be disproportionately represented in the criminal justice system. Through the mid-1900s other immigrant groups to the state were disproportionately impacted and Native Hawaiians were underrepresented in the criminal justice system.

A second and more in-depth study of the issue has now been authorized by the state Legislature. The Hawai'i Advisory Committee commends the State of Hawai'i for taking this initiative, as this is an important civil rights issue that requires not only attention but resolution.

In adhering to its statutory mandate to study information relating to discrimination or a denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, the Hawai'i Advisory Committee intends to give the issue of the administration of justice its continued attention. The Committee is resolved not only to assess this issue in its own right, but also to monitor forthcoming studies from state sanctioned sources as well other independent studies and offer its bipartisan judgment on this important civil rights issue.

Respectfully,
Michael A. Lilly, *Chairman*
Hawai'i State Advisory Committee

The Hawai'i Advisory Committee to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established state advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees examine civil rights issues in their states that are within the Commission's jurisdiction. This.¹

The modern civil rights movement had its roots in anti-slavery activities prior to the Civil War, such as the American Anti-Slavery Society and the New England Anti-Slavery Society. In the ensuing decades after the Civil War, southern states began passing segregation laws marking the beginning of the "Jim Crow" era. In 1896, the U.S. Supreme Court upheld the legality of these segregation statutes in its infamous *Plessy* decision. The modern day civil rights movement occurring in the South in the late 1950s, its work has expanded to include the provision of equal opportunity for all minority groups.

Although the Commission and its state advisory committees were established primarily in response to issues of racial segregation, the civil rights movement would expand its initially focused concern regarding equality for African Americans to encompass other identifiable minority groups, such as women, American Indians, Latinos, and the disabled. In Hawai'i, the work of the Hawai'i Advisory Committee to the U.S. Commission on Civil Rights (Hawai'i Advisory Committee) has focused its attention on equal opportunity issues as they relate to Native Hawaiians.²

In October 1980 the Hawai'i Advisory Committee released a first report on long neglected problems affecting homelands for

¹ State advisory committees advise the Commission concerning matters includes the study of discrimination or a denial of equal protection of the laws under the Constitution because of color, race, religion, sex, age, disability or national origin or in the administration of justice. CFR 45 § 703.2.

² *Breach of Trust? Native Hawaiian Homelands*, Hawai'i Advisory Committee to the U.S. Commission on Civil Rights, October 1980.

Native Hawaiians. The study examined the administration of the Hawaiian Homes Commission Act of 1920 (HHCA).³ The Committee followed-up on this report with a second study, and found a continued failure by the federal and state governments to protect the civil rights of Native Hawaiians.⁴

In 2009, at a meeting of the Hawai'i Advisory Committee in Honolulu, there was an expressed concern among Committee members that some minority groups may be suffering discrimination in the administration of justice. The Hawai'i Advisory Committee resolved to examine this issue and make its findings public.

On September 20, 2010, the Hawai'i Advisory Committee held a community forum on the administration of justice. At the forum the Committee received testimony from law enforcement agencies and elected officials. The Committee also received information from individuals, community organizations, and researchers that had studied the issue. Additional information was submitted to the Committee for the record. The testimony and information received by the Committee during the hearing process primarily focused on Native Hawaiians. This report by the Hawai'i Advisory Committee is its statement regarding the administration of justice and Native Hawaiians.⁵

³ 42 Stat. 108 (1921).

⁴ See: *A Broken Trust, The Hawaii Homelands Program: Seventy Years of Failure by the Federal and State Governments to Protect the Civil Rights of Native Hawaiians*, Hawai'i Advisory Committee to the U.S. Commission on Civil Rights, December 1991.

⁵ The forum was held on September 20, 2010, at the Liliha Public Library, Honolulu, Hawai'i. Testifying before the Committee were: Tommy Johnson (Department of Public Safety); Cpt. Gordon Shiraishi and Lt. Coby Tatsuyama (Honolulu Police Department); Roy Reeber (Hawai'i Paroling Authority); Cecelia Chang and Tana Kekina-Cabaniero (Office of the Prosecuting Attorney); Representative Faye Pua Hanohano; Kat Brady (Community Alliance on Prisons); RaeDeen Keahiolalo-Karasuda (Kamehameha Schools); Meda Chesney-Lind (University of Hawai'i); and Alphonso Braggs (Honolulu NAACP).

Officials from law enforcement agencies respond to allegations of disparities in the administration of justice

Hawai'i Department of Public Safety

Unlike most other states, Hawai'i has a unified correctional system. The Hawai'i Department of Public Safety (HDPS) oversees the Corrections Division, which includes local jails and state prisons; a law enforcement division, which includes narcotics and sheriff divisions; and the Parole Authority. Tommy Johnson, deputy director of HDPS, reported to the Hawai'i Advisory Committee that HDPS is at the 'back-end' of the criminal justice system. As such, HDPS has no direct involvement in affecting which persons come under its jurisdiction.⁶

Addressing the issue of disparities in the criminal justice system, Johnson provided information to the Hawai'i Advisory Committee from HDPS that showed Native Hawaiians substantially overrepresented in the state's correctional system. Persons identified as Native Hawaiian/Part Hawaiian are 41 percent of the prison population. Whites comprise 27 percent of the persons in prison, while Filipinos are 11 percent. No other racial or ethnic group makes-up more than 10 percent of the state's prison population. (See Table 1.) The data displays a striking disparate representation of Native Hawaiians in the correctional system.

Despite the data reported by his department, Johnson noted that he does not believe the presented data on race and ethnicity is reliable. "Despite the fact that the data show an overrepresentation of Native Hawaiians, there needs to be a more definitive definition of race and ethnicity. Presently, offender data is self-reported. So the race and ethnicity of a person is whatever the person claims. To accurately assess any disparity, race and ethnic data need to be more carefully gleaned."⁷

⁶ Tommy Johnson, testimony before the Hawai'i Advisory Committee to the U.S. Commission on Civil Rights, Sept. 20, 2010, Honolulu, Hawai'i (hereafter *Hawai'i Justice Hearing*.)

⁷ Ibid.

Hawai'i Paroling Authority

Administratively attached to HDPS is the Hawai'i Paroling Authority (HPA). Roy Reeber, Board Member of the HPA, told the Hawai'i Advisory Committee that the prison population in Hawai'i has doubled since the 1990s. He also confirmed OHA's finding that under the Hawai'i criminal justice system the Parole Board sets the minimum time to be served before the person is eligible for parole. The other part of sentencing comes from the presiding judge, who sets the maximum sentence to be served.⁸

Table 1
Race and ethnicity of persons
Incarcerated in Hawai'i, as of June 30, 2010

	Percent
Hawaiian/Part Hawaiian	41
White	27
Filipino	11
Japanese	6
Samoaan	4
African American	3
Hispanic	2
Chinese	0
Korean	1
Other**	3
Other Pacific Islander	0
Not Reported	2

Source: Hawai'i Department of Public Safety.

* "Other" includes American Indians, Vietnamese, and other groups not listed.

** "Not reported" represents that person did not indicate a race or ethnicity to HDPS.

Like Johnson, Reeber also advised the Hawai'i Advisory Committee that racial and ethnic data published by the department has limitations due to the self-reporting of race and ethnicity. "When a suspect or detainee is asked his or her race or ethnicity, the first item reported by the person is what is recorded. If the suspect says 'Hawaiian,' then that is what is recorded. If the suspect says 'Hawaiian and white,' then 'Hawaiian' is recorded."⁹

⁸ Roy Reeber, *Hawai'i Justice Hearing*.

⁹ Ibid.

Speaking to recidivism rates, in the opinion of Reeber, rates for parolees and prisoners do not significantly differ along racial and ethnic lines. He told the Hawai'i Advisory Committee that prisoners of Japanese ethnicity had the highest recidivism rate at 68 percent, while Filipinos had the lowest at 52 percent; the rate of recidivism for Hawaiians was 60 percent.¹⁰

Honolulu Police Department

Captain Gordon Shiraishi and Lieutenant Coby Tatsuyama from the Training Division of the Honolulu Police Department (HPD) also testified before the Hawai'i Advisory Committee about disparities in the administration of justice. HPD is the largest law enforcement agency in the state, with more than 2,000 sworn officers. It polices the area of the state with the largest population and the portion of the state that accounts for 70 percent of all crime and 75 percent of all violent crime.¹¹

Table 2
Crime rates for Hawai'i and the City and County of Honolulu

	State	City and County of Honolulu	Honolulu percent
Violent crime	3,432	2,570	74.9
Property crime	60,635	42,383	69.9
Total	64,067	44,953	70.2

Source: Uniform Crime Reporting Data, State of Hawai'i.

Captain Shiraishi said: "From my experience, police officers just go out there and enforce the law. Everyone is the same to the police officer, and the department really stresses that concept with its officers. When new officers are first trained they are given a course in bias-free profiling, and that training is repeated by officers after they graduate from the academy."¹²

Captain Shiraishi emphasized to the Hawai'i Advisory Committee that the department stresses to its officers the HPD policy of bias-

free profiling. "The policy of the department is that officers are to be fair, act with integrity, and treat everyone with the same standard. For example, if a police officer wants a warrant issued, there are policies in place that must be followed. The determination to issue a warrant is based on the evidence, not on the race or ethnicity of the suspect."¹³

Captain Shiraishi repeated the earlier remarks from officials of HDPS and HPA that race and ethnic arrest data are self-reported, and therefore suspect. "When someone gets arrested, it is what the person says that determines their race or ethnicity. There is a lot of mixture in Hawai'i, so a person who is arrested may say "Hawaiian," but is really 70 percent white. To the arresting officer, that person is Hawaiian."¹⁴

Table 3
Race and ethnicity of Honolulu Police Department police officers

	Number	Percent
White	336	17.1
Black/Puerto Rican	51	2.6
Filipino	186	9.4
Hawaiian/Part Hawaiian	529	26.9
Asian	487	24.7
Other	348	17.7
Samoan/Pacific Islander	32	1.6

Source: Honolulu Police Department.

HPD also provided a racial and ethnic profile of its sworn police officer force to the Hawai'i Advisory Committee. Hawaiians/Part Hawaiians comprise the largest ethnic group on the police force, at 27 percent of the police force. The next two largest racial/ethnic groups represented in the department were Asians and whites, comprising 25 and 17 percent respectively of the total police force.¹⁵

¹⁰ Ibid.

¹¹ See Table 2.

¹² Captain Gordon Shiraishi, *Hawai'i Justice Hearing*.

¹³ Ibid.

¹⁴ Ibid..

¹⁵ See Table 3.

Office of the Prosecutor states that it does not prosecute on the basis of race or ethnicity nor track data on that basis

The four counties of Hawai‘i are the only legally constituted government bodies below that of the state. No formal level of government (such as city governments) exists below that of the county in Hawai‘i. As such, county offices of the Prosecuting Attorney are the legal agencies responsible for the prosecution of criminal offenses occurring in their jurisdictions. Deputy prosecutors are not civil servants with immunity to act independently. Prosecuting attorneys are political appointees, who serve at the pleasure of the elected Prosecuting Attorney.¹⁶

Speaking to the issue of disparities in the administration of justice, Cecelia Chang and Tana Kekina-Cabaniero, deputy prosecuting attorneys, represented the City and County of Honolulu Office of the Prosecuting Attorney (HOPA). Ms. Chang asserted that there was no racial or ethnic bias in the prosecution of crimes. “My earnest belief is that there is no ethnic or racial discrimination in criminal prosecutions by the Office of the Prosecuting Attorney. The decision to prosecute is evidence-based. If a file is presented to our office that has sufficient evidence to prove beyond a reasonable doubt, then our office will prosecute. In cases where there is insufficient evidence, the Prosecuting Attorney will decline to prosecute.”¹⁷

Moreover, regarding race and ethnic data, Chang informed the Hawai‘i Advisory Committee that HOPA does not have the capability to track prosecution decisions by race or ethnicity, as that information is not maintained. The only exception to this rule is for hate crimes, and for those crimes it is the race and ethnicity of the victim that is tracked. This also applies to pre-trial detention decisions. As Chang told the Committee: “Once a decision to charge has been made, there are multiple factors that can affect pre-trial detention. Some of these are prior

criminal history, grade of offense, felon in possession, career criminal, and flight risk.”¹⁸

Apart from prosecution, Chang informed the Hawai‘i Advisory Committee that HOPA actively engages in community efforts to prevent crime. Chang noted for the Hawai‘i Advisory Committee that 10 percent of all offenders commit 50 percent of all crimes. Similarly, 10 percent of victims are associated with almost half of all victimization, and 10 percent of locations are responsible for 60 percent of police calls for service.

As a result, HOPA has developed community programs designed to proactively educate victims, control potential offenders, and improve locations to eliminate chronic crime problems.¹⁹ Along with this initiative by HOPA, Chang further told the Hawai‘i Advisory Committee that seven major characteristics contribute to criminal behavior. These are:

- poverty,
- unemployment,
- lack of education,
- single parent families,
- substance abuse,
- youth, and
- family member in the criminal justice system.

As a group, Native Hawaiians in the state disproportionately possess these characteristics. The rate of poverty is much higher for Native Hawaiians; fewer Native Hawaiians have post-secondary degrees; almost 40 percent of Native Hawaiian children live in single-parent households; the median age of Native Hawaiians is 10 years younger than the general population; and, as can be inferred from data received by the Committee from HDPS, Native Hawaiians are more likely to have a family member in the criminal justice system.²⁰

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ See Tables 4, 5, and 6.

¹⁶ Cecelia Chang, *Hawai‘i Justice Hearing*.

¹⁷ Ibid.

Representatives of the African American community assert discrimination in the administration of justice

The Hawai'i Advisory Committee also heard from other individuals, who asserted that Native Hawaiians along with other minority groups suffer from a disparate administration of justice. Alphonso Braggs, president of the Honolulu chapter of the NAACP, and Andre Wooten, a practicing attorney in Honolulu, were among persons to express such views.

Alphonso Braggs told the Hawai'i Advisory Committee that racial and ethnic disparities in justice have a long history in the state. "It is sad for me to say that we are now again talking about the same substantive points that have been discussed many times before in the past. That is, simply, we have a disproportionate number of ethnic minorities who are not receiving equal justice under the law."²¹

Braggs went on to say that discrimination may not be intentional, but it still exists. He asserted that if Hawai'i is serious about eradicating the sources of this injustice, an in-depth analysis of the issue is required. "I do not believe that any police officer gets into his car and says, 'Today I'm going to go out and get someone of this particular race or ethnicity.' But among the police officers there are some who practice discriminatory behavior, and an examination of the police reports would support that assertion. There needs to be a complete assessment of the justice system in all aspects and over a period of time to fully analyze these racial and ethnic disparities and the reasons for them."²²

Andre Wooten wrote to the Hawai'i Advisory Committee that discrimination is subtle, and for that reason it is difficult to establish with irrefutable evidence that disparities exist in the criminal justice system. "Like every place, there is a mixed bag and a dichotomy in the treatment of minorities by the criminal justice system in the State of Hawai'i. Not all situations are good, and not all situations are black and white. At the

same time it cannot be denied that African Americans represent six to seven percent of the state's prison population, and that is twice their official number according to the Census."²³

Wooten expressed the concern that a lack of diversity among judges acts to impede a fair and impartial administration of justice. "While there are a few African American prison guards and a few African American probation officers, at this time there are absolutely no African American judges or magistrates on the Federal bench in Hawai'i [The African American community] has called upon the government of the State of Hawai'i to appoint an African American judge or two, reasoning that if [other judges] had African American attorneys and judges as peers and mentors [they] would have colleagues to discuss matters with and become sensitized to unconscious racism, which we fear displays itself in sentencing disparities."²⁴

"There needs to be a complete assessment of the justice system in all aspects and over a period of time to fully analyze these racial and ethnic disparities and the reasons for them."
Alphonso Braggs

Representatives from the Sentencing Project commented to the Hawai'i Advisory Committee that Native Hawaiians are disproportionately represented in Hawai'i prisons. Simply reducing the prison population would serve to address one part of the disparity problem. Other states have acted to amend probation and parole policies as well as to expand good time and earned time programs that have resulted in reducing prison sentences. The vast sums of money spent on prisons could be shifted to far more productive and pro-social uses like restoring funds to public education and strengthening the tattered social service safety net.²⁵

²³ Andre S. Wooten, submitted testimony to the Hawai'i Advisory Committee, Aug. 16, 2010.

²⁴ Ibid.

²⁵ See Sabol, William J. and Heather West and Matthew Cooper, *Prisoners in 2008*, Bureau of Justice Statistics, National Institute of Justice.

²¹ Alphonso Braggs, *Hawai'i Justice Hearing*.

²² Ibid.

Native Hawaiians in Hawai'i

Despite the formal and legal definition, the term Native Hawaiian lacks precision due to the racial and ethnic heterogeneity of Hawai'i. Only 56 percent of the people in Hawai'i indicate an "unmixed" racial/ethnic background. The United States census, in its community survey of the population, classified Native Hawaiians by several categories to include: Native Hawaiian alone as well as several "mixed" categories."²⁶

Census reports that the Native Hawaiian population in Hawai'i is between 6 percent and 20 percent, depending upon definition. The Census also reports that the Native Hawaiian population is significantly younger than other racial and ethnic groups. While the median age of all residents in the state is about 34, the median age for Native Hawaiians is 24.²⁷

Table 4
Native Hawaiian population of Hawai'i

	percent of population	median age
Non-Native Hawaiians	80.1	34.5
Native Hawaiian Alone or in Combination with other races	19.9	24.6

Source: U.S. Census, 2005 Community Survey, Hawai'i.

Educational levels are similar between Native Hawaiians and other persons in the state through high school, however post-secondary education levels differ. Ten percent of all Native Hawaiians have less than a high school education, similar to 12 percent of the general adult population. However, 20 percent of the state's adult population has at least a bachelor's degree, while only 10 percent of Native Hawaiians possess a post-secondary degree.²⁸

The difference in education is related to income. The median annual income for all adult persons in Hawai'i is \$39,000; for Native Hawaiians it is

substantially less at about \$29,000. Additionally, while one-third of the general population is employed in managerial/professional positions, only 22 percent of all Native Hawaiians are employed in these types of positions. Sales and service jobs account for half of the employment for Native Hawaiians.²⁹

Table 5
Percent of population in Hawai'i with post-secondary degree and median income

	pct with post-sec degree	median income
General population	18.8	38,703
Native Hawaiian Alone or in Combination with other races	10.4	29,447

Source: U.S. Census, 2005 Community Survey, Hawai'i.

The poverty rate for Native Hawaiians is higher than that of the general population. Fifteen percent of Native Hawaiians live in poverty, compared to 9.8 percent of the general population overall. Among persons under 18 years of age, about 13 percent live in poverty while 20 percent of all Native Hawaiian children live in poverty.

These proportions tend to correlate with single parent households. In Hawai'i, 28 percent of all households with children are single-parent homes. For Native Hawaiian households, it is 38 percent.³⁰

Table 6
Poverty rates in Hawai'i

	All persons	Children under the age of 18
General population	9.8	13
Native Hawaiian Alone or in Combination with other races	15	20

Source: U.S. Census, 2005 Community Survey, Hawai'i.

²⁶ For purposes of this part, unless otherwise stated the term Native Hawaiian as used is the census designation, "Native Hawaiian alone or in combination with other races."

²⁷ See Table 4.

²⁸ See Table 5.

²⁹ U.S. Census, 2005 Community Survey, Hawai'i.

³⁰ See Table 6.

Native Hawaiians testify to disparities in the administration of justice

Native Hawaiians testified before the Hawai'i Advisory Committee on the issue of disparities against Native Hawaiians in the administration of justice. Representative Faye Pua Hanohano, from Puna, District 4, asserted unequivocally that inequalities existed in the justice system. RaeDeen Keahiolalo-Karasuda, who wrote her dissertation on the politics of incarceration in Hawai'i, also testified to the existence of disparities in the justice system.

Representative Hanohano told the Hawai'i Advisory Committee: "I am a retired corrections officer with 25 years of service at the Kūlani Correctional Facility. I know there is a disparity against Native Hawaiians. I witnessed this for over 25 years at Kūlani. I observed the high rate of Native Hawaiians in the general prison population. It is important to realize that when a person is incarcerated, it is the person's family who is incarcerated as well."³¹

"Many young Native Hawaiians today live in broken homes. They do not have the guidance of Kupuna and Makua teachings in their early years; as I did as a child."

Faye Pua Hanohano

Hanohano said that it is imperative when dealing with criminal behavior that an entire conceptual approach of well-being be adopted. This is particularly true when providing social services to Native Hawaiians, given their culture and traditions.

Hanohano told the Committee: "Many young Native Hawaiians today live in broken homes. They do not have the guidance of Kupuna and Makua³² teachings in their early years, as I did as a child. If we would begin to focus on an interconnectedness of well-being through a Native Hawaiian perspective instead of being punitive, we could help many of these offenders change their lives."³³

³¹ Faye Pua Hanohano, *Hawai'i Justice Hearing*.

³² Grandparent and parent.

³³ Faye Pua Hanohano, *Hawai'i Justice Hearing*.

RaeDeen Keahiolalo-Karasuda told the Hawai'i Advisory Committee, "I listened to a Native Hawaiian tell his story about being incarcerated for five years in a maximum security facility on O'ahu. He said that every night during the head count it would take the guards over fifteen minutes to call Hawaiian last names beginning with the letter 'K'. The fact that it took more than 15 minutes to call just one letter representing Hawaiian last names offers a disturbing visual image on Native Hawaiians and the administration of justice."³⁴

Keahiolalo-Karasuda told the Hawai'i Advisory Committee that traditional explanations for criminal behavior, such as poverty, education, and other indicators of social distress, are inadequate when examining the issue as it pertains to Native Hawaiians. To understand the disparities in justice and Native Hawaiians, the problem needs to be analyzed through an historical and political lens.

"Individual risk factors and pathways to crime do not and cannot fully explain the high rates of incarceration among Native Hawaiians. Many historical examples exist that demonstrate the ways that the legal system, media, and policies and practices have worked to criminalize Native Hawaiians and their identities. These include but are not limited to: the launch of 19th century opium narratives in the American press; legislative initiatives against Chief Kamanawa's grandchildren to dethrone them and overthrow their nation; 20th century narratives in the media and legislation portraying Native Hawaiians as angry and violent when the Hawaiian Renaissance emerged in the 1970s; media depictions of Hawaiians in the war on drugs as dangerous and criminal drug addicts in the 1980s and 1990s; and, finally, the current situation in which Native Hawaiians are disproportionately shipped to private prisons on the U.S. continent, for their rehabilitation and the public's safety, according to the state."³⁵

³⁴ RaeDeen Keahiolalo-Karasuda, *Hawai'i Justice Hearing*.

³⁵ *Ibid.*

Criminologists testify that Native Hawaiians are adversely affected by the justice system

Meda Chesney-Lind, professor of criminology at the University of Hawai'i at Manoa, told the Hawai'i Advisory Committee that there is a disparity against Native Hawaiians in the administration of justice. Also, in recent decades Hawai'i has dramatically increased its use of incarceration, and this has had a particularly devastating effect on Native Hawaiians.

Chesney-Lind said: "In Hawai'i, it has long been recognized that Native Hawaiians are over-represented in the prisons. Disproportionate representation is also evident in the state's juvenile justice system. Youth housed at Hawai'i's only juvenile detention center shows 58 percent of boys and 49 percent of girls are Hawaiian."³⁶

According to Chesney-Lind, the growth in Hawai'i's prison population in the last three decades is an acute problem for the state. "Hawai'i now incarcerates over 6,000 inmates. That is up from 5,053 in 2000; a 20 percent increase since the turn of the century. Moreover, about one-third of those inmates are being held on the mainland at for-profit prisons where regular visitation with loved ones is virtually impossible and other forms of communication costly."³⁷

Chesney-Lind told the Hawai'i Advisory Committee that spending on state prisons is not only exorbitant, but comes at a high social cost. "In Hawai'i, since the turn of the century, the corrections budget in Hawai'i has increased by 87 percent. During that same time, tax dollars spent to send prisoners to private prisons on the mainland increased by 192 percent. Every tax dollar spent on prisons takes money away from other important government services, such as public education and needed social safety net services. The general public is losing because of this trade-off."³⁸

Kat Brady, coordinator of Community Alliance on Prisons, agreed with Chesney-Lind. She held that the state's over-reliance on prisons has not only harmed the Native Hawaiian population but the general public as well. Brady told the Hawai'i Advisory Committee: "If Hawai'i was an independent country, it would be the fifth largest jailer in the world. Hawai'i imprisons 334 out of every 100,000 persons in the state; that rate of incarceration is just behind South Africa and just ahead of Taiwan."³⁹ Of those incarcerated in Hawai'i, 39 percent are Native Hawaiians and 12 percent are Filipinos. Those two groups account for more than half of all the persons incarcerated by Hawai'i."⁴⁰

"If Hawai'i was an independent country, it would be the fifth largest jailer in the world."
Kat Brady

Brady also stressed that the state's justice system in the state is unusually harsh on women. That reality also plays a role in adversely affecting the Native Hawaiian community. "Female rates of incarceration in Hawai'i are twice the national average. Under the federal Adoption and Safe Families Act, children in foster care for 15-22 months must be permanently placed. In Hawai'i, the average prison sentence for women is 26 months. Almost half of these women are Native Hawaiians. More than 70 percent of these women are mothers of young children."⁴¹

Brady further testified that the state's prison policy is simply not cost effective. "In 2008, the two largest indices of crime were larceny and burglary. These crimes are about drug addiction. We have a public health problem, and we are trying to solve it as a criminal problem. It costs \$50,000 a year to incarcerate someone in Hawai'i. It costs about \$19,000 to provide drug treatment."⁴²

³⁹ Citing: "2009 World Incarceration Rates," International Center for Prison Studies, King's College, University of London.

⁴⁰ Kat Brady, *Hawai'i Justice Hearing*.

⁴¹ *Ibid.*

⁴² *Ibid.*

³⁶ Meda Chesney-Lind, *Hawai'i Justice Hearing*.

³⁷ *Ibid.*

³⁸ *Ibid.*

Office of Hawaiian Affairs 2010 study finds disparate treatment of Native Hawaiians in administration of justice

In 2010, the Office of Hawaiian Affairs (OHA) released its study that examined the impact of the criminal justice system on Native Hawaiians.⁴³ The report was the result of a collaborative research project supported by the State of Hawai‘i for the purpose of effecting policy change at the legislative and administrative levels and serving as a tool for communities to advocate for change within the criminal justice system.

As summarized in the report’s Executive Summary, for the last two centuries the criminal justice system has negatively impacted Native Hawaiians. As Clyde Nāmu‘o wrote in the preface to the report: “It is clear that when Native Hawaiian persons enter the criminal justice system, they serve more time in prison and more time on probation than other racial or ethnic groups. Native Hawaiians are also more likely to have their parole revoked and be returned to prison compared to other racial or ethnic groups. Coupled with the experiences of pa’ahao⁴⁴ included in the pages of this report, it is clear that Native Hawaiians are caught in a cycle of imprisonment that is perpetuated across generations.”⁴⁵

The OHA report found a disparate impact by the criminal justice system on Native Hawaiians.

Native Hawaiians make up 24 percent of the general population of Hawai‘i, but [Hawaiians are] 36 percent of those admitted to prison, ...39 percent of the incarcerated population,... 39 percent of those on parole, and 41 percent of parole revocations.⁴⁶

⁴³ Office of Hawaiian Affairs, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, 2010, at http://www.oha.org/index.php?option=com_content&task=category§ionid=4&id=149&Itemid=358 (hereafter *Native Hawaiians in the Criminal Justice System*).

⁴⁴ An individual who is incarcerated.

⁴⁵ Clyde Nāmu‘o, Foreword, *Native Hawaiians in the Criminal Justice System*.

⁴⁶ *Native Hawaiians in the Criminal Justice System*, Executive Summary.

The OHA report further found that once found guilty by the courts, Native Hawaiians are more likely to be sentenced than other groups of persons except Native Americans.

An analysis of data...controlling for age, gender, and type of charge, found that for any given determination of guilt, Native Hawaiians are much more likely to get a prison sentence than almost all other groups, except for Native Americans.⁴⁷

**Table 7
Likelihood of sentencing to prison for selected racial and ethnic groups**

	Percent
Native Hawaiians	100
African Americans	97
Native Americans	41
White	67
Filipino	63
Japanese	50
Chinese	47

Source: Office of Hawaiian Affairs

The OHA report also found that Native Hawaiians receive longer prison sentences and longer probation terms than other racial and ethnic groups. Native Hawaiians also comprise the largest group of persons incarcerated in out-of-state correctional facilities.

Controlling for severity of charge, age at arrest and gender of the person charged, Native Hawaiians are sentenced to...more days in prison.... Native Hawaiians also serve more time on probation than other racial and ethnic groups, except for Hispanics.... Of the people in out-of-state [correctional] facilities, 41 percent are Native Hawaiians.⁴⁸

Of noteworthy interest, the OHA report points out that it is a relatively recent phenomenon for Native Hawaiians to be disproportionately represented in the criminal justice system. Through the mid-1900s, Native Hawaiians

⁴⁷ Ibid.

⁴⁸ Ibid.

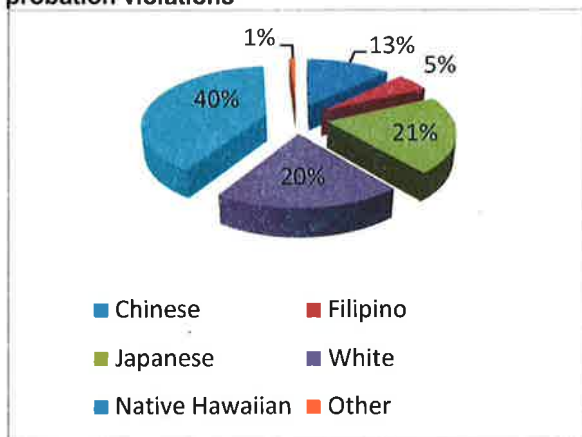
were disproportionately underrepresented in the criminal justice system. It was other immigrant groups imported to labor on plantations in Hawai‘i, such as the Chinese and Japanese, who were generally viewed as a threat and feared by white colonists.⁴⁹

The OHA report set out factors that contribute to the disparate treatment of Native Hawaiians in the administration of justice, to include:

- the discretionary nature of sentencing;
- the particular trauma of incarceration for Native Hawaiians; and
- the lack of effective and appropriate rehabilitative services.⁵⁰

The discretionary nature of sentencing seems of particular concern for Native Hawaiians. The real determination of a sentence appears not to be set by a judge, but by the Hawai‘i Paroling Authority (HPA).⁵¹ The OHA report concludes that “many persons who have had contact with the Paroling Authority see the system as arbitrary.”⁵²

Figure 1
Proportion of persons returned to prison for probation violations



Source: Office of Hawaiian Affairs

According to the OHA report, incarceration is a particularly traumatic experience for Native Hawaiians. Culturally, Native Hawaiians have uniquely strong connections to the land,

family, and their community. As a result, the actual act of imprisoning Native Hawaiians cuts them off from these life purposes. As a result, incarceration by itself acts to contribute to a growing prison population and the disproportionate impact of the criminal justice.⁵³ Additionally, the OHA report noted that “imprisoning people from Hawai‘i on the continent seems to be most damaging to Native Hawaiians.”⁵⁴

The report also noted that employment and educational differences between Native Hawaiians and other racial and ethnic groups may play a role in the disproportionate impact of the criminal justice system on Native Hawaiians. “Native Hawaiian families have the lowest mean income of all ethnic groups in the state [and] the highest percentage of people living below the poverty line in 2000. Native Hawaiians are less likely than all other people in Hawai‘i to be employed in management or professional positions, which tend to be higher paid.”⁵⁵ With respect to education, “[a]lthough Native Hawaiians in Hawai‘i had completed high school at similar rates to all other people in Hawai‘i in 2008, Native Hawaiians are less likely to have earned a Bachelor’s degree.”⁵⁶

In his testimony before the Committee, Johnson also commented on the OHA study. He said that it was his understanding that the study by OHA was not intended as an exhaustive and definitive examination of the subject. Rather, when it was funded by the Legislature, it was intended to be an initial study of the issue. Based upon any initial findings, there could be further funding from the Legislature for more study.⁵⁷

⁵³ Ibid.

⁵⁴ Ibid., p. 56.

⁵⁵ Ibid., p. 66.

⁵⁶ Ibid., p. 65.

⁵⁷ Tommy Johnson, *Hawai‘i Justice Hearing*. In follow-up comments Johnson stated: “It should be noted that the OHA study is based on ‘self-reporting’ of ethnicity by the offenders and that no definitive lineage or true blood line review and/or verification was conducted for any of the offenders. Without such an in-depth review and verification the stated results of the report are not supported.”

⁴⁹ Ibid., pp. 23-4.

⁵⁰ Ibid., p. 59.

⁵¹ Ibid., p. 54.

⁵² Ibid., Executive Summary.

New legislation calls for further study of the disparity of Native Hawaiians in Hawai'i's criminal justice system

The Hawai'i Legislature recently passed a bill designed to formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in Hawai'i's criminal justice system.⁵⁸ Under the legislation, the Office of Hawaiian Affairs will contract for another study to further examine "the disparate representation and treatment of Native Hawaiians in Hawai'i criminal justice system."⁵⁹

In the legislation, it was noted that pursuant to House Concurrent Resolution No. 27 (2008), the Office of Hawaiian affairs commissioned the study previously mentioned on the treatment of Native Hawaiians in the criminal justice system. The legislature noted that the study:

include groundbreaking current research and analysis, using quantitative and qualitative methods, and includes the voices of Native Hawaiians about the criminal justice system and the effect it has on their lives.

The study shows that the disproportionate representation of Native Hawaiians in the criminal justice system accumulates at each stage...[and] that Native Hawaiians are sentenced to more days in prison and receive a longer term of probation than most other racial or ethnic groups.⁶⁰

Under the legislation a task force is to be established "to formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in Hawai'i criminal justice system by looking for new strategies to reduce or avoid unnecessary involvement of these individuals with the criminal justice system."⁶¹ The task force is to consist of nine members: (1) The attorney general; (2) The director of public safety; (3) The chief executive officer of the Office of

Hawaiian Affairs; (4) The administrator of the adult client services branch of the first circuit court; (5) A circuit court judge to be selected by the chief justice of the Hawai'i supreme court; (6) a criminologist selected by the governor; (7) a representative from the department of the prosecuting attorney of the city and county of Honolulu; (8) a representative from the office of the public defender; and (9) a member of the public selected by the governor.⁶²

The legislation noted that a "first step toward reducing the disproportionate representation of Native Hawaiians in the criminal justice system and collateral consequences would be to identify strategies for reducing unnecessary contact with the criminal justice system." The purpose of the act therefore is "to address the findings and recommendations of the [O]ffice of Hawaiian Affairs' study by creating a task force to formulate policies and procedures to eliminate the disproportionate impact of the criminal justice system on all individuals, with particular focus on Native Hawaiians."⁶³

The legislation received the general support of law enforcement agencies, and the Department of the Prosecuting Attorney of the City and County of Honolulu submitted testimony in support of the legislation. The department agreed with the House Judiciary Committee report that showed a disproportionate amount of Native Hawaiians are in contact with the criminal justice system. The department also noted that aside from a disproportionate representation of Native Hawaiians in prison, statistics kept by the department suggest that Native Hawaiians are also the second (or first) most prevalent ethnicity among crime victims.⁶⁴

⁵⁸ S.B. 986 26th Legis., 2011 Regs. Sess. (Haw. 2011) [hereafter S.B. 986].

⁵⁹ *Id.* § 1.

⁶⁰ *Id.*

⁶¹ *Id.* § 2.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Department of the Prosecuting Attorney of the City and County of Honolulu, Testimony RE: S.B. 986, S.D. 2, HD. 2; Related to Criminal Justice System, 26th Legis. 2001 Reg. Sess. Apr. 4, 2011.

COMMITTEE OBSERVATIONS

The Hawai'i Advisory Committee received information and testimony from numerous sources—including officials of the state's criminal justice system, that show Native Hawaiians are disparately impacted by the state's criminal justice system. Though they are approximately 20 percent of Hawai'i's population, Native Hawaiians comprise more than 40 percent of the state's prison population. This is a significant disparity.

To the Hawai'i Advisory Committee, after assessing information and testimony received from law enforcement personnel, elected officials, criminologists, and members of the community, the reasons for the disparity appear complex and without clear explanation. More discouraging, the Hawai'i Advisory Committee learned that this disparity is a recent phenomenon, as through the mid-1900s Native Hawaiians were under-represented in the state's criminal justice system.

In addition, the Hawai'i Advisory Committee received information about the stress placed upon the state's budget from excessive incarceration. Hawai'i now incarcerates over 6,000 inmates, and since the turn of the century the corrections budget in the state has almost doubled. The perpetuation of this situation is therefore problematic not only from a civil rights perspective, but from an economic resource concern as well.

As noted in this report, the State of Hawai'i commissioned a preliminary study of this issue. Further and more in-depth study of the issue has now been authorized by the state. The Hawai'i Advisory Committee commends the State of Hawai'i for taking this initiative. This is an important civil rights issue that requires not only attention, but resolution.

The Hawai'i Advisory Committee acknowledges the testimony and information it received about disparities in the criminal justice system about African Americans and other minorities. In adhering to its statutory mandate to study information relating to discrimination or a denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, the Hawai'i Advisory Committee also intends to give the issue of the administration of justice its continued attention. It will monitor forthcoming explanations from state sanctioned studies as well the conclusions from other independent studies in light of what it has learned in order to fulfill its obligation to offer a bipartisan perspective on this important civil rights issue.⁶⁵

⁶⁵ One member dissented from the majority, contending that testimony from public officials with personal knowledge based on their actual experience in administering the criminal justice system in Hawai'i testified that they do not believe the presented data on race and ethnicity is reliable. For example, see testimony of Tommy Johnson, deputy director, Hawai'i Department of Public Safety (see, page 2 and page 10, footnote 56) that the data is self reported and needs to be more accurately gleaned. The second dissenting member approved the language in the body of the report, but dissented believing the title of the report should include the words "self identified" before Native Hawaiian. At the meeting of the Hawai'i Advisory Committee's on May 24, 2011, to discuss the report, Martha Torney, from the Hawai'i Department of Public Safety, told the Committee that self-identification is the accepted practice used throughout the country to track and report criminal statistics.

Hawai'i Advisory Committee

To the United States Commission on Civil Rights



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