

**The Native Hawaiian  
Justice Task Force Report**



# ***E HO'OKANAKA.***

BE A PERSON OF WORTH.

These were the very last words of Kamehameha, the unifier of the Hawaiian islands, upon his deathbed. To his beloved attendants, the King uttered the famous, “E ‘oni wale nō ‘oukou i ku‘u pono (‘a‘ole i pau).” With these words, he instructed his attendants, “Continue to do what I have done.” Then, turning to his grieving young son Liholiho, the dying King spoke these words, “E ho‘okanaka.” These words continue to be spoken today as an encouragement to be brave and courageous as well as to assert one’s Hawaiian identity.

*E ho‘okanaka.* Be a person of worth.



# The Native Hawaiian Justice Task Force Report

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## FOREWORD

We are blessed to call Hawai‘i home. There is no more special place. Yet, the root culture, Native Hawaiians, in their own homeland, are over-represented at every stage of the criminal justice system. Regardless of why, the reality cannot be denied. This state of affairs can only be considered a tragedy. To view it in any other way would be to insult and undervalue the most welcoming, giving people in the world.

Working on complex, emotional, and critically important matters is never easy. Certainly the work of the Task Force was not easy. If it was, the Task Force would not have done its job. I am confident the Task Force did its job, and I want to extend my gratitude to each Task Force member for giving so generously of their time and talents.

The Task Force took the issues and questions to the people, first and foremost to the Native Hawaiian people. As we traveled the State, from O‘ahu to Kaua‘i to Maui to Hilo to Kona to Moloka‘i and Lāna‘i (via video), Hawai‘i’s people taught us much about perseverance, about suffering, about courage and above all, about hope. It is the Task Force’s hope that all of Hawai‘i will take responsibility for reducing the number of Hawaiians in prison. As nine individuals, all the Task Force has done is lay the ground work for real change to occur. This Report, although a good start, is just that.

King Kamehameha’s last dying words to his son were, “Be a person of worth.” In the context of this Report, the same admonition should be applied to all of us—each and everyone.

Michael Broderick  
Chair  
Native Hawaiian Justice Task Force

## Acknowledgements

The Native Hawaiian Justice Task Force Report (“Report”) represents a significant amount of time, thought, and emotional investment on the part of numerous individuals, organizations, and communities. Pursuant to Act 170, the Native Hawaiian Justice Task Force (“Task Force”) consists of nine members: designee of the attorney general, Paul Perrone; designee of the director of public safety, Martha Torney, M.A.; chief executive officer of the Office of Hawaiian Affairs, Dr. Kamana’opono Crabbe; administrator of the adult client services branch, Cheryl Marlow; circuit court judge, the Hon. Richard K. Perkins; criminologist, selected by the Governor, RaeDeen Keahiolalo-Karasuda, Ph.D.; representative from the prosecuting attorney for the City and County of Honolulu, Tricia Nakamatsu, Esq.; representative of the Office of the Public Defender, John M. Tonaki, Esq.; and member representing the public, selected by the Governor, the Hon. Michael Broderick (ret.). Pursuant to Act 170, at the selection of Task Force members, Michael Broderick serves as the Chair of the Task Force. Task Force members serve without compensation. Much work was done by Task Force members to produce this document, and by members’ organizations in order to accommodate for the work in both time and resources.

The Task Force was assisted in the production of the Report by a dedicated staff. The Office of Hawaiian Affairs, Research and Advocacy divisions, already stretched to meet numerous demands, invested a significant amount of time and resources to the development of the Report. The staff at the Office of Hawaiian Affairs acted as community organizers, press liaisons, and organizers for six summits held throughout the state in the summer of 2012. After the summits, they diligently transcribed and developed the testimony that was used as the basis of the Report. Throughout the summer of 2012, independent research was also conducted by three students: Taryn Kaili, Morwenna Steinersen, and Megan Moniz. As a contracted writer, Sonny M. Ganaden, Esq. organized and compiled research, and led in the drafting of the Report.

The Task Force and the Office of Hawaiian Affairs extends their sincerest and utmost mahalo to all participants who shared their life experiences regarding the criminal justice system for this Report. Their leo (voice) and mana’o (thoughts) are crucial to understanding the human and social impact of the issues discussed in this document. As has been said in the Acknowledgments section of the 2010 Report, which subsequently led to the formation of the Task Force, “No words or phrase in English nor Hawaiian can convey the unsurpassed appreciation and deep gratitude for those participants for courageously sharing the depths of their lives with us and others.”

To identify some individual testifiers and not others in this brief section would be a disservice to the efforts of all who testified. The Task Force wishes to honor all individuals’ contributions. Readers are directed to engage with the compelling words which guided the Report at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

There were several individuals that allowed the Task Force direct access to Native Hawaiian prisoners who would be most directly affected by the Report. Warden Nolan Espinda of Hālawā Correctional Facility, Warden Mark Patterson at the Women’s Community Correctional Center, and Lorraine Robinson, Director of TJ Mahoney and Associates, Ka Hale Ho‘āla Hou No Nā Wāhine. All allowed direct access to individuals in the facilities they direct, and those individual voices led directly to specific findings and recommendations.

Many who testified before the Task Force admonished those in leadership positions to acknowledge the personal and political histories that led to the overrepresentation of Hawaiians in the criminal justice system. The Task Force acknowledges the rich legacy of brave individuals within the criminal justice system and critics of that system who have endeavored to perform their duties justly. Throughout the summer of 2012, Task Force members received oral testimony before a display that recounted the last words of Kamehameha the Great, which read: E HO’OKANAKA, be a person of worth. It is this conception of duty, received through successive generations that the Task Force wishes to acknowledge and honor.

# Executive Summary

In 2010, the Office of Hawaiian Affairs, in collaboration with the University of Hawai‘i at Mānoa, Justice Policy Institute, and Georgetown University, produced a report entitled *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (“2010 Report”). Researchers found that “Native Hawaiians are overrepresented in every stage in the criminal justice system, and the disproportionality increases as Native Hawaiians go further into the system, also making it harder to leave and stay out of prison.” (“2010 Report, at 17”) The 2010 Report recommended the formation of a governing collaborative, which led to the passage of Act 170 and the statutory creation of the Native Hawaiian Justice Task Force.

The disproportionate representation of Native Hawaiians in the criminal justice system has been previously reported upon and presented to the Hawai‘i state Legislature. In addition to the findings of the 2010 Report, the Task Force acknowledges the studies “Crime and Justice Related to Hawaiians and Part Hawaiians in the State of Hawaii,” (“1981 Study”), and “Criminal Justice and Hawaiians in the 1990’s: Ethnic Differences in Imprisonment Rates in the State of Hawai‘i,” (“1994 Study”). The 1981 Study, the 1994 Study, and the 2010 Report independently concluded that Native Hawaiians are overrepresented in the criminal justice system. Those documents, and several others which discuss Native Hawaiians in the criminal justice system, are now available online at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

As a group, the Task Force and the Office of Hawaiian Affairs, which is attached to the Task Force as its administrator through Act 170, have devoted a significant amount of time and effort in engaging in a dialogue with the community. Through a series of summits held throughout the state during the summer of 2012, the Task Force received testimony regarding the disproportionate representation of Native Hawaiians in the criminal justice system directly from one hundred fifty nine individuals, and dozens of others through site visits at State correctional facilities and the receipt of written testimony and research.

Following the summits, site visits, and the receipt of testimony, the Task Force undertook a deliberate process to draft the Findings and Recommendations sections of the Report. The production of those sections was also influenced by the perspective of each Task Force member who brought forth from his or her role within the criminal justice system.

The headings of the Report are:

- A. Data regarding Native Hawaiians in the criminal justice system;
- B. The disproportionate representation of Native Hawaiians in the criminal justice system;
- C. Early intervention programs for Native Hawaiians;
- D. Impact of the State’s contracting with non-state facilities on Native Hawaiians;
- E. Issues in State-operated correctional facilities and their impact on Native Hawaiians;
- F. Restorative justice practices and their application to Native Hawaiians;
- G. Lack of services for Native Hawaiians who come into contact with the criminal justice system;
- H. Continuing state efforts to ameliorate the over representation of Native Hawaiians in the criminal justice system.

The Task Force produced forty eight findings and thirty eight recommendations. This executive summary provides a short list of key findings and recommendations that the Task Force made. Throughout the production of the Report, the Task Force attempted to use direct and concise language; eschewing ambiguous phrasing and legal rhetoric.

The Task Force urges readers to engage with the full text of the Report. As the wording of the findings and recommendations has been deliberately vetted, the Executive Summary cannot supplant the full text. As criminal causality is debated by esteemed professionals across the world, so too are the options to address criminality. In the Report, no finding or recommendation is more important than another. From the perspective of the present, it is impossible to deduce which specific recommendation, if enacted into law, may proximately remedy the disproportionate representation of Native Hawaiians in the criminal justice system.

# Key Findings

## A. Data regarding Native Hawaiians in the criminal justice system

- In order to inform future policy decisions regarding the disproportionate representation of Native Hawaiians in the criminal justice system, the State of Hawai'i needs to identify what data is to be collected at different points within the criminal justice system, improve data integration, and improve data infrastructure amongst state agencies.
- The disproportionate representation of Native Hawaiians in the criminal justice system has been clearly and repeatedly established. Further study, including additional control variables, would provide a richer understanding of why Native Hawaiians remain disproportionately represented in the criminal justice system.

## B. The disproportionate representation of Native Hawaiians in the criminal justice system

- The general perception in the Native Hawaiian community is that the criminal justice system is broken. There has been ongoing, tremendous frustration in the Native Hawaiian community regarding the disproportionate representation of Native Hawaiians in the criminal justice system.
- Proactive policy initiatives, including those promoting a rehabilitative model of incarceration, in the criminal justice system must be effectuated. It is possible, and even likely, that federal and/or state funding will continue to decrease in the near future. In that instance, Hawai'i may continue to face a crisis.
- Implicit, unconscious bias and disparate treatment on the part of workers at all stages of the criminal justice system may explain a portion of the disproportionate representation of Native Hawaiians in the criminal justice system.
- In the present economy, ex-offenders face barriers in securing employment, housing, and reintegration into the community based on their arrest and court record. These barriers may affect the recidivism rate for Native Hawaiians.
- The Hawai'i Paroling Authority has more discretion than its counterparts in other states or the federal government regarding inmates' length of stay, conditions of parole, and other conditions regarding incarceration. An inmate's program enrollment is a factor considered by the Hawai'i Paroling Authority. The expanded discretion of the Hawai'i Paroling Authority may have been used to unequal effect due to the lack of programs for inmates.

## C. Prevention and early intervention programs for Native Hawaiians

- The children of incarcerated parents are at risk of having a higher rate of interaction with the criminal justice system.
- Preventative measures, such as adequate education and programs for at-risk youth, continue to be inadequately funded.

## D. Impact of the State's contracting with non-state facilities on Native Hawaiians

- Prisoners, former prisoners, family members of prisoners, and Task Force members report that prisoners in non-state facilities receive more consistent and available programs and live in less crowded conditions than prisoners in state prisons. Prisoners in private correctional facilities report receiving more respect from staff. However, prisoners in private facilities are subject to drastic dislocation from their home, culture, family, job prospects, and community support.
- The criteria for sending and returning prisoners to and from non-state facilities remain unclear.
- In reaction to recent statements from the Governor, and the Justice Reinvestment Initiative of 2011, any planned return of prisoners to the community from non-state facilities should be accomplished in a planned and responsible manner, with public safety being the primary concern.
- Native Hawaiians who are sent to non-state facilities are effectively given an unequal burden in relation to non-Hawaiian prisoners. This burden includes a dislocation from his or her home, connection to the land, culture, family, job prospects, and community support.
- Due to their incarceration on the continental United States, many released offenders do not have effective transition plans regarding employment, housing, and reintegration into the community beyond compliance with parole.



#### **E. Issues in State-operated correctional facilities and their impact on Native Hawaiians**

- Inmates released from state correctional institutions often do not have any form of official identification. A form of identification is necessary to apply for employment, to find housing, and to comply with conditions of parole.
- If the state of Hawai‘i had sufficient and appropriate community-based alternatives to incarceration for substance abuse, mental health treatment, and housing at all points within the criminal justice system, the state may reduce its reliance on incarceration.
- Prisoners and former prisoners in state facilities may be receiving inconsistent treatment from staff. This inconsistent treatment by staff leads to inefficient effectuation of programs and policies.

#### **F. Restorative justice practices and their application to Native Hawaiians**

- Indigenous cultural practices present appropriate models in ameliorating the disproportionate impact of the criminal justice system on indigenous communities. The Native Hawaiian community and nations such as Aotearoa, Australia, and Canada have had recent successes in adopting indigenous cultural practices.
- Restorative justice practices, such as sentencing circles, mediation, and community justice, are an option for certain defendants.

#### **G. Lack of services for Native Hawaiians who come into contact with the Criminal Justice System**

- Culturally based programs are effective, and should be expanded upon.
- Mental health services, such as psychopharmacological medication, counseling, and case management for those with mental health conditions are inadequate, and are an important component for the rehabilitation of Native Hawaiian prisoners (“pa’ahao”).
- There is no comprehensive directory of culturally-based programs and service providers for Native Hawaiians who come into contact with the criminal justice system. The Office of Hawaiian Affairs is presently working on a directory of Native Hawaiian organizations and community-based service providers.
- Pretrial detainees have limited access to community-based programs. This lack of access leads to pre-trial detainees remaining incarcerated.

#### **H. Continuing State efforts to ameliorate the disproportionate Representation of Native Hawaiians in the Criminal Justice System.**

- Effective change in the criminal justice system will require a sustained, continued cooperation amongst state agencies and private organizations, past the work of the Native Hawaiian Justice Task Force.

# Key Recommendations

## A. Data regarding Native Hawaiians in the criminal justice system

- State agencies that affect the criminal justice system are to collect and maintain data on all aspects protected by the state and federal constitutions. The state of Hawai‘i is to identify what data is to be collected at different points within the criminal justice system, improve data integration, and improve data infrastructure amongst state agencies.

## B. The disproportionate representation of Native Hawaiians in the criminal justice system

- The portions of the Justice Reinvestment Initiative which were not passed into law as Senate Bill 2776, Act 139 (2011) and House Bill 2515, Act 140 (2011), are to be reintroduced. As Native Hawaiians are over-represented in the criminal justice system, the Native Hawaiian community will be disproportionately affected by any inaction to reduce inmates or fix problems within the criminal justice system.
- The state of Hawai‘i, including the executive and judicial branches, shall create and maintain an inventory of service providers, including, but not limited to, culturally based service providers that interact with inmates and former inmates. Such services may include services that address mental health, substance abuse, workforce development, and housing.
- Training regarding implicit, unconscious bias is to be mandatory and ongoing for all employees who have contact with individuals in the criminal justice system. The judiciary has recently held such a training for judges.
- In order for the Office of the Public Defender to deliver optimal services, the legislature must approve and fund more deputies, related support staff, and facilities.
- All efforts should be made to conduct hearings before the Hawai‘i Paroling Authority with the inmate/defendant physically present.
- The legislature should develop guidelines for the Hawai‘i Paroling Authority concerning the setting of the minimum term and factors to be considered for parole. One such consideration is access to programs.
- By law, inmates should be given credit for “earned time/good credit” before the Hawai‘i Paroling Authority.

## C. Prevention and early intervention programs for Native Hawaiians

- To reduce intergenerational incarceration, resources must be directed toward children of incarcerated parents. The legislature should consider a mandatory educational program for guardians of minors with a parent in prison, similar to the “Kids First” program currently in place throughout the Judiciary.

## D. Impact of the State’s contracting with non-state facilities on Native Hawaiians

- The Department of Public Safety should ensure that prisoners who are housed in non-state facilities and who are eligible by classification for pre-release programs, such as work furlough, are returned to Hawai‘i with sufficient time to complete programs prior to their tentative parole date.
- The Department of Public Safety should ensure that all allegations of abuse of inmates are independently investigated and that appropriate corrective action is taken.
- The Department of Public Safety should ensure that inmates are allowed to follow their religious and Native Hawaiian cultural practices, and retain sacred cultural items that do not pose a danger to the security of the institution.
- Consistent with community testimony and the Governor’s repeated statements, prisoners held out of state should be returned. The State should make the return of inmates a top priority, and inmates should be returned as soon as practicable, consistent with public safety.
- Once the inmates are returned from private out-of-state facilities, the State should consider passing legislation prohibiting future use of private, for-profit, correctional facilities.

**E. Issues in state-operated correctional facilities and their impact on Native Hawaiians**

- The Department of Public Safety should ensure that prior to work furlough and/or release, all inmates obtain official state identification and if needed, a social security card.
- The staff at all state operated correctional facilities shall receive annual, mandatory training regarding trauma informed care.
- Prisoners should be allowed consistent and regular visitation with immediate and extended family members. The Department of Public Safety should make every effort to ensure that adequate staffing is available for consistent and regular visitation.

**F. Restorative justice practices and their application to Native Hawaiians**

- The State should recognize and support community and grassroots efforts that promote indigenous cultural practice models demonstrated to be successful in Hawai'i or elsewhere.

**G. Lack of services for Native Hawaiians who come into contact with the criminal justice system**

- The state should ensure adequate funding and staffing to treat offenders with mental health conditions, including supporting psychopharmacological medication, counseling, and case management.
- The State should ensure adequate funding and staffing to create a comprehensive directory of culturally-based programs, indigenous models, and service providers for Native Hawaiians who come into contact with the criminal justice system.
- Neighbor island models such as Maui Economic Opportunity BEST, POHAKU, Kahua Ola Hou, and Wailuku Neighborhood Place should be supported, expanded upon, replicated, and/or reinstated.

**H. Continuing state efforts to ameliorate the disproportionate representation of Native Hawaiians in the criminal justice system**

- There should be permanent funding and full time staffing in the appropriate agency or independent body to oversee and implement recommendations of the Native Hawaiian Justice Task Force, and to continue to review this evolving issue.
- Future efforts to implement recommendations and review this evolving issue should include a wider breadth of community and agency representation than the current Native Hawaiian Justice Task Force.

## Introduction

The Native Hawaiian Justice Task Force Report (“Report”) is the result of the collective work of many individuals, communities, and organizations. By law, the Native Hawaiian Justice Task Force (“Task Force”) was primarily comprised of individuals who represent what is generally referred to as the “criminal justice system.” Members of the Task Force include representatives from the bar, the judiciary, and governmental agencies directly involved in the prosecution, defense, sentencing, incarceration, and supervision of those charged with criminal offenses. In addition, two members were appointed by the Governor to represent the community. This Report has also been deeply influenced by individuals from various and diverse sectors of the community, whose contribution further legitimized the findings and recommendations found herein.

In 2010, the Office of Hawaiian Affairs; in collaboration with the University of Hawai‘i at Mānoa, Justice Policy Institute, and Georgetown University; produced a report titled *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (2010 Report). Researchers found that “Native Hawaiians are overrepresented in every stage of the Hawai‘i’s criminal justice system, and the disproportionality increases as Native Hawaiians go further into the system, also making it harder to leave and stay out of prison” (2010 Report, at 17). Consequently, the 2010 Report recommended the formation of a governing collaborative, which led to the passage of SB986 HD3 CD1 RELATING TO THE CRIMINAL JUSTICE SYSTEM, signed into law as Act 170(11) on June 27, 2011. Act 170 statutorily created the Native Hawaiian Justice Task Force, which has authored the present Report.

This Report fulfills the duties assigned to the Task Force under Act 170, to “...formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in Hawaii’s criminal justice system by looking for new strategies to reduce or avoid unnecessary involvement of these individuals with the criminal justice system,” and to “...recommend cost-effective mechanism, legislation, and policies to reduce or prevent individuals’ unnecessary involvement with the criminal justice system. The recommendations shall include estimates of cultural and fiscal impact.” (Act 170, pg. 2-3).

In response to this charge, the Task Force and the Office of Hawaiian Affairs, attached to the Task Force as its administrator through Act 170, sought direct testimony from the public. In the summer of 2012, through a series of Pae ‘Āina Summits held on O‘ahu, Hawai‘i Island, Maui, Kaua‘i and Moloka‘i, and Lāna‘i (via video), the Task Force heard from one hundred and fifty nine members of the public. The Task Force also received numerous documents representing written testimony. Overall, members of the community directly testified to the statistical data presented in the 2010 Report, and discussed what those data means to Native Hawaiian individuals, Native Hawaiian families, and non-Native Hawaiians as members of an interconnected community. During the Pae ‘Āina Summits, the Task Force asked those testifying to present his or her own recommendations. For many who testified, including members of the legislature, representatives of governmental and non-governmental entities, service providers, former prisoners (pa‘ahao), and families of incarcerated men and women, testifying was not an impersonal event or an academic exercise. Rather, testimony represented a collective of personal experiences, many painful, and narrative underpinned by social, political, and historical memory.

The diverse, yet consistent perspectives offered at the Pae ‘Āina Summits uniquely qualifies the present Report. The Task Force members made a concerted effort to listen to the Native Hawaiian community and the broader community, approaching each summit with an understanding of his or her position within the social structure of the criminal justice system, and how those respective positions make a qualitative difference in how the criminal justice system is perceived and experienced. Following the summits, the Task Force conducted site visits at Hālawā Correctional Facility and the Women’s Community Correctional Center on O‘ahu, and spoke directly with Native Hawaiian pa‘ahao regarding their prison experiences.

The Findings section of this Report reflects the dialogue between the Task Force, the public, and prisoners. Where possible, individuals have been cited within the document and “plain language” has been used in favor of ambiguous phrasing or legal rhetoric. The Task Force produced forty eight findings.

The Recommendations section of this Report suggests cost-effective mechanisms, legislation, and policies pursuant to Act 170, and developed from the Findings section. The Task Force produced thirty eight recommendations. The recommendations in this Report make clear that the State must continue to invest in ameliorating the disproportionate representation of Native Hawaiians in the criminal justice system. The Task Force does not have the capacity to implement its recommendations. The findings and recommendations in this Report are presented as the beginning of an endeavor to address this evolving issue.

The Task Force is well aware that in order to solve the major problems elucidated in the Findings section of this Report, the state of Hawai‘i must commit to do so. Without such commitment, the work of this Task Force, and the community that as-

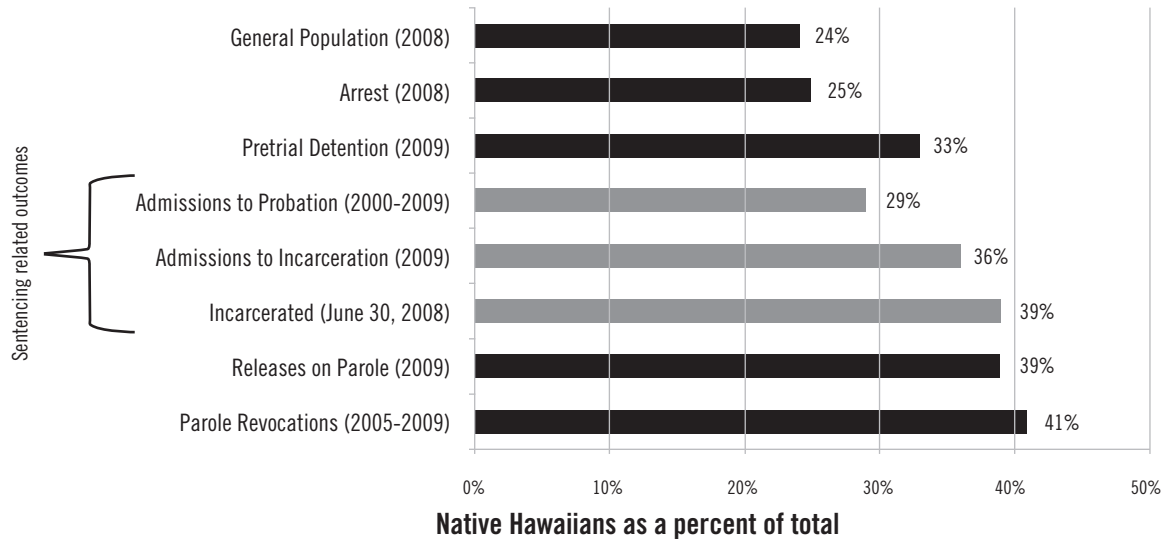
sisted in the development of this Report, will have been in vain. The Task Force has been emboldened in the development of its recommendations by the testimony of the community. In the words of one lawmaker who testified before the Task Force, “I think that we’ve had enough documents. We’ve had enough information that’s been disseminated. We’ve got enough talk... We stand ready to support you with what you have to offer. And please be bold[.]”

The recommendations set forth are supported by research and a collective of public testimony. They point to the fact that the goals of rehabilitation and healing are not incongruent with the necessities of public safety and the protection of victims or potential victims of crime.

## Background

The 2010 report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, produced by the Office of Hawaiian Affairs, in collaboration with the University of Hawai‘i at Mānoa, Justice Policy Institute and Georgetown University, (“2010 Report”) effectively outlines the current statistical data regarding the disparate representation of Native Hawaiians in the criminal justice system. Portions of the 2010 Report regarding statistical data have been adopted by the Task Force.

**The disproportionate impact of the criminal justice system on Native Hawaiians accumulates at each stage. Native Hawaiians are also more likely to receive a sentence of incarceration over probation.**



Sources: Hawai‘i State Department of Health, Office of Health Status Monitoring, special tabulation from the Hawai‘i Health Survey, January 22, 2010. <http://hawaii.gov/dbedt/info/economic/databook/2008-individual/01/>; Hawai‘i Criminal Justice Data Center; Lydia Seumanu Fuatagavi and Paul Perrone, *Crime in Hawai‘i: A Review of Uniform Crime Reports* (Honolulu, HI: Attorney General, State of Hawai‘i, 2009). [http://hawaii.gov/ag/cpja/main/rs/Folder.2005-12-05.2910/copy\\_of\\_cih2007/Crime%20in%20Hawaii%202007.pdf](http://hawaii.gov/ag/cpja/main/rs/Folder.2005-12-05.2910/copy_of_cih2007/Crime%20in%20Hawaii%202007.pdf); Hawai‘i Department of Public Safety, *2008 Annual Report* (Honolulu, Hawai‘i, Department of Public Safety, 2008). <http://hawaii.gov/psd/administration/publications/annual-reports/department-of-public-safety/PSD-AnnualReport2008.pdf>

Note: Admissions to incarceration or probation are the result of sentencing. Admissions to probation do not include instances where a period of incarceration is a condition of probation.

The disproportionate representation of Native Hawaiians in the criminal justice system has been previously reported upon and presented to the Hawai‘i state Legislature. The Task Force discussed and acknowledges the study “Crime and Justice Related to Hawaiians and Part Hawaiians in the State of Hawai‘i,” (“1981 Study”) commissioned by Alu Like, Inc., produced by Gene Kassebaum, Ph.D., for use by the State of Hawai‘i in 1981, and the study “Criminal Justice and Hawaiians in the 1990’s: Ethnic Differences in Imprisonment Rates in the State of Hawai‘i,” (“1994 Study”) commissioned by Alu Like, Inc. by Gene Kassebaum, Ph.D., for use by the State of Hawai‘i in 1994.

The 1981 Study, the 1994 Study, and the 2010 Report independently concluded that Native Hawaiians are over represented in the criminal justice system. The 1981 Study, the 1994 Study, and the 2010 Report are available online at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

## Procedural Background

United by the goal of fulfilling the duties elucidated in Act 170, the Task Force attempted to engage in a direct dialogue with the Native Hawaiian community, and the community at large. Firstly, the Task Force reviewed the document *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (2010 Report). At subsequent meetings, the Task Force chose a Chair, and worked with the staff of the Office of Hawaiian Affairs to coordinate the Pae ‘Āina Summits to be held on O‘ahu, Hawai‘i, Maui, Moloka‘i, Lāna‘i (via video), and Kaua‘i.

The Task Force met on the following dates: 11/29/11, 02/07/12, 04/03/12, 05/01/12, 06/05/12, 07/10/12, 08/14/12, 09/04/12, 10/09/12, 10/22/12, 10/23/12, 11/04/12, and 12/12/12. Most Task Force meetings lasted two hours. The Task Force’s final two meetings lasted four hours and eight hours respectively. The agendas and meeting minutes have been provided online for all of the above dates at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

The Pae ‘Āina Summits occurred on the following dates:

Honolulu, O‘ahu	June 7 and 8, 2012
Kailua-Kona, Hawai‘i	July 7, 2012
Hilo, Hawai‘i	July 14, 2012
Wailuku, Maui	July 21, 2012
Kaunakakai, Moloka‘i	August 1, 2012
And Lāna‘i (via video)	August 1, 2012
Līhu‘e, Kaua‘i	August 3, 2012

The Task Force also conducted site visits with Native Hawaiian pa‘ahao at Hālawā Correctional Facility on August 29, 2012, the Women’s Community Correctional Center on August 30, 2012, and T.J. Mahoney and Associates, Ka Hale Ho‘āla Hou No Nā Wāhine on August 21, 2012.

Subsequent to the Pae ‘Āina Summits, the Advocacy and Research divisions of the Office of Hawaiian Affairs produced a research document for use by the Task Force. The research document organized the testimony and documents presented to the Task Force using an appropriate methodology, and analyzed the information using a standardized process and coding scheme. That document is available online at:

[www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

Testimony presented at the summits was recorded by the staff of the Office of Hawaiian Affairs. One hundred forty nine testimonials were transcribed, and are presented online at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

In order to accommodate differing perspectives within the Task Force, a deliberate process was undertaken to draft the Findings and Recommendations sections of the Report. The production of those sections was influenced by the perspectives that each Task Force member brought forth from his or her role within the criminal justice system. Criminal causality and the appropriate models to address criminality are debated by esteemed professionals across the world. Stakeholders from differing fields tend to discuss criminality in specific ways and use alternative models from which to approach similar issues. In this way, discussions at Task Force meetings reflected these differing approaches and perspectives. At various points in the process of creating the present Report, Task Force members engaged in robust, and at times, heated discussions regarding appropriate findings and recommendations.

After review of the testimony, site visits, and in consultation with respective offices, individual Task Force members presented his or her own specific findings for review before the Task Force. These findings were discussed and presented through the contracted writer. Each finding was then grouped into headings organized from the major subjects the Task Force gleaned from testimony.

The headings of this Report are:

- A. Data regarding Native Hawaiians in the criminal justice system;
- B. The disproportionate representation of Native Hawaiians in the criminal justice system;
- C. Early intervention programs for Native Hawaiians;

- D. Impact of the state’s contracting with non-state facilities on Native Hawaiians;
- E. Issues in state-operated correctional facilities and their impact on Native Hawaiians;
- F. Restorative justice practices and their application to Native Hawaiians;
- G. Lack of services for Native Hawaiians who come into contact with the criminal justice system;
- H. Continuing state efforts to ameliorate the over representation of Native Hawaiians in the criminal justice system.

With the collective prospective findings recorded, the Task Force then convened, and proceeded line by line through each prospective finding and recommendation. The Task Force discussed the possible impact, appropriate placement, and wording of each point. Most, but not all findings and recommendations were unanimously approved. Where there was not unanimity, a vote was taken. Those votes are reflected in the footnotes of the Report along with the comments of the dissenting or abstaining party. The process for drafting the Recommendations section followed the format of the Findings section. Though not all findings and recommendations are unanimous, none are mutually exclusive.



# Findings

## A. Data regarding Native Hawaiians in the criminal justice system

1. The 2010 Office of Hawaiian Affairs Report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (2010 Report), recommended, among other things, the formation of a governing collaborative (2010 Report, at 76.). That specific recommendation led to the passage of SB986 HD3 CD1 RELATING TO THE CRIMINAL JUSTICE SYSTEM, signed into law as Act 170(11) on June 27, 2011. Act 170 statutorily created the Native Hawaiian Justice Task Force (hereinafter “Task Force”), which has authored the present Report.
2. The Task Force adopts the statistical data regarding the disproportionate representation of Native Hawaiians in the criminal justice system as discussed in the 2010 Report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, pgs. 27-42. The Task Force acknowledges that there have been previous studies regarding the disproportionate representation of Native Hawaiians in the criminal justice system, and that these previous studies have found similar statistical information.<sup>1</sup>
3. The state of Hawai‘i needs to identify what data is to be collected at different points within the criminal justice system, improve data integration, and improve data infrastructure amongst state agencies. Data collection will better inform future policy decisions regarding the disproportionate number of Native Hawaiians in the criminal justice system.<sup>2</sup>
4. While the disproportionate representation of Native Hawaiians in the criminal justice system has been clearly and repeatedly established, further study, however, including additional control variables, would provide a richer understanding of why Native Hawaiians remain disproportionately represented in the criminal justice system.

## B. The disproportionate representation of Native Hawaiians in the criminal justice system

1. The general perception in the Native Hawaiian community is that the criminal justice system is broken. There has been ongoing, tremendous frustration in the Native Hawaiian community regarding the disproportionate representation of Native Hawaiians in the criminal justice system.<sup>3</sup>
2. Any conversation regarding Native Hawaiians within the criminal justice system must be cognizant of political and historical context.<sup>4</sup>

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1. *Vote taken. Two votes against the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “Decline to ‘adopt’ all or part of any prior reports.” Department of the Attorney General, “The Department only acknowledges the 2010 Report’s most basic measurements showing the statistical overrepresentation of Native Hawaiians in the justice system, but is unable to ‘adopt’ a report that lacks methodological soundness and analytical objectivity. Despite citing only a specific range of pages, the Department also feels that this Finding may mislead readers toward an erroneous impression that the Task Force broadly endorses the 2010 Report.”*

See, “Crime and Justice Related to Hawaiians and Part Hawaiians in the State of Hawaii,” (“1981 Study”) commissioned by Alu Like, Inc. for use by the State of Hawai‘i in 1981, and the study “Criminal Justice and Hawaiians in the 1990’s: Ethnic Differences in Imprisonment Rates in the State of Hawai‘i,” (“1994 Study”) commissioned by Alu Like, Inc. for use by the State of Hawai‘i in 1994.

The 1981 Study, the 1994 Study, and the 2010 Report independently concluded that Native Hawaiians are over represented in the criminal justice system. The reports can be found online at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

The Office of Hawaiian Affairs has provided further studies regarding Native Hawaiians in the criminal justice system online at: [www.oha.org/nativehawaiianjusticetaskforce](http://www.oha.org/nativehawaiianjusticetaskforce)

2. *Vote taken. One vote against the finding: Department of the Attorney General, “Prior to crafting any sort of costly ‘data infrastructure’ or ‘data integration’ schemes, a single, statistically rigorous and analytically objective study should be conducted in order to identify factors that substantially explain the variance in Native Hawaiian overrepresentation in the justice system. The results of that effort would also provide excellent information on specific data-related needs for future efforts.”*

3. *Vote taken. Two votes against the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “The phrase ‘general perception’ in the first sentence appears unfounded, though that is clearly the opinion of some Native Hawaiians. Department of the Attorney General, “While summit testers offered criticism and suggestions targeting a variety of specific justice functions, policies, and procedures, it does not seem accurate to portray this feedback as a wholesale indictment of the justice system.”*

4. Numerous individuals testified regarding political and historical context.

Task Force member RaeDeen Keahiolalo-Karasuda, Ph.D. has written extensively regarding the historical constructs which have lead to the present dis-

3. Native Hawaiians have suffered from severe intergenerational, historical, and political trauma from the loss of land, language, and culture. This collective trauma has negative economic, health, cultural, and educational impacts on individuals, and often manifests itself in criminal activity. Any effort to reduce the number of Native Hawaiians who come in contact with the criminal justice system must include a multi-pronged approach to addressing this trauma.<sup>5</sup>
4. There is a strong belief in the Native Hawaiian community that historically, the criminal justice system has been used as a political tool to subjugate Native Hawaiians.<sup>6</sup>
5. The effects of the Justice Reinvestment Initiative, passed into law as Senate Bill 2776, Act 139 (2011) and House Bill 2515, Act 140 (2011), and the pu‘uhonua culturally-based substance abuse treatment and intervention program, passed

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proportionate representation of Native Hawaiians in the criminal justice system. “Scholarly studies about colonialism in Hawai‘i demonstrate the methods by which power and dominance operate (Kaunui 2002; Osorio 2002; Liliuokalani 1990; Trask 1999; Silva 2004; Kame‘eleihiwa 1992). Yet scholars and others have overlooked the role of the prison industrial complex in the illegal overthrow of the Hawaiian kingdom. Likewise, current attention to the study of drugs and crime generally concentrates on individuals or group determinants rather than institutional violence. This is misleading. [as] the colonization of Hawai‘i is directly traceable to the 19th century war on Opium, and current practices of punishment. State and popularized efforts to eradicate “social problems” related to drugs in Hawai‘i tend to target individual or group problems and rest on the proposition that Hawaiians are prone to addiction and crime. (Hishinuma 2005).” RaeDeen Keahiolalo-Karasuda, *Carceral Landscape in Hawai‘i: The Politics of Empire, the Commodification of Bodies, and a Way Home*, at 123-124, *Abolition Now!*, CRIO Publications Collective, Oakland AK Press (2008).

“So much of the problem, of what you guys are talking about, is rooted in the psychological disenfranchisement resulting from our history.” Joe Farias, Testimony before the N. Haw. Justice Task Force, Hilo Summit (2012).

5. Sharon Conroy, testimony before the N. Haw. Justice Task Force, Kaua‘i Summit (2012).

Lorraine Robinson, Director of TJ Mahoney and Associates, Ka Hale Ho‘āla Hou No Nā Wāhine, which is the “home of reawakening for women,” offered a scientific analysis and optimism for trauma intervention and the work of service providers.

“There is a phenomenon called epigenesis, which is showing that not only does intergenerational trauma get passed on socially, but it actually gets passed on genetically. The good news about that is that brains have a capacity called neuro-plasticity, meaning that they can be rewired. And all of the good work that all the people in this room are doing are actually rewiring the brains of people who have patterns and habits that have been self-destructive or destructive towards others. And now the new brain research is validating this stuff that we, as practitioners, have been seeing and living. [T]he confluence of the research on trauma, on neurobiology, and on attachment theory, is really substantiating again the importance of how we connect with people, of how culture fits into that, of how in the case of my work, we are responsive to the fact that women are not men and that they have different needs. They have different pathways into the criminal justice system. So I do think this is a kākou thing.” Lorraine Robinson (Director of TJ Mahoney and Associates, Ka Hale Ho‘āla Hou No Nā Wāhine; “home of reawakening for women”) Testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

Regarding the ways that trauma begets trauma through successive generations in terrifying and predictable ways, Earl Kawa‘a offered a rebuttal to the argument that violence is inherent in the Hawaiian conceptions of love or justice. “We need to go deep. “[W]hen I talk about deep, deeper in knowledge and ‘ike and understanding and in the heart. [A previous testifier] said [violence] was ‘traditional Hawaiian,’ but I challenge him now because that’s not traditional.

And here’s the mana‘o today: when you hit someone, when you bang someone, we say it’s okay. Someone will say it is Samoan love. A Hawaiian will say that is Hawaiian love. That’s bullshit. It was never Hawaiian love and never will be. And we should get rid of it. Never, ever allow that to happen. Here’s why. Here’s the cultural baseline for that statement. When you hit someone, and where do we slap when we slap someone? We slap someone on the head. We slap someone, we pa‘i on the head. Pa‘i ka po‘o. And we say that’s the Hawaiian way. And I say, ‘Fuck that bullshit, gang.’ That shouldn’t happen. And why it shouldn’t it happen? Because the ‘aumakua sits here on the head. Someone say, ‘Why don’t you pa‘i the butt? When the ‘aumakua sits on the head, the ‘aumakua is the entire body. So any place you hit someone is sinful—every place. That’s what we need to know.” Earl Kawa‘a (Kupuna and cultural practitioner) Testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

6. *Vote taken. Two votes against the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “The specific bases for this generalization are unclear.” Department of the Attorney General, “[T]he Department believes that this Finding does not accurately portray the overall sentiments expressed at the summits.”*

Kaniloa Kamaunu (Former Corrections Officer, State of Hawai‘i), testimony before the N. Haw. Justice Task Force, Maui Summit (2012)

Malina Kaulukukui offered a reason that much of the testimony received by the Task Force took the form of narrative. “[W]e provide a gender specific, culturally informed, residential treatment program or substance abuse treatment program for pregnant and parenting women.

Why am I telling you these stories? Because naming and language are the two critical pieces of anyone’s culture and these are the two significant factors significant factors that were diluted in the attempt to assimilate Hawaiians to a more Western paradigm.” Malina Kaulukukui (Cultural Integration Coordinator for the Salvation Army Family Treatment Services), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

“How do you dignify, how do you justify the existence of a system that has stolen? You have the Apology Bill; you have the state legislature, who had admitted to the fact that the takeover was not justified. Yet there is no satisfactory resolution; there is no satisfactory answer. And so you are catching people in this grand hypocrisy that somehow they have violated the law, when the real question is: who are the real violators?” Pōkā Laenui aka Hayden Burgess, Esq., testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012)

into law as House Bill No. 2848, Act 117 (2011), both passed into law on June 20, 2012, have yet to be felt.<sup>7</sup>

6. Proactive policy initiatives, including those promoting a rehabilitative model of incarceration, in the criminal justice system must be effectuated. It is possible, and even likely, that federal and / or state funding will continue to decrease in the near future. In that instance, Hawai‘i may continue to face a crisis.<sup>8</sup>
7. Without proactive policy and oversight, there is no indication that the disproportionate representation of Native Hawaiians in the criminal justice system will abate.<sup>9</sup>
8. Implicit, unconscious bias and disparate treatment on the part of workers at all stages of the criminal justice system may explain a portion of the disproportionate representation of Native Hawaiians in the criminal justice system.<sup>10</sup>
9. There are clear connections between poverty, access to counsel in all courts, and criminality. The Task Force acknowledges that though it has been presented with adherence to American common law, there has been a disproportionate

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7. In 2011, in order to reduce dependence on out-of-state prisons and improve the functions of the criminal justice system, the State of Hawai‘i sought assistance from the Bureau of Justice Assistance, a division of the U.S. Department of Justice, and the Pew Center on the States. The state leaders agreed to establish a bipartisan, inter-branch Justice Reinvestment Working Group comprising leading state and local officials which would receive intensive technical assistance from the Council of State Governments Justice Center, in partnership with the Pew Center on the States. The Justice Reinvestment Bill was signed into law by Governor Neil Abercrombie on June 27, 2012. Several of the Justice Reinvestment Initiative’s recommendations were not passed into law. Please see the bill in its original form. For an overview of the Justice Reinvestment Working Group’s recommendations, see <http://justicereinvestment.org/states/hawaii>

Pu‘uhonua was introduced to the Hawai‘i State legislature as House Bill 2848 (2011), and passed into law as Act 117, Session Laws of Hawai‘i (2012).

8. *Vote taken. Two votes to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “It is unclear what ‘crisis’ is being referenced in the last sentence.” Department of the Attorney General, “It is unclear what ‘crisis’ is being referenced, or how the crisis relates to a ‘rehabilitative model of incarceration.’ In addition, this Finding does not seem directly or clearly related to reducing the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups.”*

“We have over felonized. Things in Hawai‘i that are felonies are misdemeanors or petty misdemeanors in other states. They call them wobblers. Jack Tonaki (speaking to Task Force member) knows that. A burglary second in California, a UEMV, unauthorized entry into a motor vehicle can be treated with prosecutorial discretion. I have great respect for our prosecutors... By over felonizing, you trigger repeat offender sentencing which leads to overly incarcerating people in prison. Prison is for felonies, not misdemeanors.” Hon. Michael Town (Cir. and Fam. Ct. Judge (ret.), Board Member, Hawai‘i Paroling Authority) testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

Toni Bissen, J.D., Director of the Pū‘ā Foundation, brought a cohort of service providers to testify before the Task Force. “We’re here to talk about the concept of systemic change. Looking at trying to eliminate the disparate treatment of Native Hawaiians [by] taking a very broad perspective, what we call ‘from twinkle to wrinkle.’ It’s an approach that affects all of us. I think that some of the comments that have been shared today show the need for this continuum of services.

[T]o affect systemic change is to form public-private, individual, and family partnerships for community healing and well-being; using a mind, body, spirit, place, perspective and incorporating trauma informed systems of care approach[es] and a frameworks work towards community healing and well-being.” Toni Bissen, J.D. (Director, Pū‘ā Foundation), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012)

9. Refer to Supra note 1 for a link to statistical information regarding the persistence of Native Hawaiian disproportionate representation in the criminal justice system. Senator Brickwood Galuteria testified to his readiness for substantive action. “I have absolutely nothing more to offer you, except my encouragement... to move towards a document that we will receive in the next legislative session, as indicated in the law that trips the switch for action. I think that we’ve had enough documents. We’ve had enough information that’s been disseminated. We’ve got enough talk. I think that the legislature is poised to receive something that we can advance into policy, which is where we sit, and into funding, where we sit as well.

So thank you for convening [the] 2012 Native Hawaiian Justice Task Force. We stand ready to support you with what you have to offer. And please be bold in what you do because we’re gonna need boldness, courage, and we’re gonna need also an extension, not only into the prison system, but into our communities.” Brickwood Galuteria (Hawai‘i State Senator, Dist. 12), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012)

10. *Vote taken. Two votes against the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “The specific bases for this statement are unclear.” Department of the Attorney General, “We are concerned about the use of a “may” statement to the exclusion of considering other possibilities as to the reason for disparate representation of Native Hawaiians in the criminal justice system. For example, national research demonstrates that the nature and extent of an arrestee’s criminal history; the specific offense(s) resulting in the current arrest; and whether or not an arrestee was already on parole or probation at the time of his/her current arrest are factors that on average may vary by ethnicity, and are certain to have dramatic impact on case processing/handling and outcomes (e.g., the likelihood of being sentenced to incarceration). These likelihoods were not examined in prior local research, and may play a major explanatory role in this issue.”*

See *Implicit Racial Bias Across the Law*, Justin D. Levinson & Robert J. Smith, editors, Cambridge University Press (2012). This finding is further bolstered by the decades-long work of legal scholars and faculty at the William S. Richardson School of Law. The Judiciary has recently held a series of trainings for judges regarding implicit bias.

impact upon Native Hawaiians.<sup>11</sup>

10. Many members of the public testified that the Office of the Public Defender is inadequately funded.<sup>12</sup>
11. In the present economy, ex-offenders face barriers in securing employment, housing, and reintegration into the community based on their arrest and court record. These barriers may affect the recidivism rate for Native Hawaiians.<sup>13</sup>
12. Historically, there has been a conflict between American law and Native Hawaiian values. This conflict may explain some of the disproportionate representation of Native Hawaiians in the criminal justice system.<sup>14</sup>
13. The Hawai'i Paroling Authority has more discretion than its counterparts in other states or the federal government regarding inmates' length of stay, conditions of parole, and other conditions regarding incarceration. An inmate's

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11. *Vote taken. Two votes to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, "The strength of connection between poverty and criminality is unclear, as many Native Hawaiians and non-Native Hawaiians living in poverty do not resort to criminality." Department of the Attorney General, "[I]t is unclear how the Finding was derived and whether there is information to validate the cause and effect described."*

The funding of indigent legal service providers has fallen significantly in recent years. The most recent study of indigent legal services, conducted by the Access to Justice Hui in 2007, indicated that 1 in 5 low and moderate-income Hawai'i residents have their legal needs met, and legal service providers are able to help only 1 in 3 of those who contact them for assistance. In 2008, the Supreme Court formally adopted Rule 21 of the Rules of the Supreme Court of the State of Hawai'i, which established the Access to Justice Commission. See [www.hawaiijustice.org/hawaii-access-to-justice-commission](http://www.hawaiijustice.org/hawaii-access-to-justice-commission)

12. Lucy Feinberg (Maui Director, Parents and Children Together (PACT)) testimony before the N. Haw. Justice Task Force, Maui Summit (2012).

Shari Lynn (Director, Ka Hale Pomaika'i), testimony before the N. Haw. Justice Task Force, Moloka'i and Lāna'i Summit (2012).

Discussion with Native Hawaiian pa'ahao at Hālawā Correctional Facility, August 29, 2012.

13 *Vote taken. Two votes against the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, "It is unclear how Native Hawaiians are affected by these factors differently than other ethnicities." Department of the Attorney General, "This Finding relates to all former felony offenders across the country. Therefore, how former criminal offenders of Native Hawaiian descent might be disproportionately impacted by this reality relative to ex-offenders from other ethnic groups is unclear."*

Despite employment discrimination being illegal pursuant to Hawai'i Revised Statutes Chapter 378, many who testified before the Task Force discussed prevalent discrimination in hiring practices. See, Hawai'i Civil Rights Commission at: <http://hawaii.gov/labor/hcrc>

Discussion with Native Hawaiian pa'ahao at Hālawā Correctional Facility, August 29, 2012.

"[O]ur clients really have a loss of identity, and I think we've all heard today just how powerful the connection to culture is in re-establishing that identity. Ongoing identity creation really develops through how they're going to continue on their care with us into their everyday work life and career. And that's my job is to bring the two worlds together—to embrace the Hawaiian culture and the values that they learned and create a long-term career plan. These things go together.

Because what has been shown statistically, the biggest contributor to not re-offending and against recidivism is long-term employment, not just job acquisition, but job retention. So there is a challenge in the Native Hawaiian culture of career planning with them because a lot of them come from a place that's very consistent that they've never had a role model, they've never had a sense of worth and achievement prior to, which is where a lot of the drugs and crime have come from." John Unari (Workforce Development Specialist, Ho'omau Ke Ola), testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012)

Six states provide state income tax credits to employers who hire individuals with criminal records: California, Illinois, Iowa, Louisiana, Maryland, and Texas. See, CAL. REV. & TAX CODE § 17053.34; LA. REV. STAT. ANN. § 47:287.752; MD. CODE ANN., LABOR AND EMPLOYMENT § 11-702 (2002); TEX. TAX CODE ANN. § 171.654; IOWA CODE § 422.35 (2003).

14 The discussion of a conflict between American law and Native Hawaiian values was a constant refrain throughout the testimony. Pastor Greg DeLa Cruz of Maui analogized the experience of Native Hawaiians in the criminal justice system with a parable. "The original ...Brothers Grimm version of Cinderella; it's bloodier than the Disney version. In the old version, when one of the daughters' feet won't fit into Cinderella's glass slipper, the mother cuts off the toes of her eldest daughter to make it fit. So this is what the western system has done to Hawaiians; cut off a toe to make the foot fit into a shoe that's not made for it." Greg DeLa Cruz (Family Success Coach, Neighborhood Place Wailuku; Pastor, Living Way Church), testimony before the N. Haw. Justice Task Force, Maui Summit (2012).

Senator Clayton Hee offered a remembrance of the first Native Hawaiian Chief Justice of the State of Hawai'i, and his inclusion of Native Hawaiian values into his jurisprudence and leadership. "Many of you knew Chief Justice Richardson and had the privilege to sit and hear him [remember,] as a young child going to Waikīkī and looking over the hedge at how the rich people were having a party at the Royal Hawaiian hotel and how some burley Hawaiian came to the hedge and said 'get out of here, this is not for you,' and how that imprint of not being worthy never left him.

And who could know that history would be such, that as Chief Justice, the decisions [to extend] the public land to the high water mark [were] decisions born out of discrimination, and who he was. That's what we need, leadership. But we also need a firm belief in who we are. And we need to know that the kupuna; and I don't mean this flippantly as might be mentioned on the Senate floor from time to time; have our back." Clayton Hee (Senator, 23rd District, State of Hawai'i), Testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012).

program enrollment is a factor considered by the Hawai'i Paroling Authority. The expanded discretion of the Hawai'i Paroling Authority may have been used to unequal effect due to the lack of programs for inmates.<sup>15</sup>

### C. Prevention and early intervention programs for Native Hawaiians

1. This Task Force is aware that an individual's contact with the criminal justice system, regardless of race, often begins at youth. This Report has emphasized the impact of the criminal justice system on Native Hawaiian adults in order to comply with what the Task Force understood to be the focus of Act 170. The study *Disproportionate Minority Contact in the Hawai'i Juvenile Justice System*, prepared for the Juvenile Justice State Advisory Council and the State of Hawai'i, Office of Youth Services (May, 2012) provides guidance regarding effective prospective policy directives regarding juveniles.
2. Research shows that the children of incarcerated parents are at risk of having a higher rate of interaction with the justice system.<sup>16</sup>
3. Preventative measures, such as adequate education and programs for at-risk youth, continue to be inadequately funded.<sup>17</sup>

### D. Impact of the state's contracting with non-state facilities on Native Hawaiians

1. Prisoners, former prisoners, family members of prisoners, and Task Force members report that prisoners in non-state facilities receive more consistent and available programs and live in less crowded conditions than prisoners in state prisons. Prisoners in private correctional facilities report receiving more respect from staff. However, prisoners in private facilities are subject to drastic dislocation from their home, culture, family, job prospects, and community support.<sup>18</sup>

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15 *Vote taken. Two votes against the finding: Department of the Prosecuting Attorney, City and County of Honolulu. Department of the Attorney General, "We are again concerned about the leading use of a 'may' statement. There is no footnote identifying the source(s) of information indicating that Native Hawaiian detainees are kept longer as a direct result of HPA discretion and the suggested unequal effect in releasing parolees. This Finding does not seem directly or clearly related to reducing the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

Discussion with Native Hawaiian pa'ahao at Hälawa Correctional Facility, August 29, 2012.

Discussion with Native Hawaiian pa'ahao at Women's Community Correctional Center, August 30, 2012.

16 Refer to Finding C.1. Discussion with Native Hawaiian pa'ahao at Women's Community Correctional Center, August 30, 2012.

Also, see *Incarcerated Parents and their Children; Trends 1991-2007*, The Sentencing Project, Washington D.C. (2007), at: [www.sentencingproject.org](http://www.sentencingproject.org)

17 Refer to Finding C.1. The Task Force is well aware that criminal prevention requires addressing the issues facing "at risk" youth. The Task Force heard numerous persuasive narratives regarding this necessity.

"I currently live in Big Island now, and I'm 20 years old. I am a UH Hilo student and a full time maile farmer. Both my parents were in and out of prison when I was younger. I grew up with those struggles. I am the oldest of three kids. I have two younger brothers and my mom actually had my youngest one when she was in prison. And she ended up in Woman's Way cause she saw how hard everyone was having trouble. They end up going back in prison, in and out and again, and she didn't want to go through that.

Lot of the programs that you guys are talking about now days, it wasn't around back then for kids like me and my brother. It would have nice to have them, but we made it through somehow, and my father unfortunately he did not seek help or anything.

The kids, it's not just about educating them. But getting them to understand, understand how it is. Lot of them don't know what to do about it and don't know how to deal with it. And no disrespect to any psychology majors or anything in here, but those steps and everything, some of 'em they'll do it in that room when you are talking to them, they'll write that paper down or whatever you want them to write, and as soon as they walk out that door, it's in one ear and out the other.

[T]hese kids wanted to learn. When it came to learning the chants and the olis indoors, they were so like, not there. But when it came to outdoors, hand-on everything, they were there. They wanted to. It was all about, like, getting them the motivation to do it. It seems like, to me, that they want to do Hawaiian, they want to know all about the Hawaiian culture. They want to. And that was the way that we got through to a lot of kids. And it's sad, cause we couldn't do it again this year and a lot of the kids wanted to." Jessica DeCosta (Student, University of Hawai'i at Hilo, farmer), testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012).

18 In both state and non-state facilities, the Task Force has been apprised of individuals being reclassified while at non-state facilities, and having his or her stay extended due to minor infractions. The Task Force has also been apprised of individuals being reclassified while at non-state facilities, and such reclassification leading to a longer stay in a non-state facility. Varna Nakihei, who developed the program Ka Hale Pomaika'i on Moloka'i, reflected on



2. The criteria for sending and returning prisoners to and from non-state facilities remains unclear.<sup>19</sup>
3. The recidivism rate for prisoners who are incarcerated at non-state facilities on the continental United States is slightly lower than the rate for prisoners who are incarcerated in Hawai‘i, however that difference has been shown not to be statistically significant.<sup>20</sup>
4. In reaction to recent statements from the Governor, and the Justice Reinvestment Initiative of 2011, any planned return of prisoners to the community from non-state facilities should be accomplished in a planned and responsible manner, with public safety being the primary concern.<sup>21</sup>
5. Prisoners in non-state facilities may be at a disadvantage in parole hearings as hearings are currently conducted remotely.<sup>22</sup>
6. Native Hawaiians who are sent to non-state facilities are effectively given an unequal burden in relation to non-Hawaiian prisoners. This burden includes a dislocation from his or her home, connection to the land, culture, family, job prospects, and community support.<sup>23</sup>

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numerous systemic issues within the criminal justice system. “I think we need to make pono internal with our state facilities first before even thinking of bringing our people home, the power and control, things that go on inside the facilities. I’ve seen firsthand in Maui Community Correctional Center one cousin getting one more year on top of that for sharing saimin with his cousin who came in. Stupid little things like that. Uncle them talk about ho‘oponopono, the restorative justice. The restorative justice model works for today because it focuses on the issue of today.” Varna Nakihei, (Maui Economic Opportunity B.E.S.T. Reintegration program), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

19 Concern has been expressed from several individuals and organizations regarding the Corrections Corporation of America’s capacity to choose whom it will house in non-state facilities.

The Department of the Attorney General made a similar finding in 2011. “Hawai‘i prison officials sometimes say that the most expensive inmates- those with serious health problems, mental illness, disciplinary issues, and the like- do not get transferred to private prisons on the mainland.... [W]e support efforts in the state House and Senate to pass legislation that would authorize and fund an audit of the Department of Public Safety’s contract with the Corrections Corporation of America.” *Hawai‘i’s Imprisonment Policy and Performance of Parolees Who Were Incarcerated In-State and on the Mainland*, Department of Sociology, University of Hawai‘i at Mānoa & Department of the Attorney General, State of Hawai‘i (2011)

20 See Id. for full discussion.

21 Governor of the State of Hawai‘i, Neil Abercrombie, articulated a desire to return inmates housed in non-state facilities during the passage of the Justice Reinvestment Initiative. “The measures before us today — [HB 2515](#) and [Senate Bill 2776](#) — reflect that collaborative effort... With the enactment of these bills, I believe we are taking the next step forward in our commitment for control of our criminal justice system, to exercising resources in a sensible and clear-sighted, clear-headed manner in Hawai‘i, and strengthening the capacity for people to return to society who have been separated from it.

From my first day on the job as Governor, I said we will bring our inmates housed in mainland facilities back home and keep our taxpayer dollars in the state. With the enactment of these bills, we are taking the next step forward in our commitment to taking control of our criminal justice system, bringing back vital resources to Hawai‘i and strengthening communities for people to return to.” Neil Abercrombie, Governor, state of Hawai‘i, June 12, 2012.

22 The Department of the Attorney General made a similar finding in 2011. “[T]he impression of both authors is that, on the whole, it seemed more difficult for inmates on the mainland to obtain parole (via video conferencing) than it was for inmates who met face-to-face with the HPA in Hawai‘i. This possibility was acknowledged by members of the HPA, who suggested that a ‘live,’ face-to-face connection with candidates for parole facilitates interpersonal communication and thus may raise the likelihood of release.” Department of the Attorney General, *supra* note 18, pg. 34, Fn. 23.

23 *Vote taken. One vote to abstain from the Finding; Department of the Prosecuting Attorney, City and County of Honolulu. One vote against the Finding; Department of the Attorney General.* “The listed conditions generally apply to all convicted felons who are sentenced to terms of incarceration, and it would be discriminatory and unlawful to treat one group of prisoners differently from others based on broad assumptions about their race or ethnicity.”

The Task Force found the words of Justice Thurgood Marshall’s dissenting opinion in *Olim v. Wakinekona*, 461 U.S. 238 (1983) particularly relevant: There can be little doubt that the transfer of Wakinekona from a Hawaii prison to a prison in California represents a substantial qualitative change in the conditions of his confinement. In addition to being incarcerated, which is the ordinary consequence of a criminal conviction and sentence, Wakinekona has in effect been banished from his home, a punishment historically considered to be “among the severest.” For an indeterminate period of time, possibly the rest of his life, nearly 2,500 miles of ocean will separate him from his family and friends. As a practical matter, Wakinekona may be entirely cut off from his only contacts with the outside world, just as if he had been imprisoned in an institution which prohibited visits by outsiders. Surely the isolation imposed on him by the transfer is far more drastic than that which normally accompanies imprisonment. *Id.* at 253.

Delbert Wakinekona, for whom the above-cited case is named, testified before the Task Force through his attorney, Robert Merce, Esq. Mr. Wakinekona was granted a compassionate release by the Hawai‘i Paroling Authority on October 28, 2011, after forty one years of imprisonment at various non-state facilities.

“[W]hat has happened is that Native Hawaiian men have been ripped away from their families, their communities, and from the ‘aina. You’ve heard in detail about what ‘aina means to Native Hawaiians. The psychic and spiritual impact of this removal; of being alienated from their ‘aina; is devastating. How are they to heal? How are they to atone? This is what our work is addressing: protecting their rights to engage in their religious practices.” Sharla Manley, Esq. (Attorney, Native Hawaiian Legal Corporation), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

7. There are economic costs associated with inaction. The increase in the state’s contract with non-state facilities has increased exponentially since its inception in December, 1995, and now costs over \$60 million dollars per year.<sup>24</sup> The costs of the state’s contract with private prisons may increase without action.<sup>25</sup>
8. Due to their incarceration on the continental United States, many paroled offenders do not have adequate transition plans regarding employment, housing, and reintegration into the community beyond compliance with parole.<sup>26</sup>
9. There has been concern expressed regarding inmates being lost in the system at the completion of their maximum sentence (“maxing out”) without adequate transitional programming, follow up services, or housing. As a result, these individuals have a more difficult time reintegrating into the community.<sup>27</sup>
10. The state, and particularly the Department of Public Safety, may modify and/or renegotiate its contract with non-state facilities regarding Native Hawaiian religious and cultural practices. Concern was expressed regarding classification of offenders and placement in special holding units.
11. Concern was expressed regarding the reclassification of offenders in non-state facilities and his or her placement in special holding units.

#### E. Issues in state-operated correctional facilities and their impact on Native Hawaiians

1. Inmates released from state correctional institutions often do not have any form of official identification. Official identification is necessary to apply for employment, find housing, and comply with conditions of parole.<sup>28</sup>
2. Prisoners and former prisoners in state facilities report that they received inconsistent treatment from staff, which leads to inefficient effectuation of programs and policies.<sup>29</sup>
3. The trauma informed care model has been instituted at the Women’s Community Correctional Center on O’ahu. This rehabilitative model is based on being informed by the trauma that the majority of inmates have experienced, and at-

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24 As of 2010, it costs approximately \$139 per day to incarcerate an inmate in Hawai’i, and at least \$77 per day to incarcerate him or her in a non-State prison on the mainland. Note, however, that unlike the in-state per day cost, the private prison cost estimate is not all-inclusive. See, *Management Audit of the Department of Public Safety’s Contracting for Prison Beds and Services*, Marion M. Higa, State Auditor. 2010. at pg. 21.

25 “We found no policies and procedures aligned with Hawai’i Public Procurement Code, no objective evaluation to measure CCA’s performance, and no plan for contracting for private prison beds to reasonably ensure fiscal responsibility in obtaining the best value at prices the State can afford.” Id. at 24.

The Department of the Attorney General has warned against the trend of approaching questions about criminal risk and rehabilitation through the sole prism of cost. “In Hawai’i and elsewhere, problems such as these suggest the shortsightedness of relying on a perspective that stresses short-term savings at the expense of policies and programs aimed at improving the prospects for offenders’ rehabilitation and the satisfaction of their basic needs and rights. States and their leaders have a responsibility to care not only about crime control and the costs of incarceration but also about the present welfare and future well-being of criminal offenders and the communities from which they come.” Supra note 18, pg. 35

26 Discussion with Native Hawaiian pa’ahao at Hälawa Correctional Facility, August 29, 2012.

27 *Vote taken. One vote to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “The specific bases for the second sentence are unclear; not all ‘maxed out’ individuals have such difficulty. One vote against the Finding: Department of the Attorney General, “The Department has not arrived at a formal position on the “maxing out” issue and would need to study it from several legal standpoints in order to do so. This finding also posits an unstudied causal link by stating that the maxing-out issue ‘leads to’ (i.e., causes) other problems, when in fact the relationship may be correlational. In addition, this Finding does not seem directly or clearly related to reducing the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups.”*

See Supra notes 11, 13.

28 Discussion with Native Hawaiian pa’ahao at Hälawa Correctional Facility, August 29, 2012.

29 *Vote taken. Two votes against the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, “It is unclear how Native Hawaiians are affected by these factors differently than other ethnicities.” Department of the Attorney General, “This Finding does not seem directly or clearly related to reducing the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups.”*

Discussion with Native Hawaiian pa’ahao at Hälawa Correctional Facility on August 29, 2012, and at the Women’s Community Correctional Center on August 30, 2012.

Varna Nakihei, (Maui Economic Opportunity B.E.S.T. Reintegration program), testimony before the N. Haw. Justice Task Force, O’ahu Summit (2012)

tempts to mitigate future traumatic experiences while incarcerated.<sup>30</sup>

4. Prisoners do not get regular and consistent visitation with family members, including extended family members. It is important for an inmate's rehabilitation that he or she is allowed regular visits with family members and extended family members.
5. Services to prisoners with mental health issues and the chronically homeless will continue to be a major challenge for the Department of Public Safety. The Department of Public Safety is in a settlement with the federal Department of Justice regarding mental health treatment at O'ahu Community Correctional Center. There continues to be a concern about meeting the mental health needs of inmates.

## F. Restorative justice practices and their application to Native Hawaiians

1. Indigenous cultural practices present appropriate models in ameliorating the disproportionate impact of the criminal justice system on indigenous communities. The Native Hawaiian community and nations such as Aotearoa, Australia, and Canada have had recent successes in adopting indigenous cultural practices.<sup>31</sup>
2. Restorative justice practices, such as sentencing circles, mediation, and community justice, are an option for certain defendants.<sup>32</sup>
3. Incarceration and recidivism among the Native Hawaiian population will likely decrease as various contributing factors such as poverty, unemployment, healthcare, housing, and education are improved.<sup>33</sup>

## G. Lack of services for Native Hawaiians who come into contact with the criminal justice system

1. Culturally-based programs are effective, and should be expanded upon.<sup>34</sup>

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30 Toni Bissen, J.D., Executive Director, Pū'ā Foundation, has done extensive training in the application of the trauma informed care model. See <http://pua-foundation.org/Welcome.html>

31 "Every time we've travelled the world [as a Hawaiian delegation,] other indigenous groups all seem to always come back and gravitate to the fact that 'you folks had your own country. You had your own set of rules.' And one thing seems to be stark: when the overthrow took place, new management was in place." Keali'i Makekau (Cultural practitioner, Advocate), testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012).

Carmen Heteraka, a Maori cultural practitioner and prisoner advocate, traveled from Aotearoa to Honolulu specifically to testify before the Task Force regarding the Maori experience in New Zealand's criminal justice system.

"Indigenous people are disproportionately represented in the justice system all over the world[,] [Y]et the programmes that are designed for inmates and offenders often overlook cultural identity as a significant factor. In Aotearoa (New Zealand), culturally specific programmes, such as the Maori Focus Unites, designed for Maori (indigenous people of Aotearoa) inmates, have been implemented since 1992.

During the past 20 years, indigenous communities have met to address poor health, housing, education and employment statistics. These gatherings provide opportunities for indigenous solutions to address indigenous problems. O'Rongo/O'Longo is a Maori cultural programme for offenders and their families that has been presented and piloted in Hawai'i, as a result of these gatherings.

The significance of this programme is its authenticity and cultural relevance as a genuine empowerment tool. This holistic model is designed to re-structure inmates' meaning of life and self worth by drawing parallels between indigenous law and contemporary law. By reconnecting people to their ancestral knowledge and responsibilities, drawing on the legacies and great examples left by their ancestors, this programme guides the participants through a clear pathway of understanding their noble birthright that 'no action' is a violation of their sacredness." Carmen Heteraka and Michelle Brenner, *Conscious Connectivity, Creating Diversity in Conversation, Chap. 9 Holistic law approach to indigenous incarceration*, at 207 (2011).

32 *Vote taken. One vote to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu.*

"I have personally been to Aotearoa and visited on both in the standard New Zealand system and also the Maori system. They have their own sentencing circles. That's restorative justice. First Nations in Canada have sentencing circles. That is restorative justice. The Mapuchi Indians, the people in Chile have that. And we have our own ho'oponopono. In each of those, anybody can enter. You don't have to have a card or a blood quantum, they self identify. You want to use that system you can do it, they don't discriminate for or against anyone. So restorative justice is my first recommendation as a lens, telescope and a microscope." Michael Town (Cir. and Fam. Ct. Judge (ret.), Board Member, Hawai'i Paroling Authority) testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012).

33 Numerous individuals testified regarding the value of employment for ex-offenders in reducing recidivism. See *Supra* note 13.

34 *Vote taken. Two votes to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, "All programs, including culturally-based programs, must be evaluated on their individual merits." Department of the Attorney General, "Culturally-based programs are inherently*



2. Mental health services, such as psychopharmacological medication, counseling, and case management for those with mental health conditions are inadequate, and are an important component for the rehabilitation of Native Hawaiian pa‘ahao.<sup>35</sup>
3. If the state of Hawai‘i had sufficient and appropriate community-based alternatives to incarceration for substance abuse, mental health treatment, and housing at all points within the criminal justice system, the state may reduce its reliance on incarceration.
4. There is no comprehensive directory of culturally-based programs and service providers for Native Hawaiians who come into the contact with the criminal justice system. The Office of Hawaiian Affairs is presently working on a directory of Native Hawaiian organizations and community-based service providers.<sup>36</sup>
5. Pre-trial detainees have limited access to community-based programs. This lack of access leads to pre-trial detainees remaining incarcerated.
6. There are residential transition programs that have had problems with zoning regulations. In order to effectuate ser-

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*neither effective nor ineffective; that question depends on the quality and appropriateness of individual programs. Among other important considerations, effective programs target specific criminogenic factors and utilize evidence-based practices, and the manner of doing so can be culturally-based when appropriate.”*

Maui County Councilwoman and lifetime Maui resident Gladys Baisa reflected on the history of the highly successful Maui Economic Opportunity B.E.S.T. program that she and other community members have developed over several decades. “I went to a Head Start meeting in San Francisco decades ago now. It’s chicken skin, how I read about DeLancey Street on my last day there. [See: [www.delanceystreetfoundation.org](http://www.delanceystreetfoundation.org)] It’s a wonderful program, and I came home and thought ‘this is it, we need to have this.’ We got our community together, wrote a grant through the state, and hired some fabulous people.

It was a reentry program back then, before we realized we needed more comprehensive services. I wanted to call it ‘best’ because that’s what it was going to be, later on we came up with [the acronym] Being Empowered and Safe Together. At that time, we weren’t thinking Hawaiian/cultural... it took us some time to learn how to integrate the cultural aspects. And our success rate has really proven how successful that is.

You cannot pull people out of jail and throw them back on the street. We have facilities, we have a program, and we have the knowledge for how to do this proper reintegration programming and services. We could do this at an intense level. Last year, the legislature provided a good amount of money that the Governor did not release. We are doing as much as we can with our services on a very limited budget.

You must believe that people can be reintegrated and improve their own lives. They will rise to meet that expectation.” Gladys Baisa (Maui County Councilwoman, advocate), testimony before the N. Haw. Justice Task Force, Maui Summit (2012).

Regarding gender specific Hawaiian cultural programming, see *Native Men Remade*, Ty P. Kawika Tengan, Duke University Press Books, (2008).

Regarding advocacy for specific types of courts, “[t]here is a good reason that the major development of therapeutic courts and problem solving courts have been sweeping the country: they work.” Hon. Michael Town (Cir. and Fam. Ct. Judge (ret.), Board Member, Hawai‘i Paroling Authority) testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

“[W]e have to find diversionary programs [in which] we can actually take our people out of the prison track and into a program. I talk about diversionary programs because on Kaua‘i, and you’ll hear about this from our prosecutors here, and she’ll be talking about the POHAKU program. She created a diversionary restorative justice program where you put that offender in the community they offended. [I]magine that offender going into the community that they injured and performing community service, but also include an element of cultural education...teaching the Hawaiian values.” Mel Rapozo (Kaua‘i County Councilman), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

35 “Today, it is estimated that about half of state and federal prisoners meet criteria for drug abuse and/or dependence, yet fewer than 20% actually receive treatment. Longitudinal studies show that treatment begun in the criminal justice system and then continued in the community garners more lasting reduction in criminal activity and drug abuse.” Lorraine Burgess (Ho‘omau Ke Ola) testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

36 The Task Force was cautioned to be respectful of the ways in which culturally based programs differ from other programs that are designed from non-cultural models. Wayde Lee formerly established a culture-based substance abuse residential program on Moloka‘i for youth, Kahua Ola Hou, and produced a curriculum for his program. He shared his conception of best practice.

“[W]e all kalua pig different. We no kalua pig the same way. So each place gotta be one different thing. No can be the same in each community. We gotta go back to the community and kāhea. Where is the uncles and aunties for help them? The family gets hard time. You know what is one Hawaiian family? The whole community! That’s all ‘ohana! We gotta go back over there and ask them, eh what you think? They get them in place. That is best practice.” Wayde Lee (Chair of the Hawai‘i Juvenile Justice State Advisory Committee), testimony before the N. Haw. Justice Task Force, O‘ahu Summit (2012).

Francis Malani (Cultural practitioner), Testimony before the N. Haw. Justice Task Force, Hilo Summit (2012).

vices, these programs must be supported by the state and counties with appropriate zoning.<sup>37</sup>

7. Neighbor island programs which present effective community-based models such as: Maui Economic Opportunity BEST and Neighborhood Place, Wailuku on Maui; POHAKU on Kaua'i; Ka Hui o Mo'omomi on Moloka'i; and others should be expanded upon.<sup>38</sup>
8. The Department of Public Safety, in conjunction with the Office of Hawaiian Affairs, is working on the expansion of appropriate models to utilize the work of culturally-based service providers, such as the pu'uhonua model.<sup>39</sup>

#### **H. Continuing State efforts to ameliorate the disproportionate representation of Native Hawaiians in the criminal justice system.**

1. Effecting change in the criminal justice system will require a sustained, continued cooperation among state agencies and private organizations, past the work of the Native Hawaiian Justice Task Force.

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<sup>37</sup> *Vote taken. Two votes to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu; Department of the Attorney General, "There are legitimate concerns on both sides of this issue. This Finding does not seem directly or clearly related to reducing the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

See Clean and Sober Task Force, vetoed by the Governor on July 10, 2012. as S.B. 2536 H.D.2; Senate Concurrent Resolution 102.

<sup>38</sup> *Vote taken. Two votes to abstain from the Finding: Department of the Prosecuting Attorney, City and County of Honolulu, "More information is needed to evaluate these particular programs on their individual merits." Department of the Attorney General, "While the Department strongly supports the intent behind this Finding, we do not have sufficient information to endorse or attest to the effectiveness of these specific programs."*

See, *Supra* note 35.

"I often say, if you wanna see the most novel innovative models, look to the rural communities of Hawai'i. They've had to do more with less for a really long time, and as a result, they figured out how to integrate, collaborate, and provide the best quality care with the fewest resources and providers. And as a result, the models they've come up with are truly innovative and positive, and they are strengths based." Aukahi Austin (Executive Director, I Ola Lāhui Rural Hawai'i Behavioral Health Program), testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012).

"In a nutshell, everybody is talking about we need best practice, which is tied to culture. We got that concept, we got it. Nobody in this hall can tell me that you never hear that. We've been telling you guys a long time ago about that. Ho'oponopono process, Kūkulu Kumuhna, Hala, Mihi, Kala, Pā'ina is all part of the ho'oponopono process. The thing that really grabbed me as a Hawaiian [is this:] you can't put me in a small office and do individual counseling, because I feel smothered, I feel cluttered in a small little room. I had my individual counseling in the lo'i, pulling taro with my counselor. I had my individual counseling bouncing in the water at Pōka'i Bay. They took me outside the building because universe, Hawai'i, 'ha.' Language; oli, kāhea, stories, legends all of that. In a group setting, like I said ho'oponopono style. Going out to paddle. Taking the things out while practicing my culture at the same time. My house on the non-profit that I started on Moloka'i, Hale Pōmaika'i, what we do is we bring in the kupuna and we teach them about Lapa'au." Varna Nakihei, (Maui Economic Opportunity BEST Reintegration program), testimony before the N. Haw. Justice Task Force, O'ahu Summit (2012).

<sup>39</sup> The Office of Hawaiian Affairs, in conjunction with the Department of Public Safety, held a summit regarding pu'uhonua and its prospective effects on November 2-3, 2012. See House Bill 2848 (2011), and passed into law as Act 117, Session Laws of Hawai'i (2012).

# Recommendations

## A. Data regarding Native Hawaiians in the criminal justice system

1. In order to inform future policy decisions regarding the disproportionate representation of Native Hawaiians in the criminal justice system, the state of Hawai'i needs to identify what data is to be collected at different points within the criminal justice system, improve data integration, and improve data infrastructure amongst state agencies.<sup>40</sup>
2. In order to provide a richer understanding of why Native Hawaiians are disproportionately represented in the criminal justice system, the legislature should provide sufficient resources to the Department of the Attorney General for a study that includes additional control variables.<sup>41</sup>

## B. The disproportionate representation of Native Hawaiians in the criminal justice system

1. The portions of the 2011 Justice Reinvestment Initiative which were not passed into law as Senate Bill 2776, Act 139 (2011) and House Bill 2515, Act 140 (2011), are to be reintroduced. As Native Hawaiians are disproportionately represented in the criminal justice system, the Native Hawaiian community will be disproportionately affected by any inaction to reduce inmates or fix problems within the criminal justice system.<sup>42</sup>
2. The State of Hawai'i, including the executive and judicial branches, shall create and maintain an inventory of service providers, including, but not limited to, culturally based service providers that interact with inmates and former inmates. Such services may include services that address mental health, substance abuse, workforce development, and housing.
3. Training regarding implicit, unconscious bias is to be mandatory and ongoing for all employees who have contact with individuals in the criminal justice system. The Judiciary has recently held such a training for judges.<sup>43</sup>
4. As funding for indigent legal services has fallen, the State of Hawai'i legislature, through the grants-in-aid program, must adequately fund and maintain services for indigent clients.
5. While progress has been made, the Department of Public Safety must continue to bring mental health services in all state correctional facilities to constitutionally required levels.
6. In order for the Office of the Public Defender to deliver optimal services, the legislature must approve and fund more deputies, related support staff, and facilities.
7. The Office of Hawaiian Affairs and Native Hawaiian community stakeholders should collaborate with State agencies for the further development of culturally-based standards and evaluations that may be applied to Native Hawaiians who come into contact with the criminal justice system. The legislature should assist in funding this effort.
8. To enhance employment opportunities and thereby reduce recidivism, businesses that hire ex-offenders should be given a tax credit incentive.
9. All efforts should be made to conduct hearings before the Hawai'i Paroling Authority with the inmate/defendant

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40 *Vote taken. One vote against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "This language appears to over-simplify the proposed mandate." Department of the Attorney General, "Prior to initiating any large and costly data integration scheme, a single study should be conducted that includes critical control variables that may vary by race/ethnicity and are known to dramatically impact case processing and outcomes (e.g., criminal history; current offense; parole/probation status)."*

41 The Task Force is cognizant of socio-economic variables and their effect on criminal behavior.

42 *Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "For further information, see the Department's testimony pertaining to Senate Bill 2776 (2011), House Bill 2514 (2011), Senate Bill 2777 (2011), and House Bill 2525 (2011)."* One vote to abstain from the Recommendation: Department of the Attorney General, "The report should identify the areas that were removed from these bills. Otherwise, the public will need to sort through SB 2776 and HB 2515 and determine which pieces were not enacted."

43 *Vote taken. One vote against the Recommendation: Department of the Prosecuting Attorney for the City and County of Honolulu, "The specific bases for this recommendation are unclear."*

physically present.<sup>44</sup>

10. The legislature should develop guidelines for the Hawai'i Paroling Authority concerning the setting of the minimum term and factors to be considered for parole. One such consideration is access to programs.<sup>45</sup>
11. Legislation should be passed that establishes "earned time/good time" credit for inmates' behavior, including program participation, while incarcerated.<sup>46</sup>

### **C. Prevention and early intervention programs for Native Hawaiians**

1. The Task Force recognizes the importance of addressing disproportionate contact of juveniles with the justice system, and recommends the legislature consider the linkage between early prevention and/or intervention with adult incarceration.
2. To reduce intergenerational incarceration, resources must be directed towards children of incarcerated parents. The legislature should consider a mandatory educational program for guardians of minors with a parent in prison, similar to the "Kids First" program currently in place throughout the Judiciary.

### **D. Impact of the state's contracting with non-state facilities on Native Hawaiians**

1. The State of Hawai'i should increase oversight of non-state facilities pursuant to best practices.
2. The Department of Public Safety should develop criteria regarding the transfer of inmates between facilities that promote the access and completion of programs prior to an inmate's minimum sentence date.
3. The Department of Public Safety should ensure that inmates are placed in facilities that are consistent with their classification as determined by the Hawai'i classification system.
4. The Department of Public Safety should ensure that inmates scored classification is not overridden for the purposes of placing him or her in specific programs or facilities.
5. The Department of Public Safety should determine the number of prisoners placed in private facilities who have been reclassified after out-of-state transfer, the basis for reclassification, including infractions, and the amount of time added to his or her sentence as a result of such reclassification.
6. The Department of Public Safety should ensure that prisoners who are housed in non-state facilities, and who are eligible by classification for pre-release transitional programs such as work furlough, are returned to Hawai'i with sufficient time to complete programs prior to their tentative parole date.
7. The Department of Public Safety should ensure that all allegations of abuse of inmates are independently investigated and that appropriate corrective action is taken.
8. The Department of Public Safety should ensure that inmates are allowed to follow his or her religious and Native Hawaiian cultural practices, and retain sacred cultural items that do not pose a danger to the security of the institution.
9. Consistent with community testimony and the Governor's repeated statements, prisoners held out of state should

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44 *Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "All reasonable efforts should be made." Department of the Attorney General, "The Department would support this Recommendation if the first sentence read, 'All reasonable efforts...' Face-to-face hearings should be conducted whenever feasible. There is no information indicating that this Recommendation is expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

45 *Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "The specific bases and parameters for this recommendation are unclear." Department of the Attorney General, "Additional time is needed to review this issue due to the breadth of the recommendation. In addition, completing this Recommendation could not be expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

46 *Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "For further information, see the Department's testimony pertaining to House Bill 218 (2011)." Department of the Attorney General, "Like the previous Recommendation, additional time is needed to review this issue due to the breadth of the recommendation. Completion of this Recommendation is not expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

be returned. The State should make the return of inmates a top priority, and inmates should be returned as soon as practicable, consistent with public safety.<sup>47</sup>

10. Once the inmates are returned from private, out of state facilities, the State should consider passing legislation prohibiting future use of private for-profit correctional facilities.<sup>48</sup>

#### **E. Issues in state-operated correctional facilities and their impact on Native Hawaiians**

1. The Department of Public Safety should ensure that prior to work furlough and/or release, all inmates obtain official state identification and if needed, a social security card.
2. The staff at all state operated correctional facilities should receive annual, mandatory training regarding trauma informed care.<sup>49</sup>
3. Prisoners should be allowed consistent and regular visitation with immediate and extended family members. The Department of Public Safety should make every effort to ensure that adequate staffing is available for consistent and regular visitation.
4. All staff should treat inmates with respect.
5. All staff should enforce the Department of Public Safety's operating rules and policies consistently

#### **F. Restorative justice practices and their application to Native Hawaiians**

1. The State should recognize and support community and grassroots efforts that promote indigenous cultural practice models demonstrated to be successful in Hawai'i or elsewhere.
2. Through funding and resources, the legislature should support the Office of Hawaiian Affairs' efforts to increase community resilience and address poverty, unemployment, healthcare, and housing as part of addressing the systemic cycle of the incarceration of Native Hawaiians.

#### **G. Lack of services for Native Hawaiians who come into contact with the criminal justice system**

1. The State should ensure adequate funding and staffing to treat offenders with mental health conditions, including the support of mental health services such as psychopharmacological medication, counseling, and case management.
2. The State should ensure adequate funding and staffing to create a comprehensive directory of culturally based programs, indigenous models, and service providers for Native Hawaiians who come into contact with the criminal justice system.<sup>50</sup>
3. In order to reduce its reliance on incarceration, the state of Hawai'i should assist in the development of sufficient and

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47 *Vote taken. One vote against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "While the Department is not generally opposed to the return of prisoners held out-of-state, public safety must be the top priority at all times." One vote to abstain from the Recommendation: Department of the Attorney General, "It would be preferable for all Hawai'i inmates to be housed in State facilities within state boundaries, and for those housed on the mainland to be returned as soon as practicable, consistent with public safety."*

48 *Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "As circumstances change and evolve, the State should be permitted to consider all options; a prohibition of this type would bar the State from considering even in-state private correctional facilities that present a cost-saving to the State." Department of the Attorney General, "The State should retain the ability to manage its correctional facilities in accordance with changing fiscal realities. In addition, completing this Recommendation could not be expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

49 *Vote taken. One vote against the Recommendation: Department of the Attorney General, "While such training is important and should be supported, the specification of annual training (to presumably include retraining all employees every 12 months) was arbitrarily suggested and not properly researched in terms of need, value, and costs. In addition, completing this Recommendation could not be expected to reduce the overrepresentation of Native Hawaiians in the justice system relative to other ethnic groups."*

50 *Vote taken. Two votes against the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, "OHA should continue its work on a comprehensive directory, as indicated in Finding G.4." Department of the Attorney General, "Finding G.4. notes that the Office of Hawaiian Affairs is already working on creating such a directory. This will be a valuable resource."*

appropriate community-based alternatives to incarceration for substance abuse, mental health treatment, and housing at all points within the criminal justice system.<sup>51</sup>

4. Neighbor island models such as such as: MEO BEST, Wailuku Neighborhood Place on Maui; POHAKU on Kaua‘i; Ka Hui o Mo‘omomi on Moloka‘i; and others are effective models that should be supported, expanded upon, replicated and/or reinstated.<sup>52</sup>

#### **H. Continuing state efforts to ameliorate the disproportionate representation of Native Hawaiians in the criminal justice system**

1. There should be permanent funding and full time staffing in the appropriate agency or independent body to oversee and implement recommendations of the Native Hawaiian Justice Task Force, and to continue to review this issue.<sup>53</sup>
2. Future efforts to implement recommendations and review this issue should include a wider breadth of community and agency representation than the current Native Hawaiian Justice Task Force.

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51 *Department of the Prosecuting Attorney, City and County of Honolulu, “One suggestion, was for OHA to fund and/or collaborate with private organizations to create a residential substance abuse treatment facility designed specifically to treat Native Hawaiians.”*

52 *Vote taken. Two votes to abstain from the Recommendation: Department of the Prosecuting Attorney, City and County of Honolulu, “More information is needed to evaluate these particular programs on their individual merits.” Department of the Attorney General, “While the Department strongly supports the intent behind this Finding, we do not have sufficient information to endorse or attest to the effectiveness of these specific programs.”*



***E HO'OKANAKA.***

BE A PERSON OF WORTH.

