



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

**NATIVE HAWAIIAN JUSTICE TASK FORCE**

DATE: October 9, 2012  
TIME: 2:00 p.m. - 4:00 p.m.  
PLACE: Library, Office of Hawaiian Affairs  
711 Kapi`olani Boulevard Suite 500  
Honolulu, HI 96813

**MINUTES**

**I. Call to order**

Attending:

- Michael F. Broderick, Chair (President, CEO YMCA of Honolulu) (Public member)
- Dr. Kamana`opono Crabbe, OHA
- Tricia Nakamatsu, Deputy Prosecuting Attorney City & County of Honolulu
- Jack Tonaki, Public Defender
- Honorable Richard K. Perkins, 1<sup>st</sup> Circuit Court Judge
- Martha Torney, Deputy Director of Administration, Public Safety
- Cheryl Marlow, Adult Client Services Branch Administrator
- Paul Perrone, Chief of Research & Statistics, Department of the Attorney General
- RaeDeen Karasuda, Ph.D., Criminologist member selected by the Governor. Her work here is not representative or associated with her position at Kamehameha Schools Bishop Estate

Jeff Kent, OHA, Public Policy Advocate III

Sonny Ganaden, Contracted Writer

Public:

Approximately 11 guests

## **II. Approval of Minutes**

The September 4, 2012 minutes were approved with the following changes:

Add a statement clarifying that RaeDeen Karasuda, Ph.D., is not representing KSBE in documents from the Task Force (TF).

p.4 for minutes, 3<sup>rd</sup> bullet point, on camps. Remove "The reasons are known" based on extensive amount of research in the subject area. Want it clear that the bullet points don't correspond to the voting.

## **III. Reflection**

Chair Mike Broderick asked the TF to take a moment and reflect on their work to date.

The TF has held summits on O'ahu, in Kona, Hilo, on Mau'i, Kaua'i, Moloka'i and Lāna'i (via video). The TF received testimony from roughly 150 people.

The TF is making a record of the community presentation for the public to view. This alone is an important contribution.

## **IV. Website**

Jeff Kent updated the TF on the status of the NHJTF website. A preliminary website was created at:

<http://www.oha.org/nativehawaiianjusticetaskforce>

It can be found on the main OHA website in the Advocacy section. Staff is in the process of preparing the summit files for easy access. This would include the audio and submitted testimony from the summits. The current plan is to organize the site by island. It was suggested that the testimony be tagged by subject area to make it easier to research.

## **V. Proposed Findings**

The TF went through the draft findings that Sonny Ganaden had drafted. The findings were based on interviews with the TF members and an attempt to find consensus between them. In addition, there were draft findings based on research, the summits, site visits and the writer's own research.

[Note: If the TF could not reach consensus on a finding then the matter was put to a vote and the voting outcome is listed as part of the TF comments. **The final language of findings will be in bold black type.**]

**A. Data Regarding Hawaiians in the Criminal Justice System**

Comment:

The TF agreed that any references in the document to Hawaiians that should read "Native Hawaiians."

Approved Amended Heading:

**Data Regarding Native Hawaiians in the Criminal Justice System**

**A1:**

**The 2010 Office of Hawaiian Affairs Report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* recommended, among other things, the creation of the forming of a governing collaborative (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, which has authored the present Report.**

Comment:

The TF discussed and accepted section A1.

**A2:**

The Task Force adopts the empirical data regarding the over representation of Native Hawaiians in the criminal justice system as discussed in the 2010 Office of Hawaiian Affairs Report *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, pgs. 27-42.

Comment:

The TF agreed it would be more accurate to change "empirical" to "statistical". The TF agreed that there was no need to name every report in this field and was comfortable with using either "adopts" or "acknowledge." The TF requested that plainer language be used in the report to make it easy to understand. To be consistent with Act 170, the TF agreed to proceed by using "disparate" representation when "over" or "disproportionate" representation was used.

Approved amended finding:

**The Task Force adopts the statistical data regarding the disparate representation of Native Hawaiians in the criminal justice system as discussed in the 2010 Office of Hawaiian Affairs study "The Disparate Treatment of Native Hawaiians in the Criminal Justice System" ("2010 Report"), pgs. 27-42. The Task Force acknowledges that there have been previous studies regarding the disparate representation of Native Hawaiians in the criminal justice system, and that these previous studies have found similar statistical information. [Studies to be cited in a footnote.]**

**A3:**

More research is needed regarding the over representation of Hawaiians in the criminal justice system, with further objectivity and a more thorough methodology than was used in the 2010 Report.

Comment:

The TF reviewed this finding along with A4.

**A4:**

In order to maintain future credibility and to inform future decisions, continued research on the disproportionate representation of Hawaiians in the criminal justice system is necessary.

Comment:

The TF discussed the value of further research versus the need for more action. Ultimately the TF decided to delete findings 3 and 4 and convert them into a finding on the need for better data integration between criminal justice agencies.

The TF did not have consensus so they put the matter to a vote.

Voting went as follows:

8 voted in favor.

1 against

- Paul Perrone, Chief of Research & Statistics, Department of the Attorney General as designee of the Attorney General.

Approved amended finding renumbered as **A3**:

**In order to inform future policy decisions regarding the disparate 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.**

**A5:**

This report is not intended to be a socio-political document, intended to move forward an agenda.

Comment:

The TF decided to delete this finding.

**TF Request:**

The TF requested that Jeff Kent look into whether the studies by Dr. Kassebaum can be made available on the NHJTF website or a link to them. Specifically, there was a 1994 conference report they want tracked down.

**Writer's Finding (WF) A1:**

The TF adopts the findings of the report "Crime and Justice Related to Hawaiians and Part-Hawaiians in the State of Hawaii," ("1981 Report") commissioned by Alu Like, Inc. for use by the State of Hawaii in 1981, and the report "Criminal Justice and Hawaiians in the 1990's: Ethnic Differences in Imprisonment Rates in the State of Hawai'i," ("1994 Report") commissioned by Alu Like, Inc. for use by the State of Hawaii in 1994.

Comment: The Task Force reviewed WFA1 and WFA2 together.

**WFA2:**

The 1981 Report, the 1994 Report, and the 2010 Report conclude that Native Hawaiians are over represented in the criminal justice system.

Comment:

The TF decided to delete the Writer's Findings because they were incorporated into earlier findings and changes.

## **B PROPOSED HEADING**

### **The Over Representation of Native Hawaiians in the Criminal Justice System**

Comment:

The TF approved the heading.

#### **B1:**

The perception in the broader community is that the state criminal justice system is broken. There has been ongoing, tremendous frustration in the Hawaiian community regarding the known over representation of Hawaiians.

Comment:

The TF noted that this finding captured a perception held by testifiers at the community meetings but might not reflect the findings of the TF itself.

Approved amended finding:

**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 disparate representation of Native Hawaiians in the criminal justice system.**

#### **B2:**

Any recommendation is made with the intent to effectuate beneficial policy regarding disproportionate impact of the criminal justice system on all individuals, with particular focus on Native Hawaiians.

Comment:

TF decided that B2 can be removed and placed in the foreword or executive summary addresses the TF's purpose as set by Act 170.

#### **B3:**

The over representation of Native Hawaiians within the criminal justice system has been a known, studied tenet of the state justice system for decades. This report must be contextualized in a history of investigating the overrepresentation of Hawaiians in the criminal justice system. In those reports, several suggestions were made to the state legislature, various agencies, and the judiciary. Those suggestions were not pursued.

Comment:

The TF agreed that this point was addressed by the discussion on data and could be removed.

**B4:**

The work of this TF has reiterated the pervasive nature of Hawaiian overrepresentation in the criminal justice system.

Comment:

The TF agreed that this point was addressed previously and could be removed.

**B5:**

**Any conversation regarding Hawaiians within the criminal justice system must be cognizant of political and historical context.**

Comment:

TF accepted the finding and will renumber it as **B2**. Will discuss at a later date an additional finding/recommendation that there needs to be better knowledge of how the criminal justice system works.

**B6:**

The state criminal justice system is experiencing dynamic, systemic change. The effects of the nascent laws that were passed as a result of the Justice Reinvestment Initiative, as well as the Pu'uhonua project and its associated programming have yet to be felt.

Comment:

The TF discussed the matter and suggested stylistic changes.

Approved amended finding renumbered to **B3:**

**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 and treatment program, passed into law as House Bill No. 2848, Act 117 (2011), both passed into law on June 20, 2012, have yet to be felt.**

**B7:**

Proactive policy initiatives in the criminal justice system must be effectuated in order to avoid the problems that other states are currently experiencing. It is possible, and even likely, that federal and/or state funding for the criminal justice system will decrease in the near future. If that happens, Hawaii will face a multi-faceted crisis.

Comment:

The TF discussed this finding in light of the *Plata* decision affecting California and JRI. It will be renumbered as **B4**.

The TF did not have consensus. Voting went as follows:

6 voted in favor.

2 abstain

- Tricia Nakamatsu, Deputy Prosecuting Attorney City & County of Honolulu as representative from the department of the prosecuting attorney for the city and county of Honolulu.
- Paul Perrone, Chief of Research & Statistics, Department of the Attorney General as designee of the Attorney General.

Approved amended finding **B4**:

**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.**

**BWF1:**

The over representation of native Hawaiians in prison has been a studied, stable tenet of the state criminal justice system for several decades. Without action, there is no indication that the over representation discussed in previous reports, and the 2010 OHA report will not continue.

**COMMENT**

The TF discussed a need for emphasis and oversight in light of the reports on this issue that date back to the 1800s.

Amended finding to be renumbered **B5**:

To be rewritten by Sonny Ganaden.

**BWF2:**

Unconscious bias on the part of state employees may represent a portion of the over representation of Native Hawaiians in the criminal justice system.

**COMMENT**

The TF discussed whether making this finding would be saying that unconscious bias is the only factor at play. An amended version would change "state employees" to focus on employees in the criminal justice system.

The TF did not have consensus. Voting went as follows:

7 voted in favor.

1 against

- Tricia Nakamatsu, Deputy Prosecuting Attorney City & County of Honolulu as representative from the department of the prosecuting attorney for the city and county of Honolulu.

Approved amended finding to be renumbered **B6:**

**Implicit, unconscious bias on the part of workers at all stages of the criminal justice system may represent a portion of the disparate representation of Native Hawaiians in the criminal justice system.**

**BWF3:**

The TF has not been presented with any overt acts of racism. Though there has been adherence to American law within the criminal justice system, the TF acknowledges that there have been unequal outcomes for certain communities.

Comment:

The TF discussed word choice and the difference between systemic and overt racism. The TF requested the writer to rewrite the finding in response to their discussion. Sonny Ganaden indicated he would review BWF4 and BWF5 and rewrite in response to the discussions.

**BWF6:**

There are clear connections between poverty, access to legal counsel in all courts, and criminality.

Comment:

The TF discussed this as another factor and the availability of counsel. The TF did not have consensus so they put the matter to a vote.

Voting went as follows:

7 voted in favor.

2 against:

- Tricia Nakamatsu, Deputy Prosecuting Attorney City & County of Honolulu as representative from the department of the prosecuting attorney for the city and county of Honolulu.
- Paul Perrone, Chief of Research & Statistics, Department of the Attorney General as designee of the Attorney General.

Approved amended finding:

**There are clear connections between poverty, access to counsel in all courts, and criminality. The Task Force acknowledges that there has been adherence to American common law, there has been disproportionate impact upon Native Hawaiians.**

**Future findings:**

The TF discussed creating findings at a later meeting that looks at:

- Comparing the required services in the contracts with private facilities that the State cannot provide at its own local facilities.
- Looks at the clash between western system and Native Hawaiian culture.
- How Adult Corrections Officers treat pa'ahao.

### **Designee discussion:**

Paul Perrone indicated that he wanted to take final language to the Attorney General for approval.

TF discussed their role as designees and representatives of their departments. If an agency head wants final approval they can work closely with their designee.

### **Discussing approval of drafts:**

The TF members discussed taking the final draft report back to their respective agency for review. Some members wanted more time with the final draft and their agency head while other members felt that as designee or representative they should be prepared to comment and proceed. All designees will have the chance to take the proposed final report to their appointing authority for review.

There's nothing that precludes an agency from testifying regarding the report. When voting is listed, the TF member is titled as written under Act 170. Yes, no, or abstaining are the available voting options.

## **VI. Public Testimony**

### **Kat Brady:**

- The term "unequal" needs to be used in the findings.
- Community perceives that there is racism in the criminal justice system and that there are unequal outcomes.
- Feels that the minutes have been "whitewashed" and the community needs to hear what is being said here by different task force members.
- Would like a more transparent process.
- TF members have the option of writing a minority report.

### **TF responses:**

- When there is a minority report, decision makers sometimes use that as an excuse not to follow any recommendations because "the experts can't agree."
- They would consider revisiting "unequal outcomes" at another meeting.

### **Matthew Taufetee from the First Lap Organization:**

- There are not enough programs for people transitioning out of prison.

**Keala Kelly:**

- Need to account for institutionalized racism.
- One example is when small legal traffic problems spiral out of control.

**Tarewa Rota:**

- There should be more outreach about the TF and its website.
- The Hawai'i justice system should reflect indigenous systems of law like in Aotearoa.
- This TF is just advocating for the status quo.
- The community should have an input on the final draft of the report.

The TF's responses included:

- The community's input will come from the posted testimony and research report on the testimony, and to a large degree, in many of the findings themselves.
- The findings of the TF are based on their agency experience and the input received at the community summits.
- Looking at alternative systems is a potential finding/recommendation.

**Representative Faye Hanohano:**

- The work of this TF should accurately reflect the community's perspective.

**Lela Hubbard:**

- There is racism apparent in how the police treat the youth in Waimanalo.
- The TF needs to shift from a "middle class" perspective to a community, blue collar, perspective.
- Drugs are serious issue inside and outside the prison system.

**Bob Merce:**

- Testimony is as real as any figure or statistic.
- Come up with bold recommendations.

## **VII. Next Meeting**

The TF will be holding its next meetings on October 22 and 23, 2012 from 2-4pm. The location will be at:

Directors Conference Room  
Department of Public Safety  
919 Ala Moana Blvd., Room 400  
Honolulu, Hawaii 96814