# The Disparate Treatment of Native Hawaiians in the Criminal Justice System

OHA

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# Conceptual Theme for Report

**SKY FATHER, WĀKEA** mated with Hoʻohōkūkalani, his daughter with Papahānaumoku. Their first child is born ʻaluʻalu (still born) and is buried ma ka hikina (east side) of their kauhale (house). Soon thereafter, a new plant with a long stalk and a soft, fluttering leaf sprouts from the earth where there child is buried. They name him Hāloanakalaukapalili, for the long-stemmed plant with its trembling leaves. This is believed to be the first kalo (taro) plant.

Wākea and Hoʻohōkūkalani soon have a second child, a son, born live. This keiki survives and is nourished by the kalo plant, his kaikuaʻana, elder brother. He is named Hāloa in memorial to his elder brother. Hāloa is said to be the first Hawaiian person and progenitor of our Hawaiian race. Thus, the close relationship between the kalo and Hawaiian people stems from this bond of Hāloanakalaukapalili and Hāloa. It is believed that when we take care of the ʻāina (maternal progenitor or land) and the kalo, our older sibling, he will always provide our sustenance.

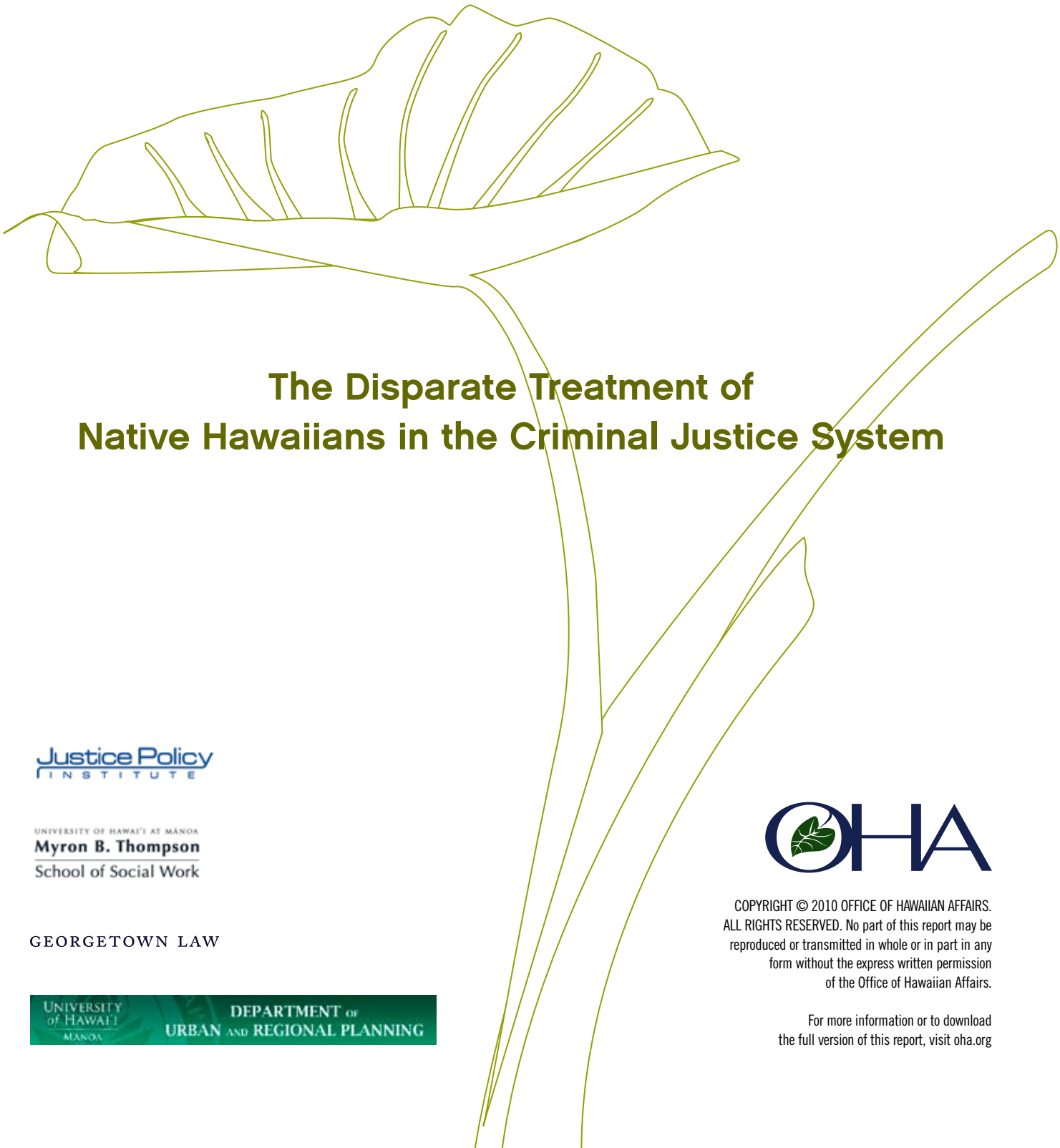
The cultivation of kalo requires much care. Kalo grows in a loʻi (patch) that contains fresh, cool, moving water and is tended and cared for by people. This ensures fresh supply of water to flow freely and generate life in the loʻi.

Thus, it was natural to conceptualize various stages of loʻi kalo (taro patch) in this report.

Kalo grows strong and healthy with the right combinations of the earth's nutrients, abundant water, energy from the sun, and the gentle breezes of the wind. Similarly, to support paʻahao while imprisoned or re-entering into the community, connection to one's ʻāina, ʻohana, and community are needed, not only to grow and develop, but to heal oneself, restore relationships, and bring forth inner resiliency.

The photos in the beginning of the report, show planters placing the huli (stalk) into the muddy waters. The following photos reflect the work of mālama, or to care for, the kalo as it continues to develop, grow, expand and transform. The photos towards the end reflect abundant, vibrant, healthy kalo.

In the same way that planters work together to carefully plant and nurture kalo in the loʻi, we must all work together to address the unfairness placed on Native Hawaiians in the criminal justice system; and mālama paʻahao, to the best of our ability, to ensure that positive individual transformation occurs that extends to future generations.



# The Disparate Treatment of Native Hawaiians in the Criminal Justice System

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Georgetown Law

University of Hawai'i at Mānoa
Department of Urban and Regional Planning

OHA



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# *E HOʻOKANAKA.*

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 ʻoni wale nō ʻoukou i kuʻu pono (ʻaʻole 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 hoʻokanaka." 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 hoʻokanaka.* Be a person of worth.

# Acknowledgements

*E mahalo mua mākou i nā kanaka like ʻole a pau nāna i kōkua a i kākoʻo i kēia papahana mai kinohi ā hiki i ka pauʻana nō hoʻi*. We would first like to thank the many individuals who have helped and supported this project from its inception to its completion.

The foundation of the research study project was based on untiring commitment, ceaseless dedication and rigorous collaboration of individuals, community organizations and government agencies. The study is a culmination of nearly three years of data collection, analysis, and remarkable partnerships that forged together in completing the project successfully.

The Office of Hawaiian Affairs (OHA) would like to extend our warmest mahalo and aloha to Amanda Petteruti of the Justice Policy Institute, Lana Sue Kaʻopua of the Myron B. Thompson School of Social Work at the University of Hawaiʻi at Mānoa, James Spencer of the Department of Urban and Regional Planning at the University of Hawaiʻi at Mānoa, Kristin Henning of Georgetown University Law School, Justin Levinson and Virginia Hench of the William S. Richardson School of Law at the University of Hawaiʻi at Mānoa for their expertise in various subject matter and research skill in completing this report.

OHA would like to mahalo Md. Saiful Momen, Margaret E. Ward, Emmitt Ford, Jr., Laura Sook, Kasey Mordecai, and the staff at the Georgetown University Law Library who made significant contributions to this project.

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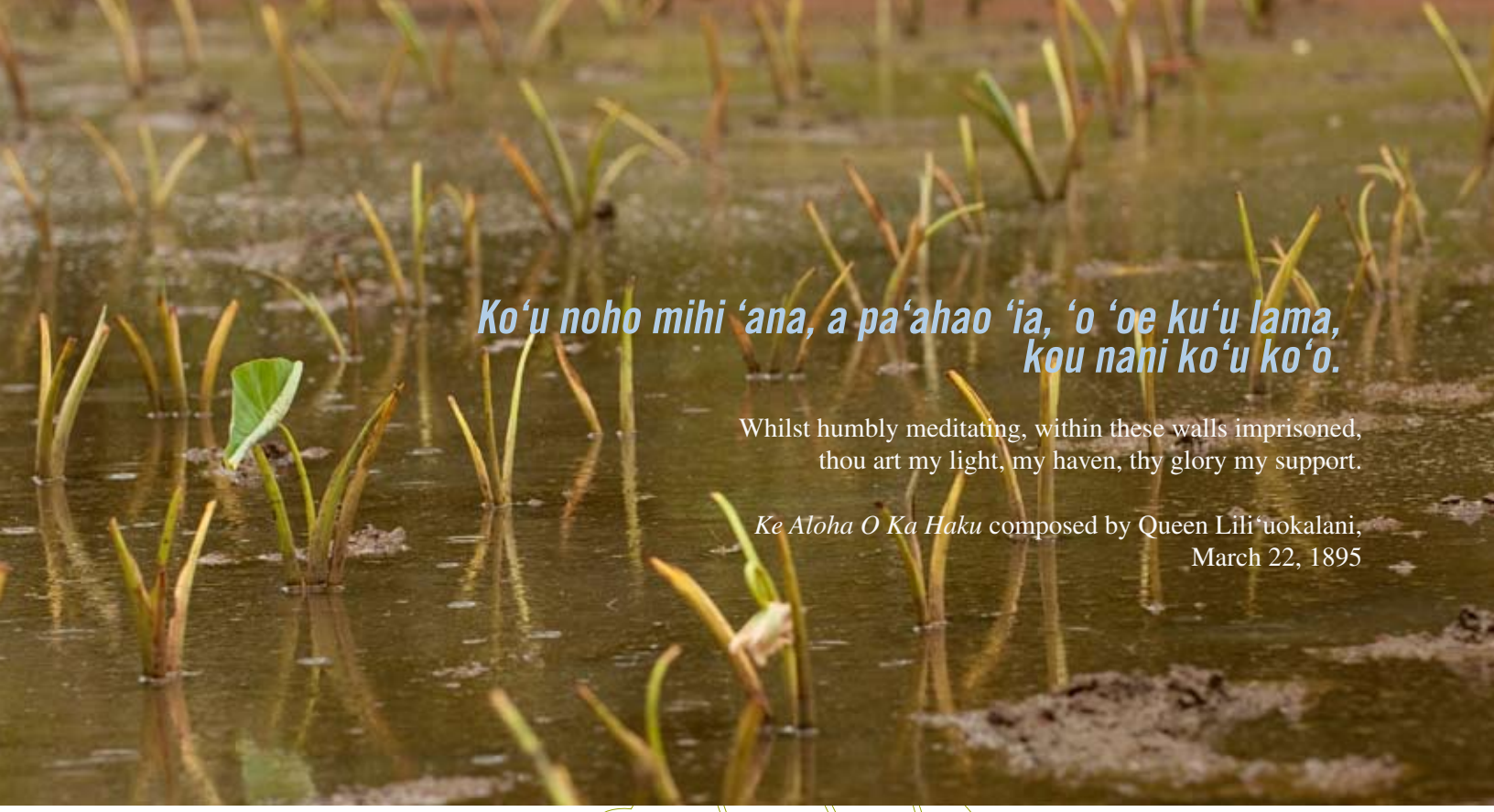
OHA would like to extend its sincerest and utmost mahalo to all participants who shared their life experiences with the criminal justice system for this project. Their leo (voice) and manaʻo (thoughts) are critical to understanding the human and social impact of the criminal justice system. No words or phrase in English nor Hawaiian can convey the unsurpassed appreciation and deep gratitude for those participants courageously sharing the depths of their lives with us and others.



*Koʻu noho mihi ʻana, a paʻahao ʻia, ʻo ʻoe kuʻu lama,*
*kou nani koʻu koʻo.*

Whilst humbly meditating, within these walls imprisoned,
thou art my light, my haven, thy glory my support.

*Ke Aloha O Ka Haku* composed by Queen Liliʻuokalani,
March 22, 1895

OHA greatly appreciates the Advisory Council members who unhesitantly provided guidance, support, and direction throughout the project. These members include Noreen Mokuau of the Myron B. Thompson School of Social Work at the University of Hawaiʻi at Mānoa, Kat Brady of the Community Alliance on Prisons, Aunty Nalani Olds, paʻahao advocate and service provider, David Kamiyama of Alu Like, Inc. and Dennis Kauahi of Queen Liliʻuokalani Children's Center.

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OHA also appreciates Clyde W. Nāmuʻo for the vision and initiation of this study, and recognizes Nalani Takushi for coordinating and managing the project. OHA research staff who supported this study includes Kamanaʻopono Crabbe, John Alamodin, Keʻala Hook, Keola Chan, Malia Kaʻaihue, and Hauʻoli Akaka. OHA recognizes the multi-disciplinary efforts coordinated through the final stage of the report to include Communications and Media Relations, Demography, Information Coordinator, Public Policy and Resource Management. Lastly, the creative and beautiful design of this report would not have been possible without the talents of John Matsuzaki, Arna Johnson, Charlie Reppun, Paul Reppun and the Matsuzaki Family.

OHA would like to acknowledge and honor Queen Liliʻuokalani through the above song and verse of the Queen's classic composition entitled, *Ke Aloha O Ka Haku* which she composed during her imprisonment.

Aloha mai kākou,

Over the years there have been a number of studies conducted concerning the disparate treatment of African Americans in America's criminal justice system. Though some individuals in our community believe that Native Hawaiians experience similar treatment in the Hawai'i criminal justice system, no comprehensive study has been conducted to determine or deny that such treatment exists. The genesis for this study came from a desire to know, once and for all, whether Hawaiians are or are not discriminated against in Hawai'i's criminal justice system.

Currently, there are an overwhelming number of Native Hawaiian men and women incarcerated in prison in Hawai'i and on the continent. Incarceration affects not only an individual person, but everything and everyone connected to them. Families are torn apart, children are left without their parents, and whole communities are dismantled.

The magnitude and complexity of this problem caused considerable attention that led to a collaborative research study that began three years ago. In this ground-breaking study, OHA asked: "Is there disparate treatment of Native Hawaiians in the criminal justice system? If so, how and why?"

A collaborative research effort began with the University of Hawai'i at Mānoa, Justice Policy Institute and Georgetown University to employ both quantitative and qualitative research methods to gather valuable information to better understand and address the concerns of our indigenous people. The results and recommendations of this study are needed to initiate policy reform and systemic change for Hawai'i. When we advocate and focus on Native Hawaiians, we are, in short, advocating for the rest of humanity and thus, it is our hope that this report will further reach to other indigenous people on the continent and the world.

It is clear that when a Native Hawaiian person enters the criminal justice system, they serve more time in prison and more time on probation than other racial or ethnic groups. Native Hawaiians are also likely to have their parole revoked and be returned to prison compared to other racial or ethnic groups. Coupled with the experiences of pa'ahao included in the pages of this report, it is clear that Native Hawaiians are caught in a cycle of imprisonment that is perpetuated across generations.

Although the study is completed, our work at OHA has begun. In the past, OHA has supported community programs to reduce recidivism rates and promote wellness, vocational training and substance abuse treatment. These agencies and organizations include: TJ Mahoney Ka Hale Ho'āla Hou No Nā Wāhine, Maui Economic Opportunity, Inc., Alu Like, Inc., Ho'omau Ke Ola and many more. We anticipate in moving and working with systems of law enforcement, and program development at the Women's Community Correctional Center.

Native Hawaiians are the indigenous people of Hawai'i, whether you are Native Hawaiian or non-Hawaiian, moving beyond Native political status, race or ethnicity, Hawai'i needs to implement effective and purposeful policies to address incarceration at its root core to building a vibrant, healthy nation.

Me ka 'oia'i'o,

Clyde W. Nāmu'o

Clyde Nāmu'o
Chief Executive Officer
Office of Hawaiian Affairs

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# *I maikaʻi ke kalo i ka ʻohā*

"The goodness of the taro is judged by the young plant it produces"

The ʻohā are the keiki that sprouts out of the kalo corm. The regeneration of the parent plant by its healthy offshoots can assure sustenance and abundance of kalo in the loʻi. This proverb reminds us that the goodness and wellbeing of our families is dependent on the positive relationships and influence that parents have with their children.

# EXECUTIVE SUMMARY

**THIS PROJECT, WHICH BEGAN AS A RESEARCH IDEA AT THE OFFICE OF HAWAIIAN AFFAIRS**, grew to a collaborative research project supported by the State of Hawai'i, House Concurrent Resolution 27, passed by the 25th Legislature on May 6, 2009. The resolution closely examines the impact of the criminal justice system on Native Hawaiians with the purpose of effecting policy change at the legislative and administrative levels, educating the media, and serving as a tool for communities to advocate for change within the criminal justice system.

As the U.S. Congress considers a bill which provides a process for Native Hawaiian self determination, there is an opportunity to create a new vision for the state of Hawai'i that takes into consideration current social challenges for Native Hawaiians. One such consideration is the enormous increase of incarceration in Hawai'i. This report includes ground-breaking, current, research and analysis, including the voices of Native Hawaiians, about the criminal justice system and the effect it has on their lives. It is with hope that decision makers will use the information to inform and develop policy and practice that will influence in building a new nation.

For the last two centuries, the criminal justice system has negatively impacted Native Hawaiians in ways no other ethnic group has experienced. The findings in this report are concerning as it tells the story of how an institution, fueled by tax payers' dollars, disparately affects a unique indigenous group of people, making them even more vulnerable than ever to the loss of land, culture, and community. These racial disparities begin with the initial contact of a punitive system that creates over-powering barriers in changing the course of their lives and are exponentially increased as a person moves through the system.

To reduce the harmful effects of the criminal justice system on Native Hawaiians and all people, Hawai'i must take action, and seek alternative solutions to prison. Assistance and training is needed in law enforcement, holistic interventions need to be implemented and evaluated, and a cultural shift in the way we imprison a person must change. If not, we will exacerbate prison over-crowding, and continue to foster the incarceration of generations to come.

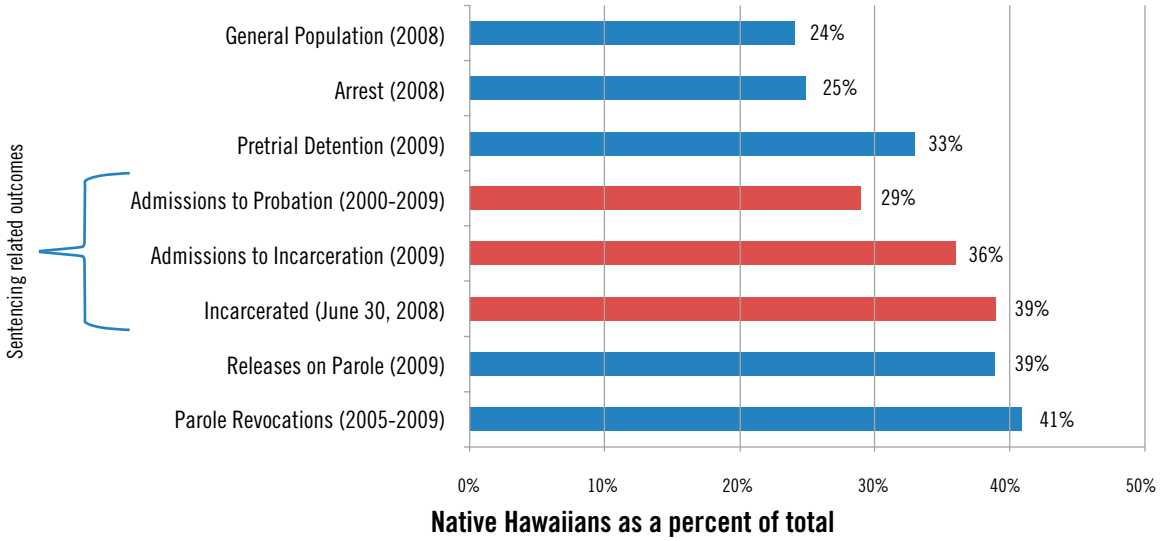
**Key Findings**

- ***Since 1977, the number of people incarcerated in Hawai'i has increased more than 900 percent,*** from 398 people in prison in that year to 4,304 people sentenced to one year or more in prison in 2008.[1] The incarceration rate increased 709 percent from 41 per 100,000 in 1980 to 332 per 100,000 in 2008.[2] Comparatively, the U.S. incarceration rate increased 262 percent in the last three decades, from 139 people in prison per 100,000 in the country in 1980 to 504 per 100,000 in 2008.[3] In total, more than 2.4 million men, women and children are incarcerated in the U.S.: about one in every 100 adults.[4]

- ***The disproportionate impact of the criminal justice system on Native Hawaiians accumulates at each stage.*** Native Hawaiians make up 24 percent of the general population of Hawai'i, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, 39 percent of the incarcerated population, 39 percent of releases on parole, and 41 percent of parole revocations.

- ***Given a determination of guilt, Native Hawaiians are more likely to get a prison sentence than all other groups.*** An analysis of data from the Hawai'i Criminal Justice Data Center, controlling for age, gender, and type of charge, found that for any given determination of guilt, Native Hawaiians are much more likely to get a prison sentence than almost all other groups, except for Native Americans. Importantly, the other major group of defendants after Native Hawaiians, Whites, are only about 67 percent (0.674), or two-thirds, as likely as Native Hawaiians to be incarcerated if judged guilty.[5]

**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 ; 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.

- ***Native Hawaiians receive longer prison sentences than most other racial or ethnic groups.*** Controlling for severity of charge, age at arrest and gender of the person charged, Native Hawaiians are sentenced to 119 days more in prison than Tongans, 73 more days than Native Americans, 68 days more than Hispanics, and 11 days more than Whites.

- ***Native Hawaiians are sentenced to longer probation terms than most other racial or ethnic groups.*** A multivariate analysis controlling for severity of the charge, age, gender and race shows that Native Hawaiians also serve more time on probation than other racial and ethnic groups, except for Hispanics. On average, a Japanese person is sentenced to 14 fewer days of probation than a Native Hawaiian person, and Whites are sentenced to nearly 21 fewer days of probation than Native Hawaiians.[6]

- ***Native Hawaiians make up the highest percentage of people incarcerated in out-of-state facilities***. In 2005, of the 6,092 people who were under the custody of the Department of Public Safety, which includes people in jails, 29 percent (1,780) were in facilities operated by other states or private companies on behalf of states. Of the people in out-of-state facilities, 41 percent are Native Hawaiians.[7]

- ***Hawai'i has the largest proportion of its population of women in prison,[8] with Native Hawaiian women comprising a disproportionate number of women in the prison.*** Native Hawaiian men and women are both disproportionately represented in Hawai'i's criminal justice system; however, the disparity is greater for women. Forty-four percent of the women incarcerated under the jurisdiction of the state of Hawai'i are Native Hawaiian. Comparatively, 19.8 percent of the general population of women in Hawai'i identify as Native Hawaiian or part Native Hawaiian.[9]

- ***Parole revocations contribute to the number of Native Hawaiians in prison in Hawai'i.*** Although Hawai'i released 644 people from prison to parole in 2009, 249 people were also returned to prison by revoking parole. Native Hawaiians had one of the lowest ratios of release to revocations. For every five Native Hawaiians released, two Native Hawaiians had their parole revoked (2.5:1 ratio). Japanese people have a slightly lower ratio (2.4:1) and Chinese people having the highest, with eight people being released for every one person returning to prison on a parole revocation.[10]

**Punitive responses to drug use disproportionately impact Native Hawaiians**

Although the "war on drugs" is part of the larger criminal justice picture, the effect it has on Native Hawaiian communities is worthy of discussion in this report.

- ***Native Hawaiians bear a disproportionate burden of punitive responses to drug use.*** Hawai'i's criminal justice approach to drug use was a significant contributor to the total number of people admitted to prison or jail in 2009 (762 or about 13 percent), but has even greater significance for Native Hawaiians. Native Hawaiians made up the largest portion (32 percent) of the people admitted to prison for drug offenses in 2009.[11]

***The weird thing is that they [parole board] fluctuate. It's the luck of the draw. The State has some of the worst laws. You don't want to go into a parole hearing after the guy who went before you, pissed off the board. One guy goes in and he just makes the board lose it. You next. You stay walking in, you stay pumped up already because they ready to smash you.***

*(Former Pa'ahao, Kāne)*

- ***Native Hawaiians do not use drugs at drastically different rates from other races or ethnicities, but go to prison for drug offenses more often than people of other races or ethnicities.*** According to the 2004 Hawai'i State Treatment Needs Assessment Program dataset, *Native Hawaiians do not use drugs at widely dissimilar rates to other races or ethnicities,* although there is some variation. Irrespective of the variation in drug use rates, the percent of Native Hawaiians that report drug use does not match the proportion of the total number of people admitted to prison or jail for drug offenses.

- ***Native Hawaiians are charged with the majority of offenses related to methamphetamine, but report using this drug at only slightly higher rates than people of other races or ethnicities.*** The use of methamphetamine in Hawai'i, particularly by Native Hawaiians, is a growing concern. Methamphetamine accounts for the most charges of all drug offenses. Although Native Hawaiians do report lifetime use and current use of methamphetamine at slightly higher rates than other groups, Native Hawaiians are still charged with the majority of offenses related to methamphetamine, by a wide margin. Data from the Hawai'i Criminal Justice Data Center shows that Native Hawaiians make up between 16 and 38 percent of charges for all categories of drugs, but account for the largest proportion of charges for methamphetamine (38 percent).

**What are the factors that contribute to disparate treatment in the criminal justice system?**

In many respects, racial disparities among Hawai'i's prison population are the products of actions that occur at different stages in the justice system, beginning with the decision to make the initial arrest. Research suggests that the effects of race may be direct or indirect and may accumulate as an individual continues through the system itself.[12]

- ***The discretionary nature of minimum sentence setting and release determinations outside the court are concerning for formerly incarcerated Native Hawaiians.*** The real determination of sentence appears to be not set by a judge, but by the Hawai'i Paroling Authority which people that come into contact with the system see as arbitrary criteria. Given the cumulative impact of the criminal justice system on Native Hawaiians and the evidence that

Native Hawaiians cycle through the system more than people of other racial and ethnic groups, sentence-setting and discretionary parole based on offense history will likely contribute to the disproportionate number of Native Hawaiians in the prison system in Hawai‘i.

- ***Incarceration is particularly traumatic for Native Hawaiians, especially when imprisonment is on the continent.*** For Native Hawaiians, the impact of trauma is particularly salient because of strong connections to family, the land and community. Imprisoning people from Hawai‘i contributes to the growing prison population and exacerbates the disproportionate impact of the system on Native Hawaiians because they are cut off from supportive communities and families that give them a reason to exit prison as soon as possible. Even the absence of familiar surroundings and changes in the weather are traumatizing.

- ***A lack of programs and services in prison to prepare a person for returning to their community contribute to the number of people in prison.*** Often, people in prison are required to participate in specific programs and services in order to be eligible for release. Without the completion of those programs, a person can be denied parole. However, programs and services frequently fill up, leaving no available spots for everyone who needs to participate. Not only are people in prison prevented from earning the earliest release possible, they could also potentially get to the end of their sentence and be released without the services that might facilitate re-entry and prevent return to prison. Complicating a successful re-entry process is that some people are returning from prison after serving their time on the continental United States.

- ***Culturally inappropriate or unavailable re-entry services are not as effective for helping Native Hawaiians achieve successful life outcomes and stay out of prison***. Research shows that culturally relevant and appropriate interventions and services are the most effective for helping Native Hawaiians participate fully in the community.[13] For example, traditional social work modalities typically rely on self-determination, which is individualistic and is Northern European or North American in orientation. Pacific cultures, including Native Hawaiians, tend to see themselves as part of a collective group or community.[14] In order to effectively provide services for re-entry or some other wellness promotion initiative, a provider must be aware of the totality of community context, interdependence, and, also, the role that oppression by other groups has played.[15] The application of Western values to a culture that does not share them makes it difficult to ensure successful implementation of initiatives or services.

***It's hard to fathom in your mind what it's like to be doing stagnant time, sitting on your bed for 24 hours, only standing to do head count. Unless they wear my shoes, they can't really comprehend what it's like, how it feels, then have an ACO degrade me, that's not encouraging me to better myself, especially if I come from a very severe traumatic background in life. Then you feel like a dollar symbol with a revolving door back to prison***

*(Former Pa‘ahao, Wahine)*

***When we go out, we're labeled as ex-convicts. We are not labeled as regular people in society. We are labeled as people coming from jail… there's a lot of roadblocks for us.***

*(Former Pa‘ahao, Kāne)*

- ***In Hawai'i, methamphetamine is the only drug that carries mandatory sentences and Native Hawaiians are more likely to be charged with a methamphetamine-related offense.***[16] This mandatory sentencing structure contributes to the disproportionate representation of Native Hawaiians in the prison system.

**Collateral Consequences, Criminal Justice Involvement and Native Hawaiians**

Imprisonment and conviction carries with it a set of collateral consequences that extend well beyond the sentence imposed by the court. Many Hawaiians coming out of the criminal justice system are denied the opportunity to finish school; they lose or cannot obtain a driver's license; they cannot find stable employment; and they are simply unable to support their families. These collateral consequences push the limits of "punishment to fit the crime" and effectively deprive a person convicted of an offense of any second chance at effectively living in, and contributing to, a community. Among the potential collateral consequences of involvement in the criminal justice system are the following:

- ***Incarcerated parents who lose their children may never get them back and for many women in Hawai'i prisons, this is a common occurrence.*** Hawai'i state law allows family courts to terminate parental rights when a child has been removed from a parent.[17] In addition, persons with a criminal history are barred from becoming foster or adoptive parents, and simply living with, or being married to, a person convicted of a crime limits the individual family rights.[8]

- ***While Hawai'i has laws designed to prevent discrimination in the hiring of people convicted of offenses there is little done to enforce the laws and protect those who have been released from prison to the community.*** Despite these laws, employers frequently screen applicants based on criminal history, through legal or illegal means and discriminate, citing other reasons not to hire.[19] In addition, the state may refuse or revoke any license to practice some type of employment, permit, registration or certificate of a person convicted of a felony if the conviction is directly related to the trade for which the license is held.[20]

- ***A person convicted of a drug offense (which includes alcohol) will lose his or her licenses for a minimum of six months and up to three years***, depending on the number of previous offenses and level of intoxication.[21] This loss often has tremendous ripple effect for individuals and families– including the ability to get to and from work, to search for employment or housing, visit relatives, obtain child care and to keep appointments with parole or probation officers as a term of community supervision. The loss of a driver's license is even more problematic on islands or in jurisdictions with no public transportation.

**Social well-being and the criminal justice system**

Involvement in the criminal justice system is a symptom of the barriers and challenges of Native Hawaiians in other social institutions and through a historical context. Although educational attainment, employment status, economic status, involvement in the juvenile justice, and the impact of a family member's incarceration are not hard and fast indicators of involvement in the criminal justice system, there is research that that these social factors are related to incarceration.

- ***Surveys of incarcerated people have consistently shown that people in prisons and jails have less educational attainment than the general population in the United States.*** Although Native Hawaiians in Hawai'i had completed high school at similar rates to all other people in Hawai'i in 2008, Native Hawaiians are less likely to have earned a Bachelor's degree.[22] The higher the level of educational attainment, the more access a person has to higher paid jobs and less likely they will be incarcerated.

- ***People in prison generally also made less money prior to their incarceration than the general population.*** For any number of reasons that are beyond the scope of this report, Native Hawaiian families have the lowest mean income of all ethnic groups in the state.[23] Additionally, Native Hawaiians in Hawai'i had the highest percentage of people living below the poverty line in 2000.[24] Specifically, Native Hawaiians have a poverty rate of 12.2 percent, while non-Natives have a poverty rate of 8.6 percent.[25]

- ***The effects of imprisonment on children and families are far reaching and can have lasting negative consequences on families and communities.*** For example, children whose parents are in prison are also more likely to develop anti-social behaviors, be involved in gangs, delinquent behaviors, or drug use than youth whose parents are not in prison. Research done by National Council on Crime and Delinquency found that children of parents in prison are five to six times more likely to become incarcerated than their peers.[26] Given that Native Hawaiians make up the largest percentage of the state prison population, the impact on families is widespread and affects many generations.

- ***Research shows that Native Hawaiian youth are disproportionately represented in the juvenile justice system in Hawai'i.*** A study of 805 juvenile cases in Hawai'i between 1995 and 1999 found that approximately 50.5 percent of the youth in juvenile facilities in Hawai'i are Native Hawaiian.[27] In 2003, Native Hawaiian youth were the most frequently arrested in all offense categories.[28]

**Recommendations**

Through interviews with Native Hawaiians, pa'ahao (formerly incarcerated or currently incarcerated people), advocates, treatment providers, and corrections officials, the following recommendations have been developed. Additional recommendations from the work of experts in the field of intentionally reducing racial disparities are also included.

***The resiliency of Native Hawaiians and the strength of culture, are the foundation for keeping Native Hawaiians out of the criminal justice system.***

- Building on cultural pride and positive identity construction may assist and support Native Hawaiians return to communities. For example, the pu'uhonua, or city of refuge or sanctuary, could be applicable to the criminal justice system. When a person is ready for community reintegration, they are forgiven and return to the community without the continued burden of the criminal justice system. This idea is particularly important as it pertains to the restrictions placed on formerly incarcerated people regarding jobs, education and housing.

- The cultural value of kuleana, or responsibility to the greater good, is another cultural strength that is central to the process of helping Native Hawaiians stay out of the criminal justice system and reintegrating to communities after prison.

- Native Hawaiian culture draws strength from community and family building, as well as communication. For example, the process of ho'oponopono, which is a spiritual process of "setting to right; to make right; to restore and maintain good relationships among family and family-and-supernatural powers," was once practiced daily. The values associated with ho'oponopono are love and affection (aloha); unity, agreement and harmony (lōkahi); and family and community ('ohana).[29] It is a sacred, culturally valuable process that draws on family and community for support and healing.

***Racial disparities must be targeted intentionally in order to reduce them***. First steps include gaining stakeholder support, making administrative or governmental resolutions to address the problem, setting goals, and collecting accurate and current data at various points in the criminal justice system to determine where racial disparities occur and to what degree.

***At the same time, an overall reduction in the number of people in prison will support efforts to reduce racial disparities***. Strategies may include: investing in alternatives to incarceration such as, shifting resources to furlough programs and re-entry strategies that reduce recidivism to incarceration, investing in holistic treatment programming in communities on all islands, and refraining from placing people in prison on the continent.

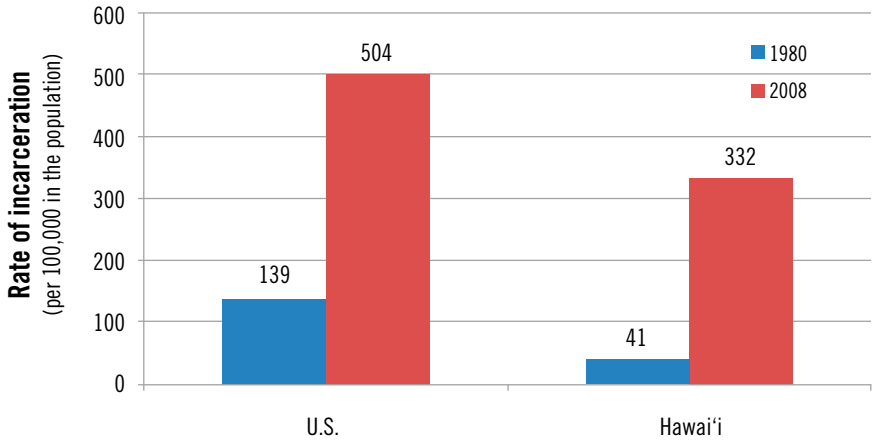
# Introduction

***Almost every Native Hawaiian has a family who has been incarcerated.***

*(Native Hawaiian kāne, Community Advocate)*

The number of people involved in the United States' criminal justice system has increased steadily over the last 30 years. Since 1977, state prison populations have grown more than 450 percent. Currently, 1.6 million people are incarcerated in state prisons and near another million are locked up in local jails and federal prisons.[30] The U.S. incarceration rate increased 262 percent in the last three decades, from 139 people in prison per 100,000 in the country in 1980 to 504 per 100,000 in 2008.[31] In total, more than 2.4 million men, women and children are incarcerated in the U.S.: about one in every 100 adults.[32]

**The rate of incarceration in Hawai'i increased 709 percent between 1980 and 2008 from 41 per 100,000 to 332 per 100,000.**




Source: Bureau of Justice Statistics, "Prisoners under State or Federal jurisdiction sentenced to more than one year, Federal and State-by-State, 1977-2004: Statistical Tables," December 2005. http://bjs.ojp.usdoj.gov/content/data/corpop01.csv. Heather C. West, William J. Sabol, and Matthew Cooper, *Prisoners in 2008* (Washington, D.C.: Bureau of Justice Statistics, 2009) http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf
Note: Hawaiian prisons and jails are a combined system. This graph includes only people sentenced to one year or more.

In Hawai'i, the growth has been even more rapid. Since 1977, the number of people incarcerated in Hawai'i has increased more than 900 percent, from 398 people in prison in that year to 4,304 people sentenced to one year or more in prison in 2008.[33] The incarceration rate increased 709 percent from 41 per 100,000 in 1980 to 332 per 100,000 in 2008.[34]

One way to understand the impact of the increase in the number of people in prison in Hawai'i is to think about the effect it has on families. Assuming that the 918,000 people in Hawai'i in 1977[35] consisted of families of three,[36] then one out of 768 families has a member in prison. If a similar assumption about family size can be made regarding the 1.3 million people in Hawai'i in 2008,[37] then one out of 100 families has a member in prison.[38]

Native Hawaiians are overrepresented in every stage of 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. This concentrated impact on Native Hawaiians has a ripple effect for whole communities; when one member of the community is in prison the entire

## What is the definition of "Native Hawaiian"?

The law that created the Office of Hawaiian Affairs (Chapter 10, §10-2)[40] defines Hawaiian and Native Hawaiian as follows:

"'Hawaiian' means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawai'i."

Although it is not the definition of Native Hawaiian used in this report, the same statute, further defines Native Hawaiian in this way:

'Native Hawaiian' means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawai'i."

The data from the agencies used in this report is self-reported data, either in the form of a survey or a census, including data from the Hawai'i Criminal Justice Data Center. Although some evidence suggests that the self-reporting method of determining race and ethnicity undercounts the number of Native Hawaiians involved in the criminal justice system,[41] for the purpose of this report we are using only the numbers available through the Hawai'i Criminal Justice Data Center or other government resources.

In the few instances in which the data available aggregates Native Hawaiians with Pacific Islanders, it is noted and where possible an explanation is given.

community suffers. Incarceration leaves one less person to provide support to a family, serve as a parent, provide child care, and to generally be part of the family. In addition, a community loses a person who might otherwise contribute to the community through taxes, volunteering, or some other community involvement. While incarceration and contact with the criminal justice system is devastating for any family or community, for Native Hawaiians, incarceration has particular destabilizing effects, as Hawaiians come from close-knit communities that often rely on each other for child care and supports.[39]

## About the project

This project is intended to closely examine the impact of the criminal justice system on Native Hawaiians with the purpose of effecting policy change at the legislative and administrative levels, educating the media, and serving as a tool for communities to advocate for change within the criminal justice system. The project, which began as a research idea in the Office of Hawaiian Affairs, grew to a collaborative research project supported by Hawai'i House Concurrent Resolution 27, passed by the 25th Legislature on May 6, 2009.[42]

The report reflects a Community-Based Participatory Research (CBPR) model that was designed to be sensitive to the experiences of Native Hawaiians who are affected by the criminal justice system and includes an advisory council to maintain a high level of sensitivity. The advisory council members have many years of experience working with people in prison or formerly in prison and their families. The members are Native Hawaiian clinicians and researchers who reflect a balance of western and indigenous perspectives. They also have an understanding of indigenous people within the context of western institutions.

The advisory council provided guidance and direction in culturally sensitive areas related to Native Hawaiians and their worldviews. The advisory council participated in monthly meetings, as well as one-on-one consultations with researchers and coordinators, kept the contributors to the project abreast of current, relevant topics, and shared experience regarding legislative and community movements.

This report, itself, presents information on how Native Hawaiians are affected by the criminal justice system and the reasons why they might be disproportionately impacted by the system. The first section of this report is primarily the analysis of data from the Hawai'i Criminal Justice Data Center by Dr. James Spencer and Saiful Momen of the University of Hawai'i at Mānoa. The data set, in its entirety, has never been available to this degree and it is instructive not only for the information that is available, but also for the information that is not.

The next section is an exploration of the impact of punitive response to drugs and drug use on the Native Hawaiian community. Although these punitive responses are part of the larger impact of the criminal justice system, they are considered separately from other offenses and together with information about treatment and recommendations because of the concentrated and important impact on Native Hawaiians. Research shows that addressing drug use with a public health response instead of a criminal justice response will dramatically reduce the number of people in prison generally and the number of Native Hawaiians in prison, specifically. This section of the report includes data from the Hawai'i Criminal Justice Data Center, as well as excerpts and analysis of interviews of formerly incarcerated people, treatment providers, advocates, and corrections officials.

The qualitative information included in the subsequent section of the report is the result of intensive and purposeful interviewing by Dr. Lana Sue Ka'opua and Margaret E. Ward, of the University of Hawai'i at Mānoa The participants in the project speak to the realities of coming into contact with the criminal justice system and fill in the gaps that the data is silent on, in terms of personal experience.

The remaining sections of this report include key issues such as social well-being factors and indicators of opportunities that might correlate with incarceration; the collateral consequences of involvement in the criminal justice system; information on more cost-effective ways to reduce the number of people in prison while protecting public safety in Hawai'i; and a comprehensive recommendations section that draws from the experiences of the people interviewed for this project as well as policy recommendations from experts in the field.

## Quantitative Component

The quantitative component of this project determines the points of the criminal justice system at which Native Hawaiians are affected, as well as the scope of the problem. Accurate, current data is critical to understanding the problem and to making informed policy decisions.

This project uses data from the Hawai`i Criminal Justice Data Center (HCJDC), a state agency that compiles data from county police departments, state and local law enforcement agencies, courts, the Attorney General's Office, prisons, and all other public agencies concerned with crime, courts, and public security. Although the primary function of the HCJDC is to do background checks, it is also an excellent source of information to better understand the social and demographic patterns of those who engage the criminal justice system in Hawai`i. In particular, because much of the data that is supplied to the HCJDC from the various agencies includes self-reported information on race and ethnicity, the data compiled by the HCJDC is an important resource for exploring the question of disproportionate representation of Native Hawaiians in the criminal justice system.

Through a strict confidentiality agreement between the Office of Hawaiian Affairs (OHA) and its researchers, and HCJDC, the HCJDC provided complete records from its database for all cases that were found in the State of Hawai`i criminal justice system between 2000 and 2009. Because the data contain sensitive information, the researchers secured a restricted, locked office space at the University of Hawai`i Department of Urban and Regional Planning (DURP) to conduct all analyses.

### *Procedures*

HCJDC provided data separated into seven areas of criminal justice data, including personal, arrests, charges, disposition, sentence, custody, and supervision information. Researchers used a statistical software package to aggregate and clean the data so that files could be matched. Overall, the seven themes represent three distinct levels of analysis: person (n=148,995), arrest (n=502,748), and charge (n=681,923). Since one person can be arrested several times, and any single arrest can have multiple charges, the data are "nested" in several "one-to-many" relationships. For this reason, we were able to link information on custody supervision and sentence to person, as well as disposition to charge. While matching the cases at each of these levels is not perfect, the number of unmatched records was relatively small compared to the number of good matches, strongly suggesting that these errors have minimal effect on the overall analysis and conclusions.

These data files were used to develop descriptive charts, tables and graphs, as well as to perform a number of inferential statistical analyses. In general, where the dependent variables of interest were binary – or the analytic question was whether an event happened or not – researchers used logistic regression techniques. An example of such a question is "whether a Native Hawaiian is more likely than others to be convicted, controlling for other explanatory factors." Where the dependent variables of interest were metric – or the analytic question was how much greater the degree of impact – researchers used ordinary least squares (linear) regression analysis. An example of such a question is "how much longer is the average Native Hawaiian probation sentence than all other ethnic groups', controlling for other explanatory factors?" Many descriptive and multivariate models were developed as part of the research project, and only those results most directly related to the question of whether Native Hawaiians are disproportionately represented in the criminal justice system in Hawai`i are presented.

Detailed information about research methods for the quantitative portion of this study is included in Appendix A.

***I gave almost 20 years of my life to the State. I am afraid I am just going to come back into prison.***

*(Former Pa'ahao)*

## **Nā Kuana ʻIke:**
## Perspectives of Paʻahao and their Allies

The qualitative aspect of this project focuses on the human impact of the criminal justice system (CJS) on Native Hawaiians, who as a group are disproportionately represented among those arrested, entering the criminal justice system, receiving consecutive and more severe sentences, and returning to prison for probation and parole violation without a new sentence.

To understand the human impact on Native Hawaiians, researchers conducted in-depth interviews with 35 individuals, a significant majority of whom are of Native Hawaiian ethnicity. All respondents had direct and extended experience in the criminal justice system. Some participants served prison sentences and some were family members of people who had served prison sentences. By recounting their experiences, participants shared perspectives often obscured by their position in the criminal justice system and by their marginalized status in society at large. Also interviewed were those who have worked in the criminal justice system as correctional officials, treatment providers, and community advocates/volunteers.

Participants detail profound and myriad challenges in the face of individual circumstances, group marginalization, and systemic realities. However, these same experiences also reflect cultural strengths and in most cases, dedication to the prospect of well-being and equity in the criminal justice system.

### *Procedures for qualitative research*
Researchers conducted semi-structured, in-depth individual or group interviews. Guided by the project's community advisory committee and informed by extant data on Native Hawaiian incarceration, researchers identified five over-arching (research) questions:

1) What are the social pathways leading to incarceration among Native Hawaiian men and women?
2) How do Native Hawaiians experience the criminal justice system?
3) What are barriers and facilitating influences to exiting the criminal justice system?
4) What are promising programs and policies for successful prevention of return to the system?
5) What might be the role of interventions grounded in Hawaiian cultural strengths?

These over-arching questions led to the formulation of interview questions. For example, to identify and describe social pathways to incarceration, researchers asked former paʻahao (inmates) to talk about their first experience with the criminal justice system, how old they were at the time, and what was happening to them in their lives.

### *Sample*
Advisory committee members provided suggestions of stakeholder groups important to include in the study, as well as the names of organizations and individuals to contact. Based on their recommendations to include diverse perspectives, researchers stratified participants by stakeholder groups: (a) former paʻahao (inmates), (b) ʻohana (family members of former paʻahao), (c) persons employed or retired from the correctional system, (d) treatment providers, and (e) community advocates and/or volunteers.

To promote study participation, researchers conducted informational sessions about the project. In most cases, those approached consented to participate in an individual or group interview. Generally, participants were enrolled in the project by eliciting from interviewees suggestions on others who might be important to interview. The sample included 35 participants with the following characteristics:

- 85 percent (29 people) reported Hawaiian ethnicity
- 54 percent (18 people) were kāne (male).
- About 57.1 percent (10 kāne, 10 wāhine or women) of those interviewed had experienced the system as paʻahao.
- Of those experiencing the system as paʻahao, about 75 percent (10 kāne, 5 wāhine) reported Hawaiian ethnicity.
- Also interviewed were: family members of former paʻahao, correctional officials (retired or currently employed) for the Hawaiʻi State Department of Public Safety, treatment providers, and community advocates.

Each person shared their unique experiences and perspectives on pathways leading to criminal justice system involvement, barriers to paʻahao exiting the system, needs and recommendations for public policies and service programs, as well as many other insights.

Detailed information about research methods for the qualitative portion of this study is included in Appendix B.

## The Demographics of Hawai'i

According to Hawai'i's Department of Business, Economic Development and Tourism, 1,257,607 people lived in Hawai'i in 2008. Native Hawaiians made up 24 percent of the population.[43] Whites made up the next largest proportion of people in Hawai'i at 20 percent; people who claim mixed heritage made up 20 percent; people with Japanese ancestry made up 18 percent; and Filipinos and Chinese people made up 12 percent and 4 percent of the population, respectively.

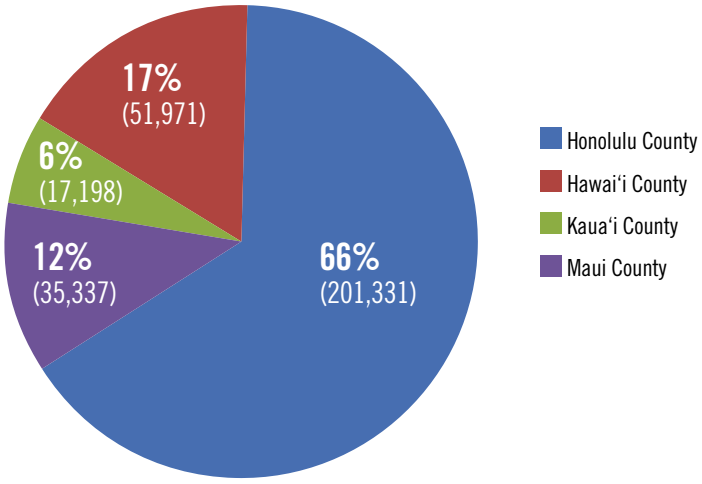
| Race/Ethnicity | Percent of total population in 2008 (1,257,607) |
|---|---|
| Unmixed (excluding Hawaiian) | 56% |
| White | 20% |
| Black | 1% |
| Japanese | 18% |
| Chinese | 4% |
| Filipino | 12% |
| Korean | 1% |
| Samoan/Tongan | 1% |
| Mixed (except Hawaiian) | 20% |
| Hawaiian/part Hawaiian | 24% |

SOURCE: 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/
Note: "Other" category is negligible given the available disaggregation of data.

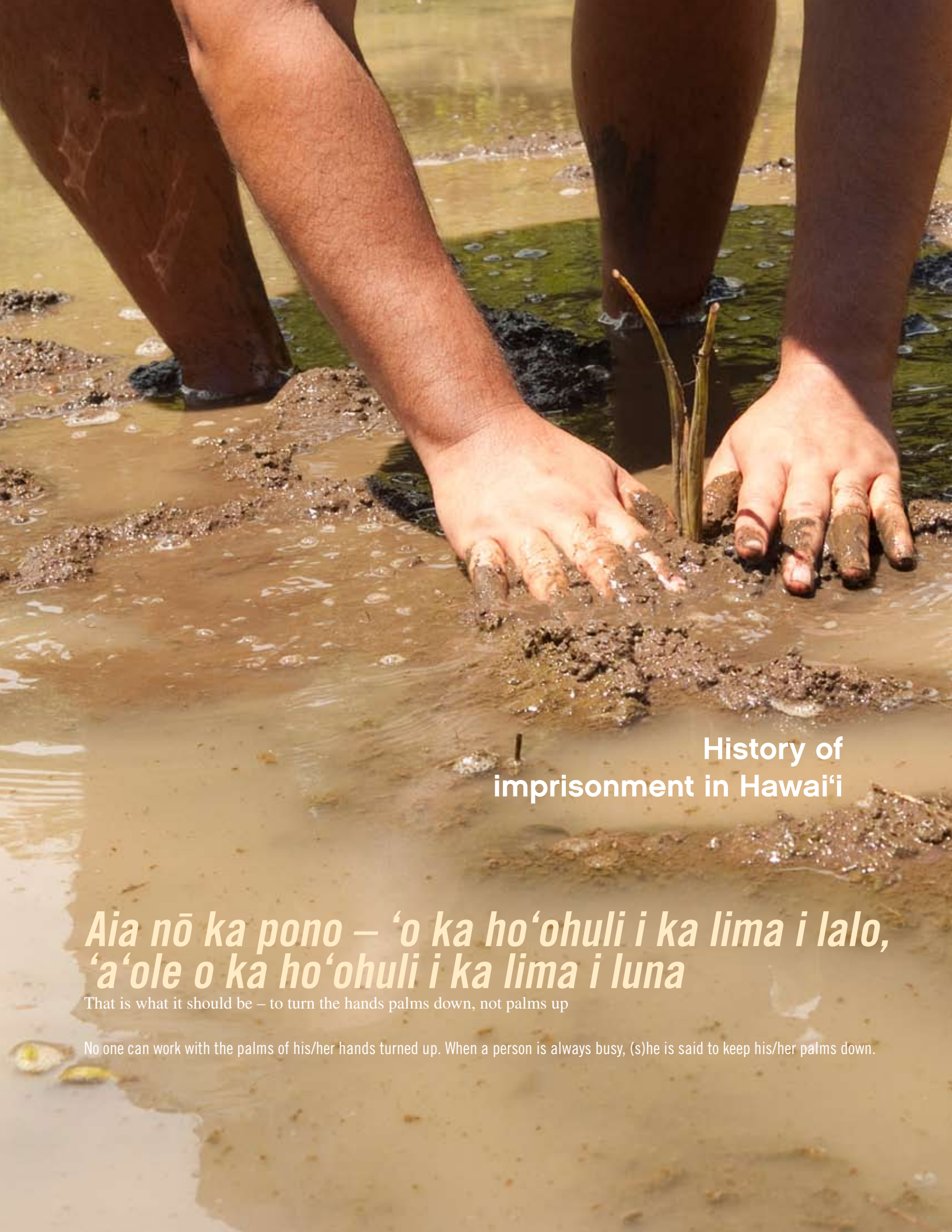
Given the demographic make-up of Hawai'i, this report intentionally uses Whites, Japanese, Filipino, Chinese, and all others as comparative racial and ethnic groups to Native Hawaiians. Those groups comprise the largest proportions of the state population.

About two-thirds of Native Hawaiians live in Honolulu County, and about two-thirds of the total population, more than 880,000,[44] also live in Honolulu County on the island of O'ahu. Native Hawaiians make up approximately 23 percent of the population in Honolulu. Although about 6 percent of Native Hawaiians live in Kaua'i County, that county includes the island of Ni'ihau, on which the majority of full-blooded Native Hawaiians reside.

**Most Native Hawaiians in Hawai'i live in Honolulu County.**




Source: 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/
Note: Maui County represents three counties, including Maui, Lanai, and Molokai.



## History of imprisonment in Hawai‘i

# *Aia nō ka pono – ‘o ka ho‘ohuli i ka lima i lalo, ‘a‘ole o ka ho‘ohuli i ka lima i luna*

That is what it should be – to turn the hands palms down, not palms up

No one can work with the palms of his/her hands turned up. When a person is always busy, (s)he is said to keep his/her palms down.

The imprisonment of Queen Lili‘uokalani in January 1895, marked the culmination of a hundred years of western imposition in Hawai‘i. The rapid rise of capitalism and business interests impressed Western governance, laws and justice on the independent Hawaiian nation. More specifically, the adoption of a Western system shifted governance away from the Mō‘ī (King), which resulted in severing the reciprocal relationship of mālama (to take care of) between the ali‘i (Chief) and maka‘āinana (commoner).[45] The new systems of law also introduced forms of punishment that comprised of law enforcement, courts, prison and parole.[46] The Queen’s wrongful imprisonment is one manifestation of a long genealogy of adverse affects of Western law on Native Hawaiians.[47]

## Depopulation

The physical, social and political well-being of the Hawaiian nation was severely affected in the colonizing project as seen with the depopulation from an estimated one million kanaka maoli in 1778, to forty thousand by 1890[48], the dispossession of land in the 1848 Māhele,[49] and the illegal overthrow of the Hawaiian Kingdom in 1893.[50]

## Hawai‘i government

The Hawaiian nation was proclaimed in 1810 by Kamehameha I, following the successful unification of the eight major Hawaiian Islands. The 1840 Constitution promulgated by Kauikeauoli, Kamehameha’s successor, further codified the Hawaiian nation.[51] Although the ali‘i adopted a western governing process, they held fast to their Hawaiian governing methods that were largely informed by Hawaiian epistemologies.[52]

For example, Queen Lili‘uokalani’s first official political act was to promulgate a new constitution to replace the 1887 Bayonet Constitution forced upon her predecessor that removed the power of the sovereign and put it in the legislature.[53] The impetus for promulgating a new constitution did not come from a self-serving need to increase her power, instead it came from the outcries of her constituents, the maka‘āinana.[54] Many petitions were drafted by the maka‘āinana in opposition of the influx of foreigners coming to Hawai‘i and purchasing their land.[55]

Traditionally, the ali‘i’s kuleana (responsibility) was to take care of and protect the maka‘āinana; however, the introduction of disease, foreign capitalist interest and western law inhibited the ali‘i from performing this primary kuleana significantly straining their relationship.

The transitions of the new laws moved Hawai‘i away from the kapu (sacred laws) system towards Christian laws and ideals.[56] The new laws shifted and affected the daily lives of the maka‘āinana by punishing common behaviors such as sexual activity, ‘awa and hula.[57]

Beginning around 1850, Hawai‘i entered another transition that moved towards a legal system. The transition of the new legal system transferred the power from the Ali‘i and the gods to a legislative form of government.[58] The legislature was made up largely by American businessmen who were driven by capitalism and their personal political interests rather than the welfare of the nation.[59]

The legislative majority staunchly supported sugar industry which; further disempowered the Hawaiian people as their land was used for business and economic gain.[60] In order to establish and support a thriving sugar plantation system, the missionaries placed American laws and legal systems to protect private property, education, religious values and the conceptions of marriage.[61]

It was after these transitions that Queen Lili‘uokalani was arrested for treason on January 16, 1895, and imprisoned in her palace.[62] A group of Western businessmen, supported by the United States overthrew the Hawai‘i government in 1893 and proclaimed a provisional government.[63] Queen Lili‘uokalani made several attempts to negotiate with the United States to return Hawai‘i’s sovereignty. In September of that year, Queen Lili‘uokalani was released from imprisonment.[64]

Native Hawaiians were not always disproportionately represented in the criminal justice system in Hawai‘i. Other immigrant groups, including Japanese, Chinese, Portuguese, and Norwegian people, who were imported to labor on plantations in Hawai‘i were generally viewed as a threat and feared by White colonists.[65] Based on a sample population of the island of Hawai‘i, beginning of the late 18th century until 1945, most of these groups were disproportionately represented as defendants compared to the general population.[66] By contrast, the sample

population of the island of Hawai'i showed that Native Hawaiians were disproportionately, *underrepresented* compared to the general population in the criminal justice system until mid-1900s.[67]

RaeDeen Keahiolalo-Karasuda in *The Colonial Carceral and Prison Politics* connects neocolonialism and neocolonial violence to disproportionate punishment of kanaka maoli in the criminal justice system. Keahiolalo-Karasuda discusses the brutal colonial punishment in Hawai'i related to Chief Kamanawa, the Cookes' boarding school, and the overthrow of Queen Liliuokalani. The idea of *colonial carceral,* affects todays kanaka maoli who are imprisioned by removing them from their 'ohana, and communities, and at the same time, weakening their ability to self-govern.[68]

## Kānaka Maoli (indigenous people of Hawai'i) and the 'āina (land)

***When you work the 'aina you learn about who you are.***

*(Community Advocate)*

To have a more complete understanding of the impact of incarceration on the Native Hawaiian people, and in order to develop recommendations that will work to reduce racial disparities in the justice system, there must be an understanding of the historical trauma associated with the loss of land, language and religion through contact with Western civilization.[69] Historical trauma manifests itself in a variety of ways, but most notably for this report, it includes substance abuse.[70]

For many indigenous people, including Native Hawaiians, the land is central to culture and well-being. Noa Emmett Aluli and Davianna Pomaika'i McGregor, respected activists and preservationists of Hawaiian culture, write that Native Hawaiian people relate to the land as they would "an ancestor or dear friend." The land is not possessed or owned and neither are resources that come from it, but Native Hawaiians are stewards with a great deal of respect for the land.[71] It is not simply the physical removal from the land that is traumatic, but it is the spiritual loss of the land that is damaging.

The long history of land alienation begins with the arrival of Spanish explorers, and continues through the arrival of Captain Cook, missionaries, sugar planters, immigrant workers, and the growth of the tourist industry and private businesses. Although there have been several recent efforts to give lands back to Native Hawaiians in the form of the Hawaiian Homes Commission Act and the Hawaiian Home Lands Recovery Act, both, both generally employ a process that returns the land to Native Hawaiians instead of returning Native Hawaiians to the land.[72]

Arguably, however, one of the most offensive and traumatic ways of alienating a Native Hawaiian person from the land is physically removing them from it and placing them behind bars, especially if those bars are on the continental United States. Prison prevents Native Hawaiians from practicing traditional Hawaiian religion and is a spiritual severance from an important part of everyday life, thus perpetuating a cycle of cultural trauma. Cultural trauma is the result of a history of marginalization by a dominant group.

***Bouncing Hawaiians out of their homeland and into prisons on the continent severs those ties to their land [and] their family.***

*(Community Advocate)*

At the same time, it is worth noting that community efforts to promote sovereignty have occasionally resulted in criminal justice responses that exacerbate the impact of land loss. William J. Rodgers, Jr. of the University of Washington, argues that the sovereignty movement is inherently an affront to the systems of law and, thus, the agents of the law are more likely to react more punitively to what might seem like small transgressions.[73]

Although the sovereignty movement and the political implications it has for the involvement of Native Hawaiians in the justice system is not central to the argument presented in this report, perhaps it is worth considering that more recent stereotypes of Native Hawaiians related to the sovereignty movement, including militancy and defiance, contribute to the involvement of Native Hawaiians in the criminal justice system.

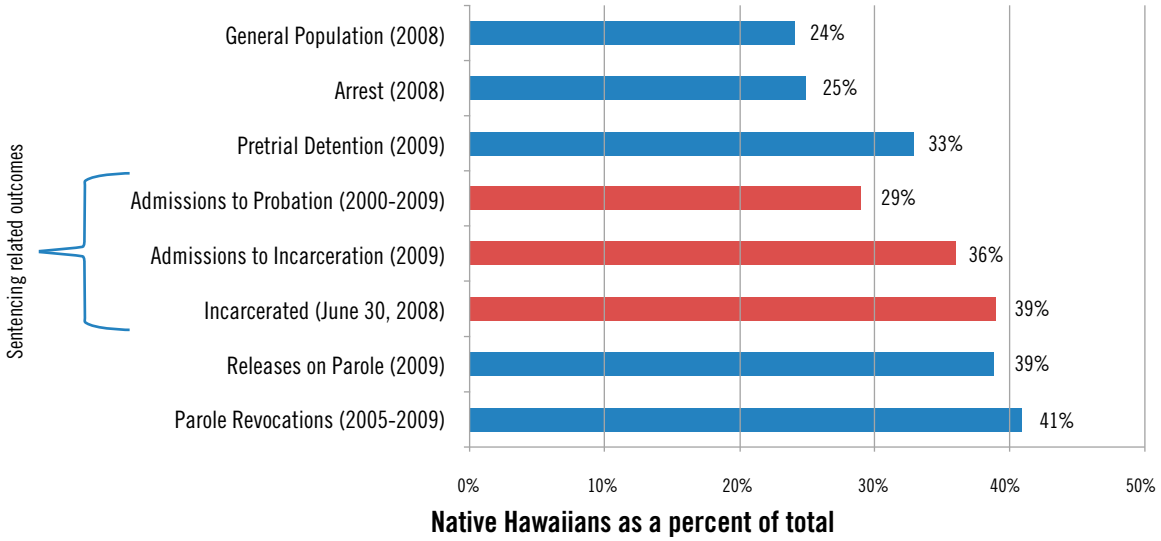
# *Nā Pulapula a Hāloa*

The descendants (sprouts, cuttings) of Hāloa

Note, pulapula refers to offspring, descendants and ho'opulapula
may also mean to regenerate, rehabilitate

# The impact of the criminal justice system on Native Hawaiians

**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 .; 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 disparate impact of these laws and their enforcement on Native Hawaiians is apparent at every stage of the criminal justice system, starting from arrest and continuing through parole. The impact is cumulative, starting with a relatively small disproportionality at arrest, but revealing itself to be more distinct at sentencing and incarceration. Disproportionate representation at the pretrial detention stage is the catalyst for increasing disparities throughout the system. Pretrial detention relates to an increased likelihood of incarceration; an increase in incarceration adds more time spent away from community and family, which then makes transition back to the community from prison more difficult, thus potentially increasing the likelihood of returning to prison. The cycle repeats itself and notably, negative cyclical effects are concentrated on Native Hawaiian communities.

Crucial first steps in efforts to reduce the overrepresentation of Native Hawaiians in the criminal justice system involve obtaining accurate and current data and then using the data to identify who is being affected and when in the criminal justice process (e.g. arrest, charging, sentencing, incarceration, etc.). Subsequent steps include determining how those policies create those effects. We use this strategy in this section of the report with data gathered from national, state, and jurisdictional sources. Some of the data included in this section is a comprehensive, multi-agency dataset compiled by the Hawai'i Criminal Justice Data Center.

***This is anecdotal, but you are going to find more police surveillance in Nānakuli than you will in Hawai'i Kai.***

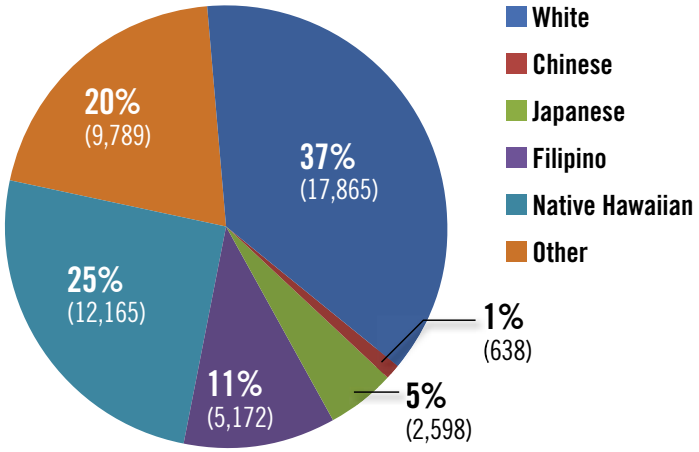
*(Community Advocate)*

## Arrest

Arrests are the primary entry point to the criminal justice system and set off a chain of events that can propel a person further into the system. According to the Federal Bureau of Investigation, 52,818 arrests were made in Hawai'i in 2008. The majority of these arrests are for offenses classified as "other," but of the remaining offenses, 2.5 percent were for violent offenses, 8.5 for property offenses, and 3.8 for drug offenses.[74] The FBI does not disaggregate data to capture the number of Native Hawaiians arrested.

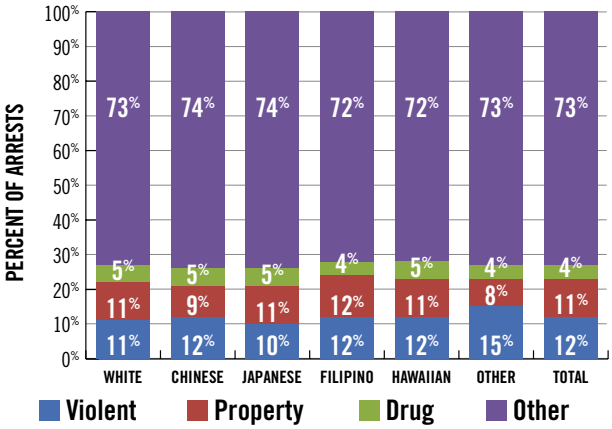
However, data from Hawai'i's Attorney General show that Native Hawaiians are arrested at a greater frequency than Hawai'i's other ethnic groups, often second only to Whites in specific offense categories.[75] Native Hawaiians are disproportionately represented in the arrest phase as they make up 24 percent of the general population, but 25 percent of arrests. Whites, too, are disproportionately arrested compared to their membership in the general population (37 percent of arrests versus 20 percent of general population). However, given that Hawai'i is a popular tourist destination, it is possible that visitors account for a portion of these arrests. In fact, according to data from the Hawai'i Criminal Justice Data Center, 69 percent of White people who were arrested between 2000 and 2008 were born outside Hawai'i. Comparatively, only 6 percent of Native Hawaiians arrested in the same time period were born outside Hawai'i.[76]

**Native Hawaiians account for 25 percent of all arrests in Hawai'i in 2008, although they are approximately 24 percent of the general population.**




Source: 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

**In 2009, Native Hawaiians, like people of other races and ethnicities, were most likely to be arrested for "other" offenses, which include DUI, offenses, probation and parole violations.**




Source: 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

More recent data from the Hawai'i Attorney General shows that people across racial and ethnic groups, including Native Hawaiians, are most likely to be arrested for "other" offenses, including probation and parole violations, driving while under the influence, gambling, and a variety of other incidents that do not fit into the other categories. Twelve percent of Native Hawaiians who were arrested in 2009, were arrested for violent offenses, which is comparable to the percent of all arrests for violent offenses in that year .[77]

In addition, the majority of arrests (81 percent) for all offenses occur in Honolulu County,[78] the most populous county and the county that sends the greatest number of people to prison.[79]

By examining the median age of first arrest, it is possible to see whether the range of ages at which people are arrested are skewed one way or another. The median age of first arrest for Native Hawaiian women is three years younger than the median age of first arrest for

| The median age of first arrest for Native Hawaiian men and women is three years younger and five years younger, respectively, than for White men and women. | | | |
|---|---|---|---|
| Race/Ethnicity | Median Age of Women | Race/Ethnicity | Median Age of Men |
| Tongan | 23.27 | Tongan | 24.92 |
| Black | 26.22 | Samoan | 27.81 |
| Native American | 28.05 | Other | 28.32 |
| Micronesian | 28.44 | Micronesian | 28.59 |
| Filipino | 28.7 | Unknown | 29.57 |
| Samoan | 29.04 | Hispanic | 30.19 |
| Hispanic | 31.25 | Hawaiian | 30.59 |
| Other | 31.58 | Black | 31.2 |
| Hawaiian | 31.65 | Filipino | 32.25 |
| Japanese | 31.82 | Korean | 34.15 |
| Unknown | 32.93 | Japanese | 34.99 |
| White | 34.91 | White | 35.73 |
| Korean | 38.13 | Chinese | 36.1 |
| Chinese | 43.18 | Native American | 38.26 |

SOURCE: Hawai'i Criminal Justice Data Center, 2000-2008 Note: The median value is the middle value in a set of values.

White women and for Native Hawaiian men, five years younger than White men. The difference is more pronounced compared to the median age of arrest of Chinese men and women: the median age of first arrest for Native Hawaiian men is eight years younger and for women, it is 12 years younger. Contact with the criminal justice system at a younger age, even if the difference is only a few years, may increase the chances that a person is likely to come into contact with the criminal justice system again in the future.[80]

## Charges

After a person is arrested, the police issue an arrest report to the prosecutor's office with a suggestion of appropriate charges. The prosecutor's office decides whether to file charges and, if so, for what offenses and the severity of the charge (felony or misdemeanor). A person can have multiple charges filed against him or her for a single arrest.

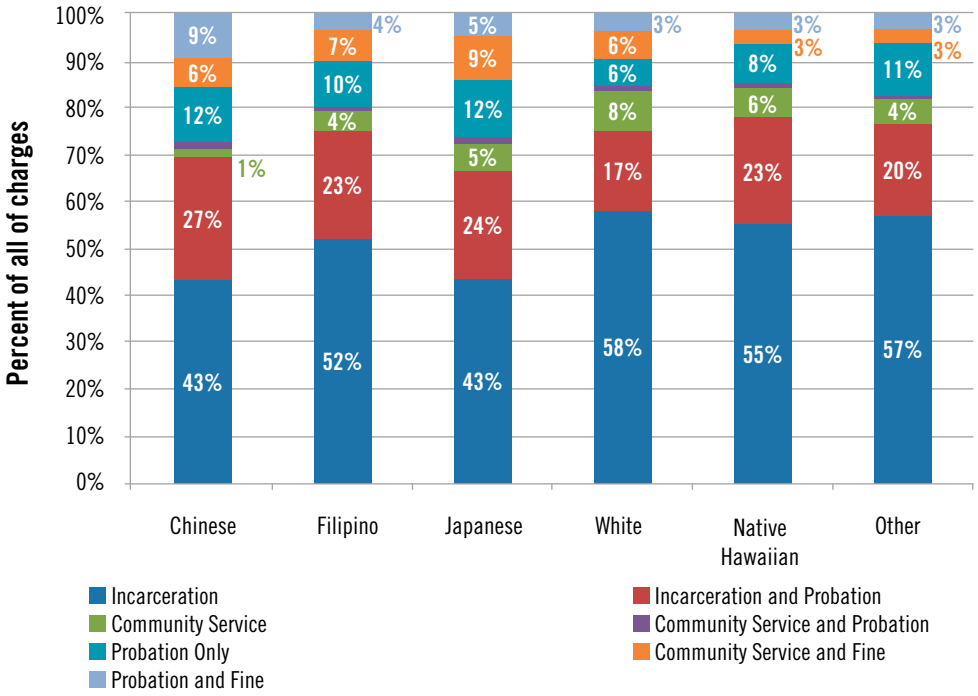
Prosecutors have some discretion in determining what charges are filed against a person; this decision can affect a host of other criminal justice outcomes. Depending on the law and practice of the jurisdiction, the severity of the charge dictates the court process and the potential term of imprisonment. The more severe the charge, the more likely a person will receive a prison sentence, which, then triggers a host of negative consequences related to life outcomes, family well-being, and community engagement.

***You are cultivating worse offenders, by taking a young 19-year-old boy and giving him five years with the hardcore guys.***

*(Community Advocate)*

Charges also serve as a benchmark for entry into the system. Charges filed will have more variability across racial and ethnic groups because the charge often reflects circumstances related to the offense and the environment in which the offense occurred. Although there is discretion used throughout the system, once a charge is filed, it is an institutional marker and, theoretically, there should be more consistency in the way people with similar charges are treated throughout the system. In other words, people of different racial and ethnic groups with similar charges and similar offense histories should receive similar sentences. As this report shows, that is not necessarily the case.

**In 2008, about half of charges for all races and ethnicities result in a sentence of incarceration.**




Source: Hawai'i Criminal Justice Data Center, 2008
Note: In Hawai'i, a condition of probation may include up to a year of incarceration for a felony offense and up to six months for a misdemeanor offense.

According to 2008 data from the Hawai'i Criminal Justice Data Center, more than half (55 percent) of charges filed result in a sentence of incarceration, with or without another type of sentence such as probation, fine, or community service; this percentage closely reflects the sentencing outcome of charges across races and ethnicities, including Native Hawaiians. Although this graph does not include information about offenses and it does not show overly dissimilar patterns of sentencing outcomes from other races and ethnicities, it is important to consider the frequency with which charges result in incarceration and the impact it has on those individuals, their families, and their communities.

***She has children –you want to bail her out. But it is not like you have an extra $500 to try to help.***

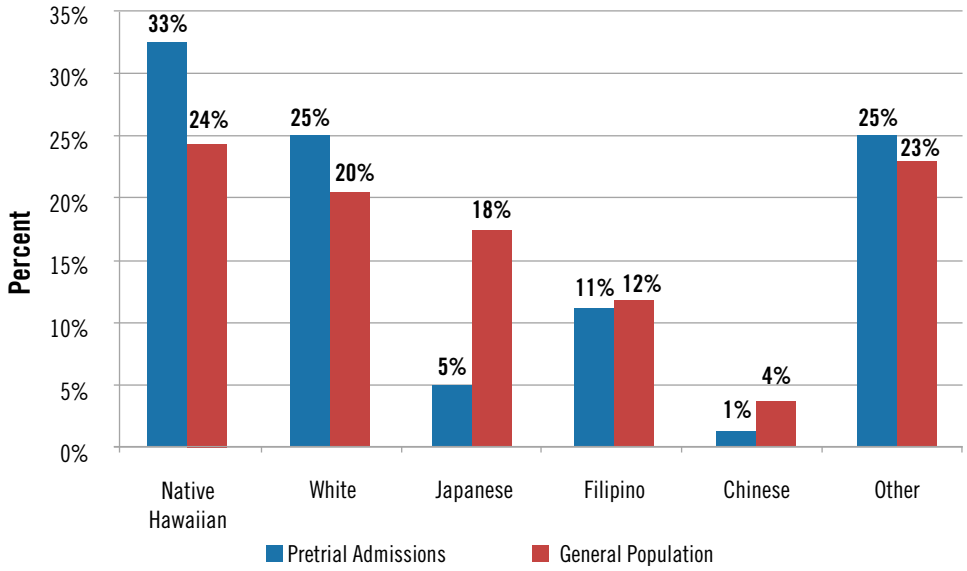
*('Ohana of pa'ahao)*

## Pretrial Detention

In Hawai'i, the jail system is operated by the state. Traditionally, jails hold people who either are serving a sentence of less than a year or who are being held pretrial because they have been determined to be a danger to public safety or themselves or there is a concern that they will not return for trial. Prisons, on the other hand, are meant to hold people who receive a sentence for more than a year and are usually designed for long-term incarceration. Hawai'i has four jails, called Community Correctional Centers, one for each county.[81] Because jails are included in the total correctional count, it is difficult to tell how many people are housed in these jails on any given day.

People held pretrial, that is, those who have not been convicted of a current offense, generally make up about 60 percent of traditional jail populations nationwide.[82] According to data from the Hawai'i Criminal Justice Data Center, approximately 4,423 people were admitted to jail pretrial during 2009,[83] which is about 74 percent of all admissions to prison or jail. People held pretrial may be there because they were not released on their

**Native Hawaiians made up one-third of admissions to pretrial detention in 2009, but are 24 percent of the general population.**




Source: Hawai'i Criminal Justice Data Center, 2009 and 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/;

own recognizance, not granted bail, or they could not afford bail if it was granted.

Pretrial detention can have a variety of negative effects on a person, including loss of a job, interruption of education, and disconnection from family and community. In addition, pretrial detention is associated with a higher likelihood of being found guilty[84] and receiving a sentence of incarceration over probation,[85] thus forcing a person further into the criminal justice system.

Native Hawaiians are disproportionately held pretrial compared to the percent of Native Hawaiians in the general population or the percent of people arrested who are Native Hawaiian.[86] In 2009, Native Hawaiians made up 33 percent of admissions to pretrial detention,[87] while comprising only 24 percent of the general population.[88]

## Sentencing

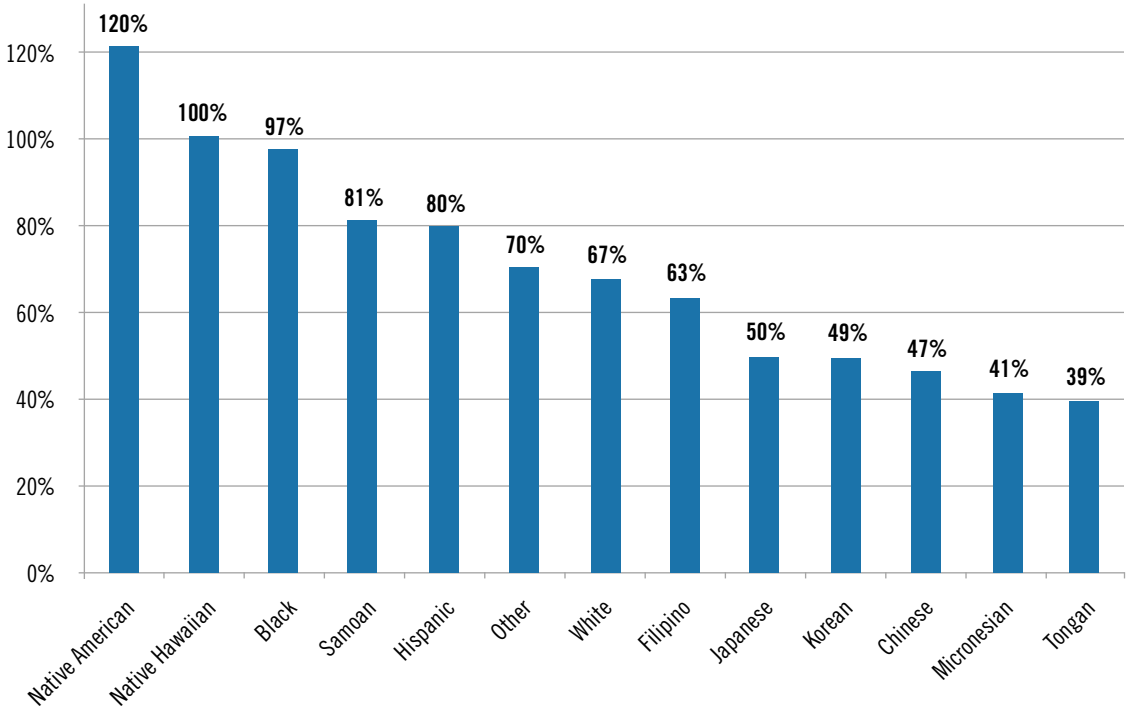
An analysis of data from the Hawai'i Criminal Justice Data Center, controlling for age, gender and type of charge, found that for any given determination of guilt, Native Hawaiians are much more likely to get a prison sentence than almost all other groups, except for Native Americans. In particular, charged Japanese are roughly 50 percent (0.498) as likely as Native Hawaiians to be sentenced to prison, while Filipinos are only about 63 percent (0.634) as likely as Native Hawaiians to get this severe punishment. Importantly, the other major group of defendants in Hawai'i, Whites, are only about 67 percent (0.674) as likely as Native Hawaiians to be incarcerated if judged guilty. In real terms, this means that for White defendants, two of three found guilty are incarcerated. For Native Hawaiian defendants, three of those three are incarcerated. While not quite as powerful of a model to explain the disproportionality of Native Hawaiians, the variables used in the model (age at arrest, gender, and charge) explain roughly 20 percent of the disproportionate results.

This analysis is particularly important because it is a reflection of the potential that subjectivity and discretion in the judicial system plays in the determination of guilt, and then, also regarding the type of punishment.

## Admissions

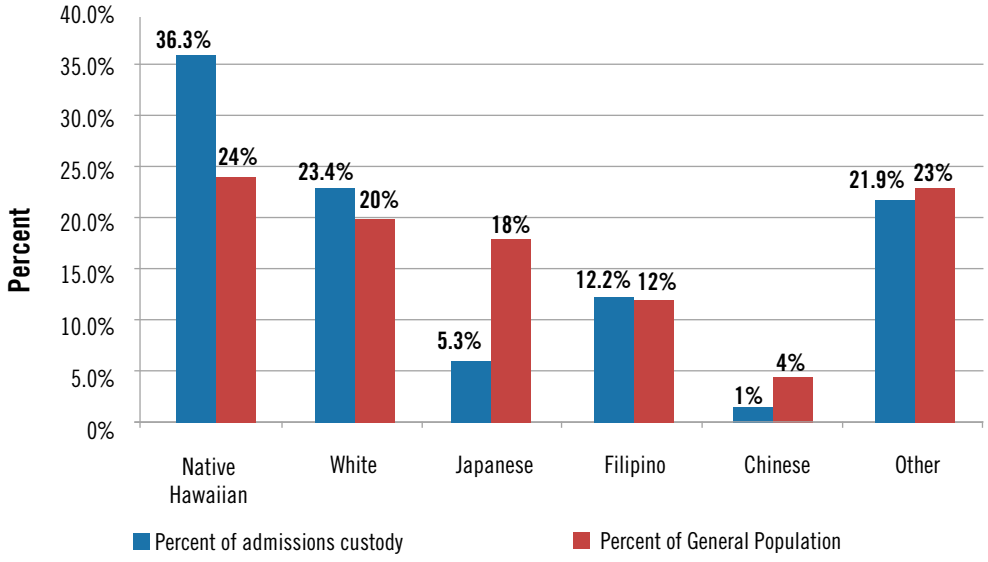
Prison populations can be measured in two ways: who is being *admitted* to prison, which could be a reflection of sentences handed down in a given time period, and

**For any given charge, Native Hawaiians are more likely to be sentenced to prision than any other racial or ethnic group other than Native Americans.**




Source: Hawai'i Criminal Justice Data Center, 2000-2008. The analysis and raw coefficients on which this chart was generated are available in Appendix C.
Note: This is not to say that 100 percent of Native Hawaiians receive incarceration sentences, but only to illustrate the rates of other groups' incarceration compared to the rate at which Native Hawaiians are incarcerated.

**In 2009, Native Hawaiians were overrepresented in admissions to custody by 12.3 percentage points; more than any other race or ethnicity.**




Source: Hawai'i Criminal Justice Data Center, 2009 and 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/

who is *in* prison, which counts all people in the prison a single day whether they have been there for two days or 20 years. Studying admissions gives a picture of the actions to confine a person to the criminal justice system in a given year and may also capture repeated entries into the system. Recommendations related to courts and sentencing can come out of admissions data.

According to data from the Hawai'i Criminal Justice Data Center, in 2009 there were 6,005 admissions to prison or jail in Hawai'i. That number includes admissions from the state court agency, as well as counties. The number also includes admissions for new offenses and technical violations while a person is on parole or probation. Racial disparities are evident in admissions as well: Native Hawaiians made up 36.3 percent of admissions to custody in 2009, but were 24 percent of the general population.

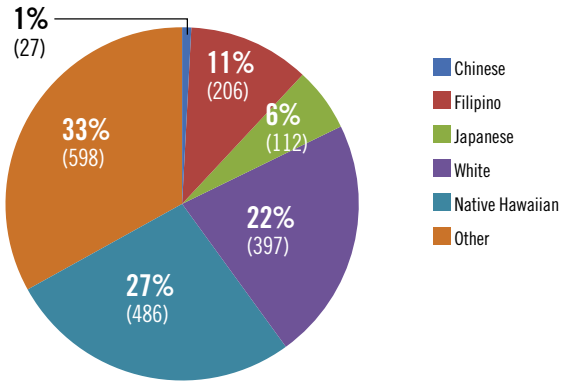
The increase in overrepresentation of Native Hawaiians by three percentage points from detention to admissions to incarceration is notable because they are the only group that experienced such a significant increase in overrepresentation from pretrial detention. The reasons for this are more fully explored in a subsequent section, but could include the disproportionate representation of Native Hawaiians in entries or returns to prison for probation or parole violations, repeated entries and reentries to facilities, and the increased likelihood that Native Hawaiians are held pretrial.

## Probation

In 2009, 19,097 people were on probation in Hawai'i. The rate of people on probation in Hawai'i (1,890 people per 100,000) was slightly higher than the national average (1,845 per 100,000). Hawai'i has the 18th highest rate of people on probation in the U.S.[89] According to Adult Client Services Branch of the First Circuit Court, in 2009, approximately 27 percent of the people on probation were Native Hawaiian or Pacific Islander.[90] Considering the other data used in this report, Pacific Islanders make up a small number of this proportion, thus changing the total proportion very little.

Although it is difficult to tell exactly how many Native Hawaiians are on probation in any given year, data from the Hawai'i Criminal Justice Data Center show that, in 2008, of the 1,826 charges filed that resulted in a sentence of probation, 486 (27 percent) were filed against

**Of all the charges that resulted in a sentence of probation in 2008, 27 percent were charges filed against Native Hawaiians.**




Source: Hawai'i Criminal Justice Data Center, 2008
Note: Includes sentences that include probation only, community service and probation, and probation and fine. This graph does not include people who were sentenced to incarceration and probation because they would serve time in incarceration before being released to probation.

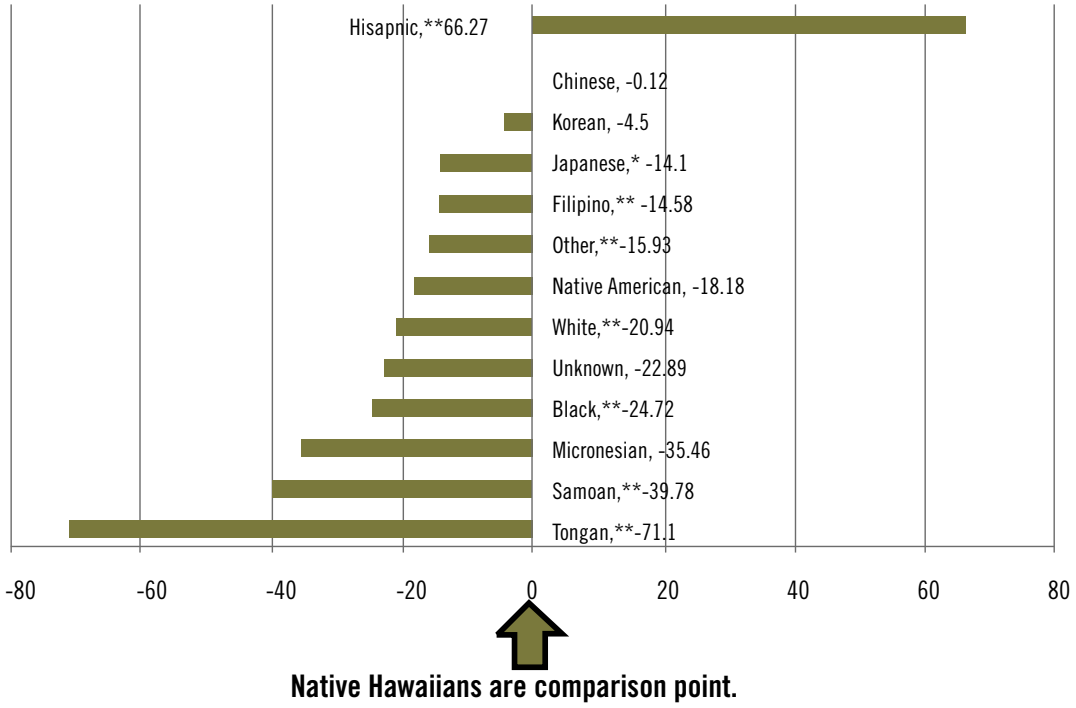
**Native Hawaiians make up the largest proportion of people returned to prison for probation violations in 2009.**


Source: Hawai'i Criminal Justice Data Center, 2009

Native Hawaiians. Although, a measurement of charges that result in a sentence of probation is not the ideal way of determining the number of Native Hawaiians on probation at any given time, it does provide some indication of the likelihood that charges filed against Native Hawaiians will result in a sentence of probation.

At the same time, Native Hawaiians made up the largest percentage of people going to prison for probation violations. In 2009, 40 percent of the people sent to prison for a probation violation were Native Hawaiian.[91] It is difficult to ascertain whether this percentage is

**All other racial and ethnic groups, except for Hispanics, receive shorter probation sentences than Native Hawaiians.**




Source: Hawai'i Criminal Justice Data Center, 2000-2008
Note: ** indicates significance at the .05 level. * indicates significance at the .10 level.
Days are calculated assuming a 30-day month. The analysis and raw coefficients on which this chart was generated are available in Appendix D.

disproportionate to the number of Native Hawaiians on probation since the number of Native Hawaiians on probation could not be collected at this time; however, it is disproportionate to the general population and to the percent of charges that were filed for Native Hawaiians that resulted in probation. Even comparing Native Hawaiians who have their probation revoked to the percent of people on probation who are Native Hawaiian or Pacific Islander yields a distinct disproportionality: 40 percent compared with 27 percent.

A multivariate analysis controlling for severity of the charge, age, gender, and race shows that Native Hawaiians also serve more time on probation than other racial and ethnic groups, except for Hispanics. On average, a Japanese person is sentenced to 14 fewer days of probation than a Native Hawaiian person and Whites are sentenced to nearly 21 fewer days of probation than Native Hawaiians. The analysis conducted using data from the Hawai'i Criminal Justice Data Center also shows that those factors included in the model accounted for 70 percent of differences in sentence. This finding can have spill-over effects into other parts of the criminal justice system, because as Native Hawaiians spend more time on probation, there is more time for them to potentially be sent to prison or jail for violating the terms of probation.

Most admissions to prison from probation are not for new offenses, but from failure to meet the terms of probation.[92] The rules of probation and how they are enforced vary across jurisdictions and even among probation officers, and can include failing to report to a probation officer, moving without notice, or testing positive on a drug test. Research shows that sentences to prison from community supervision, which includes probation and parole, can be the result of a subjective assessment on the part of a probation officer or the culmination of disadvantages that make it difficult to comply with the terms of community supervision.[93] For example, it may be difficult for a person who must report to a community supervision office during the day and leave a job for that meeting, especially when maintaining employment might be a term of community supervision. Supportive systems which help people succeed while on probation, rather than waiting for them to violate the terms of probation may reduce the chances that a person is sent to prison whether for a new sentence or a technical violation.

### Project HOPE

(Hawai`i's Opportunity Probation with Enforcement)

Project HOPE (Hawai`i''s Opportunity Probation with Enforcement), founded by Judge Steven Alm as a pilot project in 2004, has shown promise in achieving its stated goals of reducing drug use, new offenses, and incarceration. In an evaluation of HOPE, probation officers identified 493 people on probation to participate in the study. In a random assignment, 330 individuals were placed into HOPE and 163 individuals served a traditional probation sentence. The results of the evaluation, published in December 2009, show reductions in positive drug tests, fewer missed appointments, and a lower likelihood that HOPE participants would be arrested in subsequent months.

Project HOPE achieves its objectives by first issuing clear and direct expectations for participation and then subsequently applying swift and certain sanctions for non-compliance – generally, jail time – with the terms of participation in Project HOPE. Treatment is not forced upon participants unless a participant either requests a referral to treatment or continuously tests positive for drugs. People participating in HOPE only appear before the court if they violate the terms of the Project.

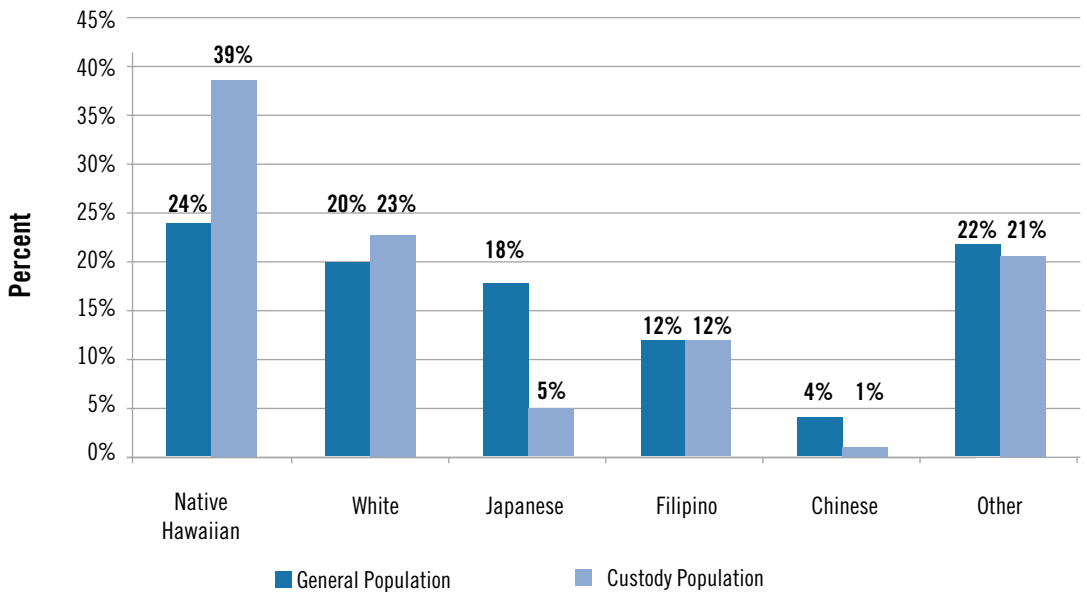
Sixty-five percent of the people participating in Project HOPE are Asian/Polynesian, which includes Native Hawaiian people. Project HOPE potentially provides an alternative to incarceration and an additional access point to treatment without using incarceration to access treatment. However, more research needs to be done to evaluate whether outcomes for Native Hawaiians are equal to those of the population as a whole, and if not, to examine what aspects of the program might disadvantage people in this group (for instance, difficulty in getting to urinalysis sites due to lack of public transportation). Since Project HOPE is still relatively new, long term effects on behavior are not available. While the program appears to have been successful for people while they are enrolled in terms of reduced drug use and low re-arrest rates, research has yet to be conducted as to what happens after participants complete the program. In addition, more research should be done to determine whether responses other than incarceration might be as effective, but also have lower costs in terms of dollars and the impact that it has on a person whose life is further disrupted by time spent in jail.

Sources: Angela Harkin and Mark Kleinman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawai'i's HOPE* (Washington, DC: National Institute of Justice, 2009). www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf
Pew Center on the States, *The Impact of Hawai'i's HOPE Program on Drug Use, Crime and Recidivism* (Philadelphia, PA: Pew Charitable Trusts, January 2010). www.pewcenteronthestates.org/uploadedFiles/PSPP_HOPE_Brief_web.pdf?n=8765

***I could easily just fall right down. It's like I am a tree-climber with no equipment sometimes. Every day is a struggle.***

*(Former Pa'ahao)*

**Although 24 percent of the general population in Hawai'i is Native Hawaiian, 39 percent of the people under the custody of the Hawai'i Department of Public Safety are Native Hawaiian.**




Source: 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/ and 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

## Incarceration

An assessment of the disproportionate incarceration of Native Hawaiians is central to understanding the overall impact of the criminal justice system on Native Hawaiians because incarceration is particularly damaging and expensive in the long term. Incarceration removes people from their families, communities, jobs, and education. It has been found to disrupt life outcomes,[94] and with a conviction or criminal record, it triggers an array of collateral consequences that make it difficult to transition back to the community.[95] Given particular considerations of Hawaiian cultural values related to family, community and connectedness, Hawai'i incarcerates a high proportion of women. Hawai'i also holds approximately 50 percent of the people sentenced to a year or more on the continental United States (1,940 out of 3,831).[96] Including people held by the federal government increases the percentage to 60 percent.[97] The effects of incarceration are even more significant as it severs and disconnects the family unit.

On December 31, 2008, Hawai'i, due to its combined prison and jail system, incarcerated 5,955 people, an increase of 17.8 percent since 2000.[98] Hawai'i's incarceration rate of 332 people in prison per 100,000 in the general population is lower than the national average of 504 per 100,000, but higher than 16 other states, including other Western states, like Washington, New Mexico, and Utah.[99] Notably, women in Hawai'i are more impacted by incarceration than in any other state. In Hawai'i, women make up a larger proportion (13 percent) of the prison system than any other state in the country.[100]

People describing themselves as Native Hawaiian made up approximately 24 percent of the state's population in 2008.[101] However, Native Hawaiians constitute a disproportionate percent of the state's corrections system, representing nearly 40 percent of all people under the custody of the Hawai'i Department of Public Safety (PSD) in 2008, both in prisons within the state and in contracted facilities in other states.[102] Native Hawaiians are the only racial or ethnic group that experiences such a severe disproportionate impact, and this disproportionality is

***When I got to Halawa there was a lot of brothers I hadn't seen for the longest time. This is where they were.***

*(Former Pa'ahao)*

| Native Hawaiians are incarcerated at nearly twice the rate of Whites in Hawai'i in 2008. Comparatively, indigenous communities, on average, in the United States are only slightly overrepresented. | | | |
|---|---|---|---|
| | **Native Hawaiians** (per 100,000) | **Whites** (per 100,000) | **Ratio Native Hawaiian to Whites** |
| HAWAI'I | 770 | 473 | 1.62 |
| | **American Indians/ Alaskan Natives** (per 100,000) | **Whites** (per 100,000) | **Ratio American Indians/Alaskan Native to Whites** |
| UNITED STATES | 576 | 487 | 1.18 |
| NEW MEXICO | 215 | 89 | 2.41 |
| WASHINGTON STATE | 393 | 173 | 2.27 |
| ARIZONA | 571 | 275 | 2.07 |
| SOUTH DAKOTA | 1276 | 176 | 7.25 |
| IDAHO | 804 | 379 | 2.12 |

Source: Heather C. West, William J. Sabol, and Matthew Cooper, *Prisoners in 2008* (Washington, D.C.: Bureau of Justice Statistics, 2009) http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf, Todd D. Minton *Jails in Indian Country,* 2008 (Washington, D.C.: Bureau of Justice Statistics, 2009). http://bjs.ojp.usdoj.gov/content/pub/pdf/jic08.pdf; Department of Business, Economic Development, and Tourism, *The State of Hawai'i Data Book 2007* (Honolulu, Department of Business Economic Development and Tourism, 2008). Hawai'i Department of Public Safety, *2008 Annual Report* (Honolulu, Hawai'i, Department of Public Safety, 2009). http://hawaii.gov/psd/administration/publications/annual-reports/department-of-public-safety/PSD-AnnualReport2008.pdf, New Mexico Corrections Department, "2008 Annual Report," News and Publications, 2008, http://corrections.state.nm.us/news/2007-2008%20Annual%20Report.pdf
State of Washington Department of Corrections, "Statistical Brochure - Fiscal Year 2008," Measures and Statistics, 2008, www.doc.wa.gov/aboutdoc/budget/docs/statistics/DOCStatisticalBrochure-Jul08.pdf. Bill Lamoreaux, email message to (me), June 7, 2010, (Arizona Department of Corrections, media@azcorrections.gov). South Dakota Department of Corrections, "Annual Report, FY 2008: Adult Inmates," Publications, 2008, http://doc.sd.gov/about/publications/documents/FY2008AnnualReportFinal.pdf. Idaho Department of Correction, "Standard Report for May 2008," Population Statistics, 2008, www.idoc.idaho.gov/facts/monthly_stats/StandReportMay08.pdf.
Notes: The U.S. rate of incarceration for American Indians and Alaskan Natives includes federal, state, local jail, and tribal jail facilities. Rates for individual states include only state-run facilities. Calculation of all U.S. rates for American Indians and Alaskan Natives uses a population estimate of 3,083,434 from the U.S. Census cited in *Jails in Indian Country, 2008*.

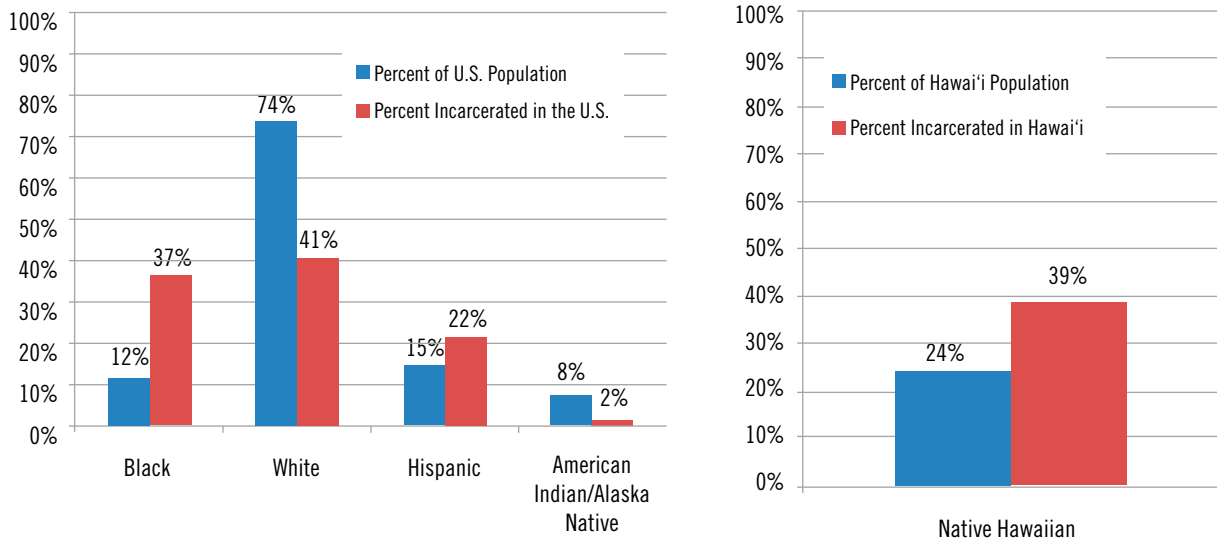
even greater than that seen in pretrial detention and admissions to prison.

National comparisons

The disproportionate impact of the criminal justice system and incarceration frequently falls on people of color across the U.S., including Native Hawaiians and other indigenous groups. Native Hawaiians and other indigenous groups, like American Indians and Alaskan Natives are overrepresented in prisons. But on average, indigenous people in the United States are slightly less overrepresented in the prison system than Native Hawaiians in Hawai'i; Native Hawaiians are incarcerated at over one and a half times the rate of Whites (1.62). However, a state by state comparison of incarceration rates of American Indians and Alaskan Natives compared to Whites shows that in some states, especially those with higher indigenous populations, indigenous people are more overrepresented. The disproportionate impact of incarceration on indigenous communities in the United States appears to be an endemic problem, not only affecting Native Hawaiians. The states included in the accompanying table were chosen because they have significant numbers of indigenous people in the general population and also had disaggregated data available.

National repositories of data on prison populations do not disaggregate data to include Native Hawaiians as a group, so it is difficult to tell the disproportionate impact of the national criminal justice system on Native Hawaiians. However, the impact of the Hawai'i criminal justice system on this group is clear, compared to incarceration rates for other races and ethnicities across the country. The degree of disproportionality for Native Hawaiians is not as severe as it is for African Americans, for example, but more severe than for Hispanics. African Americans made up 12 percent of the U.S. general population, but 37 percent of the people in prison, a disproportionality of 25 percentage points. Native Hawaiians in Hawai'i made up 24 percent of the general population and 39 percent of people in prison,

**The disproportionate representation of Native Hawaiians in prison is not as severe as it is for Blacks, nationally, but is more pronounced than that for Hispanics.**




Source: Hawai'i Department of Public Safety, *2008 Annual Report* (Honolulu, Hawai'i, Department of Public Safety, 2009). http://hawaii.gov/psd/administration/publications/annual-reports/department-of-public-safety/PSD-AnnualReport2008.pdf, Heather C. West, William J. Sabol, and Matthew Cooper, *Prisoners in 2008* (Washington, D.C.: Bureau of Justice Statistics, 2009) http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf, Todd Minton, *Jails in Indian Country, 2008* (Washington, DC: Bureau of Justice Statistics, 2009)., U.S. Census, "American Community Survey Factfinder: 2006-2008," January 24, 2010., Department of Business, Economic Development, and Tourism, *The State of Hawai'i Data Book 2007* (Honolulu, Department of Business Economic Development and Tourism, 2008).
Note: Data for American Indians/Alaska Natives are from 2006 and do not include tribal jails. Additionally, national data includes only people sentenced to federal and state prisons.

a 15 percentage point disproportionality, which is 10 percentage points lower than the African American disproportionality, but 8 percentage points higher than the Hispanic disporportionality of 7 percent.[103] However, the opposite is true for Whites. Whites made up 74 percent of the U.S. general population, but only 41 percent of the people in prison.

Given the 709 percent increase in the incarceration rate in Hawai'i over the last 30 years compared to the 262 percent increase in the national incarceration rate, it is worth considering that the increase in the incarceration rate of Native Hawaiians over the same time frame is greater than that for any other racial or ethnic group in the United States.[104]

Sentence length

Contributing to the disproportionate number of Native Hawaiians in prison compared to the general population is the length of the prison sentence. Controlling for severity of charge, age at arrest, and gender of the person charged, Native Hawaiians are sentenced to 119 days

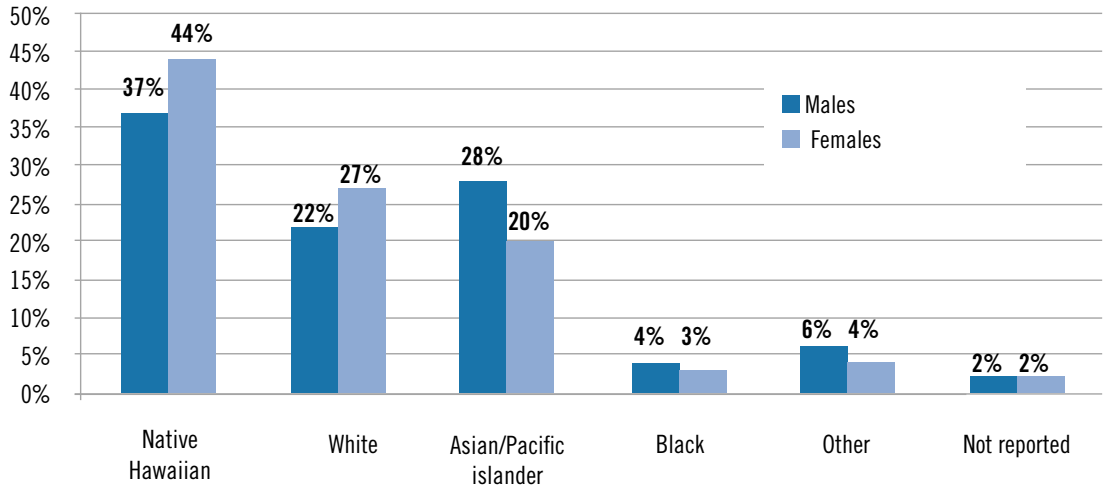
***Most families can't fly up to Arizona to see their dad. They can't afford it, but we have roughly half of the Hawai'i prison population there.***

*(Community Advocate)*

## Women in prison

While Native Hawaiian men and women are both disproportionately represented in Hawai`i's criminal justice system, the disparity is greater for women. Forty-four percent of the women incarcerated under the jurisdiction of the state of Hawai`i are Native Hawaiian. Comparatively, 19.8 percent of the general population of women in Hawai`i identify as Native Hawaiian.

**Native Hawaiian women make up a larger proportion of the total number of women under the custody of the Hawai'i Department of Public Safety than Native Hawaiian men.**




Source: Office of Hawaiian Affairs, "Databook 2006: Public Safety," March 2006. www.oha.org/pdf/databook/2006/DataBook2006PublicSafety.pdf.

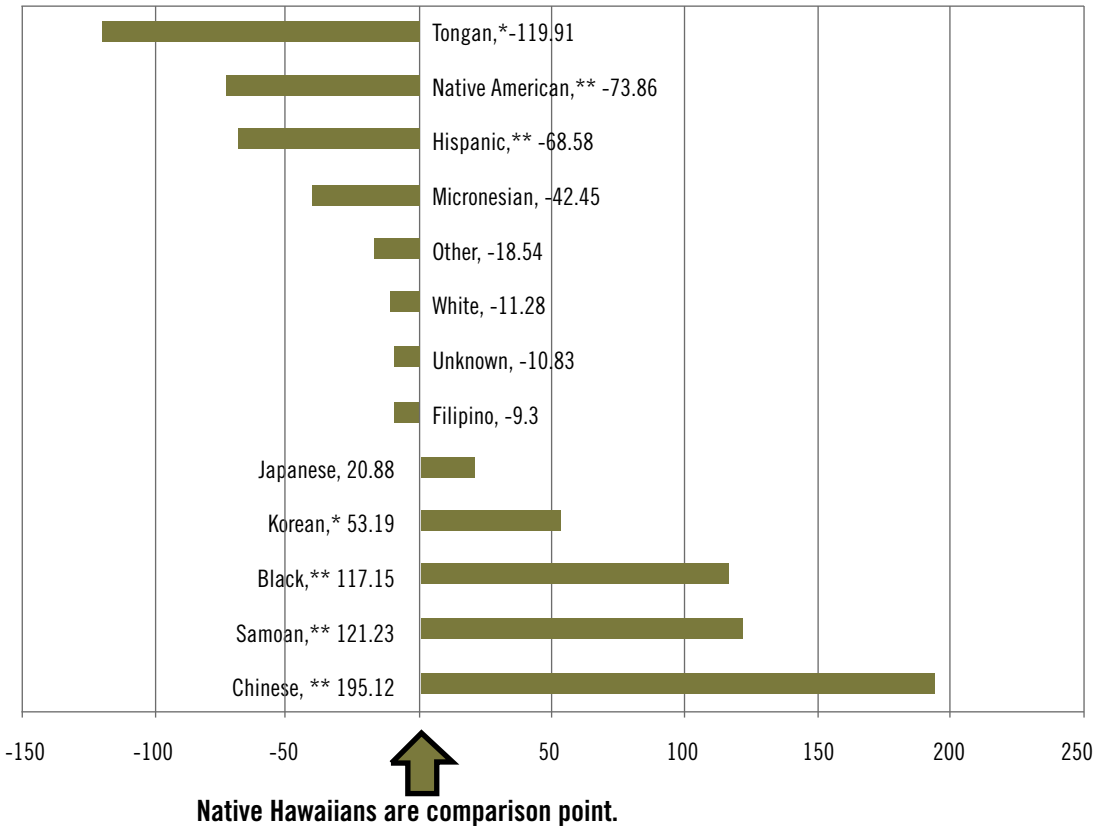
Scholars, including Meda Chesney-Lind from the University of Hawai`i and Patricia VanVoorhis of the University of Cincinnati, theorize that the prison system has a unique impact on women that leads to more women returning to prison, resulting in continuing increases in the number of women in prison. The prison system is primarily designed for men, not taking into account the unique mental and physical health needs of women. Risk assessments determining classification status of women, which, in turn, determines custody level and closeness to release, do not take into account research that generally finds women to be less likely to engage in illegal behavior upon release than men. Also, scholars theorize that prison systems generally operate to supervise and monitor women more closely, which results in more disciplinary actions for more minor offenses than men.

Research shows that women of color and native women bear the disproportionate burden of incarceration compared to White women. Women of color contend with the cultural stereotypes related to drug use, poverty, gender, and race that limit access to opportunities that improve life outcomes overall.

As will be discussed in a subsequent section of this report, the imprisonment of women has important repercussions for families, particularly Native Hawaiian families, which contribute to a cycle of contact with the criminal justice system.

Sources:
U.S. Census Bureau, "Hawai`i, S0201. Selected Population Profile, Native Hawaiian alone or in any combination, 2006-2008 American Community Survey," December 31, 2009.
Patricia Van Voorhis, Technical Assistance Provided to Review the System for Classifying Incarcerated and Re-entering Women Offenders (National Institute of Corrections, 2008).
Natasha A. Frost, Judith Greene, and Kevin Pranis, Hard Hit: The Growth in the Imprisonment of Women, 1977 – 2004 (New York, NY: Institute on Women and Criminal Justice, 2006). http://66.29.139.159/institute/hardhit/HardHitReport4.pdf.

**Native Hawaiians are sentenced to more days in prison than most other racial or ethnic groups in Hawai'i, when controlling for gender, age and severity of charge.**




Note: ** indicates significance at the .05 level. * indicates significance at the .10 level.
Days are calculated assuming a 30-day month. The analysis and raw coefficients on which this chart was generated are available in Appendix E.

more in prison than Tongans, 73 more days than Native Americans, and 68 days more than Hispanics, all of which are statistically significant.[105] Whites get 11 fewer days in prison than Native Hawaiians. Although not statistically significant, this finding still serves as a strong indicator of a disproportionately long incarceration for Native Hawaiians when compared to Whites. This model using data from the Hawai'i Criminal Justice Data Center also shows that the included factors explain 43 percent of differences in sentences. The remaining 43 percent of differences could include offense background, which was not available for analysis in this study.

***Hawai'i is their home. When you take them away like that, you mess them up even more.***

*(Former Pa'ahao)*

In addition to Native Hawaiians receiving longer sentences than other racial and ethnic groups, they are also more likely to receive consecutive sentences compared to any other racial or ethnic group. Whites receive the next highest number of consecutive sentences. Between 2000 and 2008, Native Hawaiians received 48 percent more consecutive sentences than Whites during the same time period.[106] Consecutive sentences are served one after the other, as opposed to concurrent sentences that are served at the same time. Consecutive sentences increase the burden of punishment as it keeps people in prison longer.

Incarceration on the continent

The Hawai'i the Department of Public Safety (PSD) contracts with prisons in other states to hold people under its custody. Native Hawaiians make up the highest percentage of people incarcerated in out-of-state facilities. In 2005, of the 6,092 people who were under the custody of PSD, which includes people in jails, 29 percent (1,780) were in facilities operated by other

## In 2005, Native Hawaiians were most overrepresented in out-of-state prison facilities.


Source: Office of Hawaiian Affairs, "Databook 2006: Public Safety," March 2006. www.oha.org/pdf/databook/2006/DataBook2006PublicSafety.pdf and Department of Business, Economic Development, and Tourism, *The State of Hawai'i Data Book 2008* (Honolulu, Department of Business Economic Development and Tourism, 2008). http://hawaii.gov/dbedt/info/economic/databook/db2007/section01.pdf

states or private companies on behalf of states. Of the people in out-of-state facilities, 41 percent are Native Hawaiian.[107]

After allegations of sexual abuse in a women's facility in Kentucky, Hawai'i returned approximately 168 women to prisons in Hawai'i in September of 2009,[108] but no new policies prevent women from being sent to the continent in the future and, as of July 2010, one woman, who is Native Hawaiian, still remains in a facility on the continent. As of spring 2010, approximately 1,954 men were still being held in two private, for-profit facilities in Arizona, Saguaro and Red Rock. Concerns about conditions in the facility were reinforced after the murders of two men, one in February 2010[109] and another in June 2010.[110]

The impact of incarceration on the continent, as it contributes to trauma and the perpetuation of the cycle of involvement in the criminal justice system, is considered in a subsequent section.

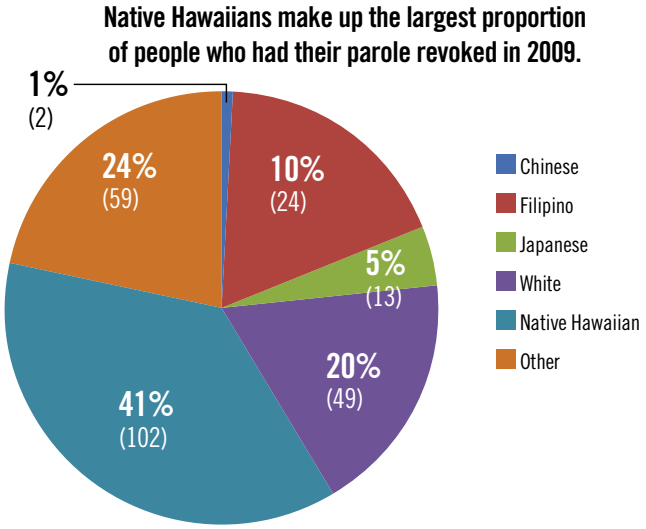
## Parole and re-entry

Parole can be considered a good strategy to safely release people into the community and provide services with supports that ensure that a person does not return to prison. Hawai'i includes in its parole handbook that parole is not supposed to be solely for the purpose of supervision, but also for providing guidance to find a job, housing, and other social supports.[111] In addition, a recent commitment by the Interagency Council on Intermediate Sanctions to reduce the rate of recidivism of people on parole by 30 percent has, thus far succeeded in reducing the re-arrest, revocation, or technical violation rate by 21.7 percentage points from 72.9 percent in 1999 to 51.2 percentage points in 2006.[112] The Hawai'i Paroling Authority is meeting this goal by using evidence-based assessments and treatment approaches, which include training parole officers and staff to address the needs of clients related to reducing the chances of committing another offense by "meeting people where they are" and providing them sufficient support to be successful.

Nonetheless, parole revocations, whether for violations of the terms of parole (i.e. failing to appear for a meeting with a parole officer or failure to maintain employment) or for a new offense, add many people to the prison system. According to federal statistics, slightly more than half of admissions to Hawaiian prisons are for parole violations.[113] New convictions while on parole are relatively infrequent, but most of those convictions are for property offenses.[114]

| For every five Native Hawaiians released on parole in 2009, two had their parole revoked. | | | |
|---|---|---|---|
| | Releases | Revocations | Ratio of Releases to Revocations |
| Native Hawaiian | 251 | 102 | 2.5 |
| Chinese | 16 | 2 | 8.0 |
| Filipino | 66 | 24 | 2.8 |
| Japanese | 31 | 13 | 2.4 |
| White | 134 | 49 | 2.7 |
| Other | 146 | 59 | 2.5 |
| TOTAL | 644 | 249 | 2.6 |

Source: Hawai'i Criminal Justice Data Center, 2009.
Note: Revocations include only violations of the terms of parole and not new offenses.




Source: Hawai'i Criminal Justice Data Center, 2009

Although Hawai'i released 644 people from prison to parole in 2009, 249 people were also returned to prison by revoking parole. Native Hawaiians had one of the lowest ratios of release to revocations. For every five Native Hawaiians released, two Native Hawaiians had their parole revoked (2.5:1 ratio), with Japanese people having a slightly lower ratio and Chinese people having the highest, with eight people being released for every one person returning to prison on a parole revocation.

Other research is mixed on the relationship between race and ethnicity and the chances that a person will return to prison after release in Hawai'i. A 2001 study showed that Whites were more likely to have their parole revoked than Native Hawaiians or Pacific Islanders,[115] however, these findings were not statistically significant. In a 1999 study, Native Hawaiians were found to be more likely to have their parole revoked.[116] In addition, according to data from the Hawai'i Criminal Justice Data Center, 41 percent of people who had their parole revoked in 2009 were Native Hawaiian, whereas they comprise 39 percent of releases on parole.[117]

***If the parole officer don't like you, he will send you back there. How are we supposed to get back in society and do good when they are just throwing away the key?***

*(Former Pa'ahao)*

## Private, For-Profit Prisons

Hawai`i has relied on contracted, for-profit, private prisons to imprison a portion of its prison population for more than a decade and at a cost of approximately $58.4 million, 26 percent of PSD's general operating fund. The state of Hawai`i contends that there is no room for additional bed space on the islands and that it is cheaper to house people on the continent. Currently, Corrections Corporation of America holds all the private prison contracts with Hawai`i.

However, critics of for-profit prisons are not only concerned by the general philosophy of making a profit from incarcerating people, but also the hidden costs to jurisdictions associated with private facilities. Those costs include:

**Holding people for longer:** Private prisons have an incentive to hold the people with the lowest custody levels and who are also the least costly to incarcerate. Because payments are usually based on the number of people held per day, there is also an incentive to keep them longer.

**Public Safety:** Advocates in Hawai`i have long been concerned that housing people from Hawai`i on the continent impedes the re-entry process and severs ties with community and family, resulting in an increased likelihood that a person will return to prison. In fact, the Community Safety Act of 2007 acknowledges this concern and says that people with a year left of their sentence should be returned to Hawai`i to participate in re-entry initiatives. However, people held on the continent continue to be released directly from the continent. Although there is no concrete evidence that private facilities necessarily decrease public safety, nationally, for people from Hawai`i who are prevented from participating in re-entry programs it seems more likely that there is no positive return in terms of public safety.

**Lawsuits related to prison safety:** States can request that changes be made in private, contracted facilities, but are prohibited from interfering in the operations of the company. However, states can be held accountable in lawsuits if the people working in contracted facilities are found liable for misconduct. Although the state may not necessarily be the one to pay in a settlement, there is the potential for significant costs related to lawsuits for states.

**Potential for corruption:** A profit motive for incarceration creates the potential for justice officials and anyone who makes decisions that can put a person in prison to be tempted to conspire with a for-profit company. A recent scandal in Pennsylvania in which judges received kickbacks to send youth to a for-profit youth prison shows that a profit motive can be a powerful factor when it is part of the sentencing process.

**Incentives to incarcerate Native Hawaiians on the continent:** For-profit prison industries also have an interest in taking the people who are perceived to be the easiest to manage, thus costing them the least. Advocates in Hawai`i have heard from Corrections Corporation of America staff that they are permitted to choose the people that they send to their facilities on the continent and that they prefer to take Native Hawaiian people because they are perceived to be docile. As a result, Native Hawaiians bear a disproportionate burden of being sent to the continent to serve a prison sentence.

Sources:
Meda Chesney-Lind and Kat Brady, "Ending Hawai`i's imprisonment boom: Let's be smart on crime, not simply tough," in The Value of Hawai`i: Knowing the Past, Shaping the Future, eds. Craig Howes and Jonathan Kay Kamakawiwo`ole Osario (Honolulu, HI: University of Hawaii, 2010).
Hawai`i State Legislature, "A Bill for An Act: SB932 SD2 HD2 CD1," http://www.capitol.hawaii.gov/session2007/bills/SB932_CD1_.htm
T.C. Pratt and J. Maahs, "Are Private Prisons More Cost-Effective Than Public Prisons? A Meta-Analysis of Evaluation Research Studies," Crime & Deliquency 45, p. 367-368, cited in Brad W. Lundahl and others, "Prison Privatization: A Meta-analysis of Cost and Quality of Confinement Indicators," Research on Social Work 19 (2009), p. 386.
Stephen Raher, "The Business of Punishing: Impediments to Accountability in the Private Corrections Industry," Richmond Journal of Law and the Public Interest 13, no. 2 (2010), p. 231.
Donald Cohen, "PA Judges Got Cash to Lock Up Teens, Revealed a Broken Justice System," AlterNet, March 6, 2009.

# Punitive responses to drug use and the impact on Native Hawaiians

Although "the war on drugs" and punitive responses to drug use are part of the larger picture of incarceration in Hawai'i, the impact that it has on Native Hawaiians must be highlighted on its own to arrive at recommendations that will reduce the number of Native Hawaiians in the criminal justice system.

The issue of substance use and abuse is important for the Native Hawaiian community because of its correlation to cultural trauma. As discussed earlier, cultural trauma is the result of a history of systematic marginalization by some dominant group. Research indicates that one symptom of cultural trauma is substance use and abuse.[118] Native Hawaiians also report personal trauma more than other racial or ethnic groups in Hawai'i,[119]which may also contribute to self-medication through substance use.

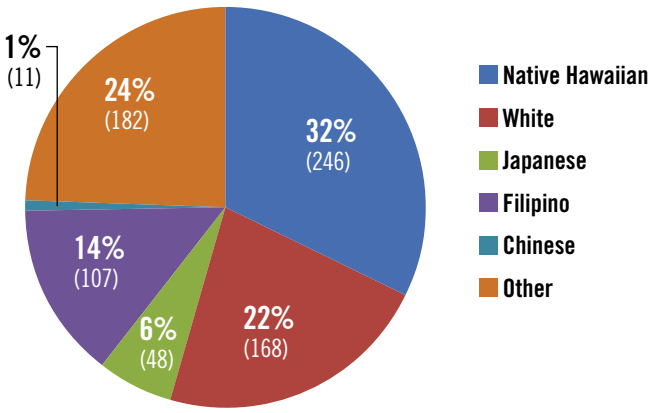
Hawai'i's criminal justice approach to drug use was a significant contributor to the total number of people admitted to prison or jail in 2009 (762 or about 13 percent), but has even greater significance for Native Hawaiians. Native Hawaiians made up the largest portion (32 percent) of the people admitted to prison for drug offenses in 2009.[120]

The following quote highlights the perspective of pa'ahao.

***The judge gave me three years, which was the lowest I could get. But when I got to the parole board--they looked at my jacket [record] and said, like "No. No way. You should be doing at least five years…we're not gonna let you out, you're gonna do at least five years for selling drugs." They named it "meth trafficking." Makes me sound like I'm some big dealer. The judge himself said "I can't understand putting this girl away for doing a simple drug deal in a parking lot." But the parole board they're trying to rub crimes and drugs off the street, right? So they really wanted to put me away.***

*(Former Pa'ahao, Wahine)*

**Native Hawaiians made up the largest portion of people who are admitted to prison for drug offenses in 2009.**



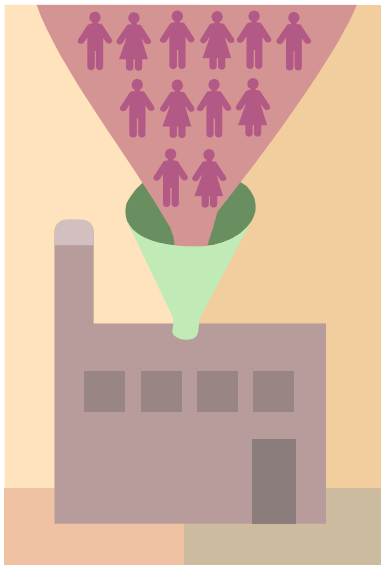

Source: Hawai'i Criminal Justice Data Center, 2009

The concentrated impact of incarceration for Native Hawaiians is most evident when considering that approximately 80,000 people in Hawai'i over the age of 12 report using illicit drugs in the previous month.[121] Compared to numbers of people that report using drugs, a relatively small number are arrested and then sent to prison or jail; about 2,000 are arrested for drug offenses[122] and 726 are admitted to prison or jail in a given year and, of those, 246 (32 percent) were Native Hawaiian.[123] In other words, many people in Hawai'i report using drugs, relatively few of those people are arrested and even fewer go to prison or jail. But, of the people who go to prison or jail for drug offenses, about one-third are Native Hawaiian.

The disproportionate impact of imprisonment for drug offenses on Native Hawaiians is not easily explained by different rates of drug use among different races or ethnicities. According to both national data sets and the 2004 Hawai'i State Treatment Needs Assessment Program dataset, Native Hawaiians do not use drugs at particularly dissimilar rates to other races or ethnicities, although there is some variation. Irrespective of the variation in drug use rates, the percent of Native Hawaiians that report drug use does not match the proportion of the total number of people admitted to prison or jail for drug offenses.

- The 2008 National Survey of Drug Use and Health shows that 7.3 percent of Native Hawaiians and Pacific Islanders over the age of 12 report using drugs within the past month compared to approximately 8 percent of Whites.[124]
- A 2004 Hawai'i State Treatment Needs Assessment, which administered a randomized survey to adult Hawaiians, shows that Native Hawaiians do not use drugs at widely dissimilar rates to other races or ethnicity, especially when comparing current use.[125]

**About a third of people admitted to prison in Hawai'i for drug offenses were Native Hawaiian in 2009**



**80,000** drug users over the age of 12 in Hawai'i

**2,097** drug arrests

**762** 762 admissions to prison or jail for drug offenses and, of those, 246 (32 percent) were Native Hawaiian

*Source:* U.S. Census, "2007 Population estimate for Hawai'i: General Demographics," February 11, 2010. http://factfinder.census.gov/servlet/QTTable?_bm=y&-context=qt&-qr_name=PEP_2007_EST_DP1&-ds_name=PEP_2007_EST&-CONTEXT=qt&-tree_id=807&-geo_id=04000US15&-search_results=01000US&-format=&-_lang=en; Substance Abuse and Mental Health Services Administration, "Appendix C: Tables of Change between the 2005-2006 and the 2006-2007 Model-Based Estimates (50 States and the District of Columbia), by Measure," February 11, 2010. www.oas.samhsa.gov/2k7State/AppC.htm#TabC-1. ; Federal Bureau of Investigation, "Uniform Crime Report," Crime in the United States, Table 69 Arrests by State, www.fbi.gov/ucr/ucr.htm; Hawai'i Criminal Justice Data Center, 2008.
Graph is adapted from Phillip Beatty, Amanda Petteruti, and Jason Ziedenberg, *The Vortex: The Concentrated Impact of Drug Imprisonment and the Characteristics of Punitive Counties* (Washington, DC: Justice Policy Institute, 2007). http://www.justicepolicy.org/content-hmID=1811&smID=1581&ssmID=69.htm
Note: Admission is defined as each instance of entry to a custody that results from a conviction. Admissions do not include pre-trial or cases in which the prosecutor declines to bring charges.

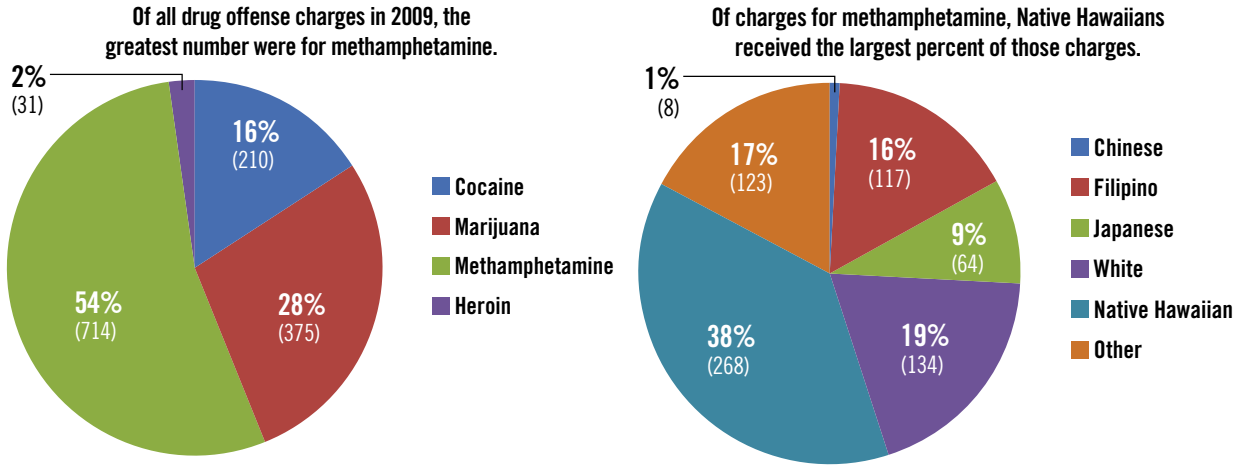
***Some guys were brought up with that drug and selling and all that dealing from their parents.***

*(Former Pa'ahao)*

| | Marijuana | | | Methamphetamine | | | Cocaine | | |
|---|---|---|---|---|---|---|---|---|---|
| | Lifetime Use | Current Use (total pop. base) | Current Use (Lifetime use as base) | Lifetime Use | Current Use (total pop. Base) | Current Use (Lifetime use as base) | Lifetime Use | Current Use (total pop. base) | Current Use (Lifetime use as base) |
| Whites | 40.3 | 4.4 | 10.9 | 4.3 | 0.1 | 2 | 16.3 | 0.5 | 23.9 |
| Native Hawaiians | 39.6 | 4.3 | 10.9 | 8.9 | 0.2 | 2.2 | 11.9 | 0.2 | 11.2 |
| Japanese | 23.5 | 1.4 | 5.9 | 2.4 | 0.1 | 4.1 | 6.9 | 0 | 15.4 |
| Filipinos | 18.6 | 0.8 | 4.5 | 4.1 | 0.5 | 11.9 | 4.8 | 0 | 14 |
| Other Asians | 17.3 | 1.7 | 10 | 3 | 0.2 | 5.7 | 6.8 | 0.5 | 29 |
| All Others | 28.5 | 3.1 | 10.9 | 4.8 | 0.1 | 1.7 | 12.5 | 0.6 | 5.5 |

Source: Alcohol and Drug Abuse Division, *2004 Treatment Needs Division* (Honolulu, HI: Hawai'i Department of Health, 2007). http://hawaii.gov/health/substance-abuse/prevention-treatment/survey/2004needsassessment.pdf

**Methamphetamine accounts for the greatest number of drug charges in Hawai'i in 2009. Native Hawaiians received the largest percent of those charges.**




Source: Hawai'i Criminal Justice Data Center, 2009

The use of methamphetamine in Hawai'i, particularly by Native Hawaiians, is a growing concern. Methamphetamine accounts for the most charges of all drug offenses. Although Native Hawaiians do report lifetime use and current use of methamphetamine at slightly higher rates than other groups, Native Hawaiians are still charged with the majority of offenses related to methamphetamine, by a wide margin. Data from the Hawai'i Criminal Justice Data Center shows that Native Hawaiians make up between 16 and 38 percent of charges for all categories of drugs, but account for the largest proportion of charges for methamphetamine (38 percent). [126]

## Why are Native Hawaiians disproportionately affected by criminal justice responses to drug use?

The reasons for the disproportionate impact of the criminal justice system on Native Hawaiians related to drug offenses are varied, but include a variety of social factors unique to indigenous people, as well as the way the criminal justice system works to react toward drug offenses.

**Policing that targets Native Hawaiians:** Arrests precipitate the charges and are part of the total consideration for prosecutors. Drug arrests are often considered to be the result of proactive policing, as drug offenses are not generally reported to the police.[127] Thus, police may have more discretion concerning who they arrest for drug offenses than for property or violent offenses, for example. One study out of New York City found that police would return to the same neighborhoods, often neighborhoods of color, to make marijuana arrests.[128] Another report by the New York Times about stop-and-frisk tactics in one Brooklyn neighborhood found that individual officers are evaluated by the number of stops and frisks that they make in a month, thus creating the potential for an officer to find drugs. Even though police were not given specific quotas, monthly performance measures included numbers of stops and frisks.[129]

**Mandatory sentences associated with methamphetamine:** Hawai'i has mandatory sentences for the sale or trafficking of methamphetamine of at least 10 years.[130] Because Native Hawaiians make up the largest proportion of people charged with methamphetamine-related offenses,[131] they are more likely to receive one of these mandatory sentences, which will extend the term they spend in prison compared to other drug offenses.

**Availability and appropriateness of treatment and prevention programs:** Differences in the availability of drug treatment for some groups of people compared

to others can be an important factor in the disparate impact of the criminal justice system on communities. Native Hawaiian admissions to treatment do vary widely across data sets and geographic regions. The Hawai'i Department of Health reports that in 2006, Native Hawaiians represented between 29 percent of treatment admissions to 91 percent, depending on geographic region.[132] In addition, the highest percentage of admissions to treatment for a single drug in Hawai'i in 2007 was for methamphetamine at 31 percent, followed by marijuana at 25 percent. Hawai'i has the third highest percentage of people in treatment for methamphetamine compared to all other states, after Idaho and California, respectively.[133]

Although there are culturally-sensitive treatment initiatives in Hawai'i and there is evidence that they are effective, there are not enough of them. According to the Hawai'i Department of Health, culturally-sensitive treatment had the highest admission rates. Two substance use prevention programs in Hawai'i provide some evidence that culturally-sensitive initiatives are effective. The Native Hawaiian Safe and Drug-Free Schools and Communities Program and the Substance Abuse Prevention Services for Native Hawaiian Ex-Offenders initiative incorporate culturally relevant principles into their initiatives. Both programs rely on culturally sensitive staff, culturally relevant materials and processes, and relationships with family and community. Both also consider culture to be a protective factor, taking into account not only individual, but environmental factors, and viewing the person as part of the whole community. In a 1999 program evaluation of these two initiatives, both were found to be successful in preventing Native Hawaiians from using substances.[134]

## Shifting to a public health response

In 2007, there were a total of 129 treatment facilities in the state, either public or privately operated. [135] However, treatment is not yet widely available, especially to people living on neighbor islands.

A shift to treatment outside the criminal justice system would succeed in reducing the number of people going to prison or jail for drug use, reduce the number of Native Hawaiians entering the system for drug offenses, promote public safety, and save Hawai'i money that could be reallocated to other social institutions. For example, a Washington State Institute for Public Policy (WSIPP) study found that spending one dollar on drug treatment in prison yields nearly six dollars in terms of increased public safety and monetary benefits. In contrast, an investment of one dollar in community-based drug treatment yields over $18 in benefits. Funding programs in the community yields a higher return on the investment.[136]

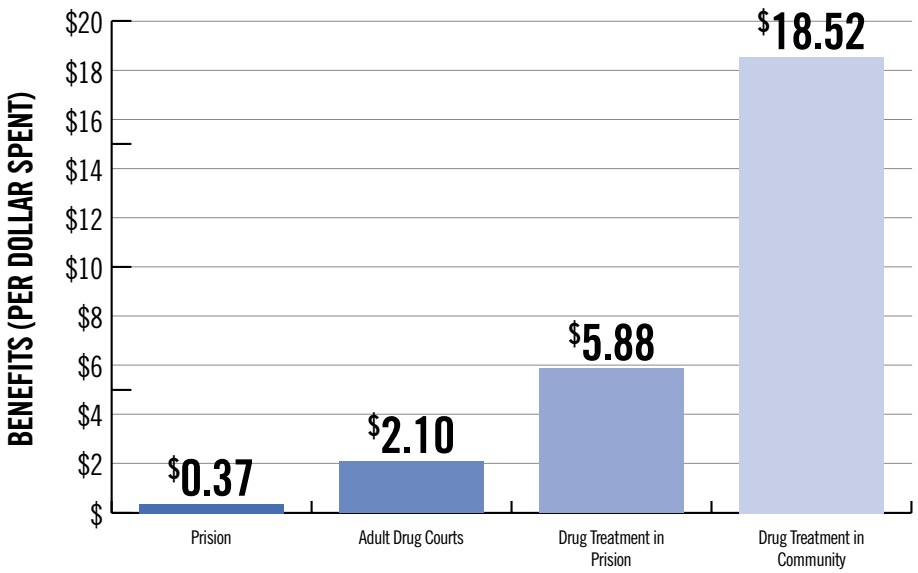
In addition to cost benefits related to reduced incarceration, drug treatment offered in the community also reduces the chance that a person will be involved in illegal behavior in the future. Intensive supervision in a treatment-oriented program in the community reduces the chance of recidivism by about 17 percent. Comparatively, drug treatment in jail reduces the chance of recidivism by about 5 percent.

Additionally, treatment in prison, although not as effective as in the community, is still better than no treatment at all. However, it is not widely or readily available in prisons, according to one corrections official and a formerly incarcerated person:

> ***The way it's designed right now—you are not going to get treatment until your last two years. You get your drug treatment and then you go to a transitional program.***
>
> *(Correctional Official)*

> ***Every individual get their own unique story. And a lot ties right back to the ice [crystal methamphetamine]. It took us like three to four years for get treatment, yeah? You go sit up there for a few years and then, you come treatment, yeah? That's how it is over here. You going sit some place for a few years and then there's a place for you in treatment.***
>
> *(Former Pa'ahao, Kāne)*

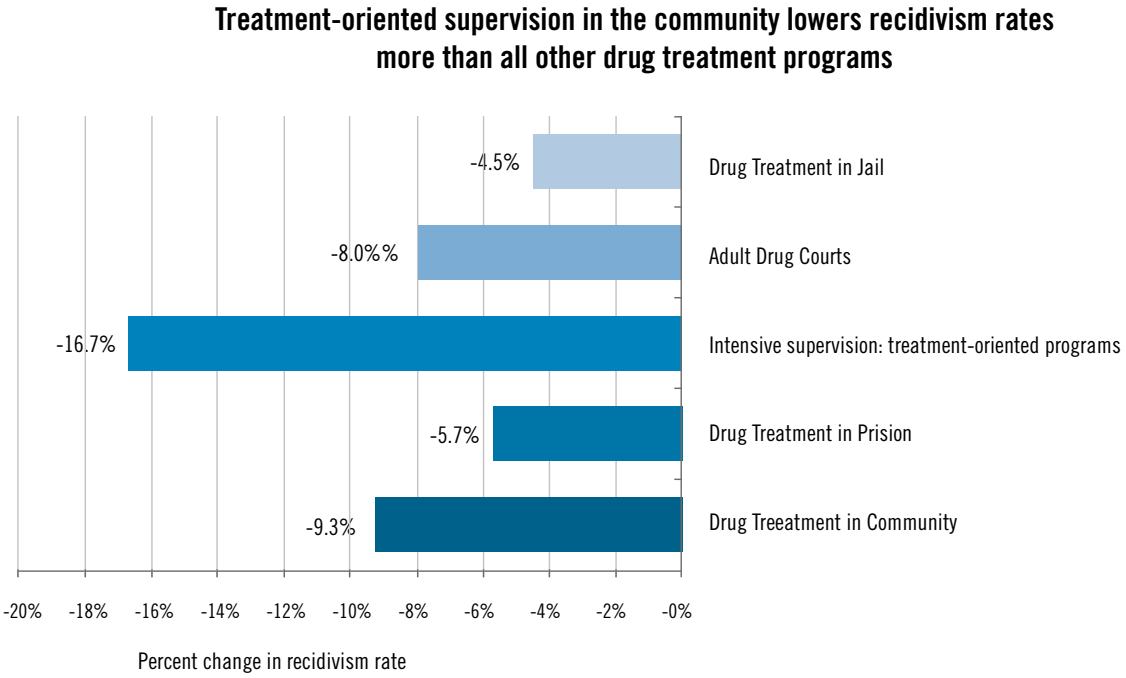
**Community-based drug treatment provides bigger crime reduction benefits than prison. For every $1 spent on drug treatment in the community, yields a return of $18.**




Source: Steve Aos, Marna Miller, and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (Olympia, WA: Washington State Institute for Public Policy, 2006). www.wsipp.wa.gov.

***Those with drug charges shouldn't be incarcerated. They should be rehabilitated. The ice [crystal methamphetamine] problem has affected a lot of people and affects the future of our keiki [children]. This drug is so strong it takes people away from their priorities-- their 'ohana, their keiki. It got so bad. It is still bad.***

*(Former Pa'ahao Kāne)*




Source: Steve Aos, Polly Phipps, Robert Barnoski, and Roxanne Lieb, *The comparative costs and benefits of programs to reduce crime* (Olympia: Washington State Institute for Public Policy, 2001)

## PATH Clinic

The PATH clinic provides pre- and perinatal services to women who are in need of substance abuse counseling. Although it is not a treatment facility, it provides OB/GYN services to women and provides referrals, education and support to help a woman who is living with addition. The women at PATH want to be good parents and participate voluntarily.

With funding from the Office of Hawaiian Affairs, PATH has established perinatal and substance abuse out-patient treatment services to 30 Native Hawaiian women and children, a therapeutic garden and meeting place with a play area for children, and community partnerships to sustain those outdoor spaces.

The PATH clinic is an example of a more holistic, gender-responsive response to women who living with addiction and who are also parents. PATH helps to improve life outcomes for both women and children. The clinic's pre-term birthrate is 6.2 percent, lower than the national average of 12.7 percent or Hawai`i's average of 12.2 percent. Most of the women are able to maintain custody of their children and 80 percent of women abstain from substance use.

Sources: Office of Hawaiian Affairs and The PATH Clinic, "Home," July 30, 2010. http://pathclinic.org/index.php?option=com_content&view=frontpage&Itemid=1
Renee Schuetter, "The PATH Clinic – Giving Birth to Hope," in Unlocking Justice: Community Protection and Smart Spending Conference Proceedings (Honolulu, HI, 2009).

## *Huli ka lima i lalo, ola,*
## *Huli ka lima i luna, make*

When one turns their hands down to cultivate and work hard,
there will be life and sustenance.

When palms turn up and work ceases, there will be hardship.

# Disparate treatment within the criminal justice system

In many respects, racial disparities among Hawai'i's prison population are the products of actions that occur at different stages in the justice system, beginning with the decision to make the initial arrest. Research suggests that the effects of race may be direct or indirect and may accumulate as an individual continues through the criminal justice system itself.[137]

This section is divided into two parts. The first section explores specific ways in which disparate treatment within the criminal justice system affects Native Hawaiians. The second section suggests that there are other possible reasons for disparate impact for Native Hawaiians borne out by other research.

## Disparate treatment of Native Hawaiians

The experiences of Native Hawaiians, correctional officers, treatment providers, and advocates explain the processes that result in a disproportionate representation of Native Hawaiians in the criminal justice system. Differences in the way that Native Hawaiians experience the system are often the result of the way the criminal justice system operates, but other experiences seem to be the result of a long history of stereotypes, and cultural and personal trauma.

Disparate treatment before the courts. There are many zealous, hard-working public defenders in Hawai'i, but nonetheless, they are perceived by some as unhelpful and disinterested. Formerly incarcerated people in Hawai'i have a negative perception of public defenders.

> ***The public defender wasn't for the public. We [pa'ahao] call them the "Public Pretender" or the "PP." The first thing they want to do is take a plea. They don't even seem to care what you say. There are times when I think they could have done more for me. But because of my "jacket" [record], they're like, "Just take the plea." I'd gotten to the point where the first thing I'd ask is: "can I get a plea?" or "what's the best plea I can get?" Cause that's what you hear from them. What you don't hear is, "What can I do for you? How can we work this out?" No, it's more like: "This is what they're offering. I think you should take it."***
>
> *(Former Pa'ahao, Pacific Islander/non-NH, Wahine)*

> ***When I went in for my last one [incarceration] with my meth trafficking charges, my public defender told my mom that I was gonna do 15 years-- that almost broke my mom's and my son's heart. But I'm up there studying the laws and when he told me that I was gonna be doing 15 years I said, "Oh, hell no. I'm not doing 15 years, watch this", okay? So, I fired that lawyer 'cause he was a Public Pretender, like they say. I got a court-appointed lawyer,[138] because I knew a repeat offender does something more like three years, or whatever it is. He was really for me and the judge allowed me to go out on supervised release to a program that did wonders for me.***
>
> *(Former Pa'ahao, Wahine)*

These perceptions may be caused by a variety of factors ranging from media images of public defenders, stories of public defense from other states or jurisdictions, the idea that a good lawyer should be able to fight all charges, and that people who come in contact with the criminal justice system may have had negative experiences with other public service agencies. In addition, those being defended may not understand the limited resources that are available to public defenders. Public defenders may also be blamed for the punitiveness of the system related to sentencing and a lack of alternatives to incarceration.

National research provides an example of how the image of public defenders in other jurisdictions may affect how public defenders are viewed in Hawai'i. Research by the American Bar Association shows that appearing before the court with private counsel is associated with a lower likelihood of conviction than using a court-appointed public defender.[139] Youth of color are more likely to rely on the indigent defense system, which often includes public defenders that are overburdened and under-resourced with higher caseloads than private attorneys. White youth are twice as likely as African American youth to retain private counsel.[140]

Nonetheless, public defenders have an opportunity to use whatever perception or criticisms as a way to further improve public defense in Hawai'i.

Discretionary paroling practices: Good time does not equal less time

More so than other states, Hawai'i gives the Hawai'i Paroling Authority (HPA) a significant amount of authority to set minimum sentences. Judges set sentences, but within six months of the conviction, the HPA holds a hearing to determine the minimum sentence. At the hearing, the person being sentenced can have legal representation and the prosecuting attorney will also present evidence. The HPA uses guidelines to assist in setting the sentence, including the nature of the offense, the degree of injury or loss, and the person's prior offense history. The HPA has the prerogative to use criteria they deem necessary to make decisions about sentence, [141] but cannot go over the maximum sentence set by the judge. Hawai'i does not have diminution or good time credits, but a sentenced person can apply to have their minimum sentence reduced after they have served a third of their sentence.

Through the parole process, HPA functionally determines the length of time a person stays in prison. A minimum sentence guarantees a parole hearing, but does not guarantee release. Parole hearings are scheduled prior to the expiration of the minimum sentence. The HPA is required to submit, in writing, the reasons for denying parole.

The discretionary nature of minimum sentence setting and release determinations outside the court are concerning for formerly incarcerated Native Hawaiians. The real determination of sentence appears to be not set by a judge, but by the HPA, which to people that come into contact with the system see as arbitrary criteria.

***I didn't think I'd be there for as long as I was cause I didn't know anything about the parole board--I thought it'd be, okay, you go see the judge, he'll sentence you to whatever it is, he gives you a mandatory time and that's what you'll do and that's it, pau. I was gravely mistaken. The judge gave me an open 10 years, with a six months mandatory minimum. That's what he recommended to the parole board. But they gave me four years. I didn't understand why. I'd never once been arrested for anything before that.***

*(Former Pa'ahao, Wahine)*

***The weird thing is that they [parole board] fluctuate. It's the luck of the draw. The State has some of the worst laws. You don't want to go into a parole hearing after the guy who went before you, pissed off the board. One guy goes in and he just makes the board lose it. You next. You stay walking in, you stay pumped up already because they ready to smash you.***

*(Former Pa'ahao, Kāne)*

Given the cumulative impact of the criminal justice system on Native Hawaiians and the evidence that Native Hawaiians cycle through the system more than people of other racial and ethnic groups, sentence-setting and discretionary parole based on offense history will likely contribute to the disproportionate number of Native Hawaiians in the prison system in Hawai'i.

Interactions with correctional staff: Bad time equals more time

Interactions between people in prison and guards can contribute to the amount of time that a person ultimately spends in prison. Infractions within the prison walls, sometimes subjectively determined by correctional officers and not always serious in nature, can lead to changes in custody that will then impact the chances that a person can participate in certain programs or services that make a person eligible for release. Some correctional officers view their position of power as one that does not require interpersonal problem solving, which could contribute to perceptions about behaviors. For example, one correctional officer noticed that another officer would yell at the people in prison from behind an enclosed area, thus separating himself from the people.

***The control box separates the inmate from the officer—physically and otherwise. Sometimes my partner would be screaming at the inmate from the box. And I would look at him and say, "Why don't you just bring him inside and talk?" The box gives that false sense of security because there is a door between them and us and some officers think they can talk in any way they like. You get more respect when you open the door.***

*(Correctional Official)*

Several participants interviewed for this project noticed a difference in the way that they are treated by correctional officers in Hawai'i compared to correctional officers on the continent. Such differences in treatment may be because correctional officers on the continent did not grow up with the same biases and stereotypes as correctional officers in Hawai'i.

***On the mainland, the officers are more professional in a lot of ways. For example, they don't tolerate cliques—they investigate and if they find something, they encourage or move people on so no cliques can be formed. I like that because then there's no riot. I feel safe.***

*(Former Pa'ahao, Wahine)*

***When I got to the mainland, I found the ACOs [Adult Correctional Officers] more professional [than in Hawai'i]. They didn't pick on really manini, small, little things. They treat you like an adult, as long as you respect them, they respect you. Say that my bed is not done properly. On the mainland, the ACO would say, 'come on you know better than that.' It's more encouraging way to talk, yeah? With the ACO's here [in Hawai'i], our lingo is "the only thing that is consistent is the inconsistency."***

*(Former Pa'ahao, Wahine)*

***I see a change in ACO's now, they disrespect a lot of inmates. Just for little things they would yell at them, slap 'em. I think that shouldn't be happening.***

*(Former Pa'ahao, Kāne)*

However, housing people from Hawai'i on the continent may also be contributing to longer sentence lengths. The private, for-profit prisons used to house Native Hawaiians on the continent are far from the purview of the Hawai'i government and may not necessarily be as respectful of the unique needs of Native Hawaiians. For example, the ACLU of Hawai'i found that Saguaro prison in Arizona does not permit Native Hawaiians to participate in multiple religions, which include Native Hawaiian cultural practices.[142]

Trauma of incarceration

Incarceration is traumatic for all people. It devastates families, destabilizes communities, and cuts people off from jobs and education that improve life outcomes and help keep people out of prison once they are released. Incarceration also re-traumatizes people that have already experienced trauma in their lives.

***Families are so devastated by incarceration. Families give up and the inmates are like: "I swear I'm going to get it right this time." And then they blow it again. And their kids are so through with that and angry and act out. And grandparents are so through with their adult children.***

*(Treatment Provider)*

For Native Hawaiians the impact of trauma is particularly salient because of strong connections to family, the land and community. Some formerly incarcerated Native Hawaiians voluntarily end visits and contact with their family while they are in prison because they do not want their family to be traumatized by the searches and by seeing their family member in prison.

***I remember them suffering when the visit ends and families leave. You see it. They want to go home, especially when children are involved… [But] while they enjoy seeing their children, not all of them feel good about seeing them in prison. When you sit down and talk to them, there is anxiety about children and families coming in…after all, they have to watch their parents and children being searched.***

*(Correctional Official)*

Native Hawaiians disproportionately experience childhood trauma and abuse.[143] Upon incarceration, many formerly incarcerated people reported further victimization, which complicated their efforts to cope and gain mastery over chemical dependency and other addictive behaviors, both of which can increase the chances of a person returning to prison after release.

***There was a murder. One inmate stabbed another inmate. They had been involved and then one of them got out, took some money from the other, and I guess, abused that and had a relationship with someone else. Then she came back to prison. So, the other had a knife and went after her. It happened quickly before the staff could do anything. I was off working in another building, but you could hear the screaming. Horrendous screaming. Can you imagine---the inmates were watching TV and all of sudden seeing this? Trauma for inmates and staff.***

*(Correctional Official)*

Imprisoning people from Hawai'i on the continent seems to be the most damaging to Native Hawaiians. It contributes to the growing prison population and exacerbating the disproportionate impact of the system on Native Hawaiians because they are cut off from supportive communities and families that give them a reason to exit prison as soon as possible. Even the absence of familiar surroundings and changes in weather is traumatizing.

***I went up to the mainland for five years and I lost my family—wife and kids.***

*(Former Pa'ahao, Kāne)*

***For me it was a bad experience. I got sick as soon as I got there. I spent three months in the infirmary. I couldn't handle the water, the cold…the whole experience was traumatizing.***

*(Former Pa'ahao, Wahine)*

***It gets cold on the North American continent and when our pa'ahao are sent away that cold enhances the sense of disconnectedness, the sense of unsettled spirit uprootedness. I agree that we need to bring pa'ahao back. But we need to ask ourselves: what are we bringing them back to? A lot of the men would prefer to be in Arizona because it's a brand new facility, it's clean, and there are programs.***

*(Community Advocate/Volunteer)*

The transfer to continental prisons has also historically been traumatic. People are rarely permitted to say good-bye to their families and in some cases were forcibly removed by SWAT teams.

***I remember the first time they were moving the inmates to the mainland. They had a SWAT team and they came in and went to the dorms and told the women, "You gotta get your stuff together now and you gotta get out.***

### Women's Community Correctional Center

The Women's Community Correctional Center (WCCC) in Kailua has formed a series of partnerships to implement a trauma-informed system of care to the women at the facility. With funding from the Office of Hawaiian Affairs and the Mental Health Transformation Working Group, WCCC provides universal trauma screening to identify women in need of specialized trauma intervention and training to the staff.

In addition to trauma-informed care, the facility also has Project Bridge, which is a transitional program that provides job training, including gourmet cooking skills, to help women find jobs when the leave prison.

Sources: Office of Hawaiian Affairs and Department of Public Safety, "Women's Community Correctional Center," July 30, 2010. http://hawaii.gov/psd/corrections/institutions-division/prisons/womens-community-correctional-center

***Like it or not." There was one woman who didn't want to leave—she didn't want to leave her family. She cried like a child. And there was another who didn't want to leave and acted out. They ended up tying her to a stick to remove her. It was unbelievable…very traumatic… very traumatic.***

*(Correctional Official)*

***You know the worse thing about it?! You no can let your family know you going.***

*(Former Pa'ahao, Kāne)*

Lack of programs and services in prison to prepare a person for reentry

Often, people in prison are required to participate in specific programs and services in order to be eligible for release. Without the completion of those programs, a person can be denied parole. However, programs and services fill up and there are no available spots for everyone who needs to participate. In some cases, a person is transferred to out of state and have to start programming over again. Not only are people in prison prevented from earning the earliest release possible, they could also potentially get to the end of their sentence and be released without the services that might facilitate reentry and prevent return to prison. Complicating a successful reentry process is that some people are returning from prison after serving their time on the continental United States because they are placed directly into the community without adequate resources to sustain themselves.

***Stagnant time, dead time, more time [longer incarceration]. We're not doing nothing. We sitting in one place. They give us these requirements to do, but they don't have the means for you to do your programs. They expect you to get a GED but no schooling in the prison. yeah? It's like the State telling you—"you know what, you going wait until we are ready."***

*(Former Pa'ahao, Kāne)*

***We go through culture shock and there is nothing to prepare us from incarceration to furlough to reentry. We only have two furlough homes. That's not enough. Even when you're qualified for the system to send us out, there are not enough spaces for us in the furlough homes.***

*(Former Pa'ahao, Wahine)*

***Before I got into a furlough program, I tried to find out from the Parole Board 'what' I needed to qualify to be paroled, what kind of programs they got. They wouldn't release that information to me. We need that kind of information…If you don't have that set up as your parole plan, you see the Parole Board, they goin' defer you. And what that causes when you done a lot of time is discouragement, loss of hope. It doesn't seem that the system is trying to help. It just seems like they just want you there. And then you become what everybody labels you—another statistic in a revolving door.***

*(Former Pa'ahao, Wahine)*

***It's hard to fathom in your mind what it's like to be doing stagnant time, sitting on your bed for 24 hours, only standing to do head count. Unless they wear my shoes, they can't really comprehend what it's like, how it feels, then have an ACO degrade me, that's not encouraging me to better myself, especially if I come from a very severe traumatic background in life. Then you feel like a dollar symbol with a revolving door back to prison***

*(Former Pa'ahao, Wahine)*

***You try walk out of prison with absolutely nothing. No more ID, that kind, simple kind of things, yeah? In prison you get everything, three meals, one bed, hot water for shower, you get one job, you save money. Scary to think about parole, re-entry. I have no more nothing for go home to right now. As much as you try to plan, it's crazy right now [in society]. Everything getting worse.***

*(Former Pa'ahao, Kāne)*

**TJ Mahoney & Associate, Inc.**
**Ka Hale Ho'āla Hou No Nā Wāhine (The Home of Reawakening for Women)**

Recognizing the growing number of women in prison in Hawai`i and the need for gender-responsive approaches and services, TJ Mahoney & Associates opened Ka Hale Ho`āla Hou No Nā Wāhine, dedicated to empowering women to successfully transition from prison to the community. The program is for women on work release and is designed to help them successfully navigate the obstacles of community reentry through a stage-based change process. The unique model, developed in response to the women's needs, strengths and struggles, supports women as they make progress, derail and re-stabilize, leading to personal empowerment while increasing accountability and resilience.

Included in the programs are the cultural values of Native Hawaiians. `Ohana (family) is a concept that creates a supportive environment in which women are part of the whole. The `ohana includes staff and the women living at the facility, working together to plan celebrations, community activities, and contributing to policy development at the facility. The program also includes kuleana (responsibility) as part of the transition process.

Source: Ka Hale Ho`āla Hou No Nā Wāhine, "Ka Hale Ho`āla Hou No Nā Wāhine," July 6, 2010. http://www.reawakeningforwomen.org/index.php?view=1.0

***When you talk 'culture', you have to look at people and understand how they live so you can administer your mana'o [concern, thoughts] to them. You want to teach them. Feed them so they no choke, so that they are able to inu [drink] from what you teach and digest it. So, that they can stand up and be proud. No hold down their head and be willing to build a foundation that is pa'a [firm, solid] and pono [moral, right]. So that no matter what kine come, they not going fall down again, because they have that foundation.***

*(Treatment Provider)*

<u>Culturally inappropriate or unavailable reentry services</u>

Research conducted by Noreen Mokuau, a respected scholar of social work and health care for Native Hawaiians at the University of Hawai'i at Mānoa, shows that culturally relevant and appropriate interventions and services are the most effective for helping Native Hawaiians participate fully in the community.[144] For example, traditional social work modalities typically rely on self-determination, which is individualistic and is Northern European or North American in orientation. Pacific cultures, including Native Hawaiians, tend to see themselves as part of a collective group or community.[145] In order to effectively provide services for reentry or some other wellness promotion initiative, a provider must be aware of the totality of community context, interdependence, and, also, the role that oppression by other groups has played.[146] The application of Western values to a culture that does not share them will not ensure successful implementation of initiatives or services.

## Other possible sources of disparate treatment

Mandatory sentences and sentencing enhancements have been a significant factor in the disproportionate incarceration of communities of color, including Native Hawaiians. Mandatory sentences are obligatory for certain offenses in some states and for the federal government. Without mandatory sentences, judges have considerable discretion in sentencing, which allows the judge to consider mitigating (or aggravating) circumstances surrounding a charged offense.[147] Mandatory sentences theoretically ensure uniformity of sentencing, but in reality have significant unintended consequences that often disproportionately impact communities of color.

In Hawai'i, methamphetamine are the only drugs that carry mandatory sentences. According to data from the Hawai'i Criminal Justice Data Center, Native Hawaiians are more likely than any other racial or ethnic group to be charged with a methamphetamine-related offense,[148] which may contribute to the disproportionate representation of Native Hawaiians in the prison system.

A 2002 leniency statute[149] allows for people convicted for the first time of a drug-related offense and who would benefit from substance abuse treatment to be sentenced to probation and treatment instead of incarceration. However, if the person has been previously convicted of a felony, he or she is classified as a "repeat offender" and is no longer eligible for the treatment exception.[150] This exception can create barriers for people who want and need treatment.

Other mandatory sentences are also associated possession of a firearm while committing a felony and after a conviction for repeat offenses. A person convicted of a felony with a firearm in their possession (whether it was used or not, and whether it was operable or not) will serve a mandatory minimum of up to three years for some felonies, and up to 10 years for felonies determined to be more serious.[151] The presence of a firearm, even if it is not loaded or even functional, can increase a person's sentence up to 10 years. Nineteen states have rolled back or restructured mandatory minimum sentences and related sentencing policies so that the "punishment fits the crime."[152]

Similar to three strikes laws in other states like California, Hawai'i has mandatory sentences for repeat offenses. These offenses receive the harshest mandatory sentences in Hawai'i. A person previously convicted of certain felonies, who is convicted again of the same type of felony or has a felony conviction from another jurisdiction, is subject to a mandatory minimum sentence.[153] These sentences run anywhere from 20 months to 20 years than it was for Whites.[154]

Although there is no similar study for Hawai'i, three strike laws in California were found to disproportionately impact people of color in that state. In 2004, 10 years after the implementation of three strike laws in California, the Justice Policy Institute calculated the approximate impact that the laws have on people of color and found that the incarceration rate for African Americans convicted on a three strikes law was 12 times higher that it was for Whites.[155]

Generalizations and miscommunication between people of different racial or ethnic backgrounds sometimes results in different treatment in the criminal justice setting. In a study examining differences in sentencing recommendations for African American and White youth, researchers found that probation officers viewed crimes committed by youth of color as caused by personal failure, but viewed crimes committed by White youth as having to do with external forces.[156] This may result in a White youth receiving a more lenient sentence or one of treatment, where a youth of color, including Native Hawaiian youth, may receive a harsher punishment.

# Collateral consequences of criminal justice involvement on Native Hawaiians

Most people assume that a person convicted of an offense will "pay his debt to society" with a prison sentence or a term of probation that is deemed appropriate by a judge. The reality is, however, that imprisonment and conviction carries a set of collateral consequences that extend well beyond the sentence imposed by the court. Many Native Hawaiians coming out of the criminal justice system are denied the opportunity to finish school; they lose or cannot obtain a driver's license; they cannot find stable employment, and they are simply unable to support their families. These collateral consequences push the limits of "punishment to fit the crime" and effectively deprive a person convicted of an offense of any second chance at effectively living in, and contributing to, a community.

The collateral consequences included here are generally applicable to all people in Hawai'i. However, because Native Hawaiians make up nearly 40 percent of the people in prison in 2008, these collateral consequences intensely affect this community and perpetuate a cycle of involvement in the criminal justice system, further contributing to disproportionality.

## Breaking up the family

Not only are Hawaiians separated from their families during incarceration, but many will be permanently separated. Hawai'i state law allows family courts to terminate parental rights when a child has been removed from a parent "who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child."[157] This law follows the federal Adoption and Safe Families Act which mandates that children in foster care be placed within 18 months.[158]

Incarcerated parents who lose their children may never get them back. For many women in prison in Hawai'i, this is a common occurrence. A report prepared by Marilyn Brown and Jedidiah Kay of the University of Hawai'i showed that 75 percent of the sample of women in prison in Hawai'i County had at least one child.[159]

In addition, persons with a criminal history are barred from becoming foster or adoptive parents, and a person who wishes to become a foster or adoptive parent must not share a household with a formerly incarcerated person.[160] Simply living with, or being married to, a person convicted of a crime limits the individual family rights.

## Loss of the family home

Even if a person convicted of a crime is able to reunite with his or her family after incarceration, the family may find itself homeless. The Housing Opportunity Program Extension Act of 1996 imposed a mandatory three year ban from public housing on anyone who was evicted due to drug-related criminal activity.[161] Although successful completion or compliance with a rehabilitation program can reinstate eligibility, the Act grants state public housing authorities broad discretion to make their own standards about who qualifies for public housing. Most people convicted of felonies are denied public housing due to screening procedures.[162] Housing is the foundation for maintaining all other aspects of successful participation in society. Laws that prohibit where a person, and ultimately his or her family, can live may have severe negative effects on individuals and on communities. As evidenced by the findings in this report, Native Hawaiians are disproportionately affected by the criminal justice system and punitive responses to drug use.

For Native Hawaiians, it is the land, often associated with housing, that is of particular significance. The connection to the land is culturally significant and central to Native Hawaiian's positive identity construction.

> ***Hawaiians can't even afford their own land. All these homeless people, most of 'em is Hawaiians. And when they do build low income housing, they live on welfare… and they don't even come close to qualifying for land. It's b.s. Being homeless drive Native Hawaiians to do lots of criminal activities just to survive.***
>
> *(Former Pa'ahao, Kāne)*

## Limited employment and vocational opportunities

While Hawai'i has laws designed to prevent discrimination in the hiring of people convicted of offenses there is little done to enforce the laws and protect those who have been released from prison to the community. An employer, as well as a prospective landlord, is barred from inquiring about arrests that did not lead to convictions; such arrests can be sealed or expunged in most circumstances.[163] However, many

employers are exempt from this rule, including the federal government, Department of Education, private schools, banks, and health care facilities.[164] If an employer decides to deny employment because of a prior record, he or she must show that the criminal record is rationally related to the ability to perform the job in question.[165] Despite these laws, employers frequently screen applicants based on criminal history, through legal or illegal means and discriminate, citing other reasons not to hire.[166]

The state of Hawai'i may itself deny employment to those who have been convicted of an offense. The state may refuse or revoke any license to practice some type of employment, permit, registration, or certificate of a person convicted of a felony if the conviction is directly related to the trade for which the license is held.[167] In addition, a person may not hold any public office in the state of Hawai'i until he or she has been discharged of his or her sentence.[168] These types of restrictions, both from private and public employers, can make it harder for people to comply with parole or probation's employment requirements and may lead to re-incarceration.

The people who participated in this project, including formerly incarcerated people and a correctional official, express frustration with the lack of opportunities, desperation that there seems to be no way around the barriers that perpetuate a cycle of contact with the criminal justice system and without a way to interrupt the cycle.

***When we go out, we're labeled as ex- convicts. We are not labeled as regular people in society. We are labeled as people coming from jail… there's a lot of roadblocks for us.***

*(Former Pa'ahao, Kāne)*

***Economy stay down and hard for find one job. Or you can find one if you really want to, but the pay's not going to be what you in the State of Hawai'i, where it's expensive for live. A guy can work two jobs and he's still living on the beach…hard time.***

*(Former Pa'ahao, Kāne)*

***Plenty of us, many people in prison no more no place for go. When they get out, they no more place for go. The beach is their home. They get to look forward to one tent, if that, yeah? No more clothes. No more financial support. No more vehicle. No more job, that's for sure.***

*(Former Pa'ahao, Kāne)*

## Excessive fines

The inability of a person with a criminal record to find employment is often compounded by large fines imposed by the criminal court. Theoretically, the courts are strictly bound not to issue fines if the person cannot pay; however, the statutory language does not provide the court with criteria to assess their financial ability, so the matter is largely in the court's discretion.[169] Fines may range from $1,000 for a petty misdemeanor to $50,000 for a Class A felony,[170] and may be imposed when a person is convicted of a crime for which he or she derives a pecuniary gain or where the court believes a fine is specially suited for deterrence.[171] If a person is sentenced to probation, paying fines may be a condition of probation.[172]

## Loss of driver's license

A conviction for driving a vehicle while under the influence of an intoxicant (which includes both drugs and alcohol) triggers an automatic revocation of a driver's license. A person convicted of a such an offense will lose his or her licenses for a minimum of six months and up to three years, depending on the number of previous offenses and level of intoxication.[173] This loss often has a tremendous ripple effect for individuals and families–including the ability to get to and from work, to search for employment or housing, visit relatives, obtain child care, and keep appointments with parole or probation officers as a term of community supervision. Some of the people interviewed for this project indicated the difficulty in getting to the Social Security Office to get a new social security card so that they may get a new driver's license. The loss of a driver's license is even more problematic on islands or in jurisdictions with limited public transportation.

## Diminished educational opportunities

Arguably one of the most effective means of reintegrating into society and building a productive future after incarceration is through education – especially post-secondary education. However, federal law disqualifies students convicted of drug-related offenses from receiving financial aid.[174] The waiting time to become re-eligible ranges from one year to life, depending on the number of previous offenses.[175]

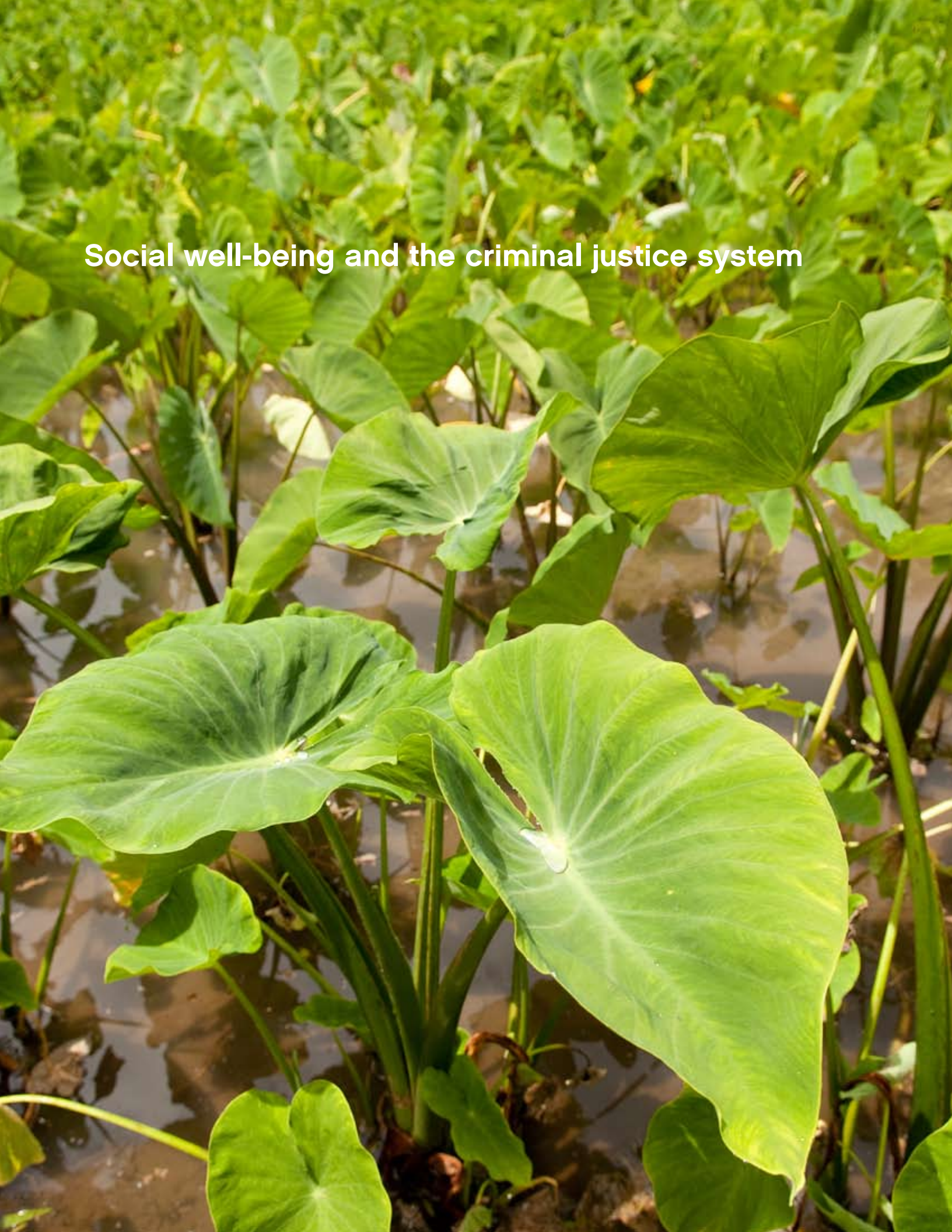
## Exclusion from civic and political participation

In many states, people convicted of certain offenses are denied civic participation, including the right to vote or sit on a jury. Voting and jury service are the primary ways that most citizens participate in the political process. Voting in particular allows people in Hawai'i to have a say in shaping the policies that affect their lives.

People convicted of felonies in Hawai'i are not permitted to vote until their sentence is discharged. [176] Although the right to vote is automatically restored once a person is released from prison, the correction agencies' system of data sharing does not always submit a person's re-eligibility to his or her county, so a released individual may have difficulty exercising their right to vote. Since Native Hawaiians are disproportionately more likely to receive a criminal conviction, they are more likely to have their voting rights taken away, leaving a large section of some communities disenfranchised and unable to help make decisions to change and better their own communities.

A person convicted of any felony who is not pardoned is also permanently disqualified from jury service.[177] Again, because Native Hawaiians are disproportionately more likely to receive a conviction, it limits the jury pool, thus making it more difficult to achieve a jury that is representative of the population, which is required by the U.S. Constitution.[178] A recent report by the Equal Justice Initiative that examines jury selection practices in Southern states raises concerns about representation of the community and the credibility of a justice system that does not include all members of the community.[179]

Many Americans take for granted their right to vote, serve on a jury, obtain housing, get a job, receive public assistance, and to apply for financial aid, not to mention their right to build a family. When a person is convicted of a crime, all of these rights are seriously affected and the loss of such rights can impede a person's ability to successfully transition to the community and stay out of prison.



# Social well-being and the criminal justice system

Involvement in the criminal justice system is a symptom of the barriers and challenges of Native Hawaiians in other social institutions and through a historical context. Compared to other racial and ethnic groups in Hawai'i, Native Hawaiians have lower levels of educational achievement, are underemployed, are disproportionately represented in the juvenile justice system, and, although it is not included in this report, experience disparities in health outcomes. Although educational attainment, employment status, economic status, involvement in the juvenile justice, and the impact of a family member's incarceration are not hard and fast indicators of involvement in the criminal justice system, there is research that that these social factors are related to incarceration.

While it is critical to examine disproportionate incarceration rates, the starting point for disproportionality is in the socio-economic factors that exist even before a person enters the criminal justice system. For Native Hawaiians the causes of disproportionate minority confinement are complicated, but can be attributed, in large part, to the social marginalization created by colonialism and racism.

Social marginalization is the dynamic process by which individuals and groups are increasingly distanced from the center of positive attention, influence, and power in conventional mainstream systems.[180] A marginalized community is alienated from education, economic, and other social institutions, resulting in significant challenges in not only experiencing positive life outcomes, but in persevering in trying to achieve them. One treatment provider interviewed for this project suggests that incarceration is a symptom of social marginalization.

***Typically over 50 percent of our [client] population is Hawaiian. I think the key is the system. It's part of the bigger picture and not isolated to the criminal justice system. It's about marginalized people who don't have the resources, support, protective factors, function at a level that doesn't make it, fall through the cracks and end up giving up and saying, 'I'm just going to get loaded because I can't handle it.'***

*(Treatment Provider)*

The social factors outlined in this section of the report are examples of ways in which marginalization plays out in a community.

## Educational attainment

Surveys of incarcerated people have consistently shown that people in prisons and jails have less educational attainment than the general population in the United States. In *Education and Correctional Populations*, the U.S. Department of Justice's research arm, the Bureau of Justice Statistics, reported that in the late 1990s, 68 percent of people in state prisons had not received a high school diploma, while only 18.4 percent of the general population had not completed high school. In the same year, 48.4 percent of the general population achieved a postsecondary education; yet, only 12.7 percent of the incarcerated population reached this achievement.[181]

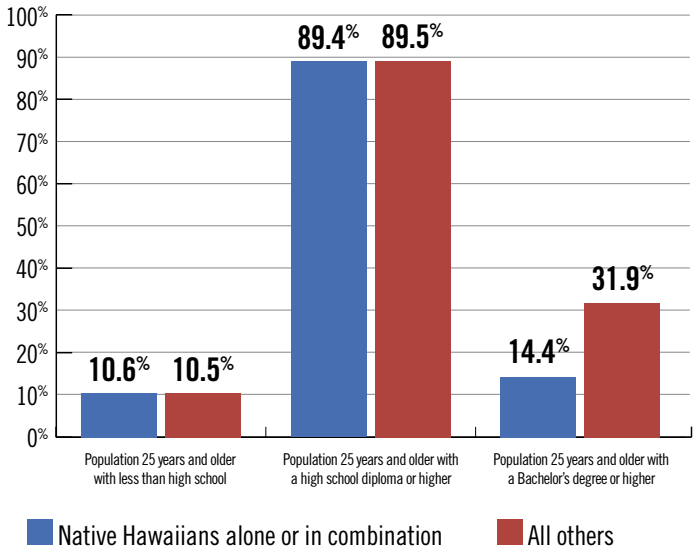
National data suggest that the relationship between educational attainment and incarceration has a concentrated impact on communities of color. Whites tend to have a higher level of educational attainment than African Americans and Latinos[182] and a lower incarceration rate.[183]

This link may also be evident in Hawai'i, where the level of educational attainment of Native Hawaiians is not proportionate to all other groups in Hawai'i. Although Native Hawaiians in Hawai'i had completed high school at similar rates to all other people in Hawai'i in 2008, Native Hawaiians are less likely to have earned a Bachelor's degree.[184] The higher the level of educational attainment, the more access a person has to higher paid jobs and less likely they will be incarcerated.

Alienation from the school system, perhaps because of a feeling of marginalization, might result in non-completion of high school and in low literacy levels, which in turn exacerbates social marginalization. One participant in this project left school after being hit by a teacher and a principal.

***When I was in the fifth grade I remember getting whacked across my face with a ruler from a teacher because I was just too slow to respond to one answer. Then, when I was in the seventh grade, the principal***

**Although Native Hawaiians complete high school at similar rates to other racial and ethnic groups, they are less likely to earn a Bachelor's degree.**




Source: U.S. Census Bureau, "Hawai'i, S0201. Selected Population Profile, Native Hawaiian alone or in any combination, 2006-2008 American Community Survey," December 31, 2009.
Note: "All others" is calculated by subtracting Native Hawaiians alone or in combination from the total population.

***whacked me and I never like that either. My father gave me lickings [beatings], too. That's what made me turn away. I never went back to school.***

*(Former Pa'ahao, Kāne)*

## Employment

People in prison tend to have higher unemployment rates and lower wages prior to their arrest. In the most recent statistics compiled by the U.S. Department of Justice (DOJ), one-third of people in jail reported they were unemployed prior to arrest in 2002;[185] compared to 5.8 percent of the general population.[186]

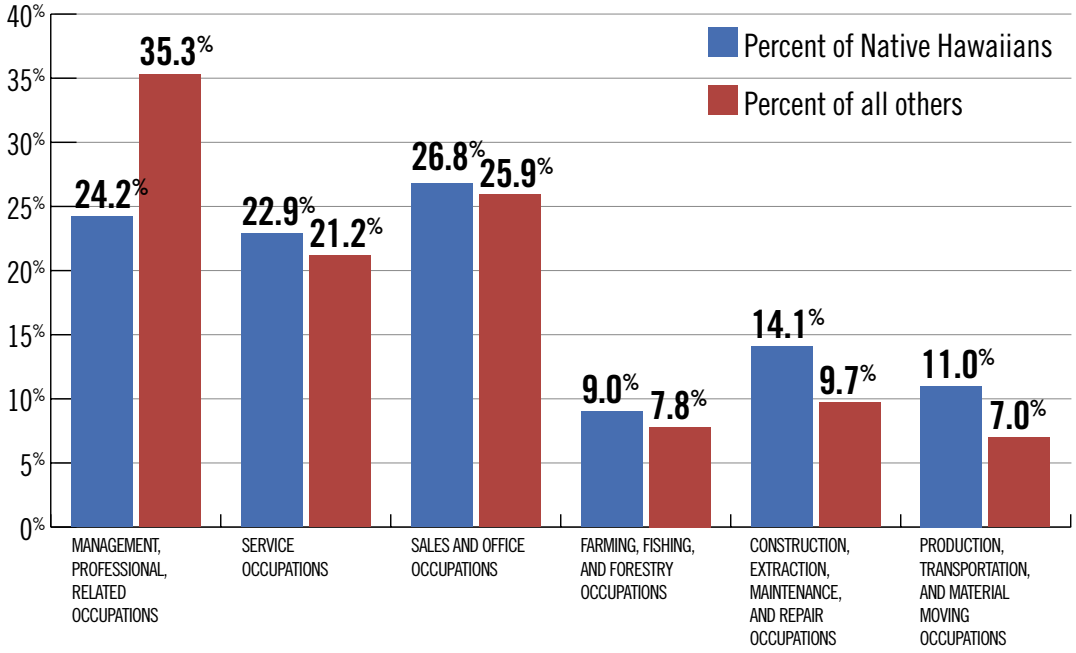
People in prison generally also made less money prior to their incarceration than the general population. Eighty-three percent of people in jail reported income of less than $2,000 in the month prior to arrest in 2002.[187] This is one-third lower than the average monthly wage of the U.S. general public which is slightly more than $3,000 per month.[188]

For any number of reasons that are beyond the scope of this report, Native Hawaiian families have the lowest mean income of all ethnic groups in the state.[189] Additionally, Native Hawaiians in Hawai'i had the highest percentage of people living below the poverty line in 2000.[190] Specifically, Native Hawaiians have a poverty rate of 12.2 percent, while non-Natives have a poverty rate of 8.6 percent in Hawai'i.[191]

Native Hawaiians are less likely than all other people in Hawai'i to be employed in management or professional positions, which tend to be higher paid. Native Hawaiians are more likely to have service-oriented jobs, which pay less than managerial positions.[192] The tourist industry in Hawai'i has adopted and exploited the notion of aloha and Hawaiian hospitality, which requires Native Hawaiians themselves to actualize those ideas. In a review of school textbooks about Hawaiian culture used in Hawaiian schools, Julie Ka'omea, found that even though some of the books were well-intentioned, they still perpetuated stereotypes about Native Hawaiians and inadvertently encouraged youth to pursue jobs in the tourist industry.[193]

It is important to note that the association between employment, wages, and imprisonment does not necessarily mean that people without jobs or who make less money commit more crime. However, given significant barriers to employment in the traditional job market and the correlation between unemployment and incarceration, Native Hawaiians may be more likely to be incarcerated than other racial or ethnic groups in Hawai'i.

**Of employed Hawai'i residents 16 years and older, Native Hawaiians are less likely than all others to participate in management or professional employment, but more likely to participate in service-oriented employment.**




Source: U.S. Census Bureau, "Hawai'i, S0201. Selected Population Profile, Native Hawaiian alone or in any combination, 2006-2008 American Community Survey," December 31, 2009.

## Incarcerated families

The effects of imprisonment on children and families are far reaching and can have lasting negative consequences on families and communities. Parents and other adult caregivers provide financial and emotional support to children and other members of families. Incarceration of a parent has the potential to cause economic disparity, impedes emotional development in children, and increase instances of mental health disorders for other members of the family.

Children are the most vulnerable when a parent is in prison and commonly experience sadness, anger, confusion, grief or depression due to separation from their parents.[194] Children whose parents are in prison are also more likely to develop anti-social behaviors, be involved in gangs, delinquent behaviors, or drug use than youth whose parents are not in prison. Research done by National Council on Crime and Delinquency found that children of parents in prison are five to six times more likely to become incarcerated than their peers.[195]

When a woman is incarcerated, the disruption may be more severe because 69 percent of the time, women are primary caregivers prior to incarceration.[196] Children whose mothers are or were imprisoned are more likely to have low self-esteem, impaired achievement motivation, and poor peer relations, with up to 30 percent of such children developing mental health problems.

***How do you tell a 6-year-old that about his parents – that they are in jail? How does a 6-year-old deal with that when he goes to school and is with his friends?***

*('Ohana of pa'ahao)*

For Native Hawaiians, the impact on the family or 'ohana, has a ripple effect. Native Hawaiian households are more likely to include multigenerational relatives, specifically grandparents. In fact, a study conducted in 2000 found that in 33.9 percent of Native Hawaiian households grandparents were in some part responsible for caring for their grandchildren. Situations in which grandparents or other family members share care-giving

duties of children do not necessarily signify that parents are completely absent; one or both parents might be present but unable to provide full care of children due to employment or other factors. In fact, the rate of Native Hawaiian households where the family consists of school-age children and married parents, and where both parents are working, is higher than the statewide rate.

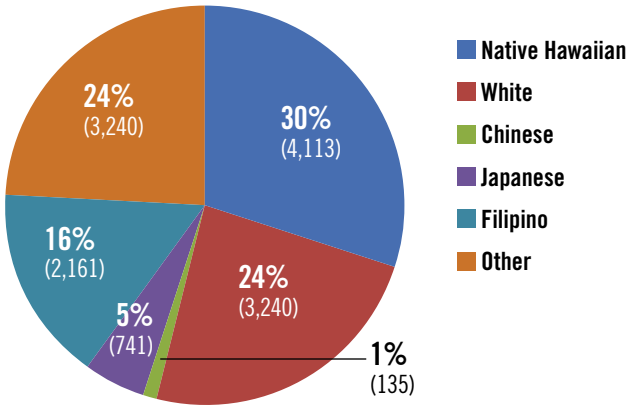
Given that Native Hawaiians make up the largest percentage of the state prison population, the impact on families is widespread and affects many generations. The incarceration of parents intensifies a sense of social marginalization for the Native Hawaiian community and contributes to the number of Native Hawaiians in prison.

## Juvenile justice

According to the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, in 2006, there were 96 youth committed to residential facilities in Hawai‘i, a rate of 72 per 100,000 youth in the population, and an additional 30 youth were in secure detention, a rate of 22 per 100,000 youth.[197] Comparatively, the national average of commitment to residential facilities is 205 per 100,000 youth and 84 per 100,000 youth in the general population for detention, significantly higher than in Hawai‘i.[198] More recent data reported to the Hawai‘i Judiciary Committee in 2009 shows that 1,092 youth were admitted to detention at the Hale Ho‘omalu Secure Detention Facility in 2008.[199]

Research shows that Native Hawaiian youth are disproportionately represented in the juvenile justice system in Hawai‘i. A study of 805 juvenile cases in Hawai‘i between 1995 and 1999 found that approximately 50.5 percent of the youth in juvenile facilities in Hawai‘i are Native Hawaiian.[200] In 2003, Native Hawaiian youth were the most frequently arrested in all offense categories.[201] As was previously discussed, the disproportionate number of arrests and incarceration could be due to a number of factors, including concentrated policing and disparities in the handling of cases.

**Native Hawaiian juveniles made up 30 percent of arrests in 2008 for all offenses and yet Native Hawaiians comprise 24 percent of the general population.**




Source: 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

Multivariate analyses conducted by John MacDonald of the University of South Carolina using the National Juvenile Court Data Archive that controlled for age, gender, court location, poverty, charge seriousness, and offense history confirmed that Native Hawaiian youth are treated more harshly than Whites with similar situations in the juvenile justice system in Hawai‘i.[202]

***It was hard enough for me to get a job to pay for myself, much less take on some else's child. I had gone through four jobs because I had to drive him to his daycare. What are you supposed to do?***

*(‘Ohana of pa‘ahao)*

# *He kalo kanu o ka ʻāina*

A taro planted on the land

A poetic reference to a native of the land for many generations

# The costs of incarceration

The criminal justice system, and incarceration in particular, bears specific costs for states and communities. In addition to some of the human costs discussed in this report, the fiscal and public safety costs are significant.

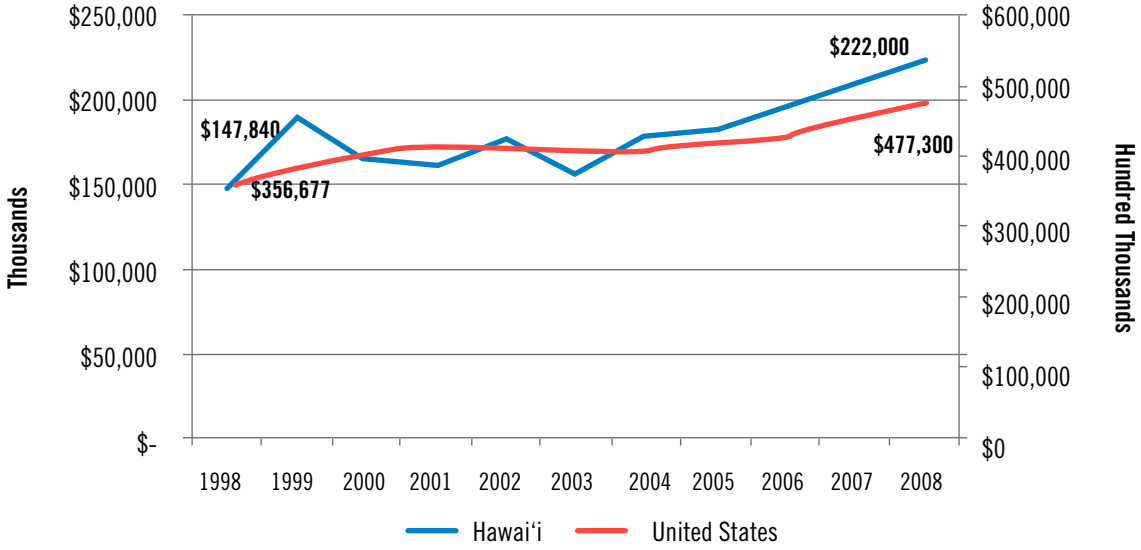
In 2008, the state of Hawai‘i spent $222 million on corrections from the state general fund, which is a 48.8 percent increase from 1998.[203] Comparatively, in the same time period, the total U.S. spending on state corrections increased approximately 34 percent.[204]

The Pew Charitable Trusts estimates that Hawai‘i spent slightly more than $18,000 per person in prison in 2005, which is about $5,000 less than the national average.[205]

Although the largest savings in corrections come from closing whole prisons or wings in a prison, reducing the number of people in prison is likely to make some decrease in the overall corrections expenditures in the state.

The cost of prison goes beyond the resources required to keep a person beyond bars; it extends into the community and includes costs related to lost wages and taxes, depletes neighborhood strength, and costs to family members related to pain and suffering. When including additional social costs, Thomas Lengyel of the University of Denver found that the total cost of keeping one person in prison for 39 months, which is an average length of stay, would be approximately $600,000.[206]

**Hawai'i's expenditures on corrections increased approximately 50 percent between 1998 and 2008. Comparatively, the U.S.'s expenditures on corrections increased 34 percent in the same time period.**




Source: National Association of State Budget Officers, *State Expenditure Reports, 1999-2008* (Washington, DC: National Association of State Budget Officers, 1998-2009). www.nasbo.org Note: Adjusted for inflation

| Costs in context: Select government expenditures[209] | |
|---|---|
| Annual cost of incarceration – one year[210] | $18,370 |
| Average salary of a secondary school teacher | $52,450 |
| Average salary of a substance abuse and behavioral disorder counselor | $37,830 |
| Average salary of a licensed practical nurse | $38,940 |
| Average salary of a mental health counselor | $39,450 |
| Average salary of a social worker (family services) | $41,920 |
| Average salary of vocational education teacher (postsecondary) | $49,150 |
| Average tuition and fees of full time public, in-state, post-secondary education[211] | $6,585 |
| Drug Treatment [212] | $1,849 |
| Supportive Housing[213] | $11,272 |

At the same time that corrections costs have gone up with the number of people in prisons, index crime rates fell. From 1998 to 2007, Hawai'i's incarceration rate increased 13 percent, while the crime rate fell 16 percent.[207]

Research shows that although incarceration does have some impact on public safety, there are other means of achieving the same and more public safety benefits without the extreme costs.[208] For example, expanding diversion to drug treatment is one way that many states have improved outcomes at lower costs. As mentioned in the section dedicated to punitive responses to drug use, research by the Washington State Institute for Public Policy has shown that drug treatment offered in the community is not only less expensive than incarceration, but also provides a greater return in terms of public safety for every dollar spent. For every dollar spent on drug treatment in the community there is an $18 dollar return in public safety savings; comparatively, prison yields 37 cents per dollar spent.

Money spent on incarceration could potentially be redirected to other agencies that result in more positive investments in communities. The cost of imprisoning three people for a year could pay a secondary school teacher's salary.

# Recommendations

The recommendations included in this section are designed to help policymakers, practitioners, advocates, and communities make choices to reduce racial disparities, the number of people in prison generally, and improve life outcomes. These recommendations include some very specific suggestions for changing the criminal justice system in Hawai‘i. First, they include specific recommendations and suggestions for using the resiliency of the Native Hawaiian community to improve life outcomes and help Native Hawaiians transition back to the community. Second, they provide strategies for targeting racial disparities drawn from experiences of other jurisdictions across the United States. Lastly, they provide specific recommendations to reduce the number of people in prison generally. Many of these recommendations come from formerly incarcerated people, advocates, treatment providers, and corrections officials in Hawai‘i.

## Cultural Resilience and Protective Factors

When considering recommendations for reducing the impact of the criminal justice system on Native Hawaiians, it is necessary and most effective to access the protective nature and strength of Native Hawaiian culture for Native Hawaiians. This is important because a one-size-fits-all approach to reducing racial disparities is not likely to work and secondly, research shows that Native Hawaiian cultural values and traditions are supportive and healing that promote resiliency for Native Hawaiian people.[214]

Resilience, generally, refers to the ability of people to cope, recover, and even, transcend psychosocial, physical, and spiritual challenges. Having a safe, health-promoting environment and access to a range of social resources are considered basic to success in “bouncing back” from the stresses of life. Other resiliency factors include the capacity to connect, foster, and take leadership in social networks, organizations, and systems. Cultural resilience refers to the capacity of a cultural group to maintain and develop values, knowledge, and skills crucial to proactively engaging challenges associated with cultural, historic, and other types of trauma.[215] Resiliency is a central feature of not only ensuring that Native Hawaiians do not come into contact with the criminal justice system, but that if they do, that they are able to leave the system and never return.

Research on promoting the health and well-being of Native Hawaiians has found that in order to fully realize the strength of Native Hawaiian culture and values, Native Hawaiians must be involved in the design and implementation.[216] Recommendations and reflections of Native Hawaiians about cultural values as a foundation for reducing contact with the criminal justice system are included here.

1. Honoring the Sacred, Forgiveness, and Successful Entry Back

Making Native Hawaiian culture central to the reentry process is important to Native Hawaiians coming out of prison. Building on cultural pride and positive identity construction could help Native Hawaiians return to communities. Research by A. Aukahi Austin regarding ethnic pride and resiliency as related to substance use and violent behavior shows that ethnic pride serves as a protective or even preventative factor against violence and encourages resiliency after a violent experience.[217] One participant explains that valuing and holding sacred Native Hawaiian culture could help Native Hawaiians stay out of the criminal justice system.

> ***Sacredness is the root of a lot of my beliefs to rehabilitation approaches, the sacredness that comes through our culture. Through teaching about cultural practices, we introduce an understanding of the sacredness that automatically brings out a level of respect. The more sacredness we give pa‘ahao through culture, the more we are teaching them to be pono [morale, ethical, righteous].***
>
> *(Community Advocate/Volunteer)*

Another participant explains that the principle of the pu‘uhonua, a city of refuge or sanctuary, could be applied to the criminal justice system. When a person emerges from the system, they are forgiven and they can return to the community without the continued burden of the criminal justice system. This idea is particularly important as it pertains to the restrictions placed on formerly incarcerated people regarding jobs, education, and housing.

***Traditionally, Hawaiians had the pu'uhonua. If you violated the law and you were successful in getting to the pu'uhonua, no one could touch you. I remember my kupuna [elder] saying, "if you can reach the wall, you are forgiven. While you stay there, you learn to live a forgiven life." When return was made, the person went through that 'system' and everything was made pono again. He was accepted back and had the chance to become a productive member of that community. Today, we have lost that ability to bring someone back into the community. Programs like that are needed, forgiveness is needed, too.***

*(Correctional Official)*

At the same time, however, there cannot be a perpetuation of a colonial modality of forcing cultural programs on Native Hawaiians. In addition, connection to culture should occur before a person is in contact with the criminal justice system.

***Some cultural programs can still position prisoners as subjects that need to be repaired through a reconnection with their culture. But how does that really benefit prisoners? How does that really deeply benefit people re-entering?***

*(Community Advocate/Volunteer)*

2. Kuleana (Responsibility within the context of the collective)

Kuleana, or responsibility to the greater good, is another cultural strength that is central to the process of helping Native Hawaiians either stay out of the criminal justice system or return to communities after prison. According to survey research from Kamehameha Schools and a Hawai'i Community Survey, Native Hawaiians have strong ties to their communities and are involved in community service. Fifty-one percent of Native Hawaiians participate in community organizations, with 48.7 percent taking leadership roles when they are involved in the community.[218] Participants in this project confirmed the importance of kuleana, as well.

***I like give back to the community—help 'em out in programs…'cause I don't forget where I come from.***

*(Former Pa'ahao/Volunteer,Kāne)*

***My father and mother were both very active and I learned the term 'social responsibility' when I was about three years old. Being a person, you are supposed to be an instrument of social change. That is part of your kuleana.***

*(Treatment Provider)*

***I really wanted to go into corrections because I felt I had an obligation to give back to Ke Ali'i Pauahi, to give to her what she gave me while attending Kamehameha School. I entered the prison system with hopes to see what I could do for the "lost sons of Hawai'i", which I really knew were the Native Hawaiians.***

*(Correctional Official)*

3. Pili, Close Relations, and Feeding with Learning

Native Hawaiian culture draws strength from community and family building, as well as communication. For example, the process of ho'oponopono, which is a ritualized process of "setting to right; to make right; to restore and maintain good relationships among family and family-and-supernatural powers," was once practiced daily. Ho'oponopono involved prayer with family and a discussion of problems and resolutions. The values associated with ho'oponopono are love and affection (aloha); unity, agreement, and harmony (lōkahi); and family and community ('ohana).[219] It is a sacred, culturally valuable process that draws on family and community for support and healing.

Participants in this project talked about meeting people where they are in their lives and learning together to resolve problems.

***When you talk 'culture', you have to look at people and understand how they live so you can administer your mana'o [concern, thoughts] to them. You want to teach them. Feed them so they no choke, so that they are able***

### Maui Being Empowered and Safe Together (BEST)

Hawai`i has several initiatives to smooth the transition from prison to the community. In 2003, Maui Economic Opportunity, Inc. and the Department of Public Safety created and administered Being Empowered and Safe Together (BEST) to prepare people returning to the community from the Maui Community Correctional Center. A BEST review committee determines the appropriate level of services for each person, a housing coordinator helps locate housing, and other case workers identify other supports such as child care, training, transportation, and mentoring to help people stay out of prison. The cornerstone of BEST is a cultural renewal component, which uses Native Hawaiian culture as a means of promoting self-transformation and helping people move beyond the label "criminal." The courses are open to all people and classes include Hula, reading circles, and family reunification cultural activities.

According to a 2009 evaluation of BEST, its outcomes are promising. BEST participants who are deemed "high risk" were shown to have a lower recidivism rate than people who are "high risk" and did not participate in BEST (47.1 percent vs. 88.2 percent). BEST participants are also less likely to be convicted of a new crime than people who do not participate. Approximately 24 percent of BEST participants were convicted of a new crime from June 2003 to June 2007, compared to 42.3 percent of people who did not participate. In addition, the study shows a savings of $13,643 per participant in terms of costs related to the criminal justice system and public safety.

Sources:
Maui Economic Opportunity, Inc., "Frequently Asked Questions About the BEST Program and BEST House," January 26, 2010. http://meoinc.charityfinders.org/BEST_FAQ
Marilyn Brown and others, Impact and Cost-Benefit Analysis of Hawai`i's Serious and Violent Offender Reentry Initiative: The BEST Program (Hilo, HI: University of Hawai`i at Hilo, 2009).

***to inu [drink] from what you teach and digest it. So, that they can stand up and be proud. No hold down their head and be willing to build a foundation that is pa'a [firm, solid] and pono [moral, right]. So that no matter what kine come, they not going fall down again, because they have that foundation.***

*(Treatment Provider)*

***We want to nurture them, help them heal, have a reciprocal learning process so we're working through these issues—together. And we're sitting down on the ground with them and we're working things together through a relationship. Indigenous people have processes. As Hawaiians, we have our processes for talking through things, like ho'oponopono.***

*(Community Advocate)*

***We met these inmates who were struggling, wanting to learn Hawaiian Makahiki ceremonies, Hawaiian cultural practices…40 men wanting and struggling to learn, but having only one Hawaiian dictionary. I was appalled. So, we taught them specific ceremonies related to Makahiki, but underneath the Makahiki ceremony theme, interwoven and running parallel was this sense of Hawaiian identity, building and healing, and ho'oponopono [spiritually-grounded and structured discussion intended to maintain wellness and resolve conflict] .***

*(Community Advocate)*

Some of the participants in this project, recommend courses that teach language and history to convey culture prior to leaving prison. Learning in prison, especially if it is done as a partnership, could help people transition and move forward after prison.

***I don't know how to speak Hawaiian. We want to be taught about our culture. But how come they can't have somebody –like a volunteer--teach the basics of our language or our roots? For me, I want to search my roots. How do you even start tracing your roots? Knowing 'who' you are, 'where' you come from is important, especially for individuals like myself…it's like a kind of healing to really imua [move forward].***

*(Former Pa'ahao, Wahine)*

***It's easy to be trampled over when you don't know 'who' you are, 'what' your rights are. Knowledge to me is important…cultural-language programs, programs that help you transition from prison to furlough are important.***

*(Former Pa'ahao, Wahine)*

***The administrator was very open to having classes for pa'ahao. They wanted us to do a university program so that women would learn about what was available here, learn to take notes, take tests, sitting through a lecture, and stuff like that. And I decided to teach a Hawaiian history class [course] and I did a presentation on women leaders like Lili'uokalani who went beyond the stereotype that Hawaiian women don't do much. And the point was that traditional leaders had strengths and that this was part of Hawaiian women's genealogy—this is what you can model yourself after. And the women got really turned on to it!***

*(Family Member/Volunteer)*

## Targeting Racial Disparities

Concerns about disproportionate contact of youth of color with the juvenile justice system have brought about research and best practices for uncovering and addressing the problem. Entities and initiatives such as the Burns Institute, the Juvenile Detention Alternatives Initiative, and Models for Change are resources for this information. Below is a summary of the steps that those entities employ to reduce racial disparities, largely adopted from the W. Haywood Burns Institute in California.[220]

1. Form a Governing Collaborative

Hawai'i should establish a committee responsible for examining local policies and practices, and directing the work of reducing disproportionate contact of Native Hawaiians. This governing collaborative should combine traditional and non-traditional stakeholders such as judges, prosecutors, defenders, law enforcement officers, and probation officers as well as community representatives, local cultural ambassadors, schools, advocates, parents, former pa'ahao and youth. Specifically, the governing collaborative should have the following features, many of which are also included in well-researched approaches to improving the health of Native Hawaiians:

- **Diversity and community participation:** To fully draw from the unique culture and spirit of leadership among Native Hawaiians, local organizations and community representatives should be equally-respected decision-makers in the collaboration. Participants should be familiar with language, acronyms, processes and positions that make up the local criminal justice system and system participants should be familiarized with various aspects of Hawaiian culture. In all aspects of the collaboration, the specific historical and social context of Native Hawaiians in Hawai'i should be considered and should always be a focus when collaborating.

  While the "culture of politeness" is a valuable tradition in Hawai'i, it is imperative to avoid situations where those in the collaborative "favor niceties and platitudes over an honest and challenging conversation regarding why local policies and practices contribute to racial and ethnic disparity." Often, the Burns Institute warns, this "culture of politeness" can become a proxy for inaction. At the same time, the collaborative's decisions should be made by consensus. Even if this method is more time-consuming, it produces better results than a majority vote, which may alienate a minority and may end up sabotaging the decision-making process. Consensus also better ensures equal and full participation of all parties in the collaboration. At all times, discussions and deliberations must always be undertaken in an atmosphere of genuine respect and dignity for those who are imprisoned.

- **Local staff:** On behalf of the collaboration, a person in the community must staff and manage the disparity reduction effort on a full-time basis.[221] This coordinator must be comfortable interacting with a broad range of decision-makers, must be familiar with Native Hawaiian culture and values, and should possess knowledge about the workings of the local criminal justice system and the community providers. The coordinator's duties will include organizing a governing collaborative and committee meetings,

### Commission on Reducing Racial Disparities in the Wisconsin Justice System

In March 2007, Governor Doyle of Wisconsin signed an Executive Order recognizing the disparate treatment of African Americans and Hispanics in the criminal justice system and establishing a Commission on Reducing Racial Disparities in the Wisconsin Justice System. The Commission worked with scholars, experts, and government officials to closely examine the problem and develop a report on the issue. The final report includes an assessment of data and a summary of community meetings held throughout the state.

Included in the recommendations, the Commission recommends accurate, current data; interagency collaboration; investments in community programs and services; and investments in improving the availability of treatment. The report goes on to make specific recommendations to various criminal justice agencies, including the legislature.

The report and the Commission itself demonstrate Wisconsin's commitment to reducing racial disparities in the criminal justice system in their state.

Source: Commission on Reducing Racial Disparities in the Wisconsin Justice System, Final Report (Madison, WI: Governor's Office, February 2008). ftp://doaftp04.doa.state.wi.us/doadocs/web.pdf

preparing meeting minutes, organizing and assisting in presenting data, and monitoring compliance with the disparities work plan.

- **Goal-setting and work plan:** Establishing a specific goal and outlining the steps to achieve it is crucial in reducing racial disparities. The collaboration must establish a consistent meeting schedule with adequate time for deliberation and consensus, create a common agenda, and develop a work plan. This work plan should enumerate the specific tasks the collaborative plans to complete, include deadlines, and the individuals responsible for completing the tasks. A measurement system should be built into the work plan to ensure progress.

- **Government leadership and support:** Government entities, that may include the legislature or administrative agencies, could provide technical, financial, or in-kind support to the efforts of the collaborative.

2. Data Collection and Decision Point Analysis

Accurate, current, and consistent data is critical to understanding where disproportionality is occurring in the system. Quantitative data is important, but qualitative data gathered from staff, people who are incarcerated, people on supervision in the community, advocates, and treatment providers will fill in the gaps. As mentioned previously, engaging the Native Hawaiian community in the process of implementation of solutions will increase their effectiveness.

- **Consistent data collection:** Continued data collection and analysis of the racial disparities in Hawai'i's criminal justice system is necessary to provide the foundation for identifying whether, to what extent, and at which decision-making points disproportionality of Native Hawaiians in the criminal justice system exists, and where further strategies for change can be developed. Although the contributors to this project were able to conduct many analyses with data provided by the Hawai'i Criminal Justice Data Center, the data was not necessarily consistent across agencies and in some cases it was difficult to determine exactly what the data represented. For example, given that arrests did not include the controlling charge, it was difficult to determine the primary cause of the arrest or the offense.

- **Data should be available for community-based initiatives:** The continued effort to collect and analyze data must be combined with a local effort to use the data to create the changes the collaborative decides are necessary. It is evident that Native Hawaiians have strong ties to their communities and many are involved in community service. These supportive factors can help provide the foundation for community-based initiatives that the collaborative should make use of to meet its goals.

- **Defining and measuring success:** Defining success begins with an examination of the existing baseline data to determine the level of ethnic disparities in Hawai'i. For example, one of the collaboration's

### Hawai'i County Police Department

With support from the Office of Hawaiian Affairs, the Hawai`i County Police Department implemented a program that includes training to law enforcement officers in the areas of cultural competency, crisis intervention, homelessness and mental illness. Officers are better able to respond to mental health crisis with mental health services, thereby reducing the number of arrests. Officers also use bikes rather than patrol cars to put them closer to communities and make them more accessible.

Source: Office of Hawaiian Affairs

ultimate goals may be having the proportion of Native Hawaiians in the overall Hawai'i population reflected at parity in the criminal justice system. However, more important than a reduction in percentages of Native Hawaiians in the criminal justice system is the reduction of inappropriate detentions and disparate policing practices that have a disproportionate impact on Native Hawaiians. Data should be used to regularly evaluate the effects of their current policies and practices, and to assess the relationship between modifications to these policies and practices and subsequent reductions in racial, ethnic, and gender disparities.

- **Objective screening tools:** Recent innovations in screening tools or risk assessment instruments have the potential to reduce disproportionate contact with the criminal justice system for Native Hawaiians.[222] Screening tools can be used in initial decisions related to pretrial detention, needs assessment, release decisions, and placement decisions. Objective-screening tools must also be monitored and updated at designated intervals in order to ensure fairness and efficiency in arrests.[223] Hawai'i could develop its own objective screening tool by using a balance of accepted design principles, test protocols, and local practice in order to determine who should be detained and released.

- **Interagency collaboration within the criminal justice system:** Because of the interrelated nature of different agencies in the criminal justice system, it is necessary to share data and information across agencies. Hawai'i currently has a few different interagency collaboratives dedicated to changing the criminal justice system. One is the Interagency Council on Intermediate Sanctions, a collaborative of the Judiciary, which includes Adult Client Services (probation), the Department of Public Safety, the Hawai'i Paroling Authority, the Department of Health, and the State Attorney General, and it aims to reduce recidivism and better meet the needs of the people in the system.[224] This type of collaboration could be used to determine the junctures in the system at which racial disparities could be addressed and reduced.

  Efforts should be made to include non-traditional partners in the effort to reduce incarceration of Native Hawaiians. These partners may include parents, community-based service providers and grassroots organizations that demonstrate interest in disproportionate minority contact issues.[225]

## Reducing contact with the criminal justice system for everyone

In addition to a targeted effort to reduce the disproportionate impact of the criminal justice system on Native Hawaiians, Hawai'i and its counties should work to reduce incarceration and contact with the criminal justice system overall. This section includes recommendations drawn directly from people in Hawai'i with experience with the criminal justice system: formerly incarcerated people, treatment providers, and corrections officials.

- **Reduce arrests:** Arrests are the gateway to the criminal justice system. Law enforcement should not consider issuing more citations for certain offenses, especially those related to homelessness and other quality of life offenses. Arrests for low-level non-violent offenses also use significant law enforcement resources without having a significant impact on public safety.

- **Release more people pretrial:** Courts could divert people who need mental health or substance abuse treatment to those services rather than the criminal justice system. Additionally, courts could use screening tools and risk assessments to add confidence to release decisions.

- **Implement trauma-informed services:** Many people who come into contact with the criminal justice system have experienced trauma in their lives. Trauma may contribute to mental illness or substance use. Proving trauma-informed services, especially those that are culturally relevant, will divert people away from the criminal justice system. Two people that work closely in the corrections system thought that trauma-informed services would help reduce the number of people in prison.

***For the majority of incarcerated women, the pathway to crime is usually unresolved trauma and use of drugs to deal with unresolved trauma that leads to addiction, crime, and incarceration. Policy-wise, there is a need for trauma-informed services that give women a positive sense of self and a sense of self-efficacy about their ability to be functional.***

*(Treatment Provider)*

***You find that many men, too have trauma issues from abuse…Post-Traumatic Stress Disorder.***

*(Correctional Official)*

- **Focus services on people who appear before the courts frequently:** Often people who appear before the courts multiple times are in need of some other preventative service. For example, research on county jails has shown that providing housing to homeless people decreases their arrests and appearances before the court.[226]

- **Make treatment available on all the islands:** Currently, treatment services are focused where there are the most people. However, people on the neighbor islands should have access to those services as well.

- **Fully shift probation and parole modalities to that of service and support over supervision:** Hawai‘i’s parole services already state that it is a priority to provide services to ensure that people on parole do not return to prison. Such a modality should be consistent through all types of supervision and all offices across the state. Hawai‘i could consider opening supervision offices in Native Hawaiian communities, specifically, to ensure that people on supervision successfully meet the terms of supervision.

  Supervision could also include mentoring programs either outside the government or in cooperation with a nonprofit or other advocacy group. One family member of a person in prison spoke of the need for networks of support after a person leaves prison:

***The women come out and there are many who they know who have come out before them. But they are not supposed to interact with each other. Where then do you go for support when you haven’t built a system of support? I think a mentoring network might help women move along. What prevents us [Hawaiian women] from coming together to move forward? It’s about women honoring women.***

*(Family Member/Volunteer)*

- **Allow for a shorter term of probation:** Currently, probation terms are generally five years or less. An option to sentence a person to three years or less would limit the number of people on probation, which would allow probation to provide more services to people who might pose a greater risk of committing another offense.

- **Fully implement alternatives to incarceration:** Community-based alternatives have been found to be cost effective and work to promote public safety. People who stay in the community have access to their families, communities, jobs, education, and other social institutions that support and improve life outcomes. Community-based alternatives can include probation, half-way houses, electronic monitoring, and treatment.

- **Refrain from housing any person from Hawai'i in prisons on the continent:** The 2009 and 2010, instances of sexual abuse for women and suspicious deaths in prisons on the continent are of great concern. Aside from evidence of abuse and violence in these facilities, people on the continent are cut off from families and communities, making transition back to communities after release more difficult. Given the strength and support that Native Hawaiians find in family and community, this separation is particularly damaging. In order to refrain from housing people on the continent, Hawai'i must consider placing more people in alternatives to incarceration.

- **For people who are not diverted, increase services in the prison:** Increasing the availability of programs and services for the people that are in prison will help people prepare to be released and can also help people qualify to be released earlier, thus reducing the number of people in prison. Formerly incarcerated people describe waiting lists and "dead time," in which they can't access courses or treatment while in prison.

***We're not doing nothing. We sitting in one place. They give us these requirements, stipulations for us to do. Some places that you go, they don't have the means for you to do your programs. Like for example--Halawa, they had no schooling at all but they expect you to get a GED. How are you supposed to do that? It's like the State telling you, "you know what, you going to wait until we are ready, yeah? We no more funding, yeah, we no more funds for do the class, then why you give me for do on top of my stipulations for release then, yeah? No makes no sense at all. They stipulate that, you do this, you show us this, [then] you can go home. But no more the classes for you to take because there's no more funding!***

*(Former Pa'ahao, Kāne)*

***Treatment is a big thing. You gotta get treatment to whatever level they stipulate you to be. On the mainland, we had a lot of programs that we could do. I completed my level three programs—parenting, anger management. I finished up my GED there and started taking some college courses. Coming home to Hawai'i is good because there is no place like home—you know what I mean?! But for doing time, better on the mainland because the opportunities [for programs] are there.***

*(Former Pa'ahao, Wahine)*

***I had to wait until I get out of incarceration and could go into a furlough program in order to get knowledge, kokua [help]. We go through culture shock and there is nothing to prepare us from incarceration to furlough… which we only have two furlough homes, that's not enough. Even when we're qualified for the system to send us out, there aren't enough space for us in the furlough homes.***

*(Former Pa'ahao, Wahine)*

***The way it's designed right now—you are not going to get treatment until your last two years. You get your drug treatment and then you go to a transitional program. You can come in for drug charges, get 10 years, and you have to do 10 years. If you've got 10 years, then you won't get your drug treatment until the end of your eighth year…because there are people with less time to serve than that and that person is going to be first. So, the issue is: what do you do with those who are long-term?***

*(Correctional Official)*

- **Provide gender-responsive services:** Many services available in prisons are designed for men. Women have different needs, especially pertaining to physical and mental health. Being responsive to those needs may allow women to leave prison more quickly, experience positive life outcomes, and not return to prison. At the same time, however, mental health services, in particular, must be customized to help people, including men. Correctional officials spoke about both issues for this project:

***We talk about the disparate treatment of Native Hawaiians in general. Women are also treated disparately. Many of the programs that we developed for***

### Justice Integrity Act (2009)

First introduced in 2008 by Joseph Biden, then-Senator of Delaware, the Justice Integrity Act would establish a pilot program implemented by the U.S. Attorneys in 10 federal districts. The program would have advisory committees that include an array of criminal justice personnel, including prosecutors, defenders, judges, correctional officers, and other stakeholders. The advisory committee would guide the collection and analysis of data to show if and when there are racial and ethnic disparities in the criminal justice system in those 10 districts.

The advisory committee will also offer recommendations to reduce racial disparities, focusing on sentencing, law enforcement practices, and charging practices.

Source: Brennan Center for Justice, "Press Release: Justice Integrity Act of 2009 Introduced," July 27, 2010. www.brennancenter.org/content/resource/justice_integrity_act_of_2009_introduced/

***the facility are based on programs for male inmates. We need to create programs that are gender-responsive to women—incorporate programs that are receptive to women's needs—their physical needs in terms of health, the emotional, family, mental health, and treatment needs specific to women.***

*(Correctional Official)*

***It's really difficult for the men to bring this [PTSD, trauma] out. It's a cultural thing that men don't cry, don't say, just suppress it. If you're a man, you deal with it-- suck it up, be tough, move on. That's how they were brought up. They do really do have to bring out the trauma to move on. We may need to find different [gender-specific] ways to help them bring that out.***

*(Correctional Official)*

- **Increase parole eligibility:** Parole allows people to return to their communities to participate in employment, treatment, education, families, and other systems of support.[227] Further, people on parole are able to contribute to the local economy through their employment, financial support for their families and patronizing local businesses.[228] The Hawai'i Paroling Authority (HPA) has a great deal of control over the amount of time that people spend in prison. The HPA could increase good-time credits, release older people from prison who are generally considered to be low risk,[229] and utilize Hawai'i's medical parole policies to the fullest extent possible.

- **Refrain from paroling people directly from prisons on the continent:** People returning from the continent have had no time to participate in furlough or work release programs to ensure that they have a job, community or family support, and a stable place to live. The state should consistently abide by the Community Safety Act of 2007 and ensure that people in prison on the continent should return to Hawai'i and should be supported as they transition to the community.

- **Reallocate funds from traditional prisons to furlough or work release**: Furlough and work release initiatives, including T.J. Mahoney, have been shown to be successful at helping people return to the community from prison. Criminal justice officials believe that more people could be transitioned from prison to work release, but there are currently not enough beds. Money could be shifted away from more expensive prison beds to work release.

- **Eliminate the barriers to obtaining work, education, and housing after prison:** The laws that prohibit a person who has been convicted of a crime from participating in certain jobs, obtaining some types of housing, and having access to other social support system undermines any effort to reduce the number of people in prison. Without the ability to support oneself legally outside of prison, a person is vulnerable to return. One correctional official interviewed for this project, points out the difficulty of obtaining a job after conviction for a felony.

***There's a need to look at some of the laws. It's hard to get a job if you've been convicted for a felony. Maybe there'd be a way to somehow change that, or wipe it from their record after a time.***

*(Correctional Official)*

- **Establish a community oversight committee:** To ensure accountability and address concerns related to the criminal justice system, the oversight committee will provide recommendations to reduce racial disparities and coordinate stakeholders to develop sufficient resources for individuals who are leaving the system.

## *E ho'okanaka.*

*Be a person of worth*

*These were the very last words of Kamehameha 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)", Continue to do what I have done". Then, turning to his grieving young son, Liholiho, the unifier of the Hawaiian islands, Kamehameha, uttered these words. "E ho'okanaka". It is uttered 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.*

## APPENDIX A: Quantitative Data and Methods

The Hawai'i Criminal Justice Data Center has compiled information from county police departments, state and federal law enforcement agencies, courts, the Attorney General's Office, prisons, and all other public agencies concerned with crime, courts, and public security. According to the HCJDC website, "The Hawai'i Criminal Justice Data Center (HCJDC) is an agency of the Department of the Attorney General in the State of Hawai'i and is responsible for the statewide criminal history record information system (CJIS-Hawai'i), the statewide Automated Fingerprint Identification System (AFIS), the statewide Sex-Offender Registry, the Adult Criminal Conviction Information Web Site (eCrim), and the issuance of the Hawai'i State Identification Cards."

This clearinghouse function for criminal justice data was created through legislation and one of its primary functions is to provide online and public information services for interested parties to conduct background checks on criminal history. The HCJDC's function, however, provides an excellent source of information to better understand the social and demographic patterns of those who engage the criminal justice system in Hawai'i. In particular, because much of the data that is supplied to the HCJDC from the various agencies includes self-reported information on race and ethnicity, the data compiled by the HCJDC presents an excellent resource for exploring the question of disproportionate representation of Native Hawaiians in the criminal justice system.

Through a strict confidentiality agreement between the Office of Hawaiian Affairs and its contractors, the HCJDC provided complete records from its database for all cases that were found in the State of Hawai'i criminal justice system between 2000 through 2009. Because the data contain sensitive information on individuals, the researchers secured a restricted, locked office space at the University of Hawai'i Department of Urban and Regional Planning (DURP) to conduct all analyses. Only representatives of the Office of Hawaiian Affairs (OHA) and its contracted researchers were allowed into the room, and the computer on which the data were analyzed was used solely for the purposes of the project. At the conclusion of the research, the original data files were returned by hand on disc to the HCJDC. All HCJDC data files, including those derived from the raw data, on the computer used during the processing were deleted and expunged at the conclusion of the project.

The table below summarizes the datasets provided by HCJDC under this agreement.

| Table/Theme | Number of records | Major variables of interest | Comments |
|---|---|---|---|
| Person | 148,995 persons | State ID, name, date of birth, sex, race, place of birth | |
| Arrest | 502,748 arrest cases | Arrest date, arrest district | Arrest district was missing for majority of cases, making investigation relating to "space" impossible |
| Charge | 681,923 charge cases | Charges (1st, arrest, prosecution, court, final), severity of charges, place of offense | Place of offense was available for a small number of cases |
| Disposition | 681,902 cases | Disposition, plea | Ideally, the number of charges and dispositions should be the same. But, clearly some disposition and charge cases were either entered twice, and evidences of typographic errors remained in the datasets. |
| Sentence | 368,538 cases | Sentence type, amount, and method (concurrent or consecutive) | |
| Custody | 578,898 cases | Admission date, release date, scheduled release date, | Source of data: Department of Public Safety |
| Supervision | 67,669 cases | | Source of data: Judiciary Adult Probation division, and the Hawai'i Paroling authority |

The raw data were provided in multiple Excel files for each of the themes listed above. Because Excel is unable to store greater than 65,536 cases, each of these themes came in multiple files that needed to be combined into single data sets. For each theme, the multiple excel files were imported to SPSS (Statistical Package for the Social Sciences) and assembled into a single SPSS file for each of the above seven themes.

These seven master data files were then cleaned of inconsistencies wherever there they were apparent. Some inconsistencies were clearly identifiable such as the same record entered twice in the data set. In other cases, values for some variables were questionable. For example, in some cases a birth year of 1996 (making the person underage during the period listed for arrest) or 1880 (making this person over 120 years old at arrest or incarceration, for example). More problematic than these obvious errors were cases where problems were apparent, but it was not clear that the source of the problem was data entry. If, in working with supporting staff at the HCJDC, we were unable to resolve the inconsistencies, we had to make qualitative choices - involving some degree of arbitrariness - about how to treat the inconsistencies. Here, the issue was to eliminate any systematic biases from the data sets. For example, in file Sentence, a small number of cases (about 1,100 out of 368,538 cases) had multiple rows for the same sentence type for the same charge. Rather than include what appeared to be multiple entries for the same case, we randomly selected one case out of the multiple ones and retained it in the dataset, while the other cases were deleted.

The research questions and the desired descriptive statistics required assembly of theme-based datasets. For example, investigation of "number of drug charges disaggregated by race" required variables from two different files: Person (for race), and Charge (for type of offense, a subset of which is "drug offense"). For the purpose of this analysis, these two files were merged in such a way that variables from Person were looked up. To answer the research questions, many such dataset merges needed to be performed. A policy was adopted to keep the maximum possible number of cases for analysis, and therefore the original seven files were not universally cleaned of any trace of duplicates or plausible mistaken entries. Rather, for each research question, and associated merge, criteria was chosen for deleting cases so files could be merged with least number of cases being discarded.

Overall, the seven themes represent three distinct levels of analysis: person (n=148,995), arrest (n=502,748), and charge (n=681,923). Since one person can be arrested several times, and any single arrest can have multiple charges, the data are "nested" in several "one-to-many" relationships. For this reason, we were able to link information on custody supervision and sentence to person, as well as disposition to charge. While matching of the cases at each of these levels is not perfect, the number of unmatched records was relatively small compared to the number of good matches, strongly suggesting that these errors have minimal effect on the overall analysis and conclusions.

Assembling each of these data files, cleaning them of apparent inconsistencies, and linking them across like levels of analysis, therefore, enabled the researchers to see with greater clarity how cases move through the various elements of the Hawai'i criminal justice system, and in particular to see how Native Hawaiians and other racial and ethnic groups fare during each of the phases of the system. Even though this process of carefully cleaning and assembling these data accounted for any apparent inconsistencies, the research team is unable to verify that there are not systematic problems in the way the data were entered at the departmental and agency level. Although we have no suspicions that there were any systematic data entry issues, because the raw data entry was not part of the research project, the researchers are unable to speak to the integrity of this aspect of the data.

These HCJDC data files were used to develop descriptive charts, tables and graphs, as well as to perform a number of inferential statistical analyses. In general, where the dependent variables of interest were binary – or the analytic question was whether an event happened or not – researchers used logistic regression techniques. An example of such a question is "whether a Native Hawaiian is more likely than others to be convicted, controlling for other explanatory factors." Where the dependent variables of interest were metric – or the analytic question was how much greater the degree of impact – researchers used ordinary least squares (linear) regression analysis. An example of such a question is "how much longer is the average Native Hawaiian probation sentence than all other ethnic groups', controlling for other explanatory factors?" Many descriptive and multivariate models were developed as part of the research project, and only those results most directly related to the question of whether Native Hawaiians are disproportionately represented in the criminal justice system in Hawai'i are presented.

## APPENDIX B: Qualitative Data and Methods

1. Research questions, interview questions, and study design are developed, with a view towards clarifying and complementing analysis of statistical data. Study questions and design are discussed with members of the full research team and the project advisory board.
2. Study receives approval from the Committee on Human Studies, the institutional review board of the University of Hawai‘i.
3. Study promotion proceeds with guidance from the project advisory board who assist in identifying key agencies and individuals for participation.
4. Prior to study enrollment, researchers meet with all potential interviewees to provide information on ‘what’ study participation involves. Potential harms and benefits of participation and participant rights are discussed. Time is given to address individual and group concerns prior to enrollment.
5. Interviews are conducted only after written informed consent is secured.
6. All interviews are conducted by the principal investigator (PI) and/or a graduate assistant (GA) trained and supervised in the research protocol.
7. All interviews are audio-tape and subsequently, transcribed verbatim by transcriptionists trained in the research protocol.
8. Transcripts are reviewed and independently coded by the principal investigator and a graduate assistant. A single interview is continuously analyzed and compared with interviews from participants of the same group (e.g., content of a former pa‘ahao’s interview is compared with those from other former pa‘ahao) and with all participants (i.e., content of a former pa‘ahao’s interview is compared with those from family members, correctional officials, treatment providers, and community advocates).
9. Emerging themes are noted and discussed at weekly meetings of the PI and GA. Monthly feedback is shared with the project advisory board and other researchers. Advisory board members and other researchers review study summaries and ensure accuracy of interpretation.
10. The PI and GA continue to collect interview data until a point of data saturation is reached, with saturation defined as researchers no longer hearing new information.
11. A final coding system of headings and categories is developed and used to code all interview transcripts.
12. Sections of transcripts are filed together by themes, sub-themes, and characteristic actions.
13. Written analysis begins and is linked to the published literature, as well as emerging results from the analysis of statistical data.

# APPENDIX C

**Are Native Hawaiians more likely to be sentenced to prison?**
**Logistic Regression of Likelihood of Incarceration in the Case of a Guilty Verdict, Controlling for Age at Arrest, Gender and Charge**

| | | B | S.E. | Wald | df | Sig. | Exp(B) |
|---|---|---|---|---|---|---|---|
| Step 1[a] | AgeAtArrest | 0.008 | 0 | 324.911 | 1 | 0 | 1.008 |
| | SevCode | 1.09 | 0.006 | 31224.1 | 1 | 0 | 2.973 |
| | Race=Native Hawaiian | | | 2404.352 | 13 | 0 | |
| | Race=Chinese | -0.766 | 0.046 | 283.038 | 1 | 0 | 0.465 |
| | Race=Filip. | -0.456 | 0.016 | 765.77 | 1 | 0 | 0.634 |
| | Race=Nat. Am | 0.186 | 0.067 | 7.77 | 1 | 0.005 | 1.204 |
| | Race=Japanese | -0.697 | 0.022 | 986.789 | 1 | 0 | 0.498 |
| | Race=Korean | -0.706 | 0.049 | 211.391 | 1 | 0 | 0.493 |
| | Race=Micronesian | -0.895 | 0.092 | 95.047 | 1 | 0 | 0.408 |
| | Race=Black | -0.031 | 0.029 | 1.157 | 1 | 0.282 | 0.97 |
| | Race=Other | -0.354 | 0.02 | 315.8 | 1 | 0 | 0.702 |
| | Race=Hispanic | -0.228 | 0.025 | 84.931 | 1 | 0 | 0.796 |
| | Race=Samoan | -0.215 | 0.03 | 51.395 | 1 | 0 | 0.807 |
| | Race=Tongan | -0.936 | 0.074 | 161.936 | 1 | 0 | 0.392 |
| | Race=White | -0.395 | 0.012 | 1018.275 | 1 | 0 | 0.674 |
| | Race=Unknown | 0.278 | 0.043 | 41.547 | 1 | 0 | 1.321 |
| | Male | 0.368 | 0.012 | 884.831 | 1 | 0 | 1.445 |
| | Constant | -2.194 | 0.023 | 9477.545 | 1 | 0 | 0.111 |

a. Variable(s) entered on step 1: AgeAtArrest, SevCode, RaceNHeZ, Male.

# APPENDIX D

**Do Native Hawaiians get longer probation?**
**OLS Regression of Probation Length Controlling for Age at Arrest, Gender and Charge**

| | Model 01 (R-sq = .004) | | | Model 02 (R-sq = .700) | | | Model 03 (R-sq = .701) | | |
|---|---|---|---|---|---|---|---|---|---|
| | Unstandardized Coefficients | | Sig. | Unstandardized Coefficients | | Sig. | Unstandardized Coefficients | | Sig. |
| | B | Std. Error | | B | Std. Error | | B | Std. Error | |
| (Constant) | 33.794 | 0.398 | 0 | -29.08 | 0.282 | 0 | -27.833 | 0.312 | 0 |
| Chinese | 0.862 | 0.964 | 0.371 | 0.07 | 0.529 | 0.894 | -0.004 | 0.529 | 0.993 |
| Filipino | 0.746 | 0.355 | 0.036 | -0.508 | 0.195 | 0.009 | -0.486 | 0.196 | 0.013 |
| NatAm | -0.735 | 1.503 | 0.625 | -0.523 | 0.825 | 0.526 | -0.606 | 0.825 | 0.463 |
| Japanese | 1.174 | 0.502 | 0.019 | -0.446 | 0.275 | 0.105 | -0.47 | 0.276 | 0.089 |
| Korean | -2.412 | 1.073 | 0.025 | 0.122 | 0.59 | 0.836 | -0.15 | 0.59 | 0.799 |
| Micrones | -7.346 | 3.202 | 0.022 | -1.296 | 1.757 | 0.461 | -1.182 | 1.757 | 0.501 |
| Black | -2.606 | 0.648 | 0 | -0.883 | 0.356 | 0.013 | -0.824 | 0.356 | 0.021 |
| Other | -2.231 | 0.471 | 0 | -0.548 | 0.259 | 0.034 | -0.531 | 0.259 | 0.041 |
| Hispanic | 2.797 | 0.618 | 0 | 2.179 | 0.339 | 0 | 2.209 | 0.34 | 0 |
| Samoan | -0.023 | 0.599 | 0.969 | -1.311 | 0.329 | 0 | -1.326 | 0.329 | 0 |
| Tongan | -12.017 | 1.905 | 0 | -2.473 | 1.048 | 0.018 | -2.37 | 1.049 | 0.024 |
| White | -2.389 | 0.3 | 0 | -0.628 | 0.165 | 0 | -0.698 | 0.165 | 0 |
| Unknown | 0.392 | 1.009 | 0.698 | -0.827 | 0.555 | 0.136 | -0.763 | 0.555 | 0.169 |
| Age At Arrest | 0.01 | 0.01 | 0.353 | 0.045 | 0.006 | 0 | 0.045 | 0.006 | 0 |
| Severity of Charge | - | - | - | 26.027 | 0.074 | 0 | 25.996 | 0.074 | 0 |
| Male | - | - | - | - | - | - | -1.433 | 0.155 | 0 |

# APPENDIX E

**Do Native Hawaiians receive longer terms of incerceration?**
**OLS Regression of Incarceration Sentence Controlling for Age at Arrest, Gender and Charge**

| | Model 01 (R-sq = .012) | | | Model 2 (R-sq = .436) | | | Model 3 (R-sq = .437) | | |
|---|---|---|---|---|---|---|---|---|---|
| | Unstandardized Coefficients | | Sig. | Unstandardized Coefficients | | Sig. | Unstandardized Coefficients | | Sig. |
| | B | Std. Error | | B | Std. Error | | B | Std. Error | |
| (Constant) | 23.122 | 0.427 | 0.00 | -41.063 | 0.397 | 0 | -43.755 | 0.444 | 0 |
| Chinese | 12.029 | 1.167 | 0.00 | 6.661 | 0.886 | 0 | 6.504 | 0.886 | 0 |
| Filipino | 2.79 | 0.398 | 0.00 | -0.098 | 0.302 | 0.746 | -0.31 | 0.303 | 0.305 |
| NatAm | -5.023 | 1.524 | 0.001 | -2.693 | 1.167 | 0.021 | -2.462 | 1.167 | 0.035 |
| Japanese | 3.182 | 0.574 | 0.00 | 0.812 | 0.437 | 0.063 | 0.696 | 0.437 | 0.111 |
| Korean | 3.876 | 1.296 | 0.003 | 1.717 | 0.983 | 0.081 | 1.773 | 0.983 | 0.071 |
| Micronesian | -17.365 | 3.026 | 0.00 | -0.848 | 2.323 | 0.715 | -1.415 | 2.323 | 0.542 |
| Black | 2.495 | 0.66 | 0.00 | 4.158 | 0.502 | 0 | 3.905 | 0.503 | 0 |
| Other | -4.738 | 0.505 | 0.00 | -0.378 | 0.385 | 0.327 | -0.618 | 0.385 | 0.109 |
| Hispanic | -4.052 | 0.611 | 0.00 | -2.089 | 0.466 | 0 | -2.286 | 0.466 | 0 |
| Samoan | 8.08 | 0.683 | 0.00 | 4.272 | 0.518 | 0 | 4.041 | 0.519 | 0 |
| Tongan | -15.132 | 2.286 | 0.00 | -3.618 | 1.737 | 0.037 | -3.997 | 1.736 | 0.021 |
| White | -5.726 | 0.305 | 0.00 | -0.346 | 0.233 | 0.139 | -0.376 | 0.234 | 0.107 |
| Unknown | -4.26 | 0.951 | 0.00 | -0.117 | 0.727 | 0.872 | -0.361 | 0.727 | 0.619 |
| Age At Arrest | -0.086 | 0.011 | 0.00 | 0.006 | 0.009 | 0.486 | 0.006 | 0.009 | 0.515 |
| Severity Code (treated as ratio scale) | - | - | - | 27.123 | 0.096 | 0 | 27.154 | 0.097 | 0 |
| Male | - | - | - | - | - | - | 3.282 | 0.241 | 0 |

## Glossary

**ʻāina –** Land, earth
**ʻohana –** Family, relative, kin group; related
**admission –** The entrance of a person to a prison. Admissions are generally used to count the number of entries to prison in a given time period.
**aloha –** Love, affection, compassion, mercy, sympathy, pity, kindness, sentiment, grace, charity
**binary –** A mathematical function with two variables
**charge –** In a criminal case, the specific statement of what crime a person is accused of (charged with). The charge can be filed by the prosecutor.
**collateral consequences –** The social and legal exclusions that a person faces because they have been involved in the criminal or juvenile justice system. For example, a person convicted of a felony may not be permitted to hold certain jobs.
**disparity –** A dictionary definition refers to disparity as being markedly distinct in quality or character. Racial disparities in the criminal or juvenile justice systems refer to the differences in the way that people experience the criminal justice system.
**disproportionality –** The imbalance of representation of one group when comparing it to a subset of the population. Disproportionality generally refers to a comparison of numbers of people across populations.
**hoʻoponopono –** Lit. To make right; a practice of reconciliation and forgiveness
**Kānaka Maoli –** Indigenous people of Hawaiʻi
**kuleana –** Responsibility within the context of the collective
**license –** For this report, license not only refers to a driver's license, but also the licenses that are required to hold certain jobs. For example, some states require a license to be a child care provider or even a barber.
**logistic regression techniques –** A model used for prediction of the probability of occurrence of an event by fitting data to a logit function logistic curve. It is a generalized linear model used for binomial regression. Like many forms of regression analysis, it makes use of several predictor variables that may be either numerical or categorical.This model gives the likelihood of a particular outcome given the occurrence of a set of particular variables.
**multivariate model –** A statistical method that controls for factors that might be mediating or affecting relationships between other variables. As a result, a particular variable can be isolated to be more confident in a determination of the relationship it has with another variable.
**Nā Kuana ʻIke –** The perspectives of a person.
**ordinary least squares regression analysis –** A method for estimating the unknown parameters in a linear regression model. This method minimizes the sum of squared distances between the observed responses in the dataset, and the responses predicted by the linear approximation. This method essentially establishes a correlation model for a particular set of factors and then establishes how far from the model the actual, observed values are. In other words, the model tells you how likely it is to predict one piece of information, given another piece of information.
**paʻahao –** An individual who is incarcerated.
**parole –** The conditional release of a person from prison. The sentence has not expired and a person on parole is subject to the terms and conditions of the paroling authority.
**parole violations –** A person commits a parole violation if they have not met the terms or conditions set by the paroling authority. This does not include a new offense.
**pili –** To join, associate with, be with, be close or adjacent; close relationship, relative
**pretrial detention –** Imprisonment of a person in a jail or detention facility prior to trial or the determination of guilt.
**probation –** A person can be sentenced to probation either as the entirety of the sentence or as part of a sentence that also includes incarceration. Probation requires that the person serving a probation sentence meet the terms and conditions set by the probation authority.
**probation violations –** A person commits a probation violation if they have not met the terms or conditions set by the probation authority. This does not include a new offense.
**puʻuhonua –** Place of refuge, sanctuary, place of peace and safety.
**reentry –** A person returning to the community from prison.
**revocation –** When a person on probation or parole is sent or returned to prison, usually because they have violated the terms of probation or parole.
**snowball sampling –** A non-probability method of sampling that relies on referrals from participants to identify additional participants.
**supervision –** When a person is on parole or probation, they are placed in the community under the management of the parole or probation authority. In Hawaiʻi it is either the Hawaiʻi Paroling Authority or Adult Client Services.
**technical violations –** When a person on probation or parole is found to have not obeyed the terms or conditions of probation or parole, they can be charged with a technical violation. This does not include a new offense.

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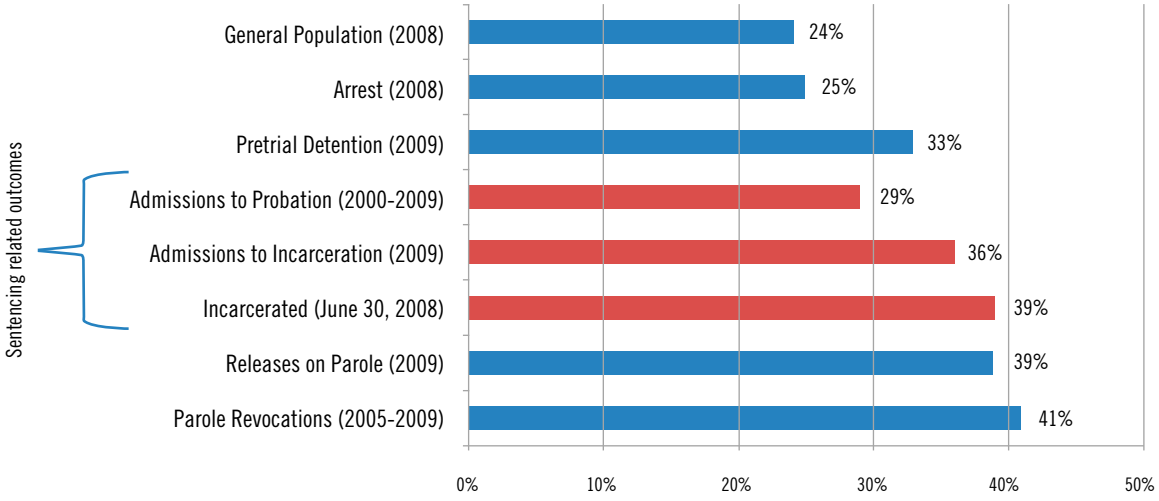
# THE IMPACT OF THE CRIMINAL JUSTICE SYSTEM ON NATIVE HAWAIIANS

**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.**

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Note: Admissions to incarceration or probation are the result of sentencing.

The disparate impact of the criminal justice system on Native Hawaiians is apparent at every stage of the criminal justice system, starting from arrest and continuing through parole. The impact is cumulative, starting with a relatively small disproportionality at arrest, but revealing itself to be more distinct at sentencing and incarceration. Disproportionate representation at entry into the system is exacerbated by pretrial detention, which has been found to relate to an increased likelihood of incarceration; subsequently, time spent away from community and family while in prison can make transition back to the community difficult, potentially increasing the likelihood of returning to prison. The cycle repeats itself and notably, negative cyclical effects are concentrated on Native Hawaiian communities.

**Given a determination of guilt, Native Hawaiians are more likely to get a prison sentence than all other groups**

An analysis of data from the Hawai'i Criminal Justice Data Center, controlling for age, gender, and type of charge, found that for any given determination of guilt, Native Hawaiians are much more likely to get a prison sentence than almost all other groups, except for Native Americans. Importantly, the other major group of defendants after Native Hawaiians, Whites, are only about 67 percent, or two-thirds, as likely as Native Hawaiians to be incarcerated if judged guilty.[1]

**Native Hawaiians receive longer prison sentences than most other racial or ethnic groups.**

Controlling for severity of charge, age at arrest and gender of the person charged, Native Hawaiians are sentenced to 119 days more in prison than Tongans, 73 more days than Native Americans, 68 days more than Hispanics, and 11 days more than Whites.

**Native Hawaiians are sentenced to longer probation terms than most other racial or ethnic groups.**

A multivariate analysis controlling for severity of the charge, age, gender and race shows that Native Hawaiians also serve more time on probation than other racial and ethnic groups, except for Hispanics. On average, a Japanese person is sentenced to 14 fewer days of probation than a Native Hawaiian person, and Whites are sentenced to nearly 21 fewer days of probation than Native Hawaiians.[2]

**Native Hawaiians make up the highest percentage of people incarcerated in out-of-state facilities.**

In 2005, of the 6,092 people who were under the custody of the Public Safety Department, which includes people in jails, 29 percent (1,780) were in facilities operated by other states or private companies on behalf of states. Of the people in out-of-state facilities, 41 percent are Native Hawaiians.[3]

**Hawai'i has the largest proportion of its population of women in prison,[4] with Native Hawaiian women comprising a disproportionate number of women in the prison.**

While Native Hawaiian men and women are both disproportionately represented in Hawai'i's criminal justice system, the disparity is greater for women. Forty-four percent of the women incarcerated under the jurisdiction of the state of Hawai'i are Native Hawaiian. Comparatively, 19.8 percent of the general population of women in Hawai'i identify as Native Hawaiian or part Native Hawaiian.[5]

**Parole revocations contribute to the number of Native Hawaiians in prison in Hawai'i.**

Although Hawai'i released 644 people from prison to parole in 2009, 249 people were also returned to prison by revoking parole. Native Hawaiians had one of the lowest ratios of release to revocations. For every five Native Hawaiians released, two Native Hawaiians had their parole revoked (2.5:1 ratio). Japanese people have a slightly lower ratio (2.4:1) and Chinese people having the highest, with eight people being released for every one person returning to prison on a parole revocation.[6]

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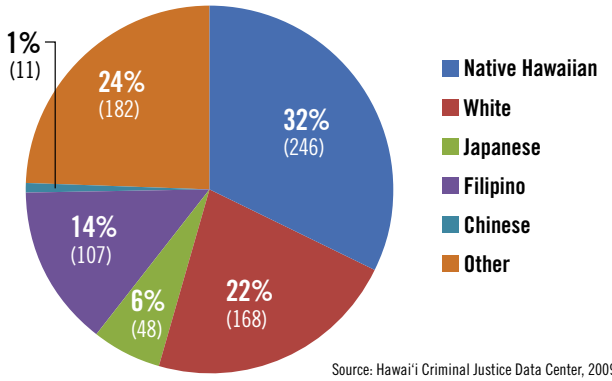
# PUNITIVE RESPONSES TO DRUG USE AND NATIVE HAWAIIANS

The issue of substance use and abuse is important for the Native Hawaiian community because of its correlation to cultural trauma (the result of a history of systematic marginalization by some dominant group). Research indicates that one symptom of cultural trauma is substance use and abuse.[1] Native Hawaiians also report personal trauma more than other racial or ethnic groups in Hawai'i,[2] which can also contribute to self-medication through substance use.

**Native Hawaiians bear a disproportionate burden of the punitive response to drug use.**
Hawai'i's criminal justice approach to drug use was a significant contributor to the total number of people admitted to prison or jail in 2009 (762 or about 13 percent), but has even greater significance for Native Hawaiians. As seen in the pie chart, Native Hawaiians made up the largest portion (32 percent) of the people admitted to prison for drug offenses in 2009.[3]

**Native Hawaiians made up the largest portion of people who are admitted to prison for drug offenses in 2009.**




Source: Hawai'i Criminal Justice Data Center, 2009

This concentrated impact of incarceration for Native Hawaiians is most evident when considering that approximately 80,000 people in Hawai'i over the age of 12 reported using illicit drugs in the previous month. Compared to numbers of people that report using drugs, a relatively small number are arrested and then sent to prison or jail; about 2,000 were arrested for drug offenses in 2009 and 726 were admitted to prison are or jail, 32 percent of whom were Native Hawaiian.[4]

**Native Hawaiians do not use drugs at drastically different rates from other races or ethnicities, but go to prison for drug offenses more often than people of other races or ethnicities.**
According to the 2004 Hawai'i State Treatment Needs Assessment Program dataset, *Native Hawaiians do not use drugs at widely dissimilar rates to other races or ethnicities,* although there is some variation. Irrespective of the variation in drug use rates, the percent of Native Hawaiians that report drug use does not match the proportion of the total number of people admitted to prison or jail for drug offenses.

**Native Hawaiians are charged with the majority of offenses related to methamphetamine, but report using this drug at only slightly higher rates than people of other races or ethnicities.**
The use of methamphetamine in Hawai'i, particularly by Native Hawaiians, is a growing concern. Methamphetamine accounts for the most charges of all drug offenses. Although Native Hawaiians do report lifetime use and current use of methamphetamine at slightly higher rates than other groups, Native Hawaiians are still charged with the majority of offenses related to methamphetamine, by a wide margin. Data from the Hawai'i Criminal Justice Data Center shows that Native Hawaiians make up between 16 and 38 percent of charges for all categories of drugs, but account for the largest proportion of charges for methamphetamine (38 percent).

**Policing, sentencing structures and the availability of treatment contribute to disproportionality.**
The reasons for the disproportionate impact of the criminal justice system on Native Hawaiians related to drug offenses are varied, but include a variety of social factors unique to indigenous people, as well as the way the criminal justice system works to react toward drug use and abuse.

- Drug arrests are often considered to be the result of proactive policing, as drug offenses are not generally reported to the police.[5] Thus, police may have more discretion concerning whom they arrest for drug offenses than for property or violent offenses, for example. One study out of New York City found that police would return to the same neighborhoods, often neighborhoods of color, to make marijuana arrests.[6]
- Hawai'i has a mandatory sentence for possession/sale/trafficking of methamphetamines of at least 10 years.[7] Because Native Hawaiians make up the largest proportion of people charged with methamphetamine-related offenses,[8] they are more likely to receive one of these mandatory sentences, which will extend the term they spend in prison compared to other drug offenses.
- Differences in the availability of drug treatment for some groups of people compared to others can be an important factor in the disparate impact of the criminal justice system on communities. Native Hawaiian admissions to treatment do vary widely across data sets and geographic regions. The Hawaiian Department of Health reports that in 2006, Native Hawaiians represented between 29 percent of treatment admissions to 91 percent depending on geographic region.[9]

**A public health response to drug use, rather than a criminal justice response would improve life outcomes, support communities and save Hawai'i money.**
A shift to treatment outside the criminal justice system would succeed in reducing the number of people going to prison or jail for drug use, reduce the number of Native Hawaiians entering the system for drug offenses, promote public safety and save Hawai'i money that could be reallocated to other social institutions. For example, a Washington State Institute for Public Policy study found that spending one dollar on drug treatment in prison yields nearly six dollars in benefits in terms of increased public safety and monetary benefits. In contrast, an investment of one dollar in community-based drug treatment yields over $18 in benefits. Funding programs in the community yields a higher return on the investment.[10]

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# WHAT ARE THE FACTORS THAT CONTRIBUTE TO DISPARATE TREATMENT IN THE CRIMINAL JUSTICE SYSTEM?

In many respects, racial disparities among Hawai'i's prison population are the products of actions that occur at different stages in the justice system, beginning with the decision to make the initial arrest. Research suggests that the effects of race may be direct or indirect and may accumulate as an individual continues through the system itself.[1]

The experiences of Native Hawaiians, correctional officers, treatment providers and advocates explain the processes that result in a disproportionate representation of Native Hawaiians in the criminal justice system. Differences in the way that Native Hawaiians experience the system are often the result of the way the criminal justice system operates, but other experiences seem to be the result of a long history of stereotypes and cultural and personal trauma.

This factsheet includes a general overview of the potential factors that contribute to the disparate treatment to Native Hawaiians. When there are specific examples from Hawai'i or related to Native Hawaiians, they are included.

**DISPARATE TREATMENT BEFORE THE COURTS:** Although there is no specific study of the court system in Hawai'i and the effect it might have on sentencing, national studies have found that appearing before the court with private counsel is associated with a lower likelihood of conviction than using a court-appointed public defender.[2] Youth of color are more likely to rely on the indigent defense system, which often includes public defenders that are overburdened and under-resourced with higher caseloads than private attorneys. Nationally, white youth are twice as likely as African American youth to retain private counsel.[3]

**DISCRETIONARY PAROLING PRACTICES: GOOD TIME DOES NOT EQUAL LESS TIME:** The discretionary nature of minimum sentence setting and release determinations outside the court are concerning for formerly incarcerated Native Hawaiians. The real determination of sentence appears to be not set by a judge, but by the Hawai'i Paroling Authority, which people that come into contact with the system see as using arbitrary criteria.

Given the cumulative impact of the criminal justice system on Native Hawaiians and the evidence that Native Hawaiians cycle through the system more than people of other racial and ethnic groups, sentence-setting and discretionary parole based on offense history will likely contribute to the disproportionate number of Native Hawaiians in the prison system in Hawai'i.

**INTERACTIONS WITH CORRECTIONAL STAFF: BAD TIME EQUALS MORE TIME:** Interactions between people in prison and guards can contribute to the amount of time that a person ultimately spends in prison. Infractions within the prison walls, sometimes subjectively determined by correctional officers and not always serious in nature, can lead to changes in custody that will then impact the chances that a person can participate in certain programs or services that make a person eligible for release. Some correctional officers view their position of power as one that does not require interpersonal problem-solving, which could contribute to perceptions about behaviors.

**TRAUMA OF INCARCERATION:** Incarceration is traumatic for all people. It devastates families, destabilizes communities and cuts people off from jobs and education that improve life outcomes and help keep people out of prison once they are released. Incarceration also re-traumatizes people that have already experienced trauma in their lives. For Native Hawaiians, the impact of trauma is particularly salient because of strong connections to family, the land and community. Imprisoning people from Hawai'i on the continent seems to be the most damaging to Native Hawaiians. It contributes to the growing prison population and exacerbates the disproportionate impact of the system on Native Hawaiians because they are cut off from supportive communities and families that give them a reason to exit prison as soon as possible. Even the absence of familiar surroundings and changes in weather is traumatizing.

**LACK OF PROGRAMS AND SERVICES IN PRISON TO PREPARE A PERSON FOR RETURNING TO THEIR COMMUNITY:** Often, people in prison are required to participate in specific programs and services in order to be eligible for release. Without the completion of those programs, a person can be denied parole. However, programs and services frequently fill up, leaving no available spots for everyone who needs to participate. Not only are people in prison prevented from earning the earliest release possible, they could also potentially get to the end of their sentence and be released without the services that might facilitate reentry and prevent return to prison. Complicating a successful re-entry process is that some people are returning from prison after serving their time on the continental United States because they are placed directly into the community without adequate resources to sustain themselves.

**CULTURALLY INAPPROPRIATE OR UNAVAILABLE REENTRY SERVICES:** Research shows that culturally relevant and appropriate interventions and services are the most effective for helping Native Hawaiians participate fully in the community.[4] For example, traditional social work modalities typically rely on self-determination, which is individualistic and is Northern European or North American in orientation. Pacific cultures, including Native Hawaiians, tend to see themselves as part of a collective group or community.[5] In order to effectively provide services for reentry or some other wellness promotion initiative, a provider must be aware of the totality of community context, interdependence, and, also, the role that oppression by other groups has played.[6] The application of Western values to a culture that does not share them makes it difficult to ensure successful implementation of initiatives or services.

**MANDATORY SENTENCES AND SENTENCING ENHANCEMENTS:** In Hawai'i, methamphetamine is the only drug that carries a mandatory sentence. According to data from the Hawai'i Criminal Justice Data Center, Native Hawaiians are more likely than any other racial or ethnic group to be charged with a methamphetamine-related offense,[7] contributing to the disproportionate representation of Native Hawaiians in the prison system.

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7 Hawai'i Criminal Justice Data Center, 2008.

# COLLATERAL CONSEQUENCES, CRIMINAL JUSTICE INVOLVEMENT AND NATIVE HAWAIIANS

Imprisonment and conviction carries with it a set of collateral consequences that extend well beyond the sentence imposed by the court. Many Hawaiians coming out of the criminal justice system are denied the opportunity to finish school; they lose or cannot obtain a driver's license; they are deprived of the right to vote; they cannot find stable employment; and they are simply unable to support their families. These collateral consequences push the limits of "punishment to fit the crime" and effectively deprive a person convicted of an offense of any second chance at effectively living in, and contributing to, a community. The consequences of criminal justice involvement include the following:

**BREAKING UP THE FAMILY -** Not only are Hawaiians separated from their families during incarceration, but many will be permanently separated. Hawai'i state law allows family courts to terminate parental rights when a child has been removed from a parent.[1] Incarcerated parents who lose their children may never get them back and for many women in Hawaiian prisons, this is a common occurrence. In addition, persons with a criminal history are barred from becoming foster or adoptive parents, and simply living with, or being married to, a person convicted of a crime limits the individual family rights.[2]

**LOSS OF THE FAMILY HOME -** The Housing Opportunity Program Extension Act of 1996 imposed a mandatory three-year ban from public housing on anyone who was evicted due to drug-related illegal activity.[3] Although successful completion or compliance with a rehabilitation program can reinstate eligibility, the Act grants state public housing authorities broad discretion to make their own standards about who qualifies for public housing. Housing is the foundation for maintaining all other aspects of successful participation in society. Laws that regulate where a person, and ultimately his or her family, lives can have severe negative effects on individuals and on communities.

**LIMITED EMPLOYMENT AND VOCATIONAL OPPORTUNITIES -** While Hawai'i has laws designed to prevent discrimination in the hiring of people convicted of offenses there is little done to enforce the laws and protect those who have been released from prison to the community. Despite these laws, employers frequently screen applicants based on criminal history, through legal or illegal means and discriminate, citing other reasons not to hire.[4] In addition, the State may refuse or revoke any license to practice some type of employment, permit, registration or certificate of a person convicted of a felony if the conviction is directly related to the trade for which the license is held.[5]

**EXCESSIVE FINES -** The inability of a person with a criminal record to find employment is often compounded by large fines imposed by the criminal court. Theoretically, the courts are strictly bound not to issue fines if the person cannot pay; however, the statutory language does not provide the court with criteria to assess their financial ability, so the matter is largely in the court's discretion.[6]

**LOSS OF DRIVER'S LICENSE -** A person convicted of a drug offense (which includes alcohol) will lose his or her licenses for a minimum of six months and up to three years, depending on the number of previous offenses and level of intoxication.[7] This loss often has tremendous ripple effect for individuals and families– including the ability to get to and from work, to search for employment or housing, visit relatives, obtain child care and to keep appointments with parole or probation officers as a term of community supervision. The loss of a driver's license is even more problematic on islands or in jurisdictions with no public transportation.

**DIMINISHED EDUCATIONAL OPPORTUNITIES -** Arguably one of the most effective means of reintegrating into society and building a productive future after incarceration is through education – especially post-secondary education. However, federal law disqualifies students convicted of drug-related offenses from receiving financial aid.[8] The waiting time to become re-eligible ranges from one year to life, depending on the number of previous offenses.[9]

**EXCLUSION FROM CIVIC AND POLITICAL PARTICIPATION -** In many states, people convicted of certain offenses are denied civic participation, including the right to vote or sit on a jury. Voting and jury service are the primary ways that most citizens participate in the political process. Voting, in particular, allows people of Hawai'i to have a say in shaping the policies that affect their lives. People convicted of felonies in Hawai'i are not permitted to vote until their sentence is discharged.[10] Although the right to vote is automatically restored once a person is released from prison, the correction agencies' system of data sharing does not always submit a person's re-eligibility to his or her county, so a released individual may have difficulty exercising the right to vote. Since Native Hawaiians are disproportionately more likely to receive a criminal conviction, they are more likely to have their voting rights taken away, leaving a large section of some communities disenfranchised and unable to help make decisions to change and better their own communities.

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**1** Hawai'i. Rev. Stat. § 571-61.
**2** Hawai'i. Rev. Stat. § 346-19.7.
**3** 42 U.S.C.A § 1437.
**4** Lau, *supra* note 22.
**5** Hawai'i. Rev. Stat. § 831-3.1 (c).
**6** Hawai'i. Rev. Stat. § 706-641(3)(a).
**7** Hawai'i. Rev. Stat. § 291E-41(b)(6).
**8** Debbie A. Mukanel & Paul N. Samuels, Statutory Limits on Civil Rights of People with Criminal Records, 30 Fordham Urb. L. J. 1501, 1508 (2003); 20 U.S.C. § 1901 (r)(1).
**9** Debbie A. Mukanel & Paul N. Samuels, 2003; 20 U.S.C. § 1901 (r)(1).
**10** Hawai'i. Rev. Stat. § 831-2.

# NATIVE HAWAIIAN RESILIENCY, CULTURAL STRENGTHS AND REDUCING INCARCERATION

When considering recommendations for reducing the impact of the criminal justice system on Native Hawaiians, it is necessary and most effective to access the protective nature and strength of Native Hawaiian culture for Native Hawaiians. This is important because a one-size-fits-all approach to reducing racial disparities is not likely to work, and research shows that Native Hawaiian cultural values and traditions are supportive and healing and promote resiliency for Native Hawaiian people.[1] In addition, the participation of Native Hawaiians in the development of recommendations is critical to their success. This factsheet includes the experiences and perspectives of Native Hawaiians who participated in the project.

Resilience, generally, refers to the ability of people to cope, recover, and even, transcend psychosocial, physical and spiritual challenges. Cultural resilience refers to the capacity of a cultural group to maintain and develop values, knowledge and skills crucial to proactively engaging challenges associated with cultural, historic and other types of trauma.[2] Resiliency is a central feature of not only ensuring that Native Hawaiians do not come into contact with the criminal justice system, but that if they do, that they are able to leave the system and never return.

Native Hawaiian cultural practices have a healing, restorative quality for Native Hawaiians, generally, but particular, supportive, strengthening facets include:

**HONORING THE SACRED, FORGIVENESS AND SUCCESSFUL ENTRY BACK:** Making Native Hawaiian culture central to the reentry process is important to Native Hawaiians coming out of prison. Building on cultural pride and positive identity construction could help Native Hawaiians return to communities. Research by A. Aukahi Austin regarding ethnic pride and resiliency as related to substance use and violent behavior shows that ethnic pride serves as a protective or even preventative factor against violence and encourages resiliency after a violent experience.[3]

People participating in this project explain that the principle of the pu'uhonua, a city of refuge or sanctuary, could be applied to the criminal justice system. When a person emerges from the system, they are forgiven and they can return to the community without the continued burden of the criminal justice system. This idea is particularly important as it pertains to the restrictions placed on formerly incarcerated people regarding jobs, education and housing.

**KULEANA (RESPONSIBILITY WITHIN THE CONTEXT OF THE COLLECTIVE):** Kuleana, or responsibility to the greater good, is another cultural strength that is central to the process of helping Native Hawaiians either stay out of the criminal justice system or return to communities after prison. According to survey research from Kamehameha Schools and a Hawai'i Community Survey, Native Hawaiians have strong ties to their communities and are involved in community service. Fifty-one percent of Native Hawaiians participate in community organizations, with 48.7 percent taking leadership roles when they are involved in the community.[4] Participants in this project confirmed the importance of kuleana, as well.

**PILI, CLOSE RELATIONS AND FEEDING WITH LEARNING:** Native Hawaiian culture draws strength from community and family building, as well as communication. For example, the process of ho'oponopono, which is a ritualized process of "setting to right; to make right; to restore and maintain good relationships among family and family-and-supernatural powers," was once practiced daily. Ho'oponopono involved prayer with family and a discussion of problems and resolutions. The values associated with ho'oponopono are love and affection (aloha); unity, agreement and harmony (lōkahi); and family and community ('ohana).[5] It is a sacred, culturally valuable process that draws on family and community for support and healing.

Some of the participants in this project recommend courses that teach language and history to convey culture prior to leaving prison. Learning in prison, especially if it is done as a partnership, could help people transition and move forward after prison.

> ***When you talk 'culture', you have to look at people and understand how they live so you can administer your mana'o [concern, thoughts] to them. You want to teach them. Feed them so they no choke, so that they are able to inu [drink] from what you teach and digest it. So, that they can stand up and be proud. No hold down their head and be willing to build a foundation that is pa'a [firm, solid] and pono [moral, right]. So that no matter what kine come, they not going fall down again, because they have that foundation.***
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> *(Treatment Provider)*

1 Noreen Mokuau, "Culturally-Based Solutions to Preserve the Health of Native Hawaiians, in B. Young (ed.) Health and Hawaiian Culture (Honolulu, HI: University of Hawai'i Press, 2005)
2 Marlyn A. McCubbin, "Typologies of resilient families: Emerging roles of social class and ethnicity," Family Relations 37(3), 1988, 247-54
3 A. Aukahi Austin, "Alcohol, Tobacco, Other Drug Use, and Violent Behavior Among Native Hawaiians: Ethnic Pride and Resilience," Substance Use and Misuse 39 (5), pp. 721–746, 2004
4 S.K. Kana'iaupuni, N. Malone, and K. Ishibashi, Ka huaka'i: 2005 Native Hawaiian Educational Assessment (Honolulu, HI: Kamehameha Schools, Pauahi Publications, 2005).
5 Noreen Mokuau, "A Family-Centered Approach in Native Hawaiian Culture," Families in Society: The Journal of Contemporary Human Services 71 (1990)

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**The Office of Hawaiian Affairs (OHA)** is a unique, independent state agency established through the Hawai‘i State Constitution and statutes to advocate for the betterment of conditions of all Native Hawaiians, with a Board of Trustees elected by the voters of Hawai‘i. OHA is guided by a vision and mission to ensure the perpetuation of the culture, protect the entitlements of Native Hawaiians, and build a strong and healthy Hawaiian people and nation.

The full report of this summary is available at www.oha.org.

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# *Pūʻali kalo i ka wai ʻole*

***Taro grows misshapen with the lack of water***

Without proper care and attention one may become ill and deformed

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