HB1459
RELATING TO JUVENILE RESTITUTION

SENATE JUDICIARY COMMITTEE

March 17, 2022 9:35 a.m. Conference Room 016

Aloha e Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

The Native Hawaiian Legal Corporation (“NHLC”) offers the following testimony in OPPOSITION to HB1459, a bill that will mandate monetary restitution in juvenile sentencing.

NHLC is a public interest law firm whose mission is to protect and advance Native Hawaiian identity and culture through legal and other forms of advocacy. After more than 47 years of service to the lāhui, NHLC has gained extensive knowledge about the legal issues facing Native Hawaiians and the inequities that burden the Native Hawaiian community.

As others have testified to with respect to this bill, there are deep concerns that this bill conflicts with the intent of our juvenile justice system to treat juveniles differently from adult offenders. This is reflected in the handling of juvenile proceedings in family court; that juveniles are adjudicated not convicted of offenses; and that the focus in these proceedings is creating “incentive for reform” and “deterrence from further misconduct.” Mandatory restitution erodes this distinction between juveniles and youth. Further, it does not serve the focus on reform and deterrence. Youth have little to no income or assets, so the burden of restitution falls largely on their families, and studies have shown that restitution obligations correlate to higher rates of recidivism.

While this is harmful for any family, if HB1459 passes, the Native Hawaiian community will disproportionately bear these negative outcomes, because the Native Hawaiian community is already burdened by significant overrepresentation in the juvenile and criminal justice systems. Native Hawaiians make up 18% of the general population, but 37% of the incarcerated population. Narrowing to juveniles, data from 2017 found that approximately one-third of adjudicated juveniles were Native Hawaiians. The significant over representation of Native Hawaiian in the juvenile and criminal justice systems are among the most serious justice problems facing the Native Hawaiian community. At the same time, Native Hawaiians also face the lowest median income of all major ethnic groups throughout the State, which is another serious social justice concern.

uluʻa – to stand erect, stand upright; ʻulu – to grow, oʻa – support beams, uluoʻa – grow the support beams of a hale
Taking these challenges together, Native Hawaiian youth have a greater likelihood of involvement in the juvenile justice system than the general population of youth, while their families are among the least financially equipped to bear these burdens. The foreseeable result is greater financial hardship for families, which studies have shown leads to increased recidivism. Not only will HB1459 fail to disrupt the tragically swollen pipeline of Native Hawaiians into the criminal justice system as adults, this bill has a good chance of making that pipeline larger.

The State should be considering systemic reforms aimed at remediating the overrepresentation of Native Hawaiian children in the juvenile justice system. This bill goes in the opposite direction. Accordingly, NHLC strongly opposes HB1459.

Mahalo for the opportunity to testify.

Makalika Naholowaa, Executive Director
For the Native Hawaiian Legal Corporation