



Hawai'i

**Commission to Improve Standards of Conduct
November 9, 2022 at 2:00pm
Via Videoconference
Conference Room 309**

**DRAFT BILLS RELATING TO CRIMINAL LAW ENHANCEMENTS TO
ADDRESS PUBLIC CORRUPTION AND FRAUD**

Aloha Chair Judge Daniel R. Foley (Ret.) and Members of the Commission:

The ACLU of Hawai'i appreciates the opportunity to provide comments on the draft bills relating to criminal law enhancements to address public corruption.

The ACLU of Hawai'i agrees that corruption erodes the trust we have in public officials and state government to act in our best interest. We support the goals of this Commission to restore public trust, increase transparency and accountability when public officials engage in corruption and fraud.

While we understand the need to hold government officials accountable for corruption, we have serious concerns about the mandatory indeterminate term of imprisonment of ten years with a mandatory minimum term of one year embedded in the **Draft Bill Relating to Fraud**.

The ACLU opposes mandatory minimums for the following reasons:

- 1) Mandatory minimums generate unnecessarily harsh sentences.
- 2) Mandatory minimums tie judges' hands in considering individual circumstances.
- 3) Mandatory minimums create racial disparities in sentencing. In Hawai'i, it is undisputed that Native Hawaiians are disproportionately represented at every stage of the criminal legal system. Pacific Islanders, Black people and Filipinos are also disparately represented in the criminal legal system. Until we resolve racial and ethnic injustices within our legal system, we cannot be at peace.
- 4) Mandatory minimums empower prosecutors to force defendants to bargain away their constitutional rights.

- 5) Mandatory minimums contribute to mass incarceration. Our jails and prisons are severely overcrowded.¹ We have documented evidence of inhumane conditions of confinement. We have penological practices that compromises the health and safety of all people – those who are incarcerated, and people working there. We continue to lock up far too many people awaiting trial simply because they cannot afford to pay bail. Taxpayers foot the bill for this unfair and ineffective system where behavioral health care and treatment and meaningful rehabilitation opportunities are the exception, not the rule. Recidivism rates hover between 50-60% because our current system fails to address the root causes of crime.
- 6) Our current criminal legal system and the proposed bills do not include opportunities for restorative justice. This is short-sighted. Restorative Justice it is practice that takes an alternative approach to incarceration and punishment that focuses on accountability and the restoration of relationships.

Draft Bills Relating to False Statements and False Claims

Both proposed measures would take away the court's discretion to grant deferrals in these cases, and make deferral decisions based on the individual facts in each case.

The harsh reality is that criminal records block people's access to jobs, housing, education, starting a business, or participating fully in social and civic community life, long after they have served their debt to society.

Given the far reaching collateral consequences of a criminal record, it is important to consider the long term implications of enacting these proposed measures that would prohibit the court from granting deferral under these charges regardless of the individual facts of the case.

In closing, it will take a strong and sustained effort and mix of reforms to bring about real and lasting changes to prevent public corruption and fraud. In the process of fostering real change, we must not fall prey to enacting more statutes with mandatory minimums that uses a one-size-fits-all approach to sentencing, prohibits deferrals and exacerbates existing racial and ethnic disparities within Hawaii's criminal legal system.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

¹ "I've been to nearly 50 corrections facility across the country and I've never seen one (Hilo jail) in this condition, ever," Christin Johnson, the Commission's Oversight Coordinator. <https://hcsoc.hawaii.gov/wp-content/uploads/2022/09/HCSOC-August-2022-HCCC-Observations.pdf>

