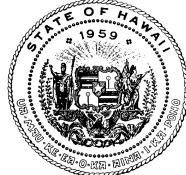


JOSH GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII'



KENNETH S. FINK, M.D., M.G.A., M.P.H.
DIRECTOR OF HEALTH
KA LUNA HO'OKELA

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of HB2414
RELATING TO THE ADMINISTRATION OF JUSTICE**

REPRESENTATIVE DAVID TARNAS, CHAIR
REPRESENTATIVE MAHINA POE, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Hearing Date: Thursday, February 5, 2026, 2:00 p.m. Room Number: 325 & Video

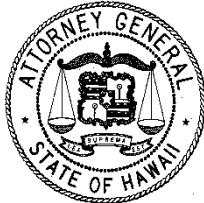
- 1 **Fiscal Implications:** Undetermined.
- 2 **Department Position:** The Department of Health (Department) supports this measure and offers amendments.
- 4 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following testimony on behalf of the Department.
 - 6 Pursuant to Act 245, SLH 2024, HB2414 seeks to implement Final Report recommendations of the 2025 Advisory Committee on Penal Code Review. The bases for the proposed legislative changes have been detailed in the Final Report. The Department acknowledges the work of the Advisory Committee and appreciates the opportunity to participate.
 - 11 The Department supports these amendments to the penal code and defers to the Department of the Attorney General to ensure all amendments conform to federal law.
 - 13 **Offered Amendments:** To address cases in which a defendant may be in the custody of the Department, but the defendant is housed at a location under the operation of an entity other than the Department, the Department respectfully requests amending page 10, line 19 to read

1 as follows: “requested to be conducted utilizing telehealth at facilities operated by the named
2 department(s) in which defendants may be hospitalized or incarcerated.”

3 As a measure to expedite judicial proceedings by improving the accessibility of records
4 maintained by public agencies, the Department requests an update to the proposed language
5 in Section 13, page 13, line 10 to read as follows:

6 “at [~~the location~~] locations where the [~~records are maintained~~] defendant has been or is
7 hospitalized or incarcerated upon request”

8 Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

H.B. NO. 2414, RELATING TO THE ADMINISTRATION OF JUSTICE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Thursday, February 5, 2026 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFER(S): Anne E. Lopez, Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) submits the following testimony in overall support, noting specific concerns and suggested amendments.

Act 245, Session Laws of Hawaii 2024, requested the Judicial Council to appoint a committee to examine the Hawaii Penal Code, title 37 (chapters 701 to 713), Hawaii Revised Statutes (HRS), to recommend revisions to the Code. This bill serves as a product of their work that seeks to maximize consistency and proportionality between various offenses and sentencing provisions in the Hawaii Penal Code. The overall goal was to align with prevailing best practices, appropriate resolutions for victims, mentally ill offenders, and all others involved in the criminal justice system.

While the Department supports many of the changes suggested in this bill, we note two specific areas of concern:

Revocation, modification of probation decisions

Section 17 of this bill amends section 706-623(1) to decrease the "default" probation period for all class C felony offenses not otherwise specified as having a four-year probation period. Page 27, lines 15-18. The enumerated specified class C felonies that would continue to receive a four-year probation period are only those found under "part III, IV, or VII of chapter 707, and . . . part V or XIII of chapter 708." Probation for any other class C felony offense, if probation is deemed appropriate by the court in a particular case, would only be three years.

In addition to those offenses listed in subsection (1)(c), the Department recommends adding the following offenses to those that would continue to receive a four-year probation period:

- Intimidating a Witness under section 710-1071;
- Retaliating Against a Witness under section 710-1072.2;
- Jury Tampering under section 710-1075;
- Aggravated Harassment by Stalking under section 711-1106.5;
- Cruelty to Animals in the First Degree under section 711-1108.5;
- Violation of Privacy in the First Degree under section 711-1110.9;
- Cruelty to Animals by Fighting Dogs in the Second Degree under section 711-1109.35;
- Causing Injury or Death to a Service Animal or Law Enforcement Animal under section 711-1109.4;
- Sexual Assault of Animals as a second offense under section 711-1109.8(3)(a); and
- Promoting Pornography for Minors under section 712-1215.

It is also important to note that the court already has and will continue to have discretion to sentence someone to probation for less than the statutorily standardized period, if "the court enters the reason therefor on the record" (page 27, lines 9-10). Moreover, the court may terminate an offender's probation term early if it is deemed appropriate to do so.

Consenting to unreasonable noise on premises

In the new section added to chapter 711 by section 25 of this bill, the word "allows" should be defined or clarified for both law enforcement and members of the public as to what type of behavior would qualify as an offense. See page 33, line 13. One possible solution would be to add an additional provision to the new section at the end of page 33, line 14, as follows (underscoring in bill removed to indicate the suggested additional wording by underscoring):

"§711- Consenting to unreasonable noise on premises. A renter, resident, owner-occupant, or other person responsible for a premises who intentionally, knowingly, recklessly, or negligently allows another person to make unreasonable noise on the premises shall be guilty of a violation. It shall not be a defense to this section that verbal or written orders to desist were given to the person making unreasonable noise, without pursuing any further consequences upon the person making unreasonable noise, if the unreasonable noise persists thereafter."

Possessing a dangerous drug

The Department has serious concerns about part IX of the bill (page 35, line 6, through page 37, line 21), and recommends that it be deleted from the bill. Part IX creates a new misdemeanor-level offense of Possessing a dangerous drug in the second degree, by carving out possession of the lowest quantities of dangerous drugs from the existing offense of Promoting a dangerous drug in the third degree. Other than those carved-out quantities, Promoting a dangerous drug in the third degree remains a class C felony and is renamed to Possessing a dangerous drug in the first degree.

While the Department believes these changes are well-intentioned, making possession of dangerous drugs a misdemeanor—even for these small amounts—will greatly diminish the court's ability to impose effective treatment and oversight to individuals who suffer from substance abuse disorders. The period of supervision afforded to these misdemeanants cannot exceed one year, which would be insufficient to secure placement and completion of a viable drug treatment program. See section 706-623(1)(c) (probation period for misdemeanors). Drugs are scheduled based on their degree of danger or probable danger to the public, and "dangerous drugs" are the most dangerous of all. See sections 329-11 (Authority to schedule controlled substances), 329-14 (Schedule I), and 329-16 (Schedule II), HRS. For example, ingestion of even minuscule amounts of Carfentanil (equivalent in size to a grain of salt), is commonly known to be lethal. Despite these dangers, under this bill, possession of dangerous drugs like Fentanyl, Carfentanil, Amphetamine, Pentobarbital, Opium,

Testimony of the Department of the Attorney General

Thirty-Third Legislature, 2026

Page 4 of 4

Mescaline, Peyote, and many other drugs would only constitute a misdemeanor. The mere one-year term of probation would impede these individuals' ability to complete long-term treatment, which is often what is needed for substances such as these.

If the Committee is concerned that individuals in possession of small amounts of dangerous drugs are serving lengthy prison sentences for these offenses, Hawai'i law already provides numerous opportunities for individuals to avoid prison sentences for this conduct. Deferral, conditional discharge, and first- or second-time drug offender sentencing provisions can all be utilized to assist defendants in pursuing treatment and avoiding criminal convictions on their record. See sections 853-1, 706-607, and 706-622.5, HRS. In addition to these options, Defendants are routinely given multiple opportunities to participate in probation or specialty court programs before prison is even a consideration. Any defendants who serve a prison term solely for a Promoting a dangerous drug in the third degree have either been sentenced as a repeat offender pursuant to section 706-606.5, HRS, or have already failed on probation after all these other mechanisms have been exhausted.

For the foregoing reasons, the Department recommends that part IX of the bill be deleted.

Thank you for the opportunity to testify on this matter.



The Judiciary, State of Hawai'i
Ka 'Oihana Ho'okolokolo, Moku'āina 'o Hawai'i

Testimony to the Thirty-Third Legislature, 2026 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Thursday, February 5, 2026 at 2:00 p.m.
State Capitol, Conference Room 325 & Videoconference

By

The Honorable Paul B. Wong
Circuit Court of the First Circuit
Chair, Advisory Committee on Penal Code Review

Bill No. and Title: House Bill No. 2414, Relating to the Administration of Justice.

Purpose: Implements recommendations pursuant to Act 245, SLH 2024 to amend the Hawai'i Penal Code

Judiciary's Position:

The Judiciary fully supports the endeavors of the 2025 Advisory Committee on Penal Code Review (the "Committee"), which was appointed by the Honorable Mark E. Recktenwald (Ret.), then Chief Justice of the State of Hawai'i, and the Judicial Council, to carry out the request of the 2024 Legislature in Act 245, Sessions Law of Hawai'i 2024, to review and recommend revisions to the Hawai'i Revised Statutes Title 37 (the "Penal Code"). The Committee consisted of 61 members from a diverse cross-section of the community affected by the criminal laws in Hawai'i. The membership included the Senate Judiciary Committee Chairperson, the House of Representatives Judiciary and Hawaiian Affairs Committee Chairperson, 16 jurists representing all courts (Supreme Court, Intermediate Court of Appeals, Circuit Court, Family Court, and District Court) and all four Judicial Circuits, prosecutors from all counties and the Department of the Attorney General, lawyers from the Public Defender's Office and the private defense bar, medical professionals from the Department of Health ("DOH") and the Governor's office, law enforcement officers, advocates for victims' rights,



House Bill No. 2414, Relating to the Administration of Justice
House Committee on Judiciary & Hawaiian Affairs
Thursday, February 5, 2026 at 2:00 p.m.
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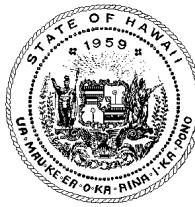
advocates for prisoner rights, the Director of the Department of Corrections and Rehabilitation (“DCR”), and interested members of the public, advocacy groups, and government staff.

The Committee was divided into eight subcommittees. Each of the subcommittees had the primary responsibility to review one or more assigned chapters of the Penal Code, analyze issues of concern in their assigned chapter(s), and craft and propose legislative solutions for those issues. The subcommittees then presented proposed legislation to the overall Committee in plenary session. This proposed legislation contains the recommendations of the Committee that gained supermajority approval in plenary session. The Judiciary appreciates the work of the members of the Committee and thanks them for their participation.

While the Judiciary takes no position on the creation, revision, or elimination of statutory offenses contained in the Penal Code, the Judiciary does offer the following comments and support regarding the proposed revisions to Chapter 704 of the Hawai‘i Revised Statutes contained in Part IV, pages 9 – 26 of the bill. The provisions contained in Part IV address the request of the Legislature in Act 245 to review the Penal Code to ensure that it is responsive to offenders suffering from mental illness. It is the position of the Judiciary that the revisions proposed will facilitate faster mental examination of defendants, minimize the time between court decisions, leverage the medical treatment already afforded to this defendant population, and ultimately, reduce the length of stay by defendants at the Hawai‘i State Hospital. The proposals seek to modernize and expedite the transfer of information, and patients, between the DOH and DCR, and the significant revisions of section 704-406 will expedite the transfer of defendants out of the State Hospital, especially when there is no dispute that a defendant is fit to proceed and should be returned to the DCR for further criminal proceedings.

Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



MARI McCAG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAII – Ka MOKU’ĀINA ‘O HAWAII
CRIME VICTIM COMPENSATION COMMISSION

Ke Komikina Uku Luaahi Kalaima
1164 Bishop Street, Suite 1530
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

TESTIMONY ON HOUSE BILL 2414
RELATING TO THE ADMINISTRATION OF JUSTICE
by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Thursday, February 5, 2026; 2:00 PM
State Capitol, Conference Room 325 & Videoconference

Good afternoon, Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs. Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify on House Bill 2414, Relating to the Administration of Justice. House Bill 2414 includes a number of technical and substantive amendments to the Penal Code, including changes to HRS section 706-623 that reduce the term of probation from 4 years to 3 years for certain Class C felonies where victims may be eligible for restitution. The reduced term of probation will negatively impact crime victims and shift the burden of restitution collection after the reduced sentence from the Judiciary to the crime victim. The Commission supports HB 2414 with a provision that excludes Class C felonies where victims may be eligible for restitution. In addition, the Commission supports the recommendations proposed by Dennis Dunn to 1) require a payment of restitution prior to discharge from probation and 2) notice to victims when the court is preparing to discharge an offender from probation.

The Commission provides compensation for victims of violent crime to pay unreimbursed expenses for crime-related losses due to physical or mental injury or death. The Commission also administers a Restitution Recovery Project to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. In January 2021, the Commission and the Council of State Governments released an article titled *“Victim Restitution Matters: Four Lessons from Hawai'i to Ensure Financial Justice for Crime Victims.”* Additionally, the Commission has represented the interests and concerns of victims and survivors on the 2011 Justice Reinvestment Working Group, the 2015 Penal Code Review Committee, and the HCR 23 Task Force. The Commission

also served as one of the crime victim advocates on the 2025 Advisory Committee on Penal Code Review.

Reducing the amount of time that the Judiciary is obligated to collect restitution unfairly shifts the burden of restitution collection to the victim. Criminal justice reform must not only serve the interest of offenders but must also include meaningful protection of the interests and rights of crime victims to avoid harmful, unintended consequences.

In Hawai‘i, victims have a statutory right to restitution (HRS § 706-646). Restitution is the primary pathway to mitigate the financial impact of a crime; however, the restitution process is often inefficient and fraught with institutional barriers. A restitution order is only the first step. Failure of the court to enforce its own orders undermines the rule of law and public trust in the justice system.

In a 2011 letter to the editor written by Rod Maile, Administrative Director of the Court, after a series of articles critical of restitution collection in Hawai‘i, the Administrative Director noted:

Clearly, offenders' failure to fully pay restitution is a difficult, complex and long-standing problem, but one that absolutely has to be addressed because of the hurtful impact it has on victims and because non-compliance with court orders undermines public trust and confidence in the justice system.

Unless restitution is paid in full in a timely manner, many crime victims never financially recover from the crime. The unexpected financial burden resulting from a crime makes being victimized even more devastating.

Reducing the time of restitution collection by the Judiciary results in less time for the defendant to meet their restitution obligations to crime victims before their sentence is completed. While crime victims can file their restitution order as a civil order, the process is so burdensome that almost no victims avail themselves of this option. In fact, in its “Instructions for Filing Exemplified or Certified Copy of Restitution Order”, the Judiciary refers crime victims to the Rules of Circuit Court that must be met in order to file and suggests that if they are not able to understand the procedure, to hire an attorney to assist them.

Filing is just the first step. As part of the filing and to enforce the order, the victims are required to provide the defendant with their name and address, compromising their safety. Once filing has been completed, the victim is then responsible for enforcement of the order which can include wage garnishment, bank garnishment, property liens, etc. Because collection enforcement is a legal matter, it is unlikely that a crime victim will be able to avail themselves of the civil enforcement methods needed to collect their restitution without the help of an attorney.

Reducing the amount of time that the Judiciary is obligated to collect restitution unfairly shifts the burden of restitution collection to the victim. The Commission supports HB 2414 with a provision that excludes Class C felonies where victims may be eligible for restitution. In addition, the Commission supports the recommendations proposed by Dennis Dunn to 1) require a payment of restitution prior to discharge from probation and 2) notice to victims when the court is preparing to discharge an offender from probation.