JON N. IKENAGA
PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAI'I 96817

APPELLATE DIVISION
TEL. NO. (808) 586-2080

DISTRICT COURT DIVISION
TEL. NO. (808) 586-2100

FAMILY COURT DIVISION
TEL. NO. (808) 586-2300

FELONY DIVISION
TEL. NO. (808) 586-2200

FACSIMILE
(808) 586-2222

STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y. C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAWAI STREET
SUITE 201
HILO, HAWAI'I 96720
TEL. NO. (808) 974-4571
FAX NO. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. NO. (808) 327-4650
FAX NO. (808) 327-4651

KAUA`I OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAI'I 96766
TEL. NO. (808) 241-7128
FAX NO. (808) 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAI'I 96793
TEL. NO. (808) 984-5018
FAX NO. (808) 984-5022

February 3, 2026

SB2479: RELATING TO CRIMINAL PROCEDURE

Chair Joy A. San Buenaventura, Vice Chair Angus L. K. McKelvey and Members of the Committee on Health and Human Services

The Office of the Public Defender (OPD) **strongly supports the intent of SB2479 with the following comments:**

The purpose of SB 2479 is to allow, as mitigating evidence, the life experiences of criminal defendants who were subjected to family violence, dating violence or child abuse and that said experiences were significant contributing factors in the offense for which the defendant is being sentenced or tried. To fulfill the purposes listed above, SB 2479 would amend current statutes to allow a court to consider the trauma a defendant has experienced as a victim of said violence during sentencing or as part of the defense of justification at trial. Lastly, SB 2479 would allow for a court to review a request by a sentenced defendant for reconsideration of their sentence wherein said mitigating evidence had not been presented.

The OPD has always believed that any type of mitigating evidence or evidence offered to give insight into a defendant's past trauma can have relevance at any sentencing or trial and thus supports the purpose of SB 2479. However, there are a few concerns that we feel should be outlined and addressed prior to passage.

First, the Hawaii Rules of Evidence (HRE) rule 1101(d)(3) already exempts sentencing hearings from the rules of evidence, and thus there would be no need to have the HRE govern sentencing hearings to implement the proposals of SB 2479. Furthermore, there should be no concern that the HRE would preclude the introduction of mitigating evidence outlined in SB 2479, because the proposed

changes to HRS sections 703-304 and 703-305 (justification) would ensure that a trial court consider said evidence when appropriate to any case. Trial courts are already required to allow for the introduction of any relevant evidence regarding any applicable defense and must then instruct a jury on said defense for which there is a scintilla of evidence in support.

Second, the OPD has concerns regarding the proposed amendments to HRS section 806-71(c)(1) allowing for the re-consideration of sentencing for all defendants who have been sentenced for offenses committed before July 1, 2026. Although the OPD supports the belief that any defendant should seek to benefit from any sentencing scheme that would allow for a more just sentence. The OPD is concerned about the method or vehicle by which these petitions become known to the court. We would suggest that said petitions could be made part of the Hawaii Rules of Penal Procedure Rule 40 (post-conviction proceedings) petition process. This would allow for a sentenced defendant to file their petition in compliance with HRPP Rule 40, naming as its basis, the relief provided by SB 2479. Said petition would then be reviewed by the court, and if the issues raised in said petition are deemed colorable, the court can then provide counsel for said petitioner to further litigate the matter. Most importantly, a denial of said petition will allow for a defendant to seek appellate review.

Thank you for the opportunity to comment on this measure.

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

Testimony to the Thirty-Third Legislature, 2026 Regular Session

Senate Committee on Health and Human Services
Senator Joy A. San Buenaventura, Chair
Senator Angus L.K. McKelvey, Vice Chair

Wednesday, February 4, 2026, 1:01 p.m.
State Capitol, Conference Room 225 & Videoconference

By

Jennifer Awong
Staff Attorney, Circuit Court of the First Circuit

Bill No. and Title: Senate Bill No. 2479, Relating to Criminal Procedure.

Purpose: Allows a defendant to introduce certain evidence to receive a reduced sentence for certain offenses if the defendant can show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor for the offense for which the defendant is being sentenced. Allows a defendant to introduce certain relevant evidence when raising the justification defenses of self defense or defense of others to show that the defendant was subjected to acts of family violence, dating violence, or child abuse by the alleged victim. Allows the circuit court imposing a criminal sentence to correct or reduce the sentence and to suspend or probate all or any part of the sentence imposed. Allows a person previously sentenced by a circuit court to petition the court to be re-sentenced to a reduced sentence if the defendant can show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor for the offense for which the defendant was sentenced.

Judiciary's Position:

The Judiciary takes **no position** on the intent of the proposed legislation and provides the following comments regarding Section 1 and Section 8 of the Bill.

Subsection (1) of Section 1 provides that "The rules of evidence shall apply to the presentation of evidence[.]" This directly contradicts Hawai‘i Revised Statutes ("HRS") § 626:

1101(d)(3), which explicitly provides that the rules of evidence do not apply in the sentencing context. Also, in Section 1, proposed subsections (3)(a) and (b) do not specify whether the terms of imprisonment required to be imposed are indeterminate terms of imprisonment or determinate terms of imprisonment. In addition, subsection (3)(b) appears to require the court to sentence a defendant to a term of imprisonment for all felony offenses under HRS Chapter 707, including those for which the defendant might otherwise be eligible for probation. Also, regarding provision relating to the maximum fine in subsection (3)(b) is unclear what the legislation is requiring the sentence to be—perhaps the word "and" should be included after "could have been sentenced," as it appears a word or phrase is missing.

In Section 8, the newly proposed subsection (b) to HRS § 806-71 would expand the time period to seek a reduction or correction of sentence currently provided by Rule 35(b) of the Hawai‘i Rules of Penal Procedure ("HRPP"), by permitting any defendant to seek a reduction or correction of their sentence anytime up to one year of the date their sentence is imposed or up to one-hundred and twenty days after the affirmance of the sentence after a direct appeal. Currently, under HRPP Rule 35, a defendant may seek a reduction of their sentence within 90 days of the sentence being imposed or within 90 days of the affirmance of the sentence after a direct appeal or a dismissal of the appeal. HRPP Rule 35(b). A defendant may seek correction of an illegal sentence at any time through HRPP Rule 40 and within 90 days of imposition of the sentence under the provisions of HRPP Rule 35(a).

Further, subsection (b) of Section 8 states that "[t]he time periods prescribed in subsection (c) shall require the defendant to file a motion [to reduce or correct a sentence] within the time periods; provided that the court shall not be constrained to issue its order or hear the matter within the time periods." However, the time periods relating to when a defendant must actually file the petition permitted by subsection (c) is unclear, as it refers to a section 706- . The provisions of subsection (c) permit a defendant to file their petition at <u>any time</u> after sentencing and further appears to permit defendants to file as many petitions as often as they want.[1] But the first line of subsection (b) specifies that the court only retains jurisdiction to correct or reduce a sentence for those delineated time periods. Therefore it is unclear what the intent is with respect to the time periods for filing a motion to correct or reduce a sentence under the newly proposed subsection (b) to H.R.S. § 806-71.

Finally, Hawai‘i currently has a "true" indeterminate sentencing scheme for felony offenses. This means that unlike many other indeterminate term sentencing states where a sentencing judge might sentence a person to a range of years (i.e. a 10-to-20-year, or 20-to-life term of imprisonment), or a determinate term sentencing state where a sentencing judge orders a specific term of imprisonment (i.e. a 2, 7, 15, 20, or even a 50+ year term of imprisonment), our sentencing judges are, for the vast majority of cases, only statutorily permitted to sentence a defendant to an indeterminate term of imprisonment of five years for "C" felonies,[2] ten years for

[1] The proposed new subsection (c) of H.R.S. § 806-71 requires the court to dismiss the petition without prejudice if "the court determines that the petitioner has not met the criteria provided in section 706- (2)...." Page 22, Lines 9-13 of the bill.
[2] H.R.S. § 706-660(1)(b).

"B" felonies,[3] twenty years for "A" felonies,[4] life with the possibility of parole for murder or attempted murder in the second degree,[5] and life without the possibility of parole for murder or attempted murder in the first degree.[6] There are very few exceptions to these five, ten, twenty, and life terms of imprisonment, and all of them include the requirement for the court to sentence the defendant to a specified indeterminate term.[7] For "C" and "B" felonies, the court can consider a term of probation, with some exceptions, instead of the indeterminate term of imprisonment, however for most "A" felonies and cases involving murder, the sentence MUST be to the indeterminate term of imprisonment outlined above.[8] Thus, the provisions of subsection (b) which state that the court may "suspend or probate all or any part of the sentence imposed" would not be applicable to most "A" felonies and cases involving murder.

Thank you for the opportunity to testify on this legislation.

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[3] H.R.S. § 706-660(1)(a).
[4] H.R.S. § 706-659.
[5] H.R.S. § 706-656(2).
[6] H.R.S. § 706-656(1).
[7] Specifically, certain "B" and "C" drug offenses can result in an indeterminate term of years of anywhere between five and ten years for "B" felonies and one and five years for "C" felonies (*see* H.R.S. § 706-660(2)) and young adult offenders can be sentenced to indeterminate terms of eight, five, and four years for "A," "B," and "C" felonies, respectively (*see* H.R.S. § 706-667).
[8] H.R.S. § 706-620.

SB-2479
Submitted on: 2/1/2026 12:59:51 PM
Testimony for HHS on 2/4/2026 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE this proposal. The convicted offender, no matter his/her history of alleged abuse, must take full responsibility for his/her criminal behavior. This proposal makes it possible for the convicted offender to blame his "past" when if fact, he/or had an opportunity or choice to cease his/her criminal behavior.

SB-2479
Submitted on: 2/3/2026 9:03:24 AM
Testimony for HHS on 2/4/2026 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark Morikawa	Individual	Comments	Written Testimony Only

Comments:

Dear Chair San Buenaventura, and members of the Senate Committee
on Health and Human Services.

While acknowledging the importance of trauma-informed justice, I want to raise the following concerns regarding the proposed legislation:

1. **Risk of Misuse or False Claims**
   There is concern that defendants may assert histories of family violence, dating violence, or child abuse without sufficient evidentiary support, potentially leading to misuse of the statute and undermining the credibility of legitimate survivor claims.
2. **Victim Safety and Ongoing Risk**
   There is concern that sentence reductions or resentencing could place current or former victims at risk, particularly in cases involving ongoing patterns of violence, coercive control, or unresolved protective concerns.
3. **Retroactive Resentencing Challenges**
   Allowing previously sentenced individuals to seek resentencing could strain judicial resources and reopen cases without adequate mechanisms to reassess risk, victim impact, or current safety conditions.
4. **Insufficient Safeguards for Victim Input**
   The bill does not explicitly require consideration of victim impact statements or victim notification in resentencing proceedings, potentially marginalizing the voices and safety concerns of those harmed.

Thank you for the opportunity to comment.

LATE

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAI'I 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

TESTIMONY ON
S.B. 2479
RELATING TO CRIMINAL PROCEDURE

February 3, 2026

The Honorable Joy A. San Buenaventura
Chair
The Honorable Angus L.K. McKelvey
Vice Chair
and Members of the Committee on Health and Human Services

Chair San Buenaventura, Vice Chair McElvey, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments **in opposition to S.B. 2479, Relating to Criminal Procedure**. This bill would, *inter alia*: 1) mandate a reduction in sentence for any offense involving a defendant that was subjected to acts of family violence, dating violence or child abuse that were a significant contributing factor in the offense committed, 2) allow evidence of these acts to support a defensive use of force claim at trial, and 3) allow a defendant to petition the sentencing court for a correction, reduction or suspension of sentence within a year of sentence imposition or one-hundred twenty days after direct appeal proceedings are completed.

We have multiple concerns about this bill. First, our courts are already required by HRS §706-606 (1) to consider the history and characteristics of the defendant, which would include all of the factors and evidentiary items this bill addresses. Notably, the pre-sentence investigation report typically prepared prior to felony sentencing hearings would be able to address most, if not all, of these factors. Defendants are also allowed to present evidence such as expert testimony regarding being a victim of abuse or sexual assault and other relevant factors.

Second, this bill requires a reduction in sentence if a court finds by a preponderance of evidence that a defendant was subject to acts of family violence, dating violence or child abuse and that these acts were a "significant contributing factor" in the offense. The bill not only removes a judge's discretion as to appropriate sentencing, it also provides courts with no further

guidance on how to gauge whether an act is a significant contributing factor. Moreover, some of the "family violence" acts in question involve arguably nonviolent crimes between family or household members such as an uncle returning to the family store premises after receiving a written trespass warning (Criminal Trespass in the Second Degree) or an estranged spouse sending repeated texts late at night (Harassment).

Third, the mandatory sentence reduction is excessively large for the scope of the violent acts and the applicable offenses: all offenses punishable by life imprisonment sentences (Murder in the First or Second Degree) would be reduced to ten to thirty years on top of mandatory parole eligibility, while all other felony offenses (including Class A felonies such as Sexual Assault in the First Degree and Manslaughter) would be reduced to anywhere from one year to half the maximum sentence for the offense.

In this scenario, a defendant convicted of Murder in the First Degree for killing their estranged spouse after a restraining order was issued (an offense with a mandatory life sentence without parole) could be granted both a reduction in sentence to ten to thirty years imprisonment and parole eligibility so long as they could prove that their spouse sent repeated texts in the middle of the night (Harassment) that made them angry enough to kill. A defendant convicted of multiple counts of Sexual Assault in the First Degree (ordinarily a 20-year prison term per count) for repeated sexual assault of a 10-year old over a five-year period would automatically receive a reduced sentence of one to ten years per count if they could prove that they abused the complaining witness because they were sexually assaulted as an adult by an intimate partner.

Fourth, the bill would allow relevant evidence of the violent acts to be submitted in support of a self-defense or defense of others claim at trial if the "alleged victim" was the person who committed the acts. This amendment is unnecessary because the existing language in Chapter 703 already implicitly allows such evidence in order to show the defendant's subjective belief that the force used was necessary based on the circumstances. Further, the amendment creates no link between the prior violent acts and the necessity of using force; it would essentially allow defendants to argue to the jury that: 1) they killed the victim by kidnapping them at gunpoint, bringing them to an isolated area and shooting them in the back of the head, and 2) the victim punched the defendant once while they were dating six months ago.

Fifth, the bill would allow defendants an additional opportunity to petition for a reduction in sentence (with a corresponding right to appeal denial of the petition) after already having opportunities to make sentencing arguments, petition the sentencing court to reconsider its sentence, challenge the sentence on direct appeal, or file a petition for post-conviction relief. This not only disrupts a victim's peace of mind in finally seeing a defendant being brought to justice, it also requires both the State and the courts to dedicate additional resources to issue that have likely already been litigated or considered at prior hearings.

Sixth, this bill does not include a waiver provision or other provision similar to Hawaii Rules of Penal Procedure Rule 40(a)(3) that would prevent a defendant from repeatedly petitioning for a reduction in sentence on grounds that have previously been ruled upon or were not raised in a prior petition. This allows frivolous or harassing petitions to unnecessarily waste prosecution and judicial resources.

For these reasons, the Department of the Prosecuting Attorney, County of Maui **opposes S.B. 2479**. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries. Thank you very much for the opportunity to provide testimony on this bill.