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TO: The Honorable Carol Fukunaga, Chair
The Honorable Chris Lee, Vice Chair
Senate Committee on Public Safety and Military Affairs

FROM: Mark Patterson, Chair
Hawai'i Correctional System Oversight Commission

SUBJECT: Senate Bill 2749, Relating to Sentencing
Hearing: Wednesday, February 4, 2026; 3:02 p.m.
State Capitol, Room 016

Chair Fukunaga, Vice Chair Lee, and Members of the Committee:

The Hawai'i Correctional System Oversight Commission (HCSOC) **supports** Senate Bill 2749, relating to sentencing, which amends repeat offender sentencing provisions to allow sentencing courts, under certain circumstances, to sentence defendants in class C felony cases to probation with appropriate terms and conditions. The Commission supports judges having more discretion to consider probation when appropriate.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-849-3580 or at christin.m.johnson@hawaii.gov. 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:
S.B. NO. 2749, RELATING TO SENTENCING.

BEFORE THE:
SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Wednesday, February 4, 2026 **TIME:** 3:02 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark S. Tom, Deputy Attorney General

Chair Fukunaga and Members of the Committee:

The Department of the Attorney General respectfully opposes this bill.

This bill purports to reduce the jail population by revising section 706-606.5, Hawaii Revised Statutes (HRS), also known as the Repeat Offender Statute, to afford judges the ability to sentence repeat offenders to terms of probation in lieu of mandatory prison.

The Repeat Offender Statute was created by the Legislature in 1976 through Act 181 to address the demand to combat repeat felony offenders by providing enhanced sentencing terms. Over the years there have been sixteen amendments to this section, many of which were to add criminal offenses that the Legislature deemed so serious in nature that mandatory prison terms were necessary. In Act 231, Session Laws of Hawaii 2016, based on recommendations by the Penal Code Review Committee, the Legislature addressed a wide range of Penal Code amendments. One such amendment involved the removal of Promoting a Dangerous Drug in the Third Degree, section 712-1243 (HRS), a class C felony offense. The committee determined that repeat offenders convicted of small drug possession offenses were better managed by probation and drug treatment.

The Penal Code Review Committee was made up of members of the Judiciary, the Office of the Public Defender, Prosecutors, members of the Legislature, and various other stakeholders who thoroughly reviewed the Repeat Offender Statute. Collectively,

they had the opportunity to make broad amendments to this statute. Instead, the committee took a more thoughtful approach and identified a specific charge where probation and treatment are warranted and removed that charge appropriately. Marginalizing repeated convictions of offenses such as Negligent Homicide in the Second Degree, section 707-703, HRS, Unlawful Imprisonment in the First Degree, section 707-721, HRS, Assault in the Second Degree, section 707-711, HRS, Burglary in the Second Degree, section 708-811, HRS, Promoting Child Abuse in the Third Degree, and section 707-732, HRS, Sex Assault in the Third Degree, section 707-732, HRS, with a similar disposition of probation and treatment does not appear to be in line with the recommendations by the Penal Code Review Committee in 2016, nor with the intent in the creation of this statute in 1976.

This blanket probation alternative for repeat class C felony offenders is not warranted. This undermines the clear legislative intent in the creation of and subsequent amendments to the Repeat Offender Statute, as well as the recent work of the Penal Code Review Committee. Thank you for the opportunity to provide comments; we respectfully ask that you hold this bill.

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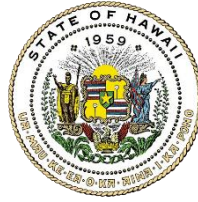
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February 3, 2026

SB 2749: RELATING TO SENTENCING

Chair Carol Fukunaga, Vice Chair Chris Lee and Members of the Committee on Public Safety and Military Affairs

The Office of the Public Defender (OPD) strongly supports **SB 2749** which seeks to amend Hawai'i Revised Statutes (HRS), section 706-606.5 and HRS section 706-620 to allow a criminal defendant, under very limited circumstances to be sentenced to probation instead of an indeterminate term of incarceration with a mandatory minimum jail term as a "repeat offender".

HRS 706-606.5 was promulgated for the purpose of disallowing a person sentenced to probation from receiving a second sentence of probation when they have committed another crime while serving their original term of probation. In other words, a person should have one chance to prove themselves on probation and if they fail by committing another crime their original term of probation would be terminated, and they would serve sentences of incarceration on both cases. This sentencing scheme is used today for all class A, class B, and a growing number of class C felonies. It is fair to say that 706-606.5 was created in a time when we knew less about substance abuse addiction, mental health treatment and the role that prior trauma plays in the recidivism of crime. For those that work within the criminal justice system, it is easy to conclude that when the law treats all defendants in the same manner, there are times when judicial discretion should be allowed in the interest of justice.

Currently, when a judge feels that the mandatory sentencing scheme of HRS 706-606.5 is inappropriate for use in a particular case, the judge may do a few things to see that justice is served:

First, the judge can delay sentencing to allow an individual to complete a treatment or other rehabilitative program that has demonstrated it can help said individual.

Second, the judge can allow the defendant to be out of custody while they complete said rehabilitative program, and when appropriate work and reside within the community.

Lastly, at sentencing, the judge can reduce the amount of the mandatory part of the defendant's jail term but cannot dispense with the indeterminate term of incarceration. Thus, a defendant that has demonstrated the ability to be rehabilitated and return to the community as law abiding and productive must still be sentenced to an indeterminate term of jail of at least five (5) years and must go through the normal means of seeking their freedom with the Hawaii Paroling Authority. This current procedure is demeaning and counter productive for the person that has already demonstrated that they have reached the goals of incarceration: public safety and rehabilitation. Furthermore, it unnecessarily adds to the costs of incarceration recently estimated to be \$112,000 per person per year.

Thus, the amendments proposed in SB 2749 will allow for a very limited exception to the mandatory sentencing scheme of HRS 707-606.5 and would then give a judge the opportunity to provide a practical and appropriate sentence when earned by a defendant. A judge would only be able to utilize said exception after making the following findings:

- a) The offense for which the defendant qualifies for repeat offender sentencing can only be a class C felony.
- b) The defendant would benefit from probation supervision and appropriate terms and conditions.
- c) The defendant does not pose a serious danger to public safety and imposing an indeterminate term of imprisonment with a mandatory minimum jail sentence would pose a hardship on the defendant or on those that depend on the defendant for support.
- d) Furthermore, any sentence of probation would require up to one year of jail as a special condition of probation.
- e) Lastly, if a defendant failed to complete said term of probation, or said term of probation was revoked, the defendant would then face the original sentence of incarceration including the mandatory term of jail.

Thus, this proposed exception to repeat offender sentencing would be used on a very limited basis and only when a defendant earns said consideration.

The use of mandatory sentencing does not take into consideration that individuals reach that moment of epiphany at different moments and for different reasons, wherein they are ready to be helped and change their lives. Thus, we must be ready when they are to provide said help. Instead, mandatory sentencing treats all persons so situated the same and leaves it to themselves and imprisonment to heal them and return them to society “cured”, “fixed” and ready to resume productive lives. It is a misguided approach to solving a complex problem that SB 2749 can help to rectify.

Thank you for the opportunity to comment on this measure.

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THE HONORABLE CAROL FUKUNAGA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai'i

February 3, 2026

RE: S.B. 2749; RELATING TO SENTENCING.

Chair Fukunaga, Vice Chair Lee, and members of the Senate Committee on Public Safety and Military Affairs, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong opposition** to S.B. 2749.

S.B. 2749 effectively repeals mandatory-minimum sentencing for repeat offenders in a broad range of class C felonies. It dilutes sentencing aimed at the most persistent criminal element: repeat offenders who commit multiple felonies in a short time frame.¹

Repeat offender sentencing applies to felons who commit another felony. Where the predicate crime is a class C felony, the new offense must occur within five years of the prior conviction.² Only specific enumerated class C felonies qualify for repeat offender sentencing. These include child molestation,³ possession of child pornography,⁴ extortion,⁵ identity theft,⁶ felony domestic abuse,⁷ and felony firearms offenses.⁸

¹ See Commentary to HRS § 706-606.5 (“Finding a clear danger to the people of Hawaii in the high incidence of offenses being committed by repeat offenders, the legislature felt it necessary to provide for mandatory terms of imprisonment without possibility of parole in cases of repeated offenses by prior offenders.”).

² HRS § 706-606.5(3)(e). For young adult defendants, the window is four years. HRS § 706-606.5(4)(c).

³ See HRS § 706-606.5(1)(l) (prior conviction for sexual assault in the third degree qualifies for repeat offender sentencing); HRS § 706-606.5(1)(n) (prior conviction for electronic enticement of a child qualifies for repeat offender sentencing). See also HRS § 706-606.5(1)(ee) (prior conviction for evading sex offender registration requirements qualifies for repeat offender sentencing).

⁴ See HRS § 706-606.5(1)(m) (prior conviction for promoting child abuse in the third degree qualifies for repeat offender sentencing).

⁵ See HRS § 706-606.5(1)(o) (prior conviction for extortion in the second degree qualifies for repeat offender sentencing).

⁶ See HRS § 706-606.5(1)(v) (prior conviction for identity theft in the third degree qualifies for repeat offender sentencing).

⁷ See HRS § 706-606.5(1)(z) (prior conviction for felony domestic abuse qualifies for repeat offender sentencing).

⁸ See HRS § 706-606.5(1)(a) (prior conviction for felon-in-possession of a firearm qualifies for repeat offender sentencing.).

A defendant has the right to a jury trial on the question of repeat offender sentencing.⁹ The prosecution must prove both the fact of the defendant's prior conviction and representation by (or knowing waiver of) counsel at the time of the prior conviction.¹⁰ This requires testimony verifying the identity of the defendant.¹¹ Proof of a prior valid conviction must be beyond reasonable doubt.¹²

With the exception of certain mandatory-minimum sentencing provisions for firearms,¹³ mandatory minimums for repeat offenders cannot run consecutively.¹⁴ The court can also impose a lesser mandatory minimum period if it enters written findings of strong mitigating circumstances.¹⁵

Only after this thorough process can a court impose mandatory minimum sentencing on repeat offenders. S.B. 2479 eliminates the finality, deterrence, and incapacitation of repeat offenders by creating a probation loophole for the most persistent criminals to continue preying on the people of this State.

The Department strongly urges this Committee to reject S.B. 2749.

Thank you for the opportunity to testify.

⁹ *State v. Auld*, 136 Hawai'i 244, 361 P.3d 471 (2015).

¹⁰ *State v. Caldeira*, 61 Haw. 285, 602 P.2d 930 (1979).

¹¹ *See State v. Pantoja*, 89 Hawai'i 492, 494, 974 P.2d 1082, 1084 (App. 1999) ("It is axiomatic that when an enhanced punishment for a particular criminal offense is sought because of a prior conviction, the present defendant must be the same person who was previously convicted.").

¹² *Auld* at 255, 361 P.3d at 481.

¹³ HRS § 706-606.1.

¹⁴ *State v. Cornelio*, 84 Hawai'i 476, 935 P.2d 1021 (1997).

¹⁵ HRS § 706-606.5(6).

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Carol Fukunaga, Chair

Senator Chris Lee, Vice Chair

Wednesday, February 4, 2026

3:02 PM

Room 016 and VIDEOCONFERENCE

STRONG SUPPORT FOR SB 2749 - AMENDING REPEAT OFFENDER SENTENCING

Aloha Chair Fukunaga, Vice Chair Lee and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for almost three decades. This testimony is respectfully offered on behalf of the 3,654 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Corrections and Rehabilitation on January 26, 2026. We are always mindful that 799 - 43% of Hawai`i’s imprisoned male population are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates the opportunity to share our **strong support for SB 2749** that amends repeat offender sentencing

¹ DCR Weekly Population Report, January 26, 2026
[Pop-Reports-Weekly-2026-01-26.pdf](#)

provisions to allow sentencing courts, under certain circumstances, to sentence defendants in class C felony cases to probation with appropriate terms and conditions.

We support this amendment that allows the court discretion in sentencing certain Class C felonies where the defendant would benefit from probation with appropriate terms and conditions, poses no serious threat to public safety, and a mandatory minimum term would pose a hardship on the defendant and/or those dependent upon the defendant.

We hope the committee supports SB 2749 and allows the court the discretion to amend the mandatory sentencing for certain Class C felonies.

Mahalo for this opportunity to share our support for this measure!

SB-2749

Submitted on: 1/31/2026 9:32:19 PM

Testimony for PSM on 2/4/2026 3:02:00 PM

Submitted By	Organization	Testifier Position	Testify
Benjamin Rose	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this measure. Convicted persons who are subject to repeat offender sentencing are inherently dangerous persons because they have re-offended within a specified time period (5 years in the case of class C felonies, as this bill covers). This bill covers all enumerated class C felonies in 706-606.5 - including felony abuse. Offenders who commit felony abuse who then reoffend and commit yet another felony domestic violence offense within 5 years should not be probationable. The supposed goal of this bill is rehabilitation. Rehabilitation is an important goal of our criminal justice system, but so is victim protection. And accountability is a strong feature of rehabilitation; without mandatory prison, offenders will not learn respect for the law. Indeed, we know that domestic violence offenders often escalate their assaults overtime if they're not held accountable early. Furthermore, the repeat offender statute already has a mitigation clause, which allows judges to reduce the mandatory minimum sentencing if there are compelling reasons to do so. Because the repeat offender statute as it currently stands works to protect victims, this Committee should vote no on this bill.

SB-2749

Submitted on: 2/1/2026 1:16:45 PM

Testimony for PSM on 2/4/2026 3:02:00 PM

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

Comments:

OPPOSE this bill. In our current related laws, the punishment (prison terms) fits the crime. I strongly oppose any bill that recommends less punishment. Protect our law abiding citizens at all cost and punish criminals by holding them responsible for their crimes.