



**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. 1627, RELATING TO SENTENCING.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Thursday, February 19, 2026 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Tarnas 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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February 18, 2026

HB 1627: RELATING TO SENTENCING

Chair David A. Tarnas, Vice Chair Mahina Poepoe and Members of the Committee on Judiciary and Hawaiian Affairs

The Office of the Public Defender (OPD) strongly supports **HB 1627** which seeks to amend Hawaii'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 to disallow a person sentenced to probation from receiving a second sentence of probation when they have committed a 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 counterproductive 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 HB 1627 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 times 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 qualifying persons the same and leave it self-awareness 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 and HB 1627 can help by allowing for a different solution.

Thank you for the opportunity to comment on this measure.



JOHN PELLETIER
CHIEF OF POLICE

POLICE DEPARTMENT COUNTY OF MAUI

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WADE M. MAEDA
DEPUTY CHIEF OF POLICE

February 17, 2026

Representative David A. Tarnas, Chair
Representative Mahina PoePoe, Vice Chair
and Members
Judiciary and Hawaiian Affairs
The Thirty-Third Legislature
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

SUBJECT: Testimony in opposition of H.B. 1627, Relating to sentencing.

Dear Chair Tarnas, Vice-Chair PoePoe, and Committee Members:

I am submitting this testimony in opposition of H.B. 1627. While the bill seeks to give judges more discretion to impose probation instead of mandatory prison for certain repeat felony offenders, it poses a risk to public safety by potentially releasing individuals who may reoffend. H.B. 1627 greatly reduces the deterrent effect of mandatory sentences for repeat felony offenders which in turn places additional monitoring and administrative burdens on law enforcement.

Judicial discretion is important, but mandatory penalties for repeat offender's safeguard our communities, reinforce consequences and uphold accountability. For these reasons, we respectfully urge the committee to oppose HB 1627.

Sincerely,

For **JOHN PELLETIER**
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
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HOPE MUA LOIO HO'OPI'I

THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Third State Legislature
Regular Session of 2026
State of Hawai'i

February 18, 2026

RE: H.B. 1627; RELATING TO SENTENCING.

Chair Tarnas, Vice Chair Poepoe, and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong opposition** to H.B. 1627.

H.B. 1627 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. H.B. 1627 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 H.B. 1627.

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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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 1627

A BILL FOR AN ACT
RELATING TO SENTENCING

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

Thursday, February 19, 2026, at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 325
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Poepoe and Members of the Committee on Judiciary and Hawaiian Affairs: The County of Hawai'i, Office of the Prosecuting Attorney respectfully submits the following testimony **in opposition** to House Bill 1627.

HB 1627 would amend the repeat offender sentencing provisions under HRS § 706-606.5 to allow judges to sentence repeat felony offenders to terms of probation instead of prison where the new offense is an enumerated class C felony offense.

HB 1627 would benefit only a small number of recidivist felons who have demonstrated their propensity to commit serious felony crimes beyond any reasonable doubt by doing so repeatedly within a short period of time. Under current law, repeat offender enhancements under HRS § 706-606.5 apply only to specific, enumerated class C felony offenses, each of which the Legislature has deemed serious enough to merit mandatory minimum prison sentences for repeat offenders. Where the prior conviction was an enumerated class C felony offense, the lookback period is only five years. Defendants have a right to a jury trial on the issue of the applicability of the repeat offender enhancement, and repeat offenders receive due process of law before any enhanced sentence can be imposed. If strong mitigating circumstances exist, judges are already allowed to reduce the applicable mandatory minimum prison sentence where appropriate.

HB 1627 would allow yet another chance to avoid prison entirely to recidivist felons who have already had one or more second chances. By doing so, the measure would weaken the deterrent effect that HRS § 706-606.5 was intended to have on the most persistent criminals. Deterrence cannot work without certainty of punishment.

For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney respectfully **opposes** the passage of House Bill 1627. Thank you for the opportunity to testify on this matter.

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Today's Inmate; Tomorrow's Neighbor



COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Wednesday, February 18, 2026

2:00 PM

Room 325 and VIDEOCONFERENCE

SUPPORT for HB 1627 - AMENDING REPEAT OFFENDER SENTENCING

Aloha Chair Tarnas, Vice Chair Poepoe 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 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on February 2, 2026. We are always mindful that 799 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.

We appreciate this opportunity to express our **SUPPORT for HB 1627** that 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 Bureau of Justice Statistics (BJS) collects data on recidivism patterns of various offenders, including those on probation or discharged from prison. The

¹ DCR Weekly Population Report, February 2, 2026

<https://www.dcr.hawaii.gov/wp-content/uploads/2026/02/Pop-Reports-Weekly-2026-02-02.pdf>

research suggests that while longer sentences may deter recidivism, the effectiveness of incarceration as a deterrent varies and is not always strong. The impact of probation and parole is also a critical area of study, as these post-conviction supervision measures play a significant role in reducing recidivism rates.

We support HB 1627 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 HB 1627 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!



Committee: Judiciary & Hawaiian Affairs
Hearing Date/Time: Thursday, February 19, 2026, at 2:00pm
Place: Conference Room 325 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1627
Relating to Sentencing**

Dear Chair Tarnas, Vice Chair Poepoe, and Committee Members:

The ACLU of Hawai'i **supports HB1627**, which amends repeat offender sentencing provisions allowing courts to sentence defendants in class C felony cases to probation, in certain circumstances, with appropriate terms and conditions.

This bill would give greater discretion to sentencing judges to impose probation to defendants, rather than prison time.

At a time when our state is struggling with overcrowded and crumbling jails and prisons, this bill could provide some small relief. Additionally, **As Justice Anthony Kennedy stated, “the trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open, and reasoned way.”** Although Hawai'i has extensive laws for habitual crimes and associated sentencing, this bill claws back some discretion for judges.

What's more, we know that incarceration comes with a laundry list of consequences for both the individual incarcerated and our communities. According to a study published in 2020, “nearly 70 percent of released individuals have been rearrested, roughly 47 percent convicted of a new crime, and 25 percent returned to prison with a new conviction.”¹ An article from the Journal of Criminal Justice similarly notes “that incarceration is expensive, punitive, socially harmful, and fails to achieve its intended purpose of reducing reoffending.”² On the other hand, providing the option for probation in certain circumstances could lead to reduced prison populations, while providing for alternatives to incarceration for low-level offenders. In this case, repeat offenders.

¹ Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety.

<https://www.ncbi.nlm.nih.gov/books/NBK566325/>

² Journal of Criminal Justice, Vol. 96. The Impact of Incarceration on Reoffending: A Period-to-Period Analysis of Canadian Youth Followed into Adulthood. Jan.-Feb. 2025.

<https://www.sciencedirect.com/science/article/pii/S0047235224001843#:~:text=Based%20on%20their%20meta%20analysis,suited%20to%20addressing%20selection%20bias.>

Adopting HB1627 will help provide greater discretion to judges and potentially reduce prison populations.

Mahalo,

Josh Frost

Josh Frost
Policy Advocate
ACLU of Hawai‘i
jfrost@acluhawaii.org

With more than 4,000 Hawaii-based members, the mission of the American Civil Liberties Union of Hawai‘i is to protect the fundamental freedoms enshrined in the United States and Hawai‘i State Constitutions through legislative, litigation, and public education work. 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 our communities in Hawai‘i for over 60 years.



Dedicated to safe, responsible, humane, and effective drug policies since 1993

TESTIMONY IN SUPPORT OF HB 1627

TO: Chair Tarnas, Vice Chair Poepoe, and JHA Committee
FROM: Nikos Leverenz, DPFH Board President
DATE: February 19, 2026 (2:00 P.M.)

Drug Policy Forum of Hawai'i (DPFH) **supports** HB 1627, 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.

At a time when state policymakers are looking to commit over \$1 billion for a public-private partnership arrangement to construct and maintain a new jail facility on Oahu, it is even more imperative to consider policy changes to reduce the use of incarceration in that context as well as prison. The amendments to HRS Section 707-606.5 would afford a judge with a basis to provide a limited exception to its mandatory sentencing regime.

While this bill has merit, the legislature should endeavor to update its sentencing statutes and its parole and probation policies. The current role of the Hawaii Paroling Authority is an aberration among the sisterhood of states. Numerous national reform organizations, including the [Brennan Center for Justice](#), [The Sentencing Project](#), the [American Civil Liberties Union](#), the [Vera Institute of Justice](#), and [Families Against Mandatory Minimums](#), have called for the rollback and repeal of mandatory minimum sentencing.

Since 1993 DPFH has advanced public discussions and policy changes around Hawai'i's drug policies, which continue to advance severe criminal penalties and extended periods of criminal legal supervision. DPFH also supports policy changes around substance use and behavioral health issues that are anchored in harm reduction, public health, and human rights. These changes include broader access to community-based behavioral health treatment; the repeal of cannabis prohibition in favor of rational regulation; reducing the severity of sentencing laws, prosecutorial practices, penological practices, and criminal legal supervision; and advancing other changes to laws and policies to reduce the impact of the criminal legal system on individuals and families from under-resourced communities.

Mahalo for the opportunity to provide testimony.

HB-1627

Submitted on: 2/15/2026 10:25:39 PM

Testimony for JHA on 2/19/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
M. Leilani DeMello	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I KĀKO‘O ‘OLE this bill. In regards to repeat offenders, they should face stiffer sentences, not leniency. There have been too many examples in recent years where criminals have extensive history with the judicial system and then they commit a very serious offense that could have possibly been prevented if they were dealt with properly. Keep our streets safe. Keep our communities safe. Enforce the laws and punish those who repeatedly break them without regard.

Mahalo,

M. Leilani DeMello

‘Ōla‘a, Puna, Hawai‘i

HB-1627

Submitted on: 2/17/2026 8:26:58 PM

Testimony for JHA on 2/19/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn Eaton	Individual	Support	Written Testimony Only

Comments:

Aloha, Chair Tarnas, Vice Chair Poepoe, and Members of the Committee,

My name is Carolyn Eaton and I reside in Makiki. I give my strong support to this bill.

Mahalo for your consideration of my testimony and for all your work on behalf of the people of Hawai'i.

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

From: Veronica Moore, Individual Citizen

Date: February 18, 2026

RE: House Bill 1627
Measure Title: RELATING TO SENTENCING.
Report Title: Penal Code; Sentencing; Repeat Offenders; Probation

To All Concerned,

My name is Veronica Moore and I support House Bill 1627. Thank you for introducing this bill.

Sincerely,

Veronica M. Moore

HB-1627

Submitted on: 2/18/2026 1:30:55 PM

Testimony for JHA on 2/19/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cacique J Melendez	Individual	Oppose	Written Testimony Only

Comments:

I strongly opposed this bill as repeat offenders have already proven that they will not follow laws, regardless of how many chances they get such as probation or supervised release. This bill, if passed, will only serve as an opportunity for victims to be re-victimized and repeat criminals to skate by again with no consequences.