



**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. 2254, RELATING TO COURT-ORDERED PAYMENTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Thursday, February 12, 2026 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(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 strongly supports this bill and offers the following comments.

The purpose of the bill is to address a recent Supreme Court decision that limited the court's ability to facilitate payment of restitution owed to victims of crime. The bill would: (1) require the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fines, fees, sanctions, or court costs; (2) allow courts to designate a specified period of time or installments for payment of fees, fines, and restitution; (3) require the court to order the defendant to show cause why, upon default in payments, the default should not be treated as contumacious (willfully disobedient); and (4) require the court to set proof of compliance hearings for any cases in which restitution was ordered, until restitution has been paid in full.

In *State v. Fay*, 154 Hawai'i 305 (2024), the Hawaii Supreme Court interpreted section 706-644, Hawaii Revised Statutes, to mean that the court may only order a proof of compliance hearing regarding restitution payments if a defendant is on probation or defaults on payments. This decision made it more difficult to ensure that convicted defendants complied with orders for restitution and victims were properly compensated for their losses. As a result, victims of crime would be compelled to pursue civil actions to secure previously court-ordered restitution from uncooperative or

unapologetic defendants. This bill is needed to assist crime victims by re-establishing a clear court procedure for court-ordered restitution.

We respectfully ask this Committee to pass this bill. Thank you for the opportunity to provide support for this bill.



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 12, 2026, 2:00 PM
State Capitol, Conference Room 325 & Videoconference

By

Brandon M. Kimura
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2254, Relating to Court-Ordered Payments.

Purpose: Requires the Judiciary to contract with a collection agency or licensed attorney to collect delinquent court-ordered fees, fines, sanctions, and court costs. Allows courts to specify a period of time or installments for payment of fines, fees, and restitution, and requires the defendant to show cause if the defendant defaults on the payments.

Judiciary's Position:

The Judiciary takes no position on the merits of this measure and provides the following comments.

House Bill No. 2254 is a workable approach for addressing the issues raised by the Attorney General in the bill justification sheet, and for providing a mechanism for the district courts to enforce judgments consistent with priority in which payments must be applied in criminal cases under Haw. Rev. Stat. § 706-651. The Judiciary respectfully requests that the committee consider the suggested amendments below to facilitate implementation of the measure.



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Prior to *State v. Fay*, 154 Hawai‘i 305 (2024), proof of compliance dates in criminal cases were scheduled at time of sentencing by the district courts. If the bill’s intent is to authorize reinstatement of that practice, the Judiciary requests that the phrase “and has not yet paid all restitution in full” on page 3, lines 5-6, be deleted for clarity.

As currently written, the measure would take effect immediately upon approval. With respect to Section 3 of the measure, the Judiciary requests that the effective date be set for October 1, 2026, to provide for orderly implementation of proof of compliance hearings by the district courts.

With respect to Sections 1 and 2 of the measure, the Judiciary requests that the effective date be set for July 1, 2028. This will enable the Judiciary’s Financial Services Department (FSD) and the Judiciary Information Management System (JIMS) to make appropriate adjustments to the Judiciary’s accounting system and to procure necessary services from vendors. The Judiciary is currently assessing whether an appropriation would be needed for these adjustments.

Thank you for the opportunity to submit testimony on House Bill No. 2254.

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March 16, 2025

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HB2254: RELATING TO COURT-ORDERED PAYMENTS

Chair Tarnas, Vice Chair Poepoe and Members of the Committee on Judiciary and Hawaiian Affairs

The Office of the Public Defender **opposes** HB2254 as it is directly contrary to the holding of the Hawai'i Supreme Court in State v. Fay, 154 Hawai'i 305, 550 P.3d 1163 (2024) and does not accomplish its stated purpose of ensuring that defendants pay restitution.

In Fay, the defendant (Fay) crashed into a tree on her way home from a bar. She ultimately pleaded to charges of OVUII, no insurance and criminal property damage in the fourth degree. She also agreed to pay reasonable and verified restitution. Kahului Auto Sales, Inc., the owner of the car that Fay wrecked asked for \$6,504 in restitution. An independent restitution order, commonly called a free-standing order, was agreed to by Fay and the State. The judge asked Fay what she could afford to pay. Fay said \$50 a month and the court ordered her to pay that amount. On her own initiative, the judge ordered Fay to return to district court in six months and told Fay that she would have ongoing proof of compliance (POC) hearings until she paid off the restitution. The judge noted that payment of the restitution "may take awhile" and this was correct as it would take almost eleven years under that payment arrangement. Keep in mind that Fay pleaded to and was convicted of a petty misdemeanor offense which is normally punishable by up to 30 days in jail or six months of probation. The court ignored defense counsel's arguments that the proper method of enforcing the free-standing order of restitution was for the victim to initiate civil enforcement of the order or, if Fay defaulted, for the State or court to make a motion to have her appear under HRS § 706-644 to show cause why her default should not be treated as contumacious.

SB2254 violates the holding and reasoning in State v. Fay. While the Hawai'i Supreme Court based its holding in Fay on the fact that the district court did not have authority to immediately order a POC hearing, it made clear that the Court's real issue with holding repeated POC hearings was that it was unfair for the district court to exercise jurisdiction over Fay well in excess of the maximum probation term for her underlying offenses.

We apply HRS § 706-644(1)'s plain language. There are only two situations where a court injects itself as a post-judgment enforcer of a restitution order involving an unsupervised former defendant: compliance hearing upon default, or civil enforcement by the victim or State.

To hold otherwise twists common sense. *It stretches Fay's probation-like obligation to appear in court well past the maximum six-month probation term for criminal property damage in the fourth degree, her only probation-eligible offense.* HRS §§ 708-823, 706-623(1)(d) (2014 & Supp. 2021). *We have previously expressed fairness concerns when ongoing court supervision may result in "combined terms of imprisonment far in excess of the maximum term for [a defendant's] underlying misdemeanor crime."* State v. Agdinaoay, 150 Hawai'i 223, 227-28, 500 P.3d 408, 412-23 (2021) (overturned in part by statute).

If Fay keeps pace with the restitution order - paying \$6,500 in \$50 monthly increments (130 payments) - it will take her nearly eleven years to complete restitution, surpassing the ten-year probation period for a class A felony. HRS § 706-623(1)(a). If the district court continues to order Fay to appear in court every six months, she may have to return to court 21 times without ever being placed on the six-month period of probation for her petty misdemeanor conviction.

Courts presume the legislature does not intend absurd outcomes, so courts interpret laws to avoid unsound, incongruous, or irrational results. State v. Haugen, 104 Hawai'i 71, 76, 85 P.3d 178, 183 (2004). We do so here.

Fay, 154 Hawai'i at 309, 550 P.3d at 1167.

SB2254 makes into law the absurd, unsound, incongruous and irrational result that the Hawai'i Supreme Court avoided in Fay – endless POC hearings. Despite the articulated basis for this measure, to ensure payment especially for victims of crime to avoid “having to file a civil lawsuit to personally pursue court-ordered restitution” and to establish “a clear court procedure for court-ordered restitution[.]” there are no assurances that endless POC hearings ensure payment of fees or restitution. Endless POC hearings only ensure that court time and judicial resources will be wasted with court dockets remaining needlessly clogged up. The delays caused by adding yet another hearing to an already overflowing court dockets will be to delay processing of cases, which could result in dismissals of cases for violation of speedy trial/Hawai'i Rules of Penal Procedure , Rule 48, and unnecessary strain on court resources, on prosecutors, defense counsels, defendants and victims. By contrast, when the court converts restitution to a free-standing order, the victim can enforce the restitution as a civil judgment and employ its effectuating tools without the hassle of initiating a civil lawsuit or a strain on court resources. POCs do not ensure that defendants pay restitution which is what SB2254 seeks to guarantee. Rather, a free-standing order guarantees that the victim has a mechanism for repayment without having the initiate a civil lawsuit. A free-standing order effectuates the intent to have restitution repaid without the problems the Hawaii Supreme Court articulated in Fay.

In light of Fay and commonsense, the OPD suggests amending page 3, paragraph (1), lines 2-3, to delete the phrase, “whether as an as an independent order, as part of a judgment and sentence, or[.]” This would limit POCs to circumstances articulated in Fay, where the defendant is on probation or deferral plea supervision. This amendment would allow the court to monitor defendants’ progress and performance in accordance with the mandated supervision.

Thank you for the opportunity to comment on this measure.

HB-2254

Submitted on: 2/11/2026 2:53:07 PM

Testimony for JHA on 2/12/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shelby "Pikachu" Billionaire	Kingdom of The Hawaiian Islands & Ohana Unity Party	Oppose	Remotely Via Zoom

Comments:

HB2254 - Relating to Court-Ordered Payments

OPPOSE

Aloha,

Oppose HB2254, requiring Judiciary contracts for collecting delinquent fees/fines/sanctions, with show-cause for defaults. Aggressive collections disproportionately harm low-income Native Hawaiians facing unaffordability (e.g., 52.5% housing burden). It risks poverty cycles without cultural safeguards. Do not advance without protections.

Mahalo,
Pikachu Shelby Billionaire