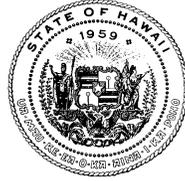


JOSH GREEN, M.D.  
GOVERNOR OF HAWAII  
KE KIA'AINA O KA MOKU'AINA 'O HAWAII



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

STATE OF HAWAII  
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**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  
3 offers amendments.

4 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following  
5 testimony on behalf of the Department.

6 Pursuant to Act 245, SLH 2024, HB2414 seeks to implement Final Report  
7 recommendations of the 2025 Advisory Committee on Penal Code Review. The bases for the  
8 proposed legislative changes have been detailed in the Final Report. The Department  
9 acknowledges the work of the Advisory Committee and appreciates the opportunity to  
10 participate.

11 The Department supports these amendments to the penal code and defers to the  
12 Department of the Attorney General to ensure all amendments conform to federal law.

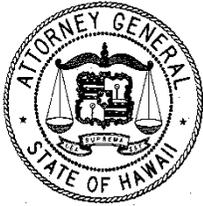
13 **Offered Amendments:** To address cases in which a defendant may be in the custody of the  
14 Department, but the defendant is housed at a location under the operation of an entity other  
15 than the Department, the Department respectfully requests amending page 10, line 19 to read

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

**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 (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 miniscule 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,

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

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**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.  
Page 2

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



STATE OF HAWAII – Ka MOKU'ĀINA 'O HAWAII  
**CRIME VICTIM COMPENSATION COMMISSION**  
Ke Komikina Uku Luaahi Kalaima  
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MARI McCAIG BELLINGER  
Chair

CLIFTON Y.S. CHOY  
Commissioner

JO KAMAE BYRNE  
Commissioner

PAMELA FERGUSON-BREY  
Executive Director

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.

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**February 4, 2026**

**HB 2414: RELATING TO THE ADMINISTRATION OF JUSTICE**

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

The Office of the Public Defender (OPD) had several representatives on the advisory committee on penal code review which was convened pursuant to Act 245 (2024). The report submitted by the advisory committee in accordance with the Act should reflect the opinions of the OPD representatives during the discussion of the proposed amendments to the Hawai'i Penal Code (HPC). The OPD also submits the following in regard to the proposed amendments to the Hawai'i Revised Statute (HRS) sections set forth in HB 2414.

PART II, SECTION 3: amending HRS § 701-107(2)

The OPD has no objection to the proposed amendments to HRS § 701-107(2).

PART II, SECTION 4: amending HRS § 701-108(2)

The OPD has no objection to the proposed amendments to HRS § 701-108(2).

PART II, SECTION 5: amending HRS § 701-116

The OPD has no objection to the proposed amendments to HRS § 701-116.

PART III, SECTION 7: amending HRS § 705-501

The OPD has no objection to amending HRS § 705-501 to use gender neutral references.

PART III, SECTION 8: amending HRS § 705-511(1) and (2)

The OPD has no objection to amending HRS §§ 705-511(1) and (2) to use gender neutral references.

PART III, SECTION 9: amending HRS § 705-520

The OPD has no objection to amending HRS § 705-520 to use gender neutral references.

PART III, SECTION 10: amending HRS § 705-521

The OPD has no objection to amending HRS § 705-521 to use gender neutral references.

PART III, SECTION 11: amending HRS § 705-523

The OPD has no objection to amending HRS § 705-523 to use gender neutral references.

PART IV, SECTION 13: amending HRS § 704-404

The OPD does not object to the amendment to HRS § 704-404 as the use of telehealth to conduct examinations is responsive to a shortage of examiners on the neighbor islands. An inability to retain qualified examiners may result in a delay in proceedings that affects the courts, the prosecution and the defense. The OPD emphasizes that the best practice is for such examinations to be conducted in-person.

PART IV, SECTION 14: amending HRS § 704-406

The OPD recognizes that it may sometimes be difficult to obtain signed consent from the defendant to obtain relevant medical, mental health, social, police and juvenile records, including those expunged. As significant privacy rights are at issue in the release of such records, the preference should always be for records, particularly those outside the normal purview of the court, to only be released with court oversight and with the signed consent of the defendant.

PART IV, SECTION 15: amending HRS § 704-407.5

The purpose of this amendment appears to be to try and expedite the fitness restoration process by allowing the court to rely on the opinions of Hawai‘i State Hospital doctors that the defendant has “regained fitness” by requiring that HSH keep the court apprised of the defendant’s status. The OPD has some questions about the implementation of the panel exam from three examiners to one examiner in non-Class A cases as it appears that this reduction is discretionary for Class B and C cases. The OPD is unsure when a court may appoint three examiners in Class B and C cases and what criteria the court uses to make this determination.

PART V, SECTION 17: amending HRS, Chapter 706

The OPD supports the proposed amendments to HRS, Chapter 706.

PART VI, SECTION 19: amending HRS § 709-906(19)

The OPD has no objection to the addition of the definition of “physically abuse” as this definition is consistent with current case law defining “physically abuse.” See e.g. State v. Nomura, 79 Hawai‘i 413, 903 P.2d 718 (App. 1995).

PART VII, Section 21: amending HRS § 710-1012

The OPD supports the proposed amendments to HRS § 710-1012 and notes that this amendment was unanimously supported by all members of the committee, including emergency services representatives.

PART VII, Section 22: amending HRS § 710-1021

The OPD supports the proposed amendments to HRS § 710-1021 and notes that this amendment was unanimously supported by all members of the committee.

PART VII, Section 23: repealing HRS § 710-1011

The OPD supports the repeal of HRS § 710-1011 and notes that this amendment was unanimously supported by all members of the committee, including law enforcement agencies.

PART VIII, Section 25: amending HRS, Chapter 711

The OPD supports the proposed amendments to HRS, Chapter 711.

PART VIII, Section 26: amending HRS § 711-1100

The OPD supports the proposed amendments to HRS § 711-1100.

PART VIII, Section 27: amending HRS §§ 711-1101(2) and (3)

The OPD supports the proposed amendments to HRS §§ 711-1101(2) and (3).

PART IX, Section 29: amending HRS, Chapter 712

The OPD supports the proposed amendments to HRS, Chapter 712.

PART IX, Section 30: amending HRS § 712-1243

The OPD supports the proposed amendments to HRS § 712-1243.

PART IX, Section 31: amending HRS § 712-1255(1)

The OPD supports the proposed amendments to HRS § 712-1255(1).

PART X, Section 33: amending HRS § 804-407

The OPD supports the proposed amendments to HRS § 804-407.

PART X, Section 34: amending HRS § 804-7.1

The OPD supports the proposed amendments to HRS § 804-7.1.

PART XI, Section 36: amending Act 19, Session Laws of Hawai'i 2020

The OPD supports the amendments to Act 19, Session Laws of Hawai'i 2020.

PART XI, Section 37: amending Act 23, Session Laws of Hawai'i 2023, as amended by Act 178, Session Laws of Hawai'i 2024

The OPD supports the amendments to Act 23, Session Laws of Hawai'i 2023, as amended by Act 178, Session Laws of Hawai'i 2024.

Thank you for the opportunity to comment on this measure.

**HB-2414**

Submitted on: 2/5/2026 10:11:43 AM

Testimony for JHA on 2/5/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Hawaii Health & Harm Reduction Center	Support	In Person

Comments:

Chair Tarnas, Vice Chair Poepoe, and JHA Committee:

Hawaii Health & Harm Reduction Center supports HB 2414, particularly the provision that would classify the possession of small quantities of drugs as a misdemeanor.

HHHRC strongly recommends policy changes around drug use, mental health conditions, and poverty that reduce the impact of the criminal legal system and provide broader access to non-coercive community-based treatment and social services.

Criminalization is the most severe and lasting stigma perpetuated by government. Those from under resourced communities are disproportionately impacted, often across generations. [Drug law enforcement, like other aspects of the state's criminal legal system, continues to undercut the inter-generational health and well-being of Native Hawaiians.](#)

HHHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions, and have also been deeply impacted by trauma related to histories of physical, sexual, and psychological abuse.

Mahalo for the opportunity to provide testimony.



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

## **TESTIMONY IN SUPPORT OF HB 2414**

TO: Chair Tarnas, Vice Chair Poepoe, and JHA Committee

FROM: Nikos Leverenz  
DPFH Board President

DATE: February 5, 2026 (2:00 P.M.)

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Drug Policy Forum of Hawai'i (DPFH) supports HB 2414, which implements recommendations pursuant to Act 245, SLH 2024 to amend the Hawaii Penal Code.

I served on the Advisory Committee on Penal Code Review, chaired by Judge Paul Wong, which submitted its [final report to the legislature](#) this past December. Judge Wong was a skilled and equanimous convenor. He deserves commendation from the residents of this state for his active stewardship of this year-long effort alongside his very active and often high-profile docket. It was an honor to serve with him and the other distinguished jurists who volunteered their valuable time to improve the operation of this state's criminal legal system.

While the changes recommended in the final report as not as far-reaching as they could have been given the parameters for adopting recommendations, the report provides a tangible and meaningful impetus for the legislature to strengthen its own ongoing institutional obligation to ensure that the state's criminal legal system metes justice with fairness, proportionality, and impartiality in composition and in operation.

My comments will focus on Part IX (p. 35), which establishes the offense of possession of a dangerous drug in the second degree. Judge Trish Morikawa adroitly headed the relevant subcommittee and came to this proposed reform along with members from the state Attorney General's office, county prosecutors, and law enforcement.

The proposed sub (3) currently provides: "Whenever a court sentences a person, grants a motion for deferral, or grants a conditional discharge, it shall also require that the person completes a substance abuse assessment and treatment, if necessary."

There should be a clearer demarcation between assessment and treatment. Every person who possesses or uses drugs does not have a substance use problem or substance use disorder, and placing these persons in treatment is a misallocation of scarce treatment resources. As with alcohol, problematic use and substance use disorder is a multi-faceted issue that requires greater attention to a person's health and not de facto eligibility for coerced treatment.

The proposed sub (3) should instead give the court discretion to refer a person to treatment should the required assessment indicate a medical need for such: "Whenever a court sentences a person, grants a motion for deferral, or grants a conditional discharge, it shall also require that the person completes a substance abuse assessment. The court may require participation in an appropriate level treatment upon recommended by the assessment."

Appendix B4 also deserves particular attention. Judge Morikawa's subcommittee gathered recent data demonstrating the very small quantities of drugs that triggered a charge for promotion of a dangerous drug in the third degree, which is a Class C felony that carries a prison term of up to five years. There was a notable discrepancy between the First Circuit (Honolulu County) and other counties, which attests to significantly more severe prosecutorial practices on O'ahu. The new offense proposed in Part IX is an improvement upon existing law, especially given the prosecutorial practices in the First Circuit that impact most of the state's population. This discrepancy is an indicator that the severity of drug law enforcement is contingent upon the county where a person resides, which runs afoul of the foundational premise offered by our government to pursue "equal justice under law."

Ideally, Hawaii should explicitly preclude **any** criminal charges for unusable traces and residue for possession under the proposed new offense or current offenses, which erroneously label possession for personal use as "promotion." This is the current practice in the Fifth Circuit, where residue is not charged.

Appendix B4 also demonstrates that most states classify drug possession for personal use as a misdemeanor.

Yet there are lasting consequences to a misdemeanor charge and conviction apart from extensive criminal legal system involvement. According to the [National Inventory of the Collateral Consequences of Conviction](#) (NICCC), the number of collateral consequences for any felony conviction is 171. Additionally, there are 117 collateral consequences that stem from a misdemeanor conviction. NICCC defines collateral consequences as "legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities."

Possession of drugs for personal use should be decriminalized entirely, in alignment with the [longstanding recommendation of the American Public Health Association](#) that “no punitive measures be taken against the users of alcohol, marijuana, or other substances when no other illegal act has been committed” and that “drug misuse must be primarily addressed as a public health issue” where punitive measures “should play a secondary role.” The American Medical Association also [adopted a new policy supporting the decriminalization of personal use and possession of drugs](#) in June 2024.

It was recognized by the larger committee that Hawaii has longest average term of probation in the nation, [per a 2020 report from the Pew Charitable Trusts](#). The state has not enacted meaningful probation reform since, nor have county prosecutors systematically advanced [drug policies grounded in harm reduction, public health, and racial justice](#). In the context of drug law enforcement, as with other aspects of the state’s criminal legal system, [Native Hawaiians are disproportionately impacted at each stage of the process](#)

Since 1993 DPFH has advanced public discussions and policy changes around the Hawai'i’s drug polices, 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 that reduce the impact of the criminal legal system on individuals and families from under-resourced communities.

Mahalo for the opportunity to provide testimony.

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TO: **Representative David A. Tarnas, Chair**

**Representative Mahina Poepoe, Vice Chair**

**House Committee on Judiciary and Hawai'ian Affairs**

RE: **H.B. 2414, Relating to the Administration of Justice**

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

**Conference Room 325**

Good afternoon, Chair Tarnas and Vice Chair Poepoe, and Members of the House Committee on Judiciary and Hawai'ian Affairs. I am providing testimony in **Support of H.B. 2414, with Amendments**. This Bill consists of the 2025 Hawai'i Penal Code Review Committee's recommendations for amendments to various Sections of the Hawai'i Penal Code. It is with pride and gratitude that I was honored to serve on this Committee with many hardworking, dedicated, and distinguished representatives of various sectors of Hawai'i's criminal justice system. I was also honored to have similarly served on the 2015 Penal Code Review Committee. To be clear, my comments represent only my personal views and not those of the Committee or any other members. However, my comments and suggestions regarding H.B 2414 are drawn from my nearly 50 years of experience as an advocate for crime victims, forty-four of which were as an employee of the Honolulu Prosecuting Attorney's Office, serving as Director of the Victim Witness Kokua Services from 1985 to 2022.

As mentioned above, I served on the 2025 Penal Code Review, and, for the most part, support its recommendations. However, I do have my own suggestions for amendments to Section 17 of the bill covering proposed amendments to H.R.S. Section 706-623. This Section provides for the length of terms of probation applying to the various levels of felonies and misdemeanors offenses within the H.R.S. including some outside of the Penal Code. The Committee's proposed amendments here are intended to reduce the probationary terms for certain types of offenses. These recommendations are based on the belief that shorter terms of probation are adequate for lower-level felons and a desire to bring Hawai'i in line with probation terms in other states. It is also based on the reality that many of Hawai'i's felony probationers are not currently being actively supervised by the Adult Client Services Branch of all Circuits due to inadequate staffing. While I could spend a substantial amount of time analyzing the various issues attendant to the potential consequences of a reduction in the period of probationary supervision

for the felons covered by the proposed statutory amendments in this bill I will confine myself to the area of concern of which I feel I have the greatest knowledge and expertise, victim restitution.

Victim restitution touches on principles that are at the foundation of our criminal justice system. These principles underly the process by which we establish the dimensions of the harm caused by an individual criminal act. In its simplest form, restitution is at its heart a direct means of requiring accountability for criminal offenders. And how do we measure this accountability? It is through the process of restitution that we demonstrate that we truly have a system that administers justice. The terms restorative justice and rehabilitation are but hollow platitudes without the full and accurate establishment of the amount of restitution, the requirement of its payment by the offender, and a meaningful process of collection. While we can tinker around with the elements of the restitution process, without basic adherence to the principles stated above any claim that we have a fair and just system of criminal law is disingenuous and without merit. The effectiveness of our restitution process puts our feet to the fire by testing any credibility that we have in declaring that our legal process fulfills the high ideals that we so often hear loudly proclaimed when comparing our justice system to other legal systems that we perceive to be inferior or corrupt.

Why then is restitution so important? It is typically the one concrete measure by which we assess the harm caused by an offender. While psychological harm and traumatic emotional injury are abstract concepts, restitution, measured in dollars and cents, provides a means of quantification that can be understood and appreciated by both victim and offender. Restitution that is fulfilled can have a significant impact on the financial restoration of a crime victim. It is also a meaningful act that provides concrete evidence of an offender's willingness to take responsibility for their actions. Successfully completing a restitution obligation is the very first step in offender rehabilitation. Failure to pay restitution clearly demonstrates that an offender is not sincere about their willingness to take responsibility for their actions, nor are they serious about embarking upon a path of rehabilitation. For me, restitution is the price that an offender must pay to successfully re-enter civil society.

Although we lacked any meaningful statistics regarding the rate of successful completion of restitution payments by probationers in Hawai'i during the Committee's deliberations, past research on this issue and anecdotal information from victims suggest that a substantial amount of restitution owed by probationers goes unpaid in Hawai'i. Unfortunately, crime victims in Hawai'i lack much leverage in achieving a better rate of payment as the enforcement of the payment of restitution relies entirely on collection efforts applied by the Judiciary through its Adult Client Services Branch or court hearings held to compel non-compliant probationers to comply with their restitution obligations. Once a probationer has been discharged from probation there is little to

encourage them to continue to pay restitution. Unfortunately, post probationary means of collection such as the establishment of free standing orders of restitution that rely on the victim's knowledge, ability, and resources to pursue offenders civilly or tax refund intercepts have been abject failures in achieving restitution collection for victims. While most restitution is a critical financial boost to the victim, the amounts are seldom sufficient to attract the type of civil legal assistance required to effect the recovery of restitution and pay for the attendant legal costs. Navigating civil recovery and collection is too complex for the average victim and I have never encountered a single victim who has been successful in recovering restitution through this method. Similarly, the tax refund interception method of recovery is non-functional due to the failure of the State Tax Department to establish any procedures for this method of recovery even though legislation establishing this process is almost ten years old. Thus, it becomes clear why probationary terms and the encouragement of the probation officers and the courts are so instrumental in restitution collection process. This fact should be weighed carefully when considering the changes in probationary terms proposed in H.B. 2414. One effective way to increase the collection of restitution from probationers is to require all probationers seeking early discharge to complete the payment of the restitution that they owe. Early discharge from probation is a privilege and should be earned through meritorious conduct including the satisfaction of their restitution obligations. This slight change in the Statute will serve as a significant incentive for offenders to complete the payment of restitution. The language for such a change is provided below:

*(f) Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause; except upon a conviction under section 709-906, the court may sentence the defendant to a period of probation not exceeding one year.*

*The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time, **provided that the court has determined that that the defendant has completed the payment of restitution to the victim of the offense or other parties who have reimbursed the victim for their financial losses incurred as a result of the crime.** Prior to the court granting early discharge, the defendant's probation officer shall be required to report to the court.*

An additional amendment that I believe is necessary to improve the restitution is the provision of adequate notice to victims that the court is preparing to discharge an offender from probation. Given the critical role that probation supervision has in

successfully achieving restitution to the victim or victims of the offense for which the defendant has been convicted, it is fitting that victims receive reasonable notice prior to the defendant's discharge from probation. As noted below, notice to victims of the placement of the defendant on probation is already required by existing statutory language so adding notice of discharge from probation closes the communication loop with victims in a way that promotes transparency, clarity, and closure for victims.

**§706-624.5 Notice of probation.** (1) *Whenever the court places a defendant convicted of an offense against the person as described in chapter 707, or of an attempt to commit such an offense on probation without requiring the serving of a term of imprisonment, the court shall provide advance written or electronic notice to each victim of such offense of the probation and of the court's intention to discharge a defendant from probation, whenever the victim has made a written or electronic request for such notice. Notice shall be given to the victim at the street address, e-mail address, or telephone number (for text messages) given on the request for notice or such other address point of contact as may be provided to the court by the victim from time to time.*

(2) *Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or the officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority.*

In summary, given the importance of restitution in the criminal justice process to both victim and offender, I strongly urge the Committee to consider approving the House Bill 2414 with the amendments proposed in my testimony above. Restitution is an ancient and foundational concept of our justice system and deserves to be a top priority in the structure of our penal code. Please put victims first. Thank you for your time and consideration.

HOUSE OF REPRESENTATIVES  
THE THIRTY-THIRD LEGISLATURE  
REGULAR SESSION OF 2026

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair  
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Rep. Mark J. Hashem    Rep. Diamond Garcia  
Rep. Kirstin Kahaloa   Rep. Garner M. Shimizu

NOTICE OF HEARING

DATE:    Thursday, February 5, 2026  
TIME:    2:00 PM  
PLACE:   VIA VIDEOCONFERENCE  
          Conference Room 325  
          State Capitol  
          415 South Beretania Street

Submitted by James Waldron Lindblad.

<a href="#">HB</a>	RELATING TO THE ADMINISTRATION OF JUSTICE.	JHA,
<a href="#">2414</a>	Implements recommendations pursuant to Act 245, SLH 2024 to amend the	FIN
<a href="#">Status</a>	Hawaii Penal Code.	

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Support HB 2414, Suggested Amendments

**Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:**

I respectfully submit testimony in support of HB 2414, with suggested amendments intended to clarify and improve the operation of the daily bail provisions discussed during the Act 245 process. My comments are offered in the spirit of implementation and refinement, not expansion, and are focused on ensuring that daily bail functions consistently and predictably within Hawai'i's existing pretrial framework.

Daily bail was contemplated as a limited release option for defendants who lack immediate access to traditional secured bail, allowing courts to authorize release while maintaining accountability and court oversight. Experience since its introduction suggests

that additional clarity would help ensure this option remains available in appropriate cases, particularly for individuals of limited means, without altering judicial discretion or public safety considerations.

The proposed amendments are narrow and procedural. They seek to align daily bail practice with the purposes of pretrial release by reducing uncertainty, promoting uniform application, and ensuring that decisions remain tied to appearance and compliance rather than technical outcomes. In that way, HB 2414 supports fairness, access to justice, and the efficient administration of Hawai'i's bail system.

**The purpose of these amendments is to:**

- Reaffirm judicial discretion in considering motions to set aside bail forfeitures based on the circumstances of each case.
- Confirm that sureties and bail agents may move to set aside forfeitures, even if a prior motion has been filed by another party.
- Extend the period for filing such motions to ninety days and permit later filings where justice so requires.
- Promote statewide consistency in the application of HRS Chapter 804 with respect to bail forfeiture procedures.
- Clarify that relief under Rule 60 of the Hawaii Rules of Civil Procedure may be available as a discretionary post-judgment remedy in appropriate forfeiture cases.
- Ensure that bail forfeiture statutes are applied in a manner consistent with the non-punitive purposes of pretrial release, judicial discretion, and fundamental principles of fairness and equity.

**SECTION 2. Section 804-1, Hawaii Revised Statutes, is not amended.**

**SECTION 3. Section 804-51, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:**

(1) After entry of judgment for the State on a forfeiture of bail and before the expiration of ninety days from the entry of such judgment, the court may, on application, direct that the forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, if it appears that justice does not require enforcement of the forfeiture. Such application may be made by the defendant, the surety insurer named on the bond, the defendant's attorney, the surety, or the bail agent, and the filing of one such application shall not preclude the filing of another by a different party. The court may also entertain a motion to set aside forfeiture beyond the ninety-day period on such terms as justice requires, consistent with the standards set forth in Rule 60 of the Hawaii Rules of Civil Procedure.