

**WRITTEN 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. 2479, S.D. 1, RELATING TO CRIMINAL PROCEDURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 3, 2026 **TIME:** 10:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Mark S. Tom,
Deputy Attorney General, at 808-586-1160)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) submits the following testimony in opposition to this bill.

The purpose of this bill is to: (1) require courts to impose reduced sentences to convicted offenders who demonstrate by a preponderance of the evidence that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor to the offense committed; (2) allow defendants who raise Use of Force in Self-Protection (commonly known as self-defense) at trial, to present such evidence for consideration in determining their culpability for the charged offense; and (3) create a mechanism for offenders who are currently serving their sentence, to request re-sentencing based on this prior history.

While the bill is well-intentioned, courts already consider such information during the pre-trial, trial, and sentencing phase of the case. There are also multiple mechanisms for the court to revisit and/or reconsider an offender's sentence. Moreover, the 2025 Penal Code Review Committee (PCRC) included subcommittees that addressed chapters 703 (which contains justification defenses) and 706 (which contains sentencing considerations) of the Hawaii Revised Statutes (HRS), yet there is no indication that the changes proposed in this bill were presented or evaluated. See: Final Report of the 2025 Advisory Committee on Penal Code Review, pp. 59-61.

SENTENCING

Pursuant to section 706-601, HRS, courts are required to order and "accord due consideration" to a pre-sentence correctional diagnosis of the defendant before

imposing sentence for every felony case, every case in which the defendant is less than twenty-two years old, and every case in which the court orders it. Pursuant to section 706-602, HRS, the pre-sentence diagnosis and report shall be made by personnel assigned to the court or other agency and shall include:

- (a) An analysis of the **circumstances attending the commission of the crime**;
- (b) The defendant's history of delinquency or criminality, **physical and mental condition, family situation and background**, economic status . . . education, occupation, and personal habits; . . . [and]
- (e) Any other matters that the reporting person or agency deems **relevant or the court directs to be included**.

(Emphasis added.) In issuing its sentence, the court is required, pursuant to section 706-606(1), HRS, to consider "[t]he nature and circumstances of the offense and the history and characteristics of the defendant." Rather than imposing additional requirements that duplicate what is already in law, the Department recommends relying on the current parameters of the pre-sentence diagnosis and report as well as the required considerations placed upon the court in sentencing. The current law permits any relevant information regarding a defendant's prior experience as a victim of family violence, dating violence, or child abuse to be introduced and requires it to be considered.

The Department also notes that the bill's required reductions in sentencings will create a risk of disparate sentences. To maintain consistent and proportionate sentencing, the Department strongly recommends that the Committee delete the sentencing amendments proposed by this bill.

SELF-DEFENSE AND/OR DEFENSE OF OTHERS

If a defendant wishes to present any information at trial, regarding prior history with the alleged victim, that evidence would be evaluated for admissibility during pre-trial and/or trial proceedings, under current evidentiary rules. Including these factors within the statutes pertaining to self-defense and/or defense of others is misplaced and confusing, as these amendments (see amendments to section 703-304(7) and (8), page 9, line 16, to page 11, line 12; and amendments to section 703-305(3) and (4), page 13, line 3 to 18) do not clarify, expand, or contract these defenses, but seem to dictate the

admissibility of certain evidence for purposes of establishing these defenses. Because the Hawai'i Rules of Evidence continue to dictate the admissibility of evidence in criminal cases, these types changes should be left to the Hawai'i Supreme Court's Standing Committee, which is tasked with making such revisions.

RECONSIDERATION OF SENTENCE

Rather than creating a separate procedure for offenders to seek re-sentencing for reasons of family violence, dating violence, or child abuse, which could ultimately lead to disparate outcomes for both victims and defendants, the Department strongly recommends that the Committee rely on the existing law.

Defendants who wish to seek reconsideration of their sentence, or the admissibility of evidence, already have a means to pursue these matters. The Hawaii Rules of Penal Procedure (HRPP) allow for requests to reconsider or reduce a sentence. See HRPP Rule 35. If certain evidence is barred from admittance at trial, either party may pursue an interlocutory appeal, through which the appellate courts may review these decisions while the case is still pending.

Following a conviction and sentencing, either party may request reconsideration of the conviction or sentence through the appellate courts.

Even after the appeals process has been exhausted, Rule 40, HRPP, allows for post-conviction relief for individuals in custody or under judgment to challenge their convictions or sentences for a wide variety of reasons.

2025 PENAL CODE REVIEW COMMITTEE

Act 245, Session Laws of Hawaii 2024, requested the Judicial Council to appoint a committee to examine revisions to the Hawaii Penal Code. Thereafter, the Hawai'i State Judiciary convened a PCRC comprised of over sixty representatives from the Office of the Public Defender, the County Prosecutors, members of the Legislature, and various other stakeholders, divided by cross-sections into eight sub-committees. The PCRC and/or its subcommittees met monthly for approximately one year and proposed numerous amendments to the Hawaii Penal Code.

Notably, subcommittees were assigned to review chapters 703 and 706, HRS, yet there was no mention of any need or desire for the changes proposed in this bill.

Thank you for the opportunity to provide testimony on 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

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, March 3, 2026, 10:15 a.m.
State Capitol, Conference Room 016 & Videoconference

By

Jennifer Awong
Staff Attorney, Circuit Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2479, Senate Draft 1, Relating to Criminal Procedure.

Purpose: Allows a defendant to introduce certain evidence to receive a reduced sentence for certain offenses if the defendant can show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor for the offense for which the defendant is being sentenced. Allows a defendant to introduce certain relevant evidence when raising the justification defenses of self-defense or defense of others to show that the defendant was subjected to acts of family violence, dating violence, or child abuse by the alleged victim. Allows the circuit court imposing a criminal sentence to correct or reduce the sentence and to suspend or probate all or any part of the sentence imposed. Allows a person previously sentenced by a circuit court to petition the court to be re-sentenced to a reduced sentence if the defendant can show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor for the offense for which the defendant was sentenced. (SD1)

Judiciary's Position:

The Judiciary takes **no position** on the intent of the proposed legislation and provides the following comments and noted concerns regarding the provisions of Section 1 and Section 8 of the proposed legislation. In summary, the Judiciary respectfully suggests additional clarity as to



the terms of imprisonment and sentences to be imposed in Section 1, additional clarity in the time periods set forth for a defendant's motion to reduce or correct a sentence in Section 8, and amendments to Section 8 to ensure that petitions filed after one year seeking sentencing under the provisions of Section 1 are adjudicated pursuant to the process and procedures of Rule 40 of the Hawai'i Rules of Penal Procedure ("HRPP").

In Section 1, proposed subsection (3)(a) at page 3, lines 11-14, requires a defendant who was convicted of a crime punishable by life imprisonment¹ to a "term of imprisonment of not less than ten years and not more than thirty years" and states at lines 19-20 that "the defendant may be eligible for parole..." The Judiciary respectfully suggests adding additional language at line 12 that the sentence shall be an "indeterminate term of imprisonment of not less than ten years and not more than thirty years" and specifying at line 20 that the eligibility for parole shall be "in accordance with sections 706-669 and 706-670." If the intent of the measure is for defendants to be eligible for parole, similar language should be added to subsection (b) on page 4, line 3 and line 7.²

Further, in Section 1, the provisions of subsection (3)(b) appear to require the court to sentence a defendant to a term of imprisonment for all felony offenses under Chapter 707 of the Hawai'i Revised Statutes ("H.R.S"), including those for which the defendant might otherwise be eligible for probation. It is not clear whether this was intended. Also, regarding the provision relating to the maximum fine in subsection (3)(b) on page 4, lines 6-7, it is not clear what the legislation is requiring the sentence to be with respect to the fine – perhaps the word "and" or "or" should be included after "could have been subjected" at lines 5-6 as it appears a word or phrase is missing.

In Section 8, the newly proposed subsection (b) to H.R.S. § 806-71 would expand the provisions of Rule 35(b) of the HRPP by permitting any defendant to seek a reduction or correction of their sentence anytime up to one year of the date their sentence is imposed or up to 120 days after the affirmance of the sentence after a direct appeal.³ Subsection (b) of Section 8, at page 20, lines 9 – 11, states that "[t]he time periods prescribed in subsection (c) shall require the defendant to file a motion [to reduce or correct a sentence] within the time periods; provided that the court shall not be constrained to issue its order or hear the matter within the time periods." However, there are no time periods prescribed in subsection (c) relating to when a defendant must file the petition permitted by subsection (c). The provisions of subsection (c) permit a defendant to file their petition at any time after sentencing and further permits

¹ These offenses would be murder or attempted murder in the first and second degree.

² If such language is not included, the provision could be interpreted as requiring a determinate term of imprisonment which would render the defendant ineligible for parole and would require the defendant to serve the entire term of years in custody.

³ Currently, under HRPP Rule 35, a defendant may already seek a reduction of their sentence within 90 days of the sentence being imposed or within 90 days of the affirmance of the sentence after a direct appeal or a dismissal of the appeal. A defendant may seek correction of an illegal sentence at any time through HRPP Rule 40 and within 90 days of imposition of the sentence under the provisions of HRPP Rule 35(a).



defendants to file as many petitions as often as they want.⁴ The first line of subsection (b) specifies that the court only retains jurisdiction to correct or reduce a sentence for those delineated time periods set forth in subsection (b). Therefore it is unclear what the intent is with respect to the time periods for filing a motion to correct or reduce a sentence under the newly proposed subsection (b) to H.R.S. § 806-71.

With respect to subsection (b), the Judiciary would note that Hawai‘i currently has a “true” indeterminate sentencing scheme for felony offenses.⁵ This means that unlike many other indeterminate term sentencing states where a sentencing judge has the discretion to sentence a defendant to a term within a range of years (i.e. a 10-to-20-year, or 20-to-life term of imprisonment), or a determinate term sentencing state where a sentencing judge has the discretion to order a specific term of imprisonment (i.e. a 2, 7, 15, 20, or even a 50+ year term of imprisonment), our sentencing judges are, for almost all cases, only statutorily permitted to sentence a defendant to an indeterminate term of imprisonment of five years for “C” felonies,⁶ ten years for “B” felonies,⁷ twenty years for “A” felonies,⁸ life with the possibility of parole for murder or attempted murder in the second degree,⁹ and life without the possibility of parole for murder or attempted murder in the first degree.¹⁰ There are very few exceptions to these five, ten, twenty, and life terms of imprisonment, and all of them include the requirement for the court to sentence the defendant to a specified indeterminate term.¹¹ For “C” and “B” felonies, the court can consider a term of probation, with some exceptions, instead of the indeterminate term of imprisonment, however for most “A” felonies and cases involving murder, the sentence MUST be to the indeterminate term of imprisonment outlined above.¹² Thus, the provisions of subsection (b) which state that the court may “suspend or probate all or any part of the sentence imposed” may not be applicable to most “A” felonies and cases involving murder.¹³

Regarding subsection (c) in Section 8, the Judiciary would respectfully suggest making any petition filed pursuant to subsection (c) subject to the provisions of HRPP Rule 40 by adding a sentence at page 21, line 4 which states: “Any such petition shall be filed and determined in

⁴ The proposed new subsection (c) of H.R.S. § 806-71 requires the court to dismiss the petition without prejudice if “the court determines that the petitioner has not met the criteria provided in section 706- (2)....” Page 22, lines 8-10 of the bill.

⁵ Hawai‘i is the only state in the country with such a system.

⁶ H.R.S. § 706-660(1)(b).

⁷ H.R.S. § 706-660(1)(a).

⁸ H.R.S. § 706-659.

⁹ H.R.S. § 706-656(2).

¹⁰ H.R.S. § 706-656(1).

¹¹ Specifically, certain “B” and “C” drug offenses can result in an indeterminate term of years of anywhere between five and ten years for “B” felonies and one and five years for “C” felonies (*see* H.R.S. § 706-660(2)) and young adult offenders can be sentenced to indeterminate terms of eight, five, and four years for “A,” “B,” and “C” felonies, respectively (*see* H.R.S. § 706-667).

¹² H.R.S. § 706-620.

¹³ In fact, there are numerous statutory provisions throughout the Penal Code that require specific sentences, “notwithstanding any other provisions/law to the contrary.” Examples include, but are not limited to: H.R.S. § 706-606.5 (“Sentencing of repeat offenders”); H.R.S. § 706-606.6 (“Repeat violent and sexual offender; enhanced sentence”); H.R.S. § 706-659 (“Sentence of imprisonment for class A felony”); and H.R.S. § 712-1240.7 (“Methamphetamine trafficking”).



Senate Bill No. 2479, SD 1 Relating to Criminal Procedure
Senate Committee on Judiciary
Tuesday, March 3, 2026 at 10:15 a.m.
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accordance with Rule 40 of the Hawai‘i Rules of Penal Procedure” and deleting the remaining provisions of page 21 and page 22 lines 1-18. This will ensure that those petitions with colorable claims will receive a hearing, with the appointment of counsel, and that any ruling by the court on the petition would be appealable and not just those that result in an amended judgment.

Finally, the Judiciary would note that the provisions of the measure may result in increased resource needs for the circuit courts across the state given the expanded deadlines for reconsideration of sentences and the newly proposed petitions for sentencing review.

Thank you for the opportunity to testify on this legislation.



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

Hawai‘i Supreme Court Standing Committee on the Hawai‘i Rules of Evidence

Testimony to the Thirty-Third Legislature, 2026 Regular Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, March 3, 2026 at 10:15 a.m.

State Capitol, Conference Room 016

By

Catherine H. Remigio, Chair

Hawai‘i Supreme Court Standing Committee on the Hawai‘i Rules of Evidence

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2479, S.D. 1, Relating to Criminal Procedure

Purpose: Provides that a Defendant may receive a reduced sentence for a felony offense if the court finds that the Defendant was subjected to acts of family violence, dating violence, or child abuse which constituted a significant contributing factor to the offense. Allows a defendant to introduce certain “relevant” evidence when raising the justification defenses of self-defense or defense of others to show that the defendant was subjected to acts of family violence, dating violence, or child abuse by the alleged victim. Allows the circuit court imposing a criminal sentence to correct or reduce the sentence and to suspend or probate all or any part of the sentence imposed.

Position of the Hawai‘i Supreme Court Standing Committee on the Hawai‘i Rules of Evidence:

The Hawai‘i Supreme Court Standing Committee on the Rules of Evidence¹ respectfully offers the following comments on Senate Bill No. 2479, S.D. 1.

¹ Evidence Committee members include: Judge Catherine H. Remigio (Chair), Judge John M. Tonaki, Judge Paul B. Wong, Professor John Barkai, Deputy Attorney General Justine T.M. Hura, Public Defender Jon Ikenaga, Philip H. Lowenthal, John-Anderson Meyer, Lisa Woods Munger, Judith A. Pavey, Loretta A. Sheehan, Deputy Prosecuting Attorney Brian Vincent



1. The Committee appreciates the removal of language stating that the Rules of Evidence shall apply to sentencing matters contained in the bill. The removal of this language is consistent with Hawai'i Rules of Evidence ("HRE") section 1101(d)(3), which provides that HRE is inapplicable to sentencing proceedings.
2. Section 2(7) and Section 3(5) allow the defense to offer "relevant evidence" subject to HRE 401, 402 and 403. The use of the term "relevant" could be misleading in the context of the HRE.

Pursuant to HRE 401, "Relevant evidence" refers to "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." HRE 402 provides that relevant evidence is generally admissible. HRE 403 allows for relevant evidence to be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence."

Whether evidence is "relevant" is determined on a case-by-case basis by a judge.

It would be appropriate to provide that a defendant may provide "evidence" (as opposed to "relevant evidence") subject to HRE 401, 402 and 403.

Thank you for the opportunity to provide comments on Senate Bill No. 2479, S.D. 1.



TESTIMONY IN SUPPORT OF SENATE BILL 2479 SD1
RELATING TO CRIMINAL PROCEDURE

Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo
(Senate Committee on Judiciary)

Ke Kapitala ‘o Hawai‘i
(Hawai‘i State Capitol)

Malaki 3, 2026

10:15 AM

Lumi 016

Aloha e Chair Rhoads, Vice Chair Gabbard, a me Members of Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo:

The Office of Hawaiian Affairs (OHA) **SUPPORTS SB2479 SD1** which creates a trauma-informed sentencing procedure for certain felony offenses when a defendant can show they were subjected to family violence, dating violence, or child abuse and that the abuse was a significant contributing factor to the offense. The measure also clarifies that relevant evidence may be introduced when a defendant raises self-defense or defense of others, and it establishes a pathway for certain individuals already serving sentences to petition the court for re-sentencing based on evidence not previously considered.

Survivors of violence are sometimes forced into circumstances where harm, coercion, and trauma shape their choices and survival strategies. In those cases, the justice system should be equipped to recognize the role that battering, post-traumatic stress, and ongoing control can play in a person’s actions, without excusing criminal conduct or compromising public safety. This measure provides courts with a structured, accountable process to consider credible evidence of abuse at sentencing, ensuring that punishment is proportional and individualized.

Importantly, the bill specifies the types of evidence that may be admissible at sentencing, including evidence that the defendant sought law enforcement assistance, medical attention, or services from counselors and domestic violence programs; evidence of prior statements; expert testimony regarding the effects of battering and post-traumatic stress; and evidence related to the alleged perpetrator’s history of violence, including restraining order and protection order filings. By allowing the court to consider a fuller factual record, this bill helps prevent survivors from being punished without meaningful consideration of the violence that contributed to the offense conduct.

For Native Hawaiians who are disproportionately impacted by justice system involvement, policies that support trauma-informed, proportionate sentencing can help reduce the compounding harms of incarceration while maintaining accountability. This bill represents a careful and practical approach to ensuring that sentencing decisions reflect both public safety needs and the realities of abuse and coercion.

For these reasons, the Office of Hawaiian Affairs respectfully urges this Committee to **PASS SB2479 SD1**. Mahalo nui for the opportunity to provide testimony on this important measure.

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



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TESTIMONY ON
S.B. 2479 SD1
RELATING TO CRIMINAL PROCEDURE

March 1, 2026

The Honorable Karl Rhoads
Chair
The Honorable Mike Gabbard
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments **in opposition to S.B. 2479 SD1, Relating to Criminal Procedure**. This bill would, *inter alia*: 1) mandate a reduction in sentence for any offense involving a defendant that was subjected to acts of family violence, dating violence or child abuse that were a significant contributing factor in the offense committed, 2) allow evidence of these acts to support a defensive use of force claim at trial, and 3) allow a defendant to petition the sentencing court for a correction, reduction or suspension of sentence within a year of sentence imposition or one-hundred twenty days after direct appeal proceedings are completed.

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

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

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

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

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

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

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

For these reasons, the Department of the Prosecuting Attorney, County of Maui **opposes S.B. 2479 SD1**. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries. Thank you very much for the opportunity to provide testimony on this bill.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL 2479, SD1

A BILL FOR AN ACT
RELATING TO CRIMINAL PROCEDURE

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Tuesday, March 3, 2026, at 10:15 a.m.
Via Videoconference
State Capitol Conference Room 016
415 South Beretania Street

Honorable Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee on Judiciary: The County of Hawai'i, Office of the Prosecuting Attorney respectfully submits the following testimony **in opposition** to Senate Bill 2479, SD1.

S.B. 2479, SD1, would create a secondary sentencing procedure in which a criminal defendant could introduce evidence, including expert testimony, to show that they were subjected to acts of family violence, dating violence, or child abuse, and that the acts were a significant contributing factor to the offense(s) of which the defendant was found guilty. If the court finds that the defendant has proven this by a preponderance of the evidence, the court is then required to give the defendant a sentence reduction—reducing life imprisonment without possibility of parole to a maximum of thirty years with parole, and halving the maximum prison sentence for any other felony. S.B. 2479, SD1, would also expand the justification defenses of self-defense and defense of others to allow defendants who raise them to present evidence that they were subjected to acts of family violence, dating violence, or child abuse by the alleged victim. Finally, S.B. 2479, SD1, would greatly expand the ability for convicted offenders to petition the court to reduce their sentence beyond the timelines allowed by the current Rule 35 of the Hawai'i Rules of Penal Procedure, allowing a petition based on acts of family violence, dating violence, or child abuse to be brought up to a year after the conviction or up to 120 days after the conclusion of an appeal.

Although we respect the intent of the bill to provide criminal defendants opportunities in the criminal process to explain and justify their conduct, we believe that existing procedures already provide defendants with ample opportunities to do so, during sentencing, during the presentation of defenses at trial, and in petitions for reduction of sentence or other post-conviction relief. Defendants can already present evidence including expert testimony regarding the trauma they experienced in their lives, and much of this is already being presented to judges through pre-sentence investigation reports. Defendants can also already present evidence

relevant to a justification defense for the use of force at trial, including facts to show the defendant's subjective belief that the force used was necessary. The purpose and intent of this bill is already served by existing law.

We are very concerned that the mandatory sentence reduction proposed in this bill is extreme—from life imprisonment without parole to a maximum of thirty years with parole, and from any other felony to half or less of the normal maximum sentence. This extreme reward and the low bar of proof by a preponderance, without rules of evidence, would greatly incentivize every defendant facing a serious felony conviction to make their case for a trauma-based reduction in sentence.

We are especially concerned about the impact of this bill upon crime victims. While we respect the intent of the bill is to protect survivors and to recognize that sometimes a criminal defendant can also be a victim, the reality is that in many violent crimes arising in the context of domestic abuse and intimate partner violence, there is one dominant aggressor. A dominant aggressor is one who controls and dominates the other person in an abusive relationship, often with behavior including patterned escalation, intimidation, and coercive control. Often a dominant aggressor will intentionally twist and portray their victim's defensive reactions as aggressive, and it can seem at first glance that the true victim was the primary aggressor. Police work hard to make the right call during investigations, and prosecuting attorneys use discretion where necessary to do justice.

Unfortunately, this bill would provide domestic abusers with a broad new opportunity to attempt to twist their victims into aggressors. Defendants would be able to show a jury all a victim's prior acts without any of their proper context within the abusive relationship, and without needing to show any proximate connection to the necessity of their use of force against the victim on the specific occasion.

The criminal justice system is already hard on crime victims and protective of criminal defendants. We are concerned that this bill could make the system even more so. For the foregoing reasons, the County of Hawai'i, Office of the Prosecuting Attorney respectfully **opposes** the passage of Senate Bill 2479, SD1. Thank you for the opportunity to testify on this matter.



JOHN PELLETIER
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WADE M. MAEDA
DEPUTY CHIEF OF POLICE

March 2, 2026

LATE

Honorable Senator Karl Rhoads, Chair
Honorable Senator Mike Gabbard, Vice Chair
and Members
Judiciary Committee
The Thirty-Third Legislature
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

SUBJECT: Testimony in opposition of S.B. 2479 SD1, Relating to Criminal Procedure.

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

I respectfully submit this testimony in opposition to SB 2479 SD1.

While we recognize and greatly appreciate the Legislature's efforts to address the serious and lasting impacts of domestic violence, family violence, and child abuse, we have significant concerns about the potential unintended consequences of SB 2479 SD1.

SB 2479 SD1 provides that if abuse is found to have been a "significant contributing factor" in the commission of an offense, a reduction in sentencing and related parole eligibility would be mandatory. We believe this language removes too much judicial discretion and could result in outcomes that are neither just nor proportionate to the harm caused by these types of incidents.

Every criminal case is unique, shaped by its specific facts, circumstances, harms, and the individual histories of those involved. Sentencing requires judges to carefully evaluate the totality of these factors in each case. By making mitigation automatic once a single threshold finding is met, the bill risks imposing a one-size-fits-all approach in cases that demand individualized consideration. Judges must retain the discretion to weigh trauma as one factor among many, rather than being required to apply a mandatory reduction.

We are also concerned that the standard of what constitutes abuse as a "significant contributing factor" remains broad and subjective. Without clear, objective, and measurable standards, courts may apply this requirement inconsistently. Combined with a mandatory sentencing reduction, this ambiguity increases the likelihood of uneven sentencing across jurisdictions and between individual judges.

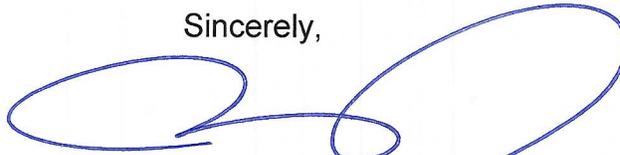
In addition, SB 2479 SD1 may substantially increase burdens on the courts. The bill is likely to invite extensive evidentiary hearings, expert testimony, and historical documentation of abuse in a wide range of cases, including those where the offender may not have the type of traumatic background the bill is intended to address. This could lengthen proceedings and place additional strain on already limited judicial resources.

While past trauma is unquestionably an important contextual factor in sentencing, it should not automatically override the responsibility individuals bear for the harm they cause. We are concerned that this measure may reduce accountability for serious criminal conduct beyond what was intended.

Lastly, we have serious concerns about the potential impact on victims' rights and confidence in the justice system. If sentence reductions become effectively mandatory in cases involving serious harm, victims of domestic violence, family violence, and child abuse as well as their families may feel that justice has not been fully served.

For these reasons, we respectfully oppose SB 2479 SD1.

Sincerely,



For JOHN PELLETIER
Chief of Police



SENATE COMMITTEE ON JUDICIARY
SB 2479 SD1 Relating to Criminal Procedures
March 3, 2026, at 10:15 AM, State Capitol CR 016 and Videoconference

Thank you for the opportunity to provide testimony in opposition to SB2479.

SB 2479 SD1 is repugnant to the rights and dignity of victims of serious crimes.

This bill mandates a sentence reduction if the court determines, based on evidence, that the defendant experienced acts of family violence, dating violence, or child abuse, and that these acts served as a significant contributing factor in the commission of the offense. It also eliminates judicial discretion of the appropriate sentencing.

For the safety and dignity of victims of serious crimes, please vote no on SB2479 SD1.

Respectfully submitted,
Jamie Detwiler, President, Hawaiian Islands Republican Women

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Fern Holland
Arryl Kaneshiro



OFFICE OF THE COUNTY CLERK

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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 25, 2026

**TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL**

ON

SB 2479, SD 1, RELATING TO CRIMINAL PROCEDURE

Senate Committee on Judiciary

Tuesday, March 3, 2026

10:15 a.m.

Conference Room 016

Via Videoconference

Dear Chair Rhoads and Members of the Committee:

Thank you for this opportunity to provide testimony in SUPPORT of SB 2479, SD 1, Relating to Criminal Procedure. My testimony is submitted in my individual capacity as a member of the Kaua'i County Council and the Public Safety & Human Services Committee Chair.

I recognize that situations involving domestic violence sometimes put survivors in a position of needing to defend themselves or another family member, often by preventing the abuser from being able to continue to inflict harm. Therefore, it is critical to allow any type of mitigating evidence or evidence offered to give insight into a defendant's past trauma, which may have relevance at sentencing or trial. Further, requiring proof of significant contributing factors may, in some cases, justify a reduced sentence.

Thank you again for this opportunity to provide testimony in support of SB 2479, SD 1. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via email to cokcouncil@kauai.gov.

Sincerely,

FELICIA COWDEN
Councilmember, Kaua'i County Council

RM:mn

To: Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary

From: Veronica Moore, Individual Citizen

Date: March 2, 2026

RE: Senate Bill 2479 SD1
Measure Title: RELATING TO CRIMINAL PROCEDURE.
Report Title: Family Violence; Dating Violence; Child Abuse; Criminal Procedure;
Sentencing; Reduced Sentence; Evidence

To All Concerned,

My name is Veronica Moore and I support Senate Bill 2479 SD1. This bill is in keeping with Executive Order No. 24-01, 'Making Hawai'i a Trauma-Informed State.' The importance of this bill should not be understated. Thank you for your consideration.

Sincerely,

Veronica M. Moore