TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026

ON THE FOLLOWING MEASURE:
S.B. NO. 2479, S.D. 2, RELATING TO CRIMINAL PROCEDURE.

BEFORE THE:
HOUSE COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

DATE: Tuesday, March 24, 2026 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 329

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

Chair Marten and Members of the Committee:

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

This bill would: (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 those 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 such history.

While the bill is well-intentioned, courts already consider this information during the pre-trial, trial, and sentencing phases of a 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) examined chapters 703 (which contains justification defenses) and 706 (which contains sentencing considerations), Hawaii Revised Statutes (HRS), yet did not identify or evaluate the changes proposed here. 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 in 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 19, to page 11, line 15; and amendments to section 703-305(3) and (4), page 13, line 7, to page 14, line 2) do not clarify, expand, or contract these defenses, but instead appear to dictate the admissibility of certain evidence for purposes of establishing these defenses. Because the Hawai‘i Rules of Evidence govern the admissibility of evidence

in criminal cases, these types of 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 existing law.

Defendants who wish to seek reconsideration of their sentence, or the admissibility of evidence, already have a means to do so. 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 admission 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 review of the conviction or sentence through the appellate courts. The latest version of the bill references HRPP Rule 40, in proposed subsection 806-71(c), HRS (page 21, lines10-11). However, the Department is concerned that this reference would create confusion as this Rule has existing standards that differ from the wording stated in this bill. The mechanisms available to defendants under these rules are already clearly stated.

2025 PENAL CODE REVIEW COMMITTEE

Act 245, Session Laws of Hawaii 2024, requested that the Judicial Council 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 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

House Committee on Human Services & Homelessness
Representative Lisa Marten, Chair
Representative Ikaika Olds, Vice Chair

Tuesday, March 24, 2026, 10:00 a.m.
State Capitol, Conference Room 329 &Videoconference

By

Jennifer Awong
Staff Attorney, Circuit Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2479, SD 2, 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. (SD2)

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 and additional clarity in the time periods set forth for a defendant's motion to reduce or correct a sentence in Section 8. The Judiciary acknowledges and appreciates the amendments made by the Senate Committee on Judiciary addressing some of the concerns raised in the Judiciary's previous testimony.

In Section 1, the provisions of subsection (3)(b) on page 4 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 sentenced" or the word "by" should be eliminated at line 6.

In Section 8, the newly proposed subsection (b) to H.R.S. § 806-71 would expand the provisions of Rule 35(b) of the Hawai'i Rules of Penal Procedure ("HRPP") by permitting any defendant[1] to seek a reduction or correction of their sentence anytime up to one year of the date their sentence was imposed or up to 120 days after the affirmance of the sentence after a direct appeal.[2] Subsection (b) of Section 8, at page 20, lines 14-16 state 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) to seek sentencing under the new provision in Section 1, nor were there any time periods set forth in Senate Bill No. 2479, SD 1. The provisions of subsection (c) in the current draft of the measure permit a defendant to file their petition in accordance with HRPP Rule 40, which in turn permits the petition to be filed at any time subject to the requirements that it contain evidence that was not part of the record at sentencing. 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. It would appear based on the first sentence of subsection (b) that any such motion must be filed, heard, and ruled upon within one year of the date the sentence was imposed or up to 120 days after the affirmance of the sentence after a direct appeal. Further, with the revisions to subsection (c), the provisions of subsection (b) on page 21, lines 2 – 3, should be amended to remove reference to subsection (c). Specifically, both line 2 and line 3 should be amended to remove the phrase "and subsection (c)."

Additionally, with respect to subsection (b), the Judiciary would note that Hawai'i currently has a "true" indeterminate sentencing scheme for felony offenses.[3] This means that

[1] This provision is not limited to those defendants who may have been the subject of family violence, dating violence, or child abuse.
[2] 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).
[3] Hawai'i is the only state in the country with such a system.

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,[4] ten years for "B" felonies,[5] twenty years for "A" felonies,[6] life with the possibility of parole for murder or attempted murder in the second degree,[7] and life without the possibility of parole for murder or attempted murder in the first degree.[8] 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.[9] 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.[10] 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.[11]

Finally, the Judiciary notes that authorizing judicial reduction of sentences up to a year after imposition of sentence and up to 120 days after the affirmance of the sentence after a direct appeal, as set forth in subsection (b), could functionally eliminate the finality of judgments in criminal actions for all cases – judgments and sentences that were already issued by sentencing judges who were required to consider the factors set forth in H.R.S.§ 706-606, judgments and sentences that were already subject to appeal and continue to be subject to post-conviction and habeas relief, and judgments and sentences that were relied on by victims. Given this greatly expanded sentencing review provision, the Judiciary cautions that these motions may result in increased resource needs for the circuit courts across the state.

Thank you for the opportunity to testify on this legislation.

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[4] H.R.S. § 706-660(1)(b).
[5] H.R.S. § 706-660(1)(a).
[6] H.R.S. § 706-659.
[7] H.R.S. § 706-656(2).
[8] H.R.S. § 706-656(1).
[9] 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).
[10] H.R.S. § 706-620.
[11] In fact, there are numerous statutory provisions throughout the Penal Code that require specific sentences, "notwithstanding any other provisions/law to the contrary." Examples inlcude, 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").

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STATE OF HAWAIʻI
OFFICE OF THE PUBLIC DEFENDER

March 23, 2026

SB 2479 SD2: RELATING TO CRIMINAL PROCEDURE

Chair Lisa Marten, Vice Chair Ikaika Olds and Members of the House Committee on Human Services and Homelessness

The Office of the Public Defender (OPD) **strongly supports the intent of SB 2479 SD 2 with the following comments:**

The purpose of SB 2479 SD2, is to allow, as mitigating evidence, the life experiences of criminal defendants who were subjected to family violence, dating violence or child abuse as significant contributing factors in the offense for which the defendant is being sentenced or tried. To fulfill the purposes listed above, SB 2479 SD2 would amend current statutes to allow a court to consider the trauma a defendant has experienced as a victim of said violence during sentencing or as part of the defense of justification at trial. Lastly, SB 2479 SD2 would allow for a court to review a request by a sentenced defendant for reconsideration of their sentence wherein said mitigating evidence had not been presented.

The OPD has always believed that any type of mitigating evidence or evidence offered to give insight into a defendant's past trauma can have relevance at any sentencing or trial and thus supports the purpose of SB 2479 SD2. However, the OPD does have a concern regarding the amendment to HRS section 806-71.

The proposed amendment to HRS 806-71 (c) allows for any defendant previously sentenced to submit a petition under Rule 40 of the Hawaii Rules of Penal Procedure to be sentenced under the new proposed procedure established by SB 2479 SD2. However, the wording states that rule 40 can only be used under these terms: "if the petition includes evidence that was not part of the record of the

case at any sentencing hearing". In other words, a defendant would only be able to seek mitigation of a prior sentence if evidence supporting said mitigation was not already part of the sentencing record. In almost every case wherein a person has suffered from the violence as outlined in SB2479 SD2, such evidence is contained in the pre-sentencing report which is provided to the sentencing court. Thus, almost all previously sentenced defendants would not be able to seek the relief provided by SB2479 SD2, because the evidence to support such relief was already presented or known to the court at the time of their original sentence, and when the changes to HRS 706 as proposed by SB2479 SD2 were not yet codified. Thus, almost all persons previously sentenced to the passage of SB2479 SD2, would not be able to benefit from said legislation. The OPD believes that this is not the intention of the legislature as it contemplates passage of SB2479 SD2. The OPD would suggest that the language: "if the petition includes evidence that was not part of the record of the case at any sentencing hearing" be stricken from the proposed bill.

Thank you for the opportunity to comment on this measure.

LATE

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

House Committee on Human Services & Homelessness
Representative Lisa Marten, Chair
Representative Ikaika Olds, Vice Chair

Tuesday, March 24, 2026 at 10:00 a.m.
State Capitol, Conference Room 329

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. 2, 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. (SD2)

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 Evidence[1] respectfully offers the following comments on Senate Bill No. 2479, S.D. 2.

[1] Evidence Committee members include: Judge Catherine H. Remigio (Chair), Judge John M. Tonaki,

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(3) 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. 2.

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,
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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL 2479, SENATE DRAFT 2

A BILL FOR AN ACT
RELATING TO CRIMINAL PROCEDURE

COMMITTEE ON HUMAN SERVICES & HOMELESSNESS
Representative Lisa Marten, Chair
Representative Ikaika Olds, Vice Chair

Tuesday, March 24, 2026, at 10:00 a.m.
Via Videoconference
State Capitol Conference Room 329
415 South Beretania Street

Honorable Chair Martin, Vice-Chair Olds, and Members of the Committee on Human Services & Homelessness: The County of Hawaiʻi, Office of the Prosecuting Attorney respectfully submits the following testimony **in opposition** to Senate Bill 2479, Senate Draft 2.

S.B. 2479, SD 2, 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, SD 2, 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, SD 2, 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 Hawaiʻi 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 an indeterminate term of imprisonment of not less than ten years and not more than thirty years with parole, and from any other felony to an indeterminate term of imprisonment of not less than one year and not more than one-half the maximum period of time for which the defendant could have been sentenced. 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, Senate Draft 2. Thank you for the opportunity to testify on this matter.

RICHARD T. BISSEN, JR.
Mayor

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TESTIMONY ON
S.B. 2479 SD2
RELATING TO CRIMINAL PROCEDURE

March 23, 2026

The Honorable Lisa Marten
Chair
The Honorable Ikaika Olds
Vice Chair
and Members of the Committee on Human Services and Homelessness

Chair Marten, Vice Chair Olds, 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 SD2, 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.

While we understand the Legislature's concerns about ensuring that the criminal justice system properly considers an offender's background during criminal proceedings, we have multiple concerns about how this bill attempts to address these concerns. First, our courts are already required by HRS §706-606 (1) to consider the history and characteristics of the defendant at sentencing, 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 prior 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. Furthermore, the mandatory reduction requirement does not allow a sentencing court to consider whether the defendant's background could reasonably be considered a significant factor in committing the offense.

For example, 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 them repeated texts in the middle of the night (Harassment). Similarly, 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, e.g.,: 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 force used was necessary because the victim punched the defendant once while they were dating six months ago.

For these reasons, the Department of the Prosecuting Attorney, County of Maui **opposes S.B. 2479 SD2**. 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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Victim/Witness Program 808-241-1898 or 800-668-5734

The Honorable Joy A. San Buenaventura, Chair
Senate Committee on Health and Human Services
Thirty-third State Legislature
Regular session of 2026
State of Hawai'i
March 23, 2026

RE: SB 2479 SD 2. Relating to Criminal Procedure

Dear Chair San Buenaventura and members of the Committee on Health and Human Services:

Thank you for the opportunity to provide testimony in **OPPOSITION** to this bill. This bill would require a reduction in sentence for offenders who demonstrate by a preponderance of the evidence that they were subjected to acts of prior family, dating or child violence and that the acts were a significant contributing factor to the offense committed. It would also allow defendants who raise a self-defense claim at trial to present such evidence of prior victimization for consideration in determining their responsibility for the charged offense. Finally, this bill would create a mechanism for offenders currently serving their sentence to request resentencing based on this prior history.

Our Office recognizes the impact trauma and victimization can have on individuals who later enter the criminal justice system. Hawaii courts already have the authority – and obligation – to consider a defendant's personal history, including prior victimization, when determining an appropriate sentence. This individualized sentencing framework allows judges to weigh all relevant mitigating factors alongside the seriousness of the offense, the need to protect the public, and the interests of justice.

If passed, this bill would create a categorial pathway for reduced sentences based solely on a defendant's status as a prior victim, regardless of the nature of the current offense. This risks producing outcomes that are inconsistent with the principles of proportionality and accountability that

underpin our sentencing system. The mandatory sentence reduction proposed in this bill would drastically impact sentencing consistency with only a requirement of proof by a preponderance without any rules of evidence.

This bill could lead to reduced sentences in cases where the defendant's past experience is unrelated to the offense at issue. In those circumstances, the law risks elevating a defendant's past victimization over the impact on the current victim, effectively diminishing the weight given to the harm suffered in the present case.

There are multiple opportunities throughout the criminal justice process for the prior victimization of defendants to be considered – at the charging stage, through expert testimony, after preparation of the presentence investigation and diagnostic report, at a motion to reconsider sentence and in petitions for post conviction relief.

Our State's current sentencing structure already provides judges with the discretion necessary to consider trauma in a thoughtful, case-specific manner. By contrast, this measure risks outcomes that are inconsistent, difficult to justify and insufficiently protective of victims. For these reasons, our Office opposes SB 2479 SD2.

POLICE DEPARTMENT
COUNTY OF KAUA'I

DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

RUDY TAI, CHIEF OF POLICE
MARK T. OZAKI, DEPUTY CHIEF OF POLICE

March 23, 2026

LATE

The Honorable Representative Lisa Marten, Chair
And Honorable Members of the Committee on Human Services & Homelessness
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Opposition to SB 2479 SD2, Relating to Criminal Procedure

Chair Marten, Vice Chair Olds, and Members of the Committee:

On behalf of the Kaua'i Police Department, I am submitting testimony in **OPPOSITION to SB 2479 SD2**, which would allow defendants to seek reduced sentences or resentencing by showing that prior experiences of family, dating, or child violence significantly contributed to their offense, and permit such evidence to be considered in determining criminal responsibility.

The Kaua'i Police Department recognizes the impact of trauma and prior victimization and supports efforts to address these issues. However, this bill raises concerns regarding public safety, accountability, and sentencing consistency. Hawai'i's courts already have broad discretion to consider a defendant's history, including prior victimization, when determining an appropriate sentence. This individualized approach ensures that all relevant factors—including the seriousness of the offense and the impact on victims—are properly balanced.

By creating a categorical pathway for sentence reduction based on a preponderance of the evidence, this bill risks inconsistent outcomes and may diminish accountability for criminal conduct. It could also elevate a defendant's past experiences over the harm caused to current victims and place additional strain on the justice system through resentencing petitions.

For these reasons, the Kaua'i Police Department respectfully urges the Committee to **OPPOSE SB 2479 SD2**. Thank you for the opportunity to provide testimony.

Respectfully submitted,

Rudy Tai

Rudy Tai
Chief of Police
Kaua'i Police Department

OFFICE OF HAWAIIAN AFFAIRS

ʻŌlelo Hōʻike ʻAha Kau Kānāwai

TESTIMONY IN SUPPORT OF SENATE BILL 2479 SD2

RELATING TO CRIMINAL PROCEDURE

Ke Kōmike Hale o ka Lawelawe Kānaka a me ka Pilikia Hoʻokuewa

(House Committee on Human Services & Homelessness)

Ke Kapitala ʻo Hawaiʻi

(Hawaiʻi State Capitol)

Malaki 24, 2026	10:00 AM	Lumi 329

Aloha e Chair Marten, Vice Chair Olds, and Members of the House Committee on Human Services & Homelessness:

The Office of Hawaiian Affairs (OHA) **SUPPORTS SB2479 SD2** 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 the abuse was a significant contributing factor to the offense. The measure also clarifies that relevant evidence of abuse may be introduced when a defendant raises self-defense or defense of others, and it preserves a path for people already serving sentences to seek relief through Rule 40 of the Hawaiʻi Rules of Penal Procedure. OHA appreciates the recent amendments clarifying sentencing structure and parole eligibility and directing petitions from incarcerated persons into an existing procedural framework.

Survivors of violence are sometimes forced into circumstances where coercion, trauma, and ongoing control shape their choices and survival strategies. In those cases, the justice system should be equipped to recognize the role battering, post-traumatic stress, and abuse can play in a person's actions, without excusing criminal conduct or compromising public safety. This measure provides courts with a structured process to consider credible evidence of abuse at sentencing and, where the court makes the required findings, to impose defined indeterminate sentencing ranges rather than defaulting to punishment unmoored from those realities.

Under the recent amendments, a person convicted of a crime punishable by life imprisonment must be sentenced to an indeterminate term of not less than ten years and not more than thirty years, and a person convicted of another felony must be sentenced to an indeterminate term of not less than one year and not more than one-half the otherwise available maximum, with parole eligibility governed by existing law. The SD2 amendments also narrow and clarify the re-sentencing path for persons already serving sentences. Rather than creating a separate new petition procedure, the measure now requires those petitions to be filed and determined under Rule 40. OHA supports that clarification because it retains access to relief while grounding review in an established procedural process.

Importantly, this bill continues to specify the categories of evidence a court may consider, including evidence a defendant sought law enforcement assistance, medical attention, or support from counselors or domestic violence programs, prior statements, expert testimony on battering and post-traumatic stress, and evidence tied to the alleged perpetrator's history of violence. By allowing the court to consider a fuller factual record, this measure helps prevent survivors from being sentenced without meaningful consideration of the violence and coercion that contributed to the offense .

For Native Hawaiians, who are disproportionately impacted by both interpersonal violence and criminal legal system involvement, trauma-informed and proportionate sentencing policy can help reduce the compounding harms of incarceration while maintaining accountability. This bill remains a careful and practical approach to ensuring sentencing decisions reflect both public safety needs and the realities of abuse, coercion, and survival.

For these reasons, the Office of Hawaiian Affairs respectfully urges this Committee to **PASS SB2479 SD2**. Mahalo nui for the opportunity to provide testimony on this important measure.