

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 Finance
Representative Chris Todd, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, April 2, 2026, 2:00 p.m.
State Capitol, Conference Room 308

By

The Honorable Paul B. Wong
Circuit Court of the First Circuit
Chair, Advisory Committee on Penal Code Review

Bill No. and Title: Senate Bill No. 2721 S.D. 1, H.D. 1, Relating to the Administration of Justice.

Purpose: Implements recommendations from the 2025 Advisory Committee on Penal Code Review, established pursuant to Act 245, SLH 2024, to amend the Hawai'i Penal Code. Effective 7/1/3000. (HD1)

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

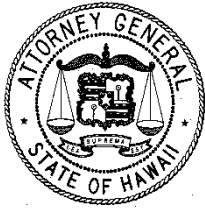


(“DOH”) and the Governor’s office, law enforcement officers, advocates for victims’ rights, advocates for prisoner rights, the Director of the Department of Corrections and Rehabilitation (“DCR”), and interested members of the public, advocacy groups, and government staff.

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.



**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. 2721, S.D. 1, H.D. 1, RELATING TO THE ADMINISTRATION OF JUSTICE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, April 2, 2026

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 308

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

Chair Todd 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 18-21. 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, line 12). Moreover, the court may terminate an offender's probation term early if it is deemed appropriate to do so.

Possessing a dangerous drug

The Department has serious concerns about part IX of the bill (page 35, line 15, through page 38, line 10), 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.

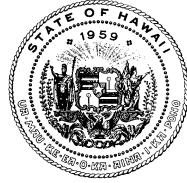
While the Department believes these changes are well-intentioned, making possession of dangerous drugs a misdemeanor—even for these small amounts—will greatly diminish the court's ability to impose effective treatment and oversight to individuals who suffer from substance abuse disorders. The period 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.

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



KENNETH S. FINK, M.D., M.G.A., M.P.H.
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**Testimony in SUPPORT of SB 2721 SD1 HD1
RELATING TO THE ADMINISTRATION OF JUSTICE**

REPRESENTATIVE CHRIS TODD, CHAIR
REPRESENTATIVE JENNA TAKENOUCI, VICE CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: Tuesday, April 2, 2026, 2:00 p.m.

Location: 308 & Video

1 **Fiscal Implications:** Undetermined.

2 **Department Position:** The Department of Health (Department) supports this measure.

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

5 Pursuant to Act 245, SLH 2024, SB 2721, SD1, HD1, seeks to implement Final Report
6 recommendations of the 2025 Advisory Committee on Penal Code Review. The bases for the
7 proposed legislative changes have been detailed in the Final Report. The Department
8 acknowledges the work of the Advisory Committee and appreciates the opportunity to
9 participate.

10 The Department supports the amendments made by the House Committee on Judiciary
11 and Hawaiian Affairs to the penal code involving telehealth and availability of records, and
12 defers to the Department of the Attorney General to ensure all amendments conform to
13 federal law.

14 **Offered Amendments:** None.

15 Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
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TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Vacant
Deputy Director
Corrections

Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

TESTIMONY ON SENATE BILL 2721, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO THE ADMINISTRATION OF JUSTICE.

by

Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Finance
Representative Chris Todd, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, April 2, 2026, at 2:00 p.m.
State Capitol, Conference Room 308 & via Videoconference

Chair Todd, Vice Chair Takenouchi, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) **supports the intent** of Senate Bill (SB) 2721, Senate Draft (SD) 1, House Draft (HD) 1, which seeks to implement recommendations pursuant to Act 245, SLH 2024, to amend the Hawai'i Penal Code and provides the following comments:

Section 34 (Part X – starting on Page 41 / Lines 17 through Page 42 / Line 6) places the responsibility for court-ordered electronic monitoring on DCR providing the legislature appropriates funds specifically for this purpose. The DCR would require an annual legislative appropriation of approximately \$100,000 to support the costs of the electronic monitoring equipment leases with an active global positioning system (GPS), and immediate route deviation and device tampering notification capabilities. While DCR supports the intent of this measure, it should be noted that costs associated with SB 2721, SD 1, HD 1 fall outside of the priorities as outlined in the Governor's Executive Budget package.

Thank you for the opportunity to provide testimony in **support of the intent** of SB 2721, SD 1, HD 1.

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April 1, 2026

SB2721 SD1 HD1: RELATING TO THE ADMINISTRATION OF JUSTICE

Chair Todd, Vice Chair Takenouchi and Members of the Committee on Finance

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 comments in regard to the proposed amendments to the Hawai'i Revised Statute (HRS) sections set forth in SB2721 SD1 HD1.

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.



Hawai'i Psychological Association

For a Healthy Hawai'i

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COMMITTEE ON FINANCE

Representative Chris Todd, Chair

Representative Jenna Takenouchi, Vice Chair

Thursday, April 2, 2026, 2:00 P.M. - VIA VIDEO CONFERENCE – ROOM 308
TESTIMONY SUBMITTING COMMENTS TO SB 2721, HD1 RELATED TO THE
ADMINISTRATION OF JUSTICE

The Hawaii Psychological Association (HPA) offers comments regarding SB 2721, HD1 which proposes amendments to the Hawai'i Penal Code (HPC). Specifically, we have reservations about the process of re-evaluating individuals for fitness to proceed.

The vague language proposed in the amendments to Section 704-406 on fitness re-evaluations after a person is found unfit to proceed appears to undermine the role of trained mental health examiners in determining fitness to proceed. The language is unclear with respect to the settings in and conditions under which fitness re-evaluations will take place. A letter from a treating doctor is not an adequate substitute for an independent examination by a non-treating mental health professional. Treating doctors may be biased, perhaps unconsciously, to either please their employer with a finding of unfitness to reduce the State Hospital census or to protect their patients from prosecution.

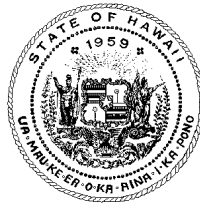
HPA recommends that the evaluations continue to be conducted without the defendants' lawyers being present so that examinees can speak freely about any differences of opinion they may have with their attorneys. Also, patients may be less likely to express misperceptions about the judge when the judge is present. If the purpose of the amendment is to reduce the backlog of evaluations at the Department of Health's Court Evaluation Branch, the shortage-differential salary should be increased in order to fill empty positions.

Mahalo for the opportunity to provide testimony on this important measure.

Sincerely,

Alex Lichten, Ph.D., Chair, HPA Legislative Action Committee

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII – Ka MOKU'ĀINA 'O HAWAI'I
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MARI McCAIG BELLINGER
Chair

CLIFTON Y.S. CHOY
Commissioner

JO KAMAE BYRNE
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON SENATE BILL 2721, SD1, HD1
RELATING TO THE ADMINISTRATION OF JUSTICE

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Chris Todd, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, April 2, 2026; 2:00 PM
State Capitol, Conference Room 308 & Videoconference

Good afternoon, Chair Todd, Vice Chair Takenouchi, and Members of the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission (“Commission”) with the opportunity to testify on Senate Bill 2721, SD1, HD1, Relating to the Administration of Justice. SB2721, SD1, HD1, includes a number of technical and substantive amendments to the Penal Code, including offenses in HRS section 706-623 that reduce the term of probation from 4 years to 3 years for the Class C felonies including where the court may be required to order the defendant to pay restitution to their victim. The shorter term of probation reduces the time the Judiciary has to enforce restitution collection by 25%, negatively impacting crime victims. The Commission suggests the following amendments to SB2721, SD1, HD1: 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 needs 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 the following amendments to SB 2721, SD1, HD1: 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.

Dennis M. Dunn

Kailua, HI 96734

dennismdunn47@gmail.com

TO: **Representative Chris Todd, Chair**

Representative Jenna Takenouchi, Vice Chair

House Committee on Finance

RE: **S.B. 2721, S.D. 1, H.D. 1 Relating to the Administration of Justice**

HEARING: **Thursday, April 2, 2026, 2:00 p.m..**

Conference Room 308

Good afternoon, Chair Todd and Vice Chair Takenouchi, and Members of the House Committee on Finance. I am providing testimony in **Support of S.B. 2721, S.D. 1, H.D. 1, 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 S.B 2721, S.D. 1. H.D. 1 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 Committee, 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 shortening the length of terms of probation applying to 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 S.B. 2721, S.D. 1, H.D.1. 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 victims and offenders, I strongly urge the Committee to consider approving the Senate Bill 2721, S.D. 1, H.D. 1 **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 and do not throw them under the bus. Thank you for your time and consideration.