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

Wednesday, February 18, 2026 at 9:05 a.m.
State Capitol, Conference Room 016 & Videoconference

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, Relating to the Administration of Justice.

Purpose: Implements recommendations pursuant to Act 245, SLH 2024 to amend the Hawai‘i Penal Code

Judiciary's Position:

The Judiciary fully supports the endeavors of the 2025 Advisory Committee on Penal Code Review (the "Committee"), which was appointed by the Honorable Mark E. Recktenwald (Ret.), then Chief Justice of the State of Hawai‘i, and the Judicial Council, to carry out the request of the 2024 Legislature in Act 245, Sessions Law of Hawai‘i 2024, to review and recommend revisions to the Hawai‘i Revised Statutes Title 37 (the "Penal Code"). The Committee consisted of 61 members from a diverse cross-section of the community affected by the criminal laws in Hawai‘i. The membership included the Senate Judiciary Committee Chairperson, the House of Representatives Judiciary and Hawaiian Affairs Committee Chairperson, 16 jurists representing all courts (Supreme Court, Intermediate Court of Appeals, Circuit Court, Family Court, and District Court) and all four Judicial Circuits, prosecutors from all counties and the Department of the Attorney General, lawyers from the Public Defender's Office and the private defense bar, medical professionals from the Department of Health ("DOH") and the Governor's office, law enforcement officers, advocates for victims' rights,

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 responsiblity 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.

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February 16, 2026

SB2721: RELATING TO THE ADMINISTRATION OF JUSTICE

Chair Rhoads, Vice Chair Gabbard and Members of the Committee on Judiciary

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.

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.

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

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Testimony in SUPPORT of SB 2721
RELATING TO THE ADMINISTRATION OF JUSTICE

SENATOR KARL RHOADS, CHAIR
SENATOR MIKE GABBARD, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: Wednesday, February 18, 2026, 9:05 a.m. Location: 016 & Video

Fiscal Implications: Undetermined.

Department Position: The Department of Health (Department) supports this measure and offers amendments.

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

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

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

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

as follows: "requested to be conducted utilizing telehealth at facilities operated by the named department(s) in which defendants may be hospitalized or incarcerated."

As a measure to expedite judicial proceedings by improving the accessibility of records maintained by public agencies, the Department requests an update to the proposed language in Section 13, page 13, line 10 to read as follows:

"at [~~the location~~] locations where the [~~records are maintained~~] defendant has been or is hospitalized or incarcerated upon request"

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

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TESTIMONY ON SENATE BILL 2721
RELATING TO THE ADMINISTRATION OF JUSTICE

by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Wednesday, February 18, 2026; 9:05 AM
State Capitol, Conference Room 016 & Videoconference

Good morning, Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify on Senate Bill 2721, Relating to the Administration of Justice. Senate Bill 2721 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 will negatively impact crime victims and shift the burden of restitution collection from the Judiciary to the crime victim after the reduced sentence. The Commission supports SB 2721 with an amendment to exclude the offenses in HRS section 706-623 that excludes Class C felonies where victims may be eligible for restitution. In addition, the Commission supports the recommendations proposed by Dennis Dunn to 1) require a payment of restitution prior to discharge from probation and 2) notice to victims when the court is preparing to discharge an offender from probation.

The Commission provides compensation for victims of violent crime to pay un-reimbursed 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 SB 2721 with an amendment that excludes Class C felonies where victims may be eligible for restitution. In addition, the Commission supports the recommendations proposed by

Dennis Dunn to 1) require a payment of restitution prior to discharge from probation and 2) notice to victims when the court is preparing to discharge an offender from probation.

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COMMITEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senate Mike Gabbard, Vice Chair

February 18, 2026, 9:05 A.M. - VIA VIDEO CONFERENCE – ROOM 016
TESTIMONY SUBMITTING COMMENTS TO SB 2721, RELATED TO THE ADMINISTRATION OF JUSTICE

The Hawaii Psychological Association (HPA) offers comments regarding SB 2721, 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 Lichton, Ph.D.

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

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February 15, 2026

Written Testimony for SB2721 Submitted to:
Senate Committee on the Judiciary
Hearing: February 18, 2026
9:05 am, Conference Room 016 & Videoconference

Aloha Chair Roads, Vice-Chair Gabbard, and the Honorable Members of this Committee:

I'm Chair of the Partner's In Care Advocacy Committee ("PIC"), but since the membership hasn't had an opportunity to vote on this measure, I'm submitting this testimony as an individual, and not as a representative of PIC.

In addition to my litigation practice in Honolulu, I frequently serve as a court appointed Guardian ad Litem on Assisted Community Treatment Act cases. I'm familiar with mental health law and its' intersection with the criminal justice system

I support this bill with the following AMENDMENTS. My reasons are stated below my suggested revisions:

I. SB2721, SECTION 14 pg 14, §704-406(1)(b): I recommend adding and deleting the following language to subparagraph (b), where suggested additional language is underlined and suggested deletions are bracketed & stricken as follows:

> "When the defendant is charged with a petty misdemeanor or misdemeanor not involving violence or attempted violence, the commitment shall be limited to not longer that one hundred twenty days from the date the court determines the defendant lacks fitness to proceed. The court, pursuant to Chapter 334, Parts IV or VIII, may consider any clear and convincing evidence, including but not limited to the defendant's psychiatric diagnosis, the impact such diagnosis had on the defendant's history of convictions, arrests and prior findings of being unfit to proceed, to conclude whether the defendant poses an imminent danger of causing harm to the defendant, other persons, or property in any manner that would constitute a crime within the next forty-five days, as defined under Part VIII, §334-1, to determine whether the defendant may be released without conditions, or with conditions under the least restrictive means necessary, but sufficiently restrictive to ensure the defendant is no longer a danger, where such conditions may include but are not limited to authorizing treatment with anti-psychotic medication under Chapter 334 Part IV. If the court is satisfied that the defendant may be released on conditions without danger to the defendant or risk of [~~substantial~~] danger to property or others, the court shall order the defendant's release, which shall . . . "

II. SB2721, SECTION 14 pg 19, §§704-406(3)(a), Right before subparagraph (a) I recommend adding and deleting the following language, where my (as opposed to those that are already there) suggested additional language is double underlined and my (as opposed to those already there) suggested deletions are bracketed stricken and highlighted grey as follows:

> "If, [~~however,~~] after a determination that the defendant has regained fitness, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge. [~~and:~~] [~~a~~] After a determination that the defendant has regained fitness, regardless of whether the court dismisses the criminal charges, if the court finds pursuant to Chapter 334, Part IV or Part VIII, there's sufficient clear and convincing evidence, including but not limited to the defendant's psychiatric diagnosis, the impact such diagnosis had on the defendant's history of convictions, arrests and prior findings of being unfit to proceed, that the defendant still poses an imminent danger of causing harm to the defendant, other persons, or property in any manner that would constitute a crime within the next forty-five days, as defined under Part VIII, §334-1, the court shall have discretion to release the defendant with conditions under the least restrictive means necessary, but sufficiently restrictive to ensure the defendant is no longer a danger, where such conditions may include but are not limited to authorizing anti-psychotic medication, as provided by Chapter 334, Parts IV and VIII, as referenced by the sections cited in subparagraphs (b) and (c) below. If the defendant is found fit to proceed, and the court dismiss the charges, the court shall: "

WHY THE FOREGOING AMENDMENTS ARE CRUCIAL, IN ORDER FOR SB2721 TO MITIGATE THE ENDLESS CYCLE OF ARRESTS followed by a return to the streets of severely mentally ill defendants who habitually commit non-violent petty misdemeanors.[1]

- **Chronic homelessness and severe mental illness are inextricably intertwined.** Over 90% of chronically homeless individuals living on the streets, are severely mentally ill, addicted, and usually a combination of both.[2]

- **Most Chronically homeless mentally ill defendants routinely refuse offers of psychiatric care and shelter, because their ability to make rational decisions is impaired by psychotic delusions and disordered thinking patterns.** In the cruelest of ironies, a majority of individuals diagnosed with schizophrenia are also afflicted with

[1] This issue is most acute for defendant's who're found unfit to proceed.

[2] *See* Stefan Gutwinski, Stefanie Schreiter, Karl Deutscher & Seena Fazel, *The prevalence of mental disorders among homeless people in high-income countries: An updated systematic review and meta-regression analysis,* PLOS MEDICINE, (Aug. 23, 2021) 23;18(8):e1003750. doi: 10.1371/journal.pmed.1003750. PMID: 34424908; PMCID: PMC8423293, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8423293/

Anosognosia, meaning they're literally incapable of understanding they're mentally ill and need help.[3]

- **Most chronic homeless are also incapable of living unmedicated and unsheltered without habitually committing what are usually non-violent petty misdemeanors.** Most have dozens of offenses on their records, and some have hundreds of offenses. The majority are petty theft, illegal dumping, public disturbances, lewd acts and trespassing.

- **Therefore, breaking the endless cycle of arrests and chronic homelessness itself, REQUIRES ADDRESSING THE ISSUE OF INVOLUNTARY TREATMENT.**[4] Involuntary treatment does not mean committing all or even most defendants to the State Hospital or confining them at all; It means mandatory psychiatric care for treatment-resistant individuals, performed under the least restrictive means necessary (see *Gresham v. Peterson,* 225 F.3d 899, 906, 2000 U.S. App. LEXIS 22359 at 17 (7th Cir. 2000); *Shelton v. Tucker,* 364 U.S. 479, 488, 81 S. Ct. 247, 252 (1960)).

- **Involuntary treatment, including administering medication over a person's objection, ALWAYS** (except in an emergency), **requires a Court to find the person poses an imminent danger to self, others or property.** (See *O'Connor v. Donaldson*, 422 U.S. 563, 575, 95 S. Ct 2486, 2493 (1975); *State v. Kotis,* 91 Haw. 319, 340, 984 P.2d 78, 99 (1999); *In re Doe,* 102 Hawaii 528, 78 P.3d 341 (Haw. App. 2003); HRS §334-60.2 "Involuntary hospitalization criteria." provides in pertinent parts that a court may commit persons to a psychiatric facility or involuntary hospitalization, upon finding they are "(1) [] mentally ill or suffering from substance abuse; (2) . . . . imminently dangerous to self or others . . . . (3) . . . . in need of care or treatment . . . " and there is no less restrictive alternative. (underline added)).

- **Under the current statutory framework, non-violent petty misdemeanors, are generally not construed as imminently dangerous, which makes it difficult for courts to order compulsory care.** That makes sense if a defendant commits only one or two offenses. But it defies common sense when a severely mentally ill defendant commits dozens or hundreds of offenses, because their inability to refrain from illegal conduct is clear and convincing evidence of (1) the severity of their illness; and (2) the degree of harm inflicted on others by their habitual commission of non-violent petty crimes.

In *Jones v. United States,* the U.S. Supreme Court ruled "This Court never has held that 'violence', however that term might be defined, is a prerequisite for a constitutional [psychiatric] commitment." *Jones v. United States*, 463 U.S. 354, 365, 103 S. Ct. 3043, 3050 (1983)(underline added). The fact a person is "found to have committed a criminal act is strong evidence that his

[3] Douglas S. Lerner, MD & Jennifer Lorenz, MD, *Anosognosia in Schizophrenia: Hidden in Plain Sight*, INNOVATIONS IN CLINICAL NEUROSCIENCE, (May 11, 2014) (5-6):10-7. PMID: 25152841; PMCID: PMC4140620) THE NATIONAL LIBRARY OF MEDICINE, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4140620/

[4] Involuntary treatment is also necessary to end chronic homelessness amongst severely mentally ill individuals, who're incapable of making rational decisions because they're psychotic. Housing by itself won't solve the problem with this group.

continued liberty could imperil the preservation of public peace . . . " The *Jones* Court further specified, "We do not agree with petitioner's suggestion that the requisite dangerousness is not established by proof that a person committed a non-violent crime against property." *Jones,* at 364—65 & 3049—50 (underlines added)(internal citations and quotation marks omitted).

Under *Jones,* non-violent petty misdemeanors, especially when committed dozens or hundreds of times by a severely mentally ill person, can be used as evidence the person poses an imminent danger to others or property, thus enabling a court to order involuntary treatment, while employing the least restrictive means necessary.

Mahalo nui loa for the opportunity to testify. I'll be available to answer questions at any time before or after the hearing.

Very truly yours;

Mike Goodman, Esq.
Chair, Partners in Care Advocacy Committee

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THE SENATE
KA ʻAHA KENEKOA

THE THIRTY-THIRD LEGISLATURE
REGULAR SESSION OF 2026

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

NOTICE OF HEARING

DATE:	Wednesday, February 18, 2026
TIME:	9:05 AM
PLACE:	Conference Room 016 & Videoconference State Capitol 415 South Beretania Street

SB 2721 Status & Testimony	RELATING TO THE ADMINISTRATION OF JUSTICE. Implements recommendations pursuant to Act 245, SLH 2024 to amend the Hawaii Penal Code.

TESTIMONY IN SUPPORT OF SB 2721
With Suggested Implementation Amendment to HRS §804-51
Submitted by James Waldron Lindblad

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

I respectfully submit testimony in support of SB 2721. I appreciate the extensive work of the Penal Code Review Committee and the careful effort reflected throughout this measure to improve clarity, proportionality, and consistency in Hawaiʻi's criminal justice statutes.

My comments are offered in the spirit of implementation refinement — not expansion — and focus specifically on Part X of the bill relating to daily bail and the effective operation of Chapter 804.

Part X – Daily Bail

Part X strengthens Hawai‘i’s statewide daily bail program by ensuring that monetary bail may be posted seven days a week for defendants who remain in custody. This is an important access-to-release measure.

The ability to post bail outside traditional court hours promotes fairness, reduces unnecessary detention, and ensures that release decisions made by judicial officers can be effectuated promptly. That goal deserves strong support.

For daily bail to function meaningfully in practice, however, responsible participation within the bail framework must remain viable and predictable.

Relationship Between Daily Bail and Forfeiture Procedure

Participation in the daily bail system depends not only on individual defendants, but also on the procedural framework governing forfeiture and post-judgment relief.

When forfeiture procedures are unduly restrictive, time-limited, or procedurally uncertain — as they may be applied in practice, including in light of decisions such as State v. Vaimili, 131 Hawai‘i 9, 313 P.3d 698 (2013) — participation in otherwise appropriate cases may contract. This contraction does not arise from unwillingness to assist, but from limited opportunities to address good-faith administrative errors, minor compliance issues, or logistical challenges that inevitably occur in bail administration.

Where risk becomes structurally difficult to manage within the statutory framework, fewer bonds may be written. When fewer bonds are written, fewer qualified defendants are able to secure release — including through the daily bail mechanism contemplated in Part X.

Modest clarification of HRS §804-51 therefore strengthens, rather than weakens, the daily bail system. It promotes predictability in procedure, supports

responsible participation, and helps ensure that release decisions already authorized by the court can be effectuated in practice.

Most jurisdictions provide broader post-judgment relief periods and recognize independent standing for sureties and related parties. Aligning Hawai‘i’s procedures with established national practice promotes uniformity and comity among jurisdictions and prevents Hawai‘i from becoming an outlier in the administration of surety law.

In practice, the current structure of §804-51 can discourage participation in cases involving defendants with limited financial support or imperfect compliance histories — even when a court has authorized release on monetary bail. By providing workable relief for good-faith efforts and minor procedural errors, the amendment supports broader participation in appropriate cases and helps ensure that judicial release decisions are effectuated in practice.

Why Implementation Refinement Is Necessary

The suggested amendment is narrow and procedural in nature. It:
• Preserves full judicial discretion in all forfeiture determinations.
• Maintains accountability for failure to appear.
• Does not alter the statutory grounds for forfeiture.
• Does not expand eligibility for pretrial release.
• Does not reduce enforcement authority.

Rather, it ensures that forfeiture procedures operate predictably and consistently with the underlying purpose of bail — securing appearance while preserving fairness and judicial authority.

Avoiding Unintended Procedural Preclusion

Clarifying that one authorized party's motion to set aside forfeiture does not preclude a subsequent motion by another authorized party ensures that distinct legal interests in the bond are afforded a full and fair opportunity to be heard.

Without such clarification, relief may be unintentionally foreclosed through procedural technicalities rather than a merits-based determination. The amendment preserves the court's authority while preventing unintended preclusive effects in situations where separate parties possess separate legal responsibilities and obligations.

Purpose of the Proposed Amendment to §804-51

The purpose of these amendments is to:
• Reaffirm and clarify judicial discretion in forfeiture proceedings so that courts may evaluate each case on its individual merits and the totality of the circumstances, consistent with the principle that when a judge authorizes monetary bail, the system should provide a workable pathway for release while preserving accountability.

• Confirm that sureties, licensed bail agents, and surety insurers may independently move to set aside forfeitures, even if a prior motion has been filed by another authorized party, thereby protecting the distinct legal and practical interests of those who assume financial responsibility for securing a defendant's release.

• Extend the period for filing such motions to ninety days and permit discretionary consideration of later filings where justice so requires, providing a reasonable opportunity to correct minor administrative or compliance errors that may occur in bail administration. The ninety-day period does not delay enforcement. Judgment of forfeiture still enters as provided by statute. The amendment simply provides a reasonable window to address administrative errors, locate

defendants, or resolve logistical issues that may not be fully addressed within thirty days. Courts retain full discretion to deny relief. The extension promotes fairness and practical administration without reducing accountability.

• Promote statewide consistency and uniform application of HRS Chapter 804 with respect to bail forfeiture procedures.

• Clarify that relief under Rule 60 of the Hawaii Rules of Civil Procedure may be available as a discretionary post-judgment remedy in appropriate cases, consistent with the procedural standards discussed in the 2013 Vaimili decision.

• Ensure that bail forfeiture statutes are applied in a manner consistent with the non-punitive purposes of pretrial release, the preservation of judicial discretion, and fundamental principles of fairness and equity — so that responsible sureties remain willing to participate in cases where courts have determined release on monetary bail is appropriate.

Proposed Amendment to HRS §804-51
(Draft for Discussion Purposes Only)

Section referenced: §804-51, Forfeiture; setting aside.

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

(1) After entry of judgment for the State on a forfeiture of bail and before the expiration of ninety days from the entry of such judgment, the court may, on application, direct that the forfeiture be set aside, in whole or in part, upon such conditions as the court may impose, if it appears that justice does not require enforcement of the forfeiture.

(a) Such application may be made by the defendant, the defendant's attorney, the surety, the licensed bail agent, or the surety insurer or insurance company named on the bond.

(b) The filing of one such application shall not preclude the filing of another by a different authorized party.

(c) The court may, in its discretion, entertain a motion to set aside forfeiture beyond the ninety-day period upon such terms as justice requires, consistent with the standards set forth in Rule 60 of the Hawaii Rules of Civil Procedure.

(d) No forfeiture shall be ordered in any felony case unless a National Crime Information Center (NCIC) warrant has been issued and entered within thirty days of the defendant's failure to appear.

(e) Notice of forfeiture shall be sent to the defendant, the surety, the licensed bail agent, and the surety insurer or insurance company named on the bond.

Judicial Authority Remains Paramount

This amendment does not weaken enforcement. It ensures enforcement operates fairly and predictably. Relief remains discretionary. Judicial authority remains paramount. Justice remains the governing standard.

The purpose of bail remains unchanged: securing appearance and compliance — not imposing punishment before conviction.

Closing

Chair Rhoads, I recognize the careful work reflected in SB 2721, particularly in Part X. My suggested amendment to §804-51 is offered in the same spirit of clarity in implementation.

A daily bail system cannot expand meaningful access to release if post-judgment procedures unintentionally discourage responsible participation. Aligning forfeiture timelines and standing with established national practice supports uniformity, comity, judicial discretion, and the effective operation of the program this Committee has worked to strengthen. I respectfully ask the Committee to consider this narrow implementation refinement to ensure that daily bail functions as intended — expanding access to release while preserving fairness, accountability, and judicial authority.

If the Committee determines that any portion of this amendment merits further consideration, I respectfully request that the Committee Report articulate the intended purpose of any adopted changes — particularly with respect to preservation of judicial discretion, the non-punitive purpose of bail, and the discretionary nature of forfeiture relief. Clear articulation of legislative intent will help avoid future ambiguity and promote consistent application statewide.

Respectfully submitted,

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LATE

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February 17, 2026

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
The Senate
33rd Legislature, State of Hawai`i

via: http://www.capitol.hawaii.gov

Dear Committee leadership and members,

Re: **SUPPORT FOR SB2721 RELATING TO THE ADMINSTRATION OF JUSTICE**

DATE: Wednesday, February 18, 2026
TIME: 9:05 a.m.
PLACE: Conference Room 016 & Videoconference
State Capitol
415 South Beretania Street

I write to express strong support for this bill and to recognize the contributions of the Penal Code Review Task Force for its attention to particularly chapter 704. The proposed amendments provide needed clarity and organization to the statutes, and the substantive amendments align with actual practice and procedure at least as I have experienced it here in the Third Circuit.

It appears the Senate draft differs from the amended companion bill HB2414 HD1 in a couple of respects only. HD1 adds a new provision under Part XI at Section 37. HD1 also proposes to make most Parts effective in the year 3000. Respectfully, the administration of justice requires that the effective date is maintained as proposed in SB2721.

Finally, there may be a typo?, re: proposed amendment to §804-7.1 In the Senate version, on page 41, line 14; in HD1 on page 27 in the last 2 lines: "provided that the department may seek reimbursement for the defendant *or filing* a claim or complaint for lost equipment or damages[.]"

Thank you for your consideration of my testimony. Aloha.

/s/ Georgette A. Yaindl
GEORGETTE ANNE YAINDL

Dennis M. Dunn

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LATE

TO: **Senator Karl Rhoads, Chair**

Senator Mike Gabbard, Vice Chair

Senate Committee on Judiciary

RE: **S.B. 2721 Relating to the Administration of Justice**

HEARING: **Tuesday, February 18, 2026, 9:05 a.m.**

Conference Room 16

Good morning, Chair Rhoads and Vice Chair Gabbard, and Members of the Senate Committee on Public Safety and Military Affairs. I am providing testimony in **Support of S.B. 2721, 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 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 the length of terms of probation applying to the various levels of felonies and misdemeanors offenses within the H.R.S. including some outside of the Penal Code. The Committee's proposed amendments here are intended to reduce the probationary terms for certain types of offenses. These recommendations are based on the belief that shorter terms of probation are adequate for lower-level felons and a desire to bring Hawai'i in line with probation terms in other states. It is also based on the reality that many of Hawai'i's felony probationers are not currently being actively supervised by the Adult Client Services Branch of all Circuits due to inadequate staffing. While I could spend a substantial amount of time analyzing the various issues

attendant to the potential consequences of a reduction in the period of probationary supervision for the felons covered by the proposed statutory amendments in this bill I will confine myself to the area of concern of which I feel I have the greatest knowledge and expertise, victim restitution.

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

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

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

obligations. Once a probationer has been discharged from probation there is little to encourage them to continue to pay restitution. Unfortunately, post probationary means of collection such as the establishment of free standing orders of restitution that rely on the victim's knowledge, ability, and resources to pursue offenders civilly or tax refund intercepts have been abject failures in achieving restitution collection for victims. While most restitution is a critical financial boost to the victim, the amounts are seldom sufficient to attract the type of civil legal assistance required to effect the recovery of restitution and pay for the attendant legal costs. Navigating civil recovery and collection is too complex for the average victim and I have never encountered a single victim who has been successful in recovering restitution through this method. Similarly, the tax refund interception method of recovery is non-functional due to the failure of the State Tax Department to establish any procedures for this method of recovery even though legislation establishing this process is almost ten years old. Thus, it becomes clear why probationary terms and the encouragement of the probation officers and the courts are so instrumental in restitution collection process. This fact should be weighed carefully when considering the changes in probationary terms proposed in S.B. 2721. One effective way to increase the collection of restitution from probationers is to require all probationers seeking early discharge to complete the payment of the restitution that they owe. Early discharge from probation is a privilege and should be earned through meritorious conduct including the satisfaction of their restitution obligations. This slight change in the Statute will serve as a significant incentive for offenders to complete the payment of restitution. The language for such a change is provided below:

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

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

An additional amendment that I believe is necessary to improve the restitution is the provision of adequate notice to victims that the court is preparing to discharge an offender from probation. Given the critical role that probation supervision has in successfully achieving restitution to the victim or victims of the offense for which the defendant has been convicted, it is fitting that victims receive reasonable notice prior to the defendant's discharge from probation. As noted below, notice to victims of the placement of the defendant on probation is already required by existing statutory language so adding notice of discharge from probation closes the communication loop with victims in a way that promotes transparency, clarity, and closure for victims.

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

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

In summary, given the importance of restitution in the criminal justice process to both victim and offender, I strongly urge the Committee to consider approving the Senate Bill 2721 with the amendments proposed in my testimony above. Restitution is an ancient and foundational concept of our justice system and deserves to be a top priority in the structure of our penal code. Please put victims first. Thank you for your time and consideration.