

LINDA LINGLE
GOVERNOR OF HAWAII



LATE TESTIMONY
CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Health

H.B. 0423, Relating to Emergency Contraceptives for Sexual Assault Survivors

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 3, 2009

1 **Department's Position:** The Department understands the intent of the bill but must oppose it because
2 there are no available resources to establish and maintain a statewide delivery system.

3 **Fiscal Implications:** There is a need to determine the estimated amount of funds necessary to carry out
4 the requirements of the bill. Fiscal impact is undetermined at present.

5 **Purpose and Justification:** H.B. 0423 ensures that sexual assault victims are given medically accurate
6 information about Emergency Contraception (EC) when they receive medical care at a hospital for
7 sexual assault, and that they have immediate access to EC upon request. There should be no delay in
8 making EC known and available to the victim as soon as possible within 72 hours from the time of
9 assault.

10 The bill states that "the cost of any EC dispensed shall be paid by the Department using moneys
11 from the Domestic Violence and Sexual Assault Special Fund under Section 321-1.3." This requires the
12 establishment and maintenance of a statewide delivery system with unknown costs.

13 The number of sexual assault victims who present at the emergency rooms in Hawaii is
14 unknown. The number of referrals to sex assault forensic medical services is also unknown. In order
15 for a statewide delivery system to be implemented, the following issues need to be considered: a system
16 to purchase and distribute prescription and over the counter EC; a billing system for reimbursement of

1 EC; and a plan to monitor and enforce the requirements of the bill. Protocols and written policy
2 regarding the treatment and referral of sexual assault, especially for minors; also need to be established.
3 This system will require training on sexual assault and emergency contraceptives to those who treat
4 victims. In order to determine the cost of this statewide system, the Department will need to partner
5 with stakeholders that include hospitals, pharmacies, healthcare facilities, and sexual assault service
6 providers.

7 Thank you for the opportunity to testify on this subject.

League of Women Voters of Hawaii
49 S. Hotel Street
Suite 413
Honolulu, Hawaii 96813
808 531-7448
www.lwv-hawaii.com

LATE TESTIMONY

January 31, 2009

To: Rep. Ryan I. Yamane, Chair
Rep. Scott Nishimoto, Vice Chair and
Members of the House Committee on Health

From: Suzanne Meisenzahl
Chair of the Women's Health & Safety Committee

RE: HB 423 Relating to Emergency Contraceptives for Sexual Assault Survivors
8:30 a.m., Tuesday, February 03, 2009, Room 329

The League of Women Voters strongly supports HB 423 and we are happy to testify on its behalf again this year. Women and girls who have survived the ultimate violation of sexual assault deserve compassionate care, including access to emergency contraception to safeguard against getting pregnant from the assault.

The American Medical Association, the American College of Obstetrics and Gynecologists, the American Academy of Pediatrics, and other leading U.S. medical organizations all support access to emergency contraception as a means of reducing unintended pregnancy.

In a survey conducted for Planned Parenthood Acton Fund in 2001 they confirmed three of four voters favored requiring all hospitals to make EC available to women who had been raped. 53 percent of voters said they would be more likely to vote for a candidate who supports mandatory EC availability in hospitals for sexual assault survivors.

We urge your support. Thank you for the opportunity to testify.



LATE

To: Members of the Committee on Health
Hearing Date/Time: Tuesday, February 3, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 329
Re: **Correction to Testimony of the ACLU of Hawaii in Support of H.B. 423,
Relating to Emergency Contraceptives for Sexual Assault Survivors**

Dear Chair Yamane and Members of the Committee on Health:

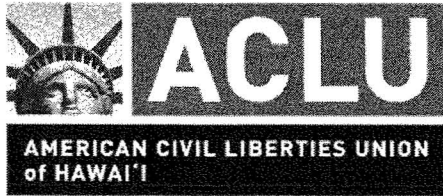
Earlier today, I testified that we believed that only two out of the twenty emergency rooms in Hawaii provide emergency contraception. I learned shortly after the hearing that six of Hawaii's Emergency Rooms – Wilcox Memorial, Molokai General, Tripler Army Medical Center, Kapiolani Medical Center, Waianae Coast Comprehensive, and Kahuku Medical Center – now provide EC. Of the remaining hospitals, some *may* provide emergency contraception, but do so on an ad hoc basis.

Thank you very much for your time and attention, and please do not hesitate to contact me directly at 522-5908 if I can be of additional assistance.

Sincerely,

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org



LATE TESTIMONY

VIA EMAIL: hlttestimony@capitol.hawaii.gov

Committee: Committee on Health
Hearing Date/Time: Tuesday, February 3, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 329
Re: *Testimony of the ACLU of Hawaii in Support of H.B. 423, Relating to
Emergency Contraceptives for Sexual Assault Survivors*

Dear Chair Yamane and Members of the Committee on Health:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 423, which seeks to require hospitals to provide information about emergency contraception to women who are sexually assaulted and to provide emergency contraception when requested.

Hawaii should not turn its back on sexual assault survivors and force them to face the added burden of possibly becoming pregnant as a result of rape. The denial of access to contraceptive services for sexual assault survivors has severe repercussions for a woman’s right to live her life and her ability to participate equally in society. Simply put, reproductive health care is essential to a woman’s opportunity – the opportunity to obtain a good education, to improve her economic circumstances, to participate in public life, to define her family, to decide what makes a meaningful life, and to live that life. Hawaii should not turn its back on sexual assault survivors.

1. This bill is critically important for sexual assault victims on the neighbor islands

According to the most recent Crime in Hawaii report, there were 377 forcible rapes reported to law enforcement in Hawaii in 2007.¹ While Hawaii’s overall crime rate was down, the rate of forced rapes increased by 3.9%.² Many of these victims required emergency medical care at one of Hawaii’s emergency rooms. Tragically, according to a 2002 survey conducted by Healthy Mothers, Healthy Babies, only two out of Hawaii’s twenty emergency rooms provide

¹ *Crime in Hawaii*, Hawaii Attorney General’s Office, 2007.

² *Id.*

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

emergency contraceptive access to sexual assault victims.³ In other words, residents of Maui, Lanai, Molokai, Kauai, and the Big Island have no access to emergency contraception in the emergency room. Moreover, in some rural communities, there is only one local hospital. If that hospital does not provide EC, it may be extremely difficult or even impossible for a rape victim to access the care she needs to avoid a pregnancy as a result of the rape.

2. Emergency Contraception is only effective if taken within a few hours of a sexual assault

Emergency contraceptive (“EC”) pills, sometimes referred to as “morning-after” pills, can *prevent* pregnancy after unprotected intercourse, including rape.⁴ EC is a concentrated dosage of ordinary birth-control pills that can dramatically reduce a woman’s chance of pregnancy if taken within 72 hours of unprotected intercourse or contraceptive failure. It is most effective if taken within 12 hours of intercourse, but can be effective up to at least 120 hours.⁵

Time is absolutely critical for a woman who wishes to prevent pregnancy after rape. The effectiveness of EC diminishes with delay: experts stress that EC is most effective the sooner it is taken, with effectiveness decreasing every 12 hours.⁶ Therefore, it is extremely important that, during an initial examination, emergency care facilities offer EC to women who have been raped.

³ To our knowledge, Straub and Kapiolani Hospitals, both on Oahu, are the only hospitals providing this service.

⁴ For purposes of this fact sheet, EC means emergency contraceptive pills. Intrauterine devices (IUDs) may also be used as post-coital contraceptives if inserted within 5 days of the unprotected intercourse. However, pills are far more commonly used than IUDs as emergency contraception.

⁵ Charlotte Ellertson et al., Extending the time limit for starting the Yuzpe regimen of emergency contraception to 120 hours, 101 *Obstet. Gynecol.* 1168, 1168 (2003); Helena von Hertzen et al., Low dose mifepristone and two regimens of levonorgestrel for emergency contraception: A WHO multicentre randomized trial, 360 *Lancet* 1803, 1809-10 (2002).

⁶ G. Piaggio et al., Timing of emergency contraception with levonorgestrel and the Yuzpe regimen, 353 *Lancet* 721, 721 (1999); see also Task Force on Postovulatory Methods of Fertility Regulation, Randomised controlled trial of levonorgestrel versus the Yuzpe regimen of combined oral contraceptives for emergency contraception, 352 *Lancet* 428, 430-31 & Table 3 (1998).

3. Major medical groups recommend that EC be offered to women to prevent pregnancy after a sexual assault.

The American College of Obstetricians and Gynecologists and the American Public Health Association recommend that EC be offered to all rape patients at risk of pregnancy.⁷ Likewise, in their guidelines for treating women who have been raped, the American Medical Association advises physicians to ensure that rape patients are informed about and, if appropriate, provided EC.⁸

Sexual assault victims' groups around the country have also advocated to increase access to EC for rape victims.⁹ In addition, the National Sexual Violence Resource Center has worked to ensure that every sexual assault victim is offered the means to prevent pregnancy when she receives treatment at an emergency care facility.¹⁰

4. The list of states mandating that EC be available in the Emergency Room is growing

Many emergency care facilities fail to provide EC to women who have been raped, and some fail even to inform women seeking care after an assault that such a treatment is available. According to a study by the ACLU, fewer than 40 percent of emergency care facilities (in eight of eleven states surveyed) provide EC on-site to rape victims.¹¹ The failure of hospitals and

⁷ American College of Obstetricians and Gynecologists, Sexual Assault 242 Educ. Bull. 3 (Nov. 1997); American College of Obstetricians and Gynecologists, Violence Against Women: Acute Care of Sexual Assault Victims (2004), at http://www.acog.org/departments/dept_notice.cfm?recno=17&bulletin=1625.

⁸ See, e.g., American Medical Association, Strategies for the Treatment and Prevention of Sexual Assault (1995).

⁹ Letter from Montana Coalition Against Domestic & Sexual Violence et al., to Diane M. Stuart, Director, Office on Violence Against Women (January 6, 2005), available at <http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=17278&c=30>.

¹⁰ National Sexual Violence Resource Center et al., Preventing Pregnancy from Sexual Assault: Four Action Strategies to Improve Hospital Policies on Provision of Emergency Contraception (2003), available at <http://www.nsvrc.org/resources/docs/ECtoolkit.pdf>.

¹¹ A copy of the ACLU briefing paper, *Preventing Pregnancy after Rape: Emergency Care Facilities Put Women at Risk*, may be downloaded at www.aclu.org/reproductiverights/gen/12748pub20041215.html. If you are interested in

Hon. Rep. Yamane, HLT Committee,
and Members Thereof
February 3, 2009
Page 4 of 6

other facilities treating rape victims to provide EC leaves these women at risk of becoming pregnant as a result of assault. EC is part of comprehensive care for women who have been raped and should be offered on-site by emergency care facilities.

Six states – California, Massachusetts, New Jersey, New Mexico, New York, and Washington – have passed laws requiring emergency care facilities to offer EC to rape victims they treat. Many other states have introduced similar measures.

5. Emergency care facilities should offer EC to a woman during her initial exam following a sexual assault.

A woman who has been raped who does not obtain EC in an emergency care facility must track down EC on her own. However, a woman who has been raped should not have to seek out additional medical care to prevent pregnancy.¹² In addition to the emotional burden this imposes, a rape victim would face increased risk of pregnancy because of the delay inherent in having to take further steps to track down EC, and in some instances she may be unable to obtain EC at all.

A rape victim is often taken to an emergency care facility by the police or emergency medical technicians. Under these conditions, most women lack the time, information, and opportunity to assess a given hospital's policy and ask to be taken to a facility that provides EC. Nor should these women be expected to do so after surviving such a brutal crime.

A bill that merely requires emergency care facilities to provide information, a referral, or a prescription for EC, fails to ensure women's health and well-being. By the time a woman arrives at an emergency facility, hours may have already elapsed since the rape took place. In the time remaining before the EC will cease to be effective, a woman who is merely informed that EC exists would most likely have to find a pharmacy that carries the medication.

conducting a survey, the ACLU manual, *EC in the ER: A manual for improving services for women who have been sexually assaulted*, may greatly assist your efforts. For copies of the manual, or for printed copies of the ACLU EC briefing paper, please contact us at office@acluhawaii.org or call 808-522-5900.

¹² Because of recent action by the Food and Drug Administration, EC is currently available at the pharmacy to women 18 and older who present government-issued proof of age. For women under the age of 18 and adult women who do not have government-issued proof of age, a prescription is still necessary to obtain EC.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Hon. Rep. Yamane, HLT Committee,
and Members Thereof
February 3, 2009
Page 5 of 6

Unfortunately, studies show some pharmacies do not stock EC and others refuse to dispense it.¹³ As the hours tick by, her chances of preventing pregnancy decrease. Depending on when the rape occurs and where she lives, obtaining EC in time may be virtually impossible.

Moreover, in some rural communities, there is only one local hospital. If that hospital does not provide EC, it may be extremely difficult or even impossible for a rape victim to access the care she needs to avoid a pregnancy as a result of the rape.

6. An institution's religious objections to EC must not imperil a woman's access to timely and comprehensive treatment.

Some emergency care facilities, invoking religious objections, refuse to provide EC because it may interfere with the implantation of a fertilized egg. Such objections cannot be allowed to stand against the urgent needs of a woman who has been raped. Emergency care facilities – whether religiously affiliated or not – are ethically and morally obligated to offer the best care possible to everyone who comes through their doors in need of care. EC is basic health care for women who have been raped.

Moreover, emergency care facilities treat and employ people of many faiths; they should not be allowed to impose one set of religious beliefs on the people of diverse backgrounds who provide and seek care. If a hospital is unwilling to dispense EC, it is not equipped to treat rape victims.¹⁴

¹³ Eve Espey et al., Emergency Contraception: Pharmacy Access in Albuquerque, New Mexico, 102 *Obstet. Gynecol.* 918, 920 (2003); Clara Bell Duvall Reproductive Freedom Project of the ACLU of Pennsylvania, Knowledge and Availability of Emergency Contraception in Pennsylvania Pharmacies (2002), at <http://www.aclupa.org/duvall/ecinpa/pharmacists.html>.

¹⁴ For a detailed and useful response to religious objections to providing EC for rape victims, see National Sexual Violence Resource Center et al., *Supra* note 9, at 37-39.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
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www.acluhawaii.org

Hon. Rep. Yamane, HLT Committee,
and Members Thereof
February 3, 2009
Page 6 of 6

7. EC prevents pregnancy. It does not induce an abortion.

Emergency contraceptive pills are high doses of oral contraceptives, the birth control pills that millions of women take every day. EC generally works by preventing ovulation or fertilization. It may also work by preventing implantation, although there is no proof of this. EC does not disrupt an established pregnancy, which the medical community defines as beginning with implantation. EC should not be confused with mifepristone (RU-486 or the early-abortion pill), a drug approved by the Food and Drug Administration in September 2000, which causes an abortion in the first 63 days of pregnancy.

To help protect rape victims from unintended pregnancy, go to
<http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=17705&c=30>

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify and for your attention to this matter. We hope that you will do your utmost to improve the quality of care for survivors of sexual assault in Hawaii.

Sincerely,



Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

nishimoto2-Bryce

From: Pam Lichy [pamelalichy@gmail.com]
Sent: Tuesday, February 03, 2009 4:05 AM
To: HLTtestimony
Subject: testimony for hlt hearing 2/3, 8:30 a.m.

Aloha - I'm having trouble w/ attachments so I'm pasting this testimony in. sorry for the inconvenience.

Mahalo-

pam

LATE TESTIMONY

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Pamela G. Lichy, MPH

Phone: 808 735-8001
Fax: 808 735-2971
Cell: 808 224-3056
plichy@hawaii.rr.com

Pamela G. Lichy, MPH
4340 Pahoa Ave., # 20C
Honolulu, HI 96816
808 735-8001

VIA EMAIL: hltestimony@capitol.hawaii.gov

Committee: Committee on Health
Hearing Date/Time: Tuesday, February 3, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 329
Re: *Testimony of Pamela Lichy, MPH, in Support of H.B. 423, Relating to Emergency Contraceptives for Sexual Assault Survivors*

Dear Chair Yamane and Members of the Committee on Health:

I write in support of H.B. 423, which seeks to require hospitals to provide information about emergency contraception to women who are sexually assaulted and to provide emergency contraception when requested.

Hawaii should not turn its back on sexual assault survivors and force them to face the added burden of possibly becoming pregnant as a result of rape. The denial of access to contraceptive services for sexual assault survivors has severe repercussions for women's right to live their lives and their ability to participate equally in society. Simply put, reproductive health care is essential to a woman's opportunity – the opportunity to obtain a good education, to improve her economic circumstances, to participate in public life, to define her family, to decide what makes a meaningful life, and to live that life.

According to the most recent Crime in Hawaii report, there were 377 forcible rapes reported to law enforcement in Hawaii in 2007.^[1] While Hawaii's overall crime rate was down, the rate of forced rapes increased by 3.9%.^[2] Many of these victims required emergency medical care at one of Hawaii's emergency rooms. Tragically, according to a 2002 survey conducted by Healthy Mothers, Healthy Babies, only 2 out of Hawaii's 20 emergency rooms provide emergency contraceptive access to sexual assault victims.

Further, please consider the following points:

All emergency care facilities should offer EC to a woman during her initial exam following a sexual assault.

- Major medical groups recommend that EC be offered to women to prevent pregnancy after a sexual assault.
- A bill that merely requires emergency care facilities to provide information, a referral, or a prescription for EC, fails to ensure women's health and well-being.
- All emergency care facilities should be required to provide EC.
- An institution's religious objections to EC must not imperil a woman's access to timely and comprehensive treatment.
- EC prevents pregnancy. It does not induce an abortion.

Passage of this bill is long overdue. Survivors of sexual assault deserve the provision of up to date and compassionate medical options at this most traumatic time. Thank you for this opportunity to testify. We hope that you will do your utmost to improve the quality of care for survivors of sexual assault in Hawaii.

Sincerely,

Pamela Lichty

Committee: Committee on Health
Hearing Date/Time: Tuesday, February 3, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 329
Re: *Testimony of Gail P. Gnazzo, MS, in Support of H.B. 423, Relating to
Emergency Contraceptives for Sexual Assault Survivors*

Dear Chair Yamane and Members of the Committee on Health:

I write in support of H.B. 423, which seeks to require hospitals to provide information about emergency contraception to women who are sexually assaulted and to provide emergency contraception when requested.

Hawaii should support sexual assault survivors and help them to avoid the added burden of possibly becoming pregnant as a result of rape. The denial of access to information and education regarding emergency contraceptives as well as the services themselves for sexual assault survivors has severe repercussions for women's right to live their lives and their ability to participate equally in society. Simply put, reproductive health care is essential to a woman's opportunity – the opportunity to obtain a good education, to improve her economic circumstances, to participate in public life, to define her family, to decide what makes a meaningful life, and to live that life. After having spent more than 25 years working with adolescent girls who are some of the most vulnerable of victims, I ask too, that age not be used to discriminate against young women with limited knowledge of resources and even more to lose as children parenting the a child of rape.

According to the most recent Crime in Hawaii report, there were 377 forcible rapes reported to law enforcement in Hawaii in 2007.¹ While Hawaii's overall crime rate was down, the rate of forced rapes increased by 3.9%.² Many of these victims required emergency medical care at one of Hawaii's emergency rooms. Tragically, according to a 2002 survey conducted by Healthy Mothers, Healthy Babies, only 2 out of Hawaii's 20 emergency rooms provide emergency contraceptive access to sexual assault victims. Please consider the following:

- All emergency care facilities should offer EC to a woman during her initial exam following a sexual assault.
- Major medical groups recommend that EC be offered to women to prevent pregnancy after a sexual assault.
- A bill that merely requires emergency care facilities to provide information, a referral, or a prescription for EC, fails to ensure women's health and well-being.
- All emergency care facilities should be required to provide EC.
- An institution's religious objections to EC must not imperil a woman's access to timely and comprehensive treatment.
- EC prevents pregnancy. It does not induce an abortion.

¹ *Crime in Hawaii*, Hawaii Attorney General's Office, 2007

² *Id.*

Hon. Rep. Yamane, HLT Committee
and Members Thereof
February 3, 2009
Page 2 of 2

LATE TESTIMONY

Thank you for this opportunity to testify and for your attention to this matter. We hope that you will do your utmost to improve the quality of care for survivors of sexual assault in Hawaii including those who are minors.

Sincerely,

Gail P. Gnazzo, MS
Maui Board Member ACLU
ACLU of Hawaii Legislative Committee Member

LATE TESTIMONY

February 2, 2009

Committee: Committee on Health
Hearing Date/Time: Tuesday, February 3, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 329
Re: *Testimony of Sheryl L. Nicholson in Support of H.B. 423, Relating to
Emergency Contraceptives for Sexual Assault Survivors*

Dear Chair Yamane and Members of the Committee on Health:

As a member of the ACLU of Hawaii Legislative Committee, I write in support of H.B. 423, which seeks to require hospitals to provide information about emergency contraception to women who are sexually assaulted and to provide emergency contraception when requested.

Hawaii should not turn its back on sexual assault survivors and require them to face, in addition to the multiple and complex emotional and physical consequences of a sexual assault, the added burden of a possible pregnancy. The denial of immediate access to information on contraception and emergency contraceptives themselves can have severe and lasting consequences for women who neither intended nor desired at the time to conceive, much less under those circumstances.

According to the most recent Crime in Hawaii report, there were 377 forcible rapes reported to law enforcement in Hawaii in 2007.¹ While Hawaii's overall crime rate was down, the rate of forced rapes increased by 3.9%.² Many of these victims required emergency medical care at one of Hawaii's emergency rooms. Tragically, according to a 2002 survey conducted by Healthy Mothers, Healthy Babies, only 2 out of Hawaii's 20 emergency rooms provide emergency contraceptive access to sexual assault victims.

I understand that providing emergency contraceptive services is an accepted standard of care; that the American Medical Association's Guidelines for treating sexual assault victims states that victims should be informed about and provided emergency contraceptives, and that the American College of Obstetrics and Gynecology also supports this standard of care. Emergency contraceptives are not the "abortion" pill and do not cause abortions.

Thank you for this opportunity to testify and for your attention to this matter. We hope that you will do your utmost to improve the quality of care for survivors of sexual assault in Hawaii.

Sincerely,

Sheryl L. Nicholson, Esq,
1001 Bishop Street, Suite 1300
Honolulu, Hawai'i 96813
Tel.: (808) 524-1212

¹ *Crime in Hawaii*, Hawaii Attorney General's Office, 2007

² *Id.*