

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON HB 2561 HD 1
RELATING TO THE ADMINISTRATION OF JUSTICE

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Thursday, February 25, 2016; 3:00 PM
State Capitol, Conference Room 308

Good afternoon Chair Luke, Vice Chair Nishimoto and members of the House Committee on Finance.

Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to testify in strong support, with exception to sections 52-56 relating to methamphetamine, of House Bill 2561 HD 1 relating to the Administration of Justice.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission. In 2003, the Commission undertook the Restitution Recovery Project to disburse restitution payments collected from inmates and parolees to their crime victims or to the Commission in cases where the Commission has previously paid a compensation award to the crime victim.

In 2015, the Commission was selected to serve as a member of the Committee to Review and Recommend Revisions to the Hawai'i Penal Code (Penal Code Committee). The Commission's role as a member of the Penal Code Committee was to represent the crime victim service community. As part of that role, the Commission solicited input from victim service providers and advocates to identify key issues and concerns specific to the penal code. The Penal Code Committee's recommendations became the basis for this bill.

The Commission strongly supports the recommendations of the Penal Code Committee except for the provisions relating to methamphetamine and would like to provide comments on five provisions of the bill that have significant importance to crime victims.

PRIORITY OF PAYMENT OF COURT-ORDERED FEES AND FINES

As a housekeeping matter, sections 14, 25, 26, 27, and 28 places the priority of payment of fees and fines in a new section of chapter 706 and deletes the priority of payments in individual sections of chapter 706. Currently, the priority of payment of court-ordered fees and fines are set forth in multiple sections of the penal code with inconsistent wording. This bill places the priority of payment in a single statute and deletes payment priorities in the various statutes. This will prevent confusion and the need to restate payment priorities when statutes for fees or fines are amended or added.

PARENTS OF MINOR VICTIMS WILL BE ALLOWED ALLOCUTION

Section 17 of this bill amends HRS § 706-604 to ensure that victims will be given the opportunity to speak to the court prior to the defendant being sentenced. The proposed amendment also permits a minor victim's family to speak at sentencing. Minors, as a result of their age, are often unable to fully describe to the court how the crime affected them and to express what sentence they wish for the defendant to receive. Allowing the victim's family to speak in addition to the minor, ensures that the court fully understands the impact of the crime on the minor, the minor's feelings on punishment, and the full extent of restitution.

RESTITUTION WILL BE COLLECTED FROM INMATES IN ACCORDANCE WITH HRS § 353-33.6

Section 61 and section 24 of this bill amends HRS § 353-22.6 and HRS § 706-646, respectively, to clarify that that restitution will be collected from the defendant in accordance with Hawai'i Revised Statutes (HRS) § 353-22.6 and any court-ordered restitution payment schedule is suspended while a defendant is in the custody of the Department of Public Safety (PSD). As part of the Justice Reinvestment Act that went into effect on July 1, 2012, HRS § 353-22.6 was amended to increase the collection by PSD of restitution from inmates from 10% of earnings to 25% of an inmate's wages, deposits and credits to satisfy any outstanding restitution order. The amendment went into effective on July 1, 2012, however, the court restitution orders after July 1, 2012, did not always conform to the new law.

As the clearinghouse for restitution payments collected from inmates and parolees, the Commission receives court judgments containing restitution orders that are inconsistent with HRS § 353-22.6. In a 2013 study of restitution orders for Halawa inmates, the Commission found that 28.9% of the orders were not in compliance with HRS § 353-22.6. The Office of the Attorney General advised PSD that PSD must comply with the court orders instead of complying with the provisions of HRS § 353-22.6. This resulted in significant financial losses to the victims.

The following chart illustrates the real losses to crime victims when courts order restitution to be paid at a rate less than 25% of all earnings, deposits and credits. The chart presents the data for ten restitution orders imposed after July 1, 2012, that have restitution payment orders that are less than the 25% required by HRS § 353-22.6. In approximately two and a half years, the victims of these cases should have received a total of \$5,518.40 instead of the \$172.97 ordered by the courts.

CIRCUIT	SENTENCE DATE	RESTITUTION ORDERED	TOTAL INMATE EARNINGS	TOTAL INMATE CASH DEPOSITS	AMOUNT DEDUCTIBLE FROM INMATE	POTENTIAL DEDUCTIONS AUTHORIZED BY STATUTE	TOTAL LOSS TO CRIME VICTIMS AS OF 1/30/15
1st	4/23/2013	\$ 6,660.00	\$ 579.00	\$ 3,411.00	\$ 57.90	\$ 997.50	\$ 939.60
1st	10/30/2012	\$ 3,925.43	\$ 667.50	\$ 2,950.00	\$ 66.75	\$ 904.38	\$ 837.63
1st	3/12/2013	\$ 309.19	\$ 143.00	\$ 3,250.00	\$ 14.30	\$ 309.19	\$ 294.89
1st	1/28/2013	\$ 1,845.00	\$ 9.00	\$ 1,975.00	\$ 0.90	\$ 496.00	\$ 495.10
1st	7/17/2012	\$ 150,542.45	\$ 80.32	\$ 939.87	\$ 8.03	\$ 255.05	\$ 247.02
1st	8/6/2013	\$ 36,450.25	\$ 0.00	\$ 925.00	\$ 0.00	\$ 231.25	\$ 231.25
2nd	**8/2/2013	\$ 2,925.22	\$ 30.10	\$ 1,660.00	\$ 9.03	\$ 422.53	\$ 413.50
3rd	**11/2/2012	\$ 1,084.00	\$ 0.00	\$ 1,850.00	\$ 0.00	\$ 462.50	\$ 462.50
3rd	11/29/2012	\$ 440.00	\$ 160.56	\$ 2,915.00	\$ 16.06	\$ 440.00	\$ 423.94
5th	7/31/2013	\$ 14,874.28	\$ 0.00	\$ 4,000.00	\$ 0.00	\$ 1,000.00	\$ 1,000.00
Totals:					\$ 172.97	\$ 5,518.39	
Total Loss to Crime Victims as of January 30, 2015:							\$ 5,345.42

In the two cases indicated with ** next to the sentencing date, the restitution orders were corrected nunc pro tunc to the sentencing date. In theory, the loss to the crime victims should have been zero, however, PSD was unable to retroactively collect the restitution. Therefore, the losses reflected on the chart for those two cases are from the date of sentencing to the date the court filed the corrected restitution order. These two cases further illustrate the need for PSD to be able to follow HRS § 353.22.6 without regard to inconsistent court orders or having to wait for court orders to be corrected.

Through the collaborative efforts of the Judiciary, PSD, and the Commission, the number of restitution orders that are inconsistent with HRS § 353-22.6 have significantly decreased. However, the loss to crime victims if restitution is not collected at the statutory rate is significant and cannot wait for a court to correct the order. This bill will eliminate the need to correct restitution orders through the courts and the resulting delay in deducting the appropriate restitution payment from inmate accounts.

MARITAL STATUS OF VICTIMS OF SEXUAL ASSAULT IN THE THIRD DEGREE
ELIMINATED AS AN ELEMENT THAT THE STATE MUST PROVE

Currently, to secure a conviction for Sexual Assault in the Third Degree involving sexual contact, the prosecutor must prove that the victim and the offender were not married. In many cases, this requirement requires a prosecutor to ask a minor child who may be as young as five whether he or she was married to the perpetrator. In addition, the requirement that the victim and perpetrator not be married fails to provide a spouse with the same protections that exist for an unmarried person. A person would be the victim of a Sexual Assault in the Third Degree if that person is forced to have sexual contact with the person's fiancé or fiancée an hour prior to their wedding. However, if the same act occurred immediately after the wedding, no crime would have occurred. Marriage should not create a license for a spouse to engage in unwanted sexual contact.

The proposed amendment in section 32 eliminates the unwarranted requirement of the parties being unmarried from the definition of Sexual Contact which would eliminate it as an element that must be proven for a conviction of Sexual Assault in the Third Degree.

METHAMPHETAMINE TRAFFICKING PROVISIONS SHOULD NOT BE CHANGED

The Commission opposes the modifications of the laws relating to methamphetamine set forth in sections 52 through 56. The use of methamphetamine results in high costs to the community both financially and in increased crime. Empirically, the Commission has found that methamphetamine use is often involved in assaults and domestic violence cases. In assault cases, where a motive for the violence is not apparent, methamphetamine usually appears to be the cause of the violence. Many domestic violence police reports start with the offender being high on methamphetamine. The use of methamphetamine results in high medical costs to the victims of the violence caused by methamphetamine use and to the user who suffers irreversible damage to the user's body and mind. In most cases, the medical costs for the user is passed on to the community.

Given the higher cost to the community, there is no justification to lower the sentencing penalties for methamphetamine dealers – those caught distributing methamphetamine or in possession of more than one ounce (considered to be an amount that a dealer would possess) of methamphetamine.

Thank you for providing the Commission with the opportunity to testify in strong support of House Bill 2561 HD 1 except for the provisions relating to methamphetamine.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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1060 RICHARDS STREET • HONOLULU, HAWAII 96813
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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i**

February 25, 2016

RE: H.B. 2561; RELATING TO THE ADMINISTRATION OF JUSTICE.

Chair Luke, Vice Chair Nishimoto, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support, with amendments, of H.B. 2561.

Thank you for the opportunity to participate as members of the Penal Code Review Committee. Each member committed an extraordinary amount of time and effort in construction of this bill and our Department would like to commend all the members for their dedication to this important area of law.

Areas for Amendments:

Section 37-41 (pg. 72-77), would increase the dollar amount thresholds for multiple types of theft. Such drastic increases will negatively impact local retailers—including many small business owners—as they will be increasingly victimized by repeat or 'professional' offenders, who are clearly aware of these threshold values. While proponents of these changes have opined that “Habitual property crime” (HRS §708-803) could be used to address such repeat offenders, Habitual property crime does not pertain to petty misdemeanor offenses. As such, the proposed changes on page 74, lines 9 and 17, would more than double the amount that can be stolen from a particular victim—from \$100 to \$250—without ever meeting the criteria for Habitual property crime, no matter how many people or establishments they victimize in this way, or how often.

Also, the significance of the felony theft threshold must not be underestimated, as the average citizen who works for minimum wage in Hawaii must work nearly 40 hours to earn \$300, and would have to work nearly 100 hours to earn \$750. Ultimately, these increases would lead to greater harms to our legitimate, law abiding citizens, and hinder law enforcement in their efforts to protect not just business owners, but also tourists and members of our communities.

Section 52-56 (pg. 93-100) would remove the current sentencing requirements for methamphetamine offenses. Since the introduction of methamphetamine to Hawaii, this drug has torn apart countless families and left entire neighborhoods in disrepair. Today, methamphetamine continues to have the same destructive force that it did when these laws were initially passed, unlike any other drug in Hawaii, and there is no compelling reason to remove the specialized sentencing requirements that were designed to address this epidemic.

Section 20 (pg. 35-45) would remove § 712-1243 H.R.S., Promoting a dangerous drug in the third degree (“PDD3”), from the repeat offender mandatory minimum imprisonment statute. For those with substance abuse issues, our Penal Code already provides numerous opportunities for diversion, treatment, deferral and/or expungement, which are typically utilized long before offenders reach the level of qualifying for these particular sentencing provisions. If substance abuse and other criminal activity continue to be a problem, retaining PDD3 in this statute precludes offenders from committing further serious crimes, ensures greater public safety, and makes it much more likely that such offenders will receive necessary treatment.

Section 44 (pg 79-84) attempts to clarify when the offense of Abuse of family or household member (HRS §709-906) occurs “in the presence of a minor.” Although our Department supports this intent, we believe a more effective method would be to amend HRS §709-906 to add the definition of “in the presence” that is currently found in HRS §706-606.4, or perhaps add a reference thereto. Currently, our courts are forced to reach across chapters to utilize this section, which is a sentencing statute. Thus, we believe that creating a new definition for the term, “in the presence”—by adding the phrase “audio and visual”—would likely increase confusion with the definition in HRS §706-606.4, which would only complicate things further.

Sections 31-34 (pg. 61-66) would add a marriage exception to the offense of Sexual assault in the fourth degree. Unwanted sexual contact by any individual should not be acceptable under any circumstances, even if the individuals are still legally married. The proposed exception would essentially allow non-consenting spouses to be victimized by unwanted sexual contact, where no such exception exists for unwanted sexual contact between romantic partners who are unmarried, or other acquaintances or strangers.

Section 42 (pg. 77-78) would repeal HRS §708-893(a), which addresses the “cybercrime” version of theft. This statute was originally enacted in 2001, and subsection (a) added in 2006, with the unanimous approval of the Legislature, in recognition of the devastation that these types of crimes have on victims. Since 2006, the Legislature has taken additional steps to strengthen Hawaii’s computer crime laws, to reflect the seriousness of cybercrime occurring throughout Hawaii. By repealing this section, it would severely weaken Hawaii’s computer crime laws and eliminate one of the most important statutes needed to address the problem of computer crimes.

Section 10 (pg. 25-26) seeks to make an amendment that would allow the court the option of temporarily hospitalizing a defendant rather than revoking the defendant’s conditional release. Although this mechanism would generally provide more judicial efficiency, our Department urges this committee not to cap the maximum length of hospitalization at one (1) year, and instead allow courts to determine what is needed on a case-by-case basis.

Section 61 (pg. 104-105) attempts to clarify and ensure that restitution is deducted from an inmate’s account at a rate of 25%, pursuant to HRS §353-22.6. Although the proposed language on page 104, line 19 (“Notwithstanding any law to the contrary”), does provide some

clarification, we would urge this committee to consider amending this to read, “Notwithstanding any law or order to the contrary,” to ensure completeness.

Section 65 (pg. 112-123) attempts to simplify HRS §806-83 by making non-substantive formatting changes to list which offenses that can be charged by written information. However, as indicated on page 71 of the Penal Code Review Committee’s report to the Legislature (submitted December 30, 2015), the Committee initially approved simplifying HRS §806-83 further, by establishing a list of offenses that could not be charged by information. We strongly believe that those initial changes approved by the Committee are needed, as the current list of charges in HRS §806-83 is exorbitantly long and unruly, and also incomplete, as most offenses that existed before HRS §806-83 (established in 2004) were never added to the list, and even many offenses created or amended since 2004 appear to have been left out by mere oversight. As such, our preferred revisions to HRS §806-83 would complete the changes initially approved by the Committee, using language from S.B. 2423 or S.B. 2109. As the Legislative Reference Bureau noted that such an amendment may be time consuming or complex, we have taken the liberty of extrapolating every class B and class C felony not currently listed in HRS §806-83, which is available for line-by-line review and comparison. The proposed amendments in S.B. 2423 and S.B. 2109 would not only complete the Committee’s goal of simplifying HRS §806-83, but would also minimize oversights and allow for flexibility to add future offenses as needed.

Areas of Support:

Section 32 (pg. 62) amends the definition of “sexual contact” for purposes of sexual assault charges, to remove the existing exception for perpetrators who are legally married to the victim. As noted, unwanted sexual contact by any individual should not be acceptable under any circumstances, whether married or not, and no such exception exists for unwanted sexual contact between romantic partners who are unmarried, or other acquaintances or strangers.

Section 59 (pg. 103) would clarify the definition of the term “alcohol”. The current definition includes a list of five (5) different forms or molecular compounds which relate to alcohol. However, the list currently contains items that are poisonous when ingested or are easily covered under the more familiar term proposed, ethanol. This proposal does not change the current definition of “Alcohol” but merely clarifies and simplifies the current definition.

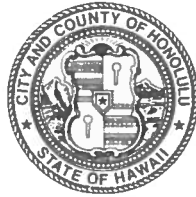
Section 51 (pg. 93) would remove any ambiguity between HRS §712-1200(1)(a) and (1)(b), and ensure conformance with the legislative intent articulated by the Legislature, in its 1990 and 2012 amendments. The proposed changes would ensure that “prostitutes” charged under HRS § 712-1200(1)(a) and “johns” charged under HRS §712-1200(1)(b) would be legally distinguishable, and further ensure that the Legislature’s intent—to exclude anyone convicted of HRS §712-1200(1)(b) from deferral of plea and sentencing, under HRS §853-4—is upheld.

Section 68 (pg. 128-132) would add the phrase, “or no contest plea,” to subsection (11) and (12) of the deferral provisions. Although our Department does not believe that there exists a loophole in which a defendant may receive a deferral on two separate occasions, this change may help to clarify the intent that a defendant can only receive a deferral on one occasion, whether that be a deferral of a plea of guilty or deferral of a plea of no contest.

For these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports H.B. 2561 with amendments. Thank you for the opportunity to testify on this.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

MARIE A. MCCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE CK-KP

February 25, 2016

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

SUBJECT: House Bill No. 2561, HD1, Relating to the Administration of Justice

I am Captain Carl Kalani of District 2 of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Part VII, Section 47, specifically §710-, Resisting an order to stop a motor vehicle in the first degree, and §710-1027, Resisting an order to stop a motor vehicle in the second degree.

With the inherent dangers to police officers as suspects in motor vehicles flee from them, establishing the felony offense will make the working environment safer for the officers, parties in violation of this section, and communities as a whole.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Kalani".

Carl Kalani, Captain
District 2

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".

Louis M. Kealoha
Chief of Police

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Scott Nishimoto, Vice Chair

Thursday, February 25, 2016

3:00 p.m.

Room 308

SUPPORT for HB 2561 HD1 - The Administration of Justice

LATE

Aloha Chair Luke, Vice Chair Nishimoto and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for almost two decades. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far, far from their ancestral lands.

HB 2561HD1 enacts the recommendations of the penal code review committee convened pursuant to HCR155, SD1 (2015) and change the effective date to 3/15/2038.

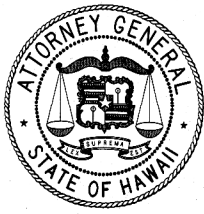
Community Alliance on Prisons served as a member of the Penal Code Review Committee. Kudos to Chief Justice Recktenwald for appointing Judge Alm to spearhead this massive effort and to Judge Alm for diligence, to Judge Ginoza for an amazing job keeping track of votes and discussion and writing the report, and to the Judiciary staff who kept us all informed. Of this 29-member committee, almost half of the members were either former or current prosecutors or work for a prosecutor's office.

The first paragraph in the Executive Summary of the Report of the Committee to Review and Recommend Revisions to the Hawai'i Penal Code reads:

"The criminal justice community is looking to be tough on crime when appropriate but also to be smart on crime. The committee drew on the collective experience of its diverse membership and, at the same time, attempted to see what current criminal justice research could teach us. The committee recognized the importance of innovative programs that were being implemented in Hawai'i, but also looked at other states to stay abreast of current thinking and practices in coming up with recommendations."

No one on the committee got everything they wanted; however, this was a good start that brought the current research on criminal justice issues into the discussions.

Mahalo for this opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2561, H.D. 1, RELATING TO THE ADMINISTRATION OF JUSTICE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

LATE

DATE: Thursday, February 25, 2016

TIME: 3:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General (the “Department”) opposes certain parts of the bill, specifically relating to the threshold dollar amounts for theft offenses and to sentencing for methamphetamine trafficking offenses.

The purpose of this bill is to enact the recommendations of the 2015 Penal Code Review Committee.

The Department has concerns about the amendments proposed in part V of the bill by sections 37 to 39 (pages 72-74), which increase the threshold dollar amounts for the offenses of Theft in the Second Degree, Theft in the Third Degree, and Theft in the Fourth Degree. And the Attorney General has concerns about the amendments proposed in part VIII of the bill by sections 52 to 56 (pages 93-100), which eliminate mandatory sentencing provisions for the methamphetamine trafficking offenses.

In part V, the bill increases the threshold value of property and services from \$300 to \$750 for the offense of Theft in the Second Degree, and from \$100 to \$250 for the offense of Theft in the Third Degree. The bill also increases the maximum value of property and services for Theft in the Fourth Degree from \$100 to \$250. The Department has concerns about these amendments.

The Department recommends that the threshold values for these theft offenses not be increased. The current values of \$300 and \$100 are appropriate amounts. To put it in perspective, the state minimum wage was \$6.25 per hour in 2003. The current minimum wage is \$8.50 per hour. Currently, a minimum wage worker would have to work at least forty hours,

over a full week, to replace property worth \$300. The \$300 felony theft amount remains a significant amount. To make \$750 (pretax), a minimum wage worker would have to work eighty-nine hours, or over two weeks. That would be half of the worker's monthly salary before taxes and other deductions.

Increasing the theft threshold value from \$300 to \$750 would diminish the seriousness of many theft crimes and reduce the deterrent impact of the theft offenses. Under this bill, theft of property or services valued between \$250 and \$750 would only be a misdemeanor. As such, the many convicted misdemeanor offenders, who are felony offenders under the current law, would not receive the level of appropriate treatment, counseling, and supervision that they would otherwise receive from felony probation services. This bill would reduce the deterrent effect against crime, while at the same time reducing the level of services to offenders, which itself may increase the rate of recidivism and the number of victims. Thieves know the difference between misdemeanor and felony offenses. With the proposed amendments, thieves will know they can steal up to \$750 in property without triggering felony prosecution. Property owners, particularly small business owners, may suffer greater losses, and are unlikely to pass all of those losses to their customers.

In part VIII, the bill eliminates mandatory sentencing provisions for the methamphetamine trafficking offenses. The Department has concerns about these amendments, which will significantly reduce the consequences of trafficking methamphetamine. Methamphetamine, often called “ice”, is one of the most commonly abused drugs in Hawaii, and by far the most dangerous. Ice destroys families and lives and is frequently a factor in violent and property crimes.

Section 52, on pages 93-96, amends the offense of Methamphetamine Trafficking in the First Degree by removing from its definition: (1) the possession of one ounce or more of methamphetamine; and (2) the distribution of one-eighth of an ounce or more of methamphetamine. Those prohibitions are then added, in section 54 of the bill, at pages 97-98, to the offense of Promoting a Dangerous Drug in the First Degree. These amendments would allow someone who committed these methamphetamine trafficking offenses to get probation. Under current law, these trafficking offenders would be sentenced to indeterminate terms of imprisonment.

In section 56, at pages 99-100, the bill repeals the offense of Methamphetamine Trafficking in the Second Degree. That offense prohibits the distribution of methamphetamine in any amount; and someone convicted of that offense must be sentenced to an indeterminate term of imprisonment, with a mandatory minimum term of imprisonment ordered by the court. By repealing this offense, a person who distributes any amount of methamphetamine will be eligible for probation.

The current methamphetamine trafficking offenses were adopted in 2006 to address the serious problem of methamphetamine abuse in our community. Methamphetamine has ruined many lives. The trafficking offenses were intended to target the distributors and sellers who were providing the drug to vulnerable individuals, getting them addicted to the substance, and making profits from their addiction. This bill will allow these traffickers to get probation.

Aside from the points of opposition related to the threshold amount for the theft offenses and sentencing for methamphetamine trafficking offenses described above, the Department supports the rest of the bill.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

LATE

Executive Director
Adriana Ramelli

DATE: February 25, 2015

Advisory Board

TO: The Honorable Sylvia Luke, Chair
The Honorable Nishimoto, Vice Chair
House Committee on Finance

President
Mimi Beams

Vice President
Peter Van Zile

Joanne H. Arizumi

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

Mark J. Bennett

Andre Bisquera

RE: Testimony in Support of H.B. 2561 H.D. 1
Relating to the Administration of Justice

Marilyn Carlsmith

Dawn Ching

Good afternoon Chair Luke, Vice Chair Nishimoto, and members of the House Committee on Finance.

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

The Sex Abuse Treatment Center (SATC) supports H.B. 2561 H.D. 1, which enacts recommendations of the penal code review committee convened pursuant to H.C.R. 155, S.D. 1 (2015).

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

Please note that the SATC's following comments are limited to Part IV of H.B. 2561 H.D. 1. This Part amends the definition of "sexual contact" in the context of Chapter 707 of the Hawai'i Revised Statutes (HRS) to eliminate a blanket exemption from the offenses of sexual assault for married people who subject their spouses to unconsented-to touching of intimate body parts. The amendments in Part IV would, however, maintain the exemption for married persons with respect to the crime of Sexual Assault in the 4th Degree.

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Joshua A. Wisch

The current law specifies that to be "sexual contact", the actor – the person initiating the touching of sexual or other intimate body parts – cannot be married to the other person who the actor is touching or is causing to touch the actor. This means that touching of intimate body parts between married spouses is not considered "sexual contact" for the purpose of defining crimes.

This has the perverse result of excusing married spouses from being accountable for various behaviors that would constitute sexual assault, and fails to protect victims of intimate partner sexual violence in the context of a marriage to their attacker in a manner that is grossly disproportionate to the protections afforded to their unmarried peers.

For example, a married person who knowingly subjects their spouse who is mentally defective, mentally incapacitated, or physically helpless to acts that would otherwise be considered sexual contact, would be excused from having committed Sexual Assault in the 3rd Degree (HRS Sec. 707-732(d)). Likewise, a married person who knowingly and by strong compulsion, such as the use of physical battery, a dangerous

instrument, or threat of bodily injury, forces their spouse to be subject to acts that would otherwise be considered sexual contact, would be excused from having committed Sexual Assault in the 3rd Degree (HRS Sec. 707-732(f)).

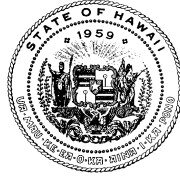
Exceptions to criminal statutes that allow married persons to force their spouses to have unwanted sexual contact without reprisal are based on the false and outdated legal notion that a marriage contract represents unconditional sexual consent by, and submission of, one spouse (historically, the wife) to the other. However, all fifty states have recognized, in banning penetrative rape in the context of marriage since the 1970s, that unwanted sexual activity in marriage can be a form of spousal abuse and domestic violence, and it is not an obligatory feature of the marriage experience that people, by default, consent to when they get married. There are many times in the course of any marriage where sexual contact may be unwanted and a violent, traumatizing affront to a non-consenting spouse.

An unlimited exception for married persons to have access to non-penetrative sexual contact with their spouses deeply disadvantages would-be victims who are married to their attackers relative to their unmarried peers, a deeply concerning equal protection issue. Although married persons are not a class to which harmful differences in protections provided by the law are automatically considered suspect, there is no rational basis for this drastically disparate treatment.

If the State of Hawai'i rejects a justification that marriage equals unconditional sexual access and consent, it makes no sense that a person on the day before their wedding may report their intimate partner to the police to seek protection against forcible sexual contact, but on the day after the wedding that same person would have no such recourse unless such sexual contact escalated to sexually penetrative rape.

The amendment to the Penal Code proposed in Part IV of H.B. 2561 H.D. 1 would correct this imbalance in the current law with respect to the offense of Sexual Assault in the 3rd Degree by removing the language "not married to the actor" from the definition of "sexual contact," when describing a would-be victim of unwanted, unconsented to, and compulsory sexual contact.

Therefore, we respectfully urge you to join SATC in supporting the passage of this portion of H.B. 2561, H.D. 1.



STATE OF HAWAII
DEPARTMENT OF HEALTH

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**Testimony SUPPORTING HB2561 H.D. 1
Relating to the Administration of Justice**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 25, 2016, 3:00 p.m. Room Number: 308

1 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a
2 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if
3 this measure is not adopted, and concomitant increased expenditures and pressure on the HSH
4 budget.

5 **Department Testimony:** The Department of Health (DOH) supports this measure. Generally,
6 the DOH supports the enactment of Part 2 of the bill with respect to chapter 704, Hawaii Revised
7 Statutes (HRS), entitled Penal Responsibility and Fitness to Proceed. The DOH takes no position on the
8 other parts of the measure.

9 The purpose of this bill is to enact recommendations of the penal code review committee
10 convened pursuant to HCR155, SD1 (2015) including changes to HRS §704-404, HRS §704-
11 411, HRS §704-712, HRS §704-713, and HRS §704-415.

12 We note several instances where the phrase “from within the department of health” in
13 reference to an examiner designated by the director of health in felony cases is deleted.

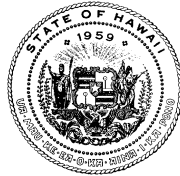
14 We understand that this provision to repeal the requirement that one member of the panel
15 be appointed from with the department is temporary and that mandatory participation in forensic

1 examinations by a state designated examiner from within the department will be restored in two
2 years. We understand that the intent of this provision is to provide flexibility in assigning court
3 ordered evaluations received by the department during a limited period of time while addressing
4 personnel shortages.

5 If this provision is enacted, the director will utilize the provided discretion in assigning
6 cases, if indicated, during this period and will remain committed to build the workforce of
7 employed examiners within the department who provide services pursuant to HRS §704.

8 Thank you for the opportunity to testify.

9 **Offered Amendments:** None.



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LATE

**Testimony SUPPORTING HB2561 H.D. 1
Relating to the Administration of Justice**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 25, 2016, 3:00 p.m. Room Number: 308

1 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a
2 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if
3 this measure is not adopted, and concomitant increased expenditures and pressure on the HSH
4 budget.

5 **Department Testimony:** The Department of Health (DOH) supports this measure. Generally,
6 the DOH supports the enactment of Part 2 of the bill with respect to chapter 704, Hawaii Revised
7 Statutes (HRS), entitled Penal Responsibility and Fitness to Proceed. The DOH takes no position on the
8 other parts of the measure.

9 The purpose of this bill is to enact recommendations of the penal code review committee
10 convened pursuant to HCR155, SD1 (2015) including changes to HRS §704-404, HRS §704-
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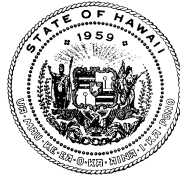
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1 examinations by a state designated examiner from within the department will be restored in two
2 years. We understand that the intent of this provision is to provide flexibility in assigning court
3 ordered evaluations received by the department during a limited period of time while addressing
4 personnel shortages.

5 If this provision is enacted, the director will utilize the provided discretion in assigning
6 cases, if indicated, during this period and will remain committed to build the workforce of
7 employed examiners within the department who provide services pursuant to HRS §704.

8 Thank you for the opportunity to testify.

9 **Offered Amendments:** None.



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LATE

**Testimony SUPPORTING SB2964
Relating to the Administration of Justice**

SENATOR GILBERT S. C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: February 23, 2016, 9:00 a.m. Room Number: 016

1 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a
2 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if
3 this measure is not adopted, and concomitant increased expenditures and pressure on the HSH
4 budget.

5 **Department Testimony:** The Department of Health (DOH) supports this measure.

6 The purpose of this bill is to enact recommendations of the penal code review committee
7 convened pursuant to HCR155, SD1 (2015) including changes to HRS §704-404, HRS §704-
8 411, HRS §704-712, HRS §704-713, and HRS §704-415.

9 Generally, the DOH supports the enactment of the recommendations made by the penal
10 review committee with regards to the statutes and will comply with these provisions should the
11 measure be enacted. We note several instances where the phrase “from within the department of
12 health” in reference to an examiner designated by the director of health in felony cases is deleted.

13 We understand that this provision to repeal the requirement that one member of the
14 panels be appointed from within the department is temporary and that mandatory participation in

1 forensic examinations by a state designated examiner from within the department will be
2 restored in two years. We understand that the intent of this provision is to provide flexibility in
3 assigning court ordered evaluations received by the department during a limited period of time
4 while addressing personnel shortages.

5 If this provision is enacted, the director will utilize the provided discretion in assigning
6 cases, if indicated, during this period and will remain committed to build the workforce of
7 employed examiners within the department who provide services pursuant to HRS §704.

8 Thank you for the opportunity to testify.

9 **Offered Amendments:** None.