



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of HB573
RELATING TO FENTANYL TEST STRIPS**

REP. DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Hearing Date: February 17, 2023

Room Number: 325

1 **Fiscal Implications:** Undetermined

2 **Department Testimony:** The Department of Health (DOH) supports this measure however
3 defers to the Department of Law Enforcement on its implementation.

4 This measure amends §329-1, Hawaii Revised Statute by exempting fentanyl test strips (FTS)
5 from the current definition of drug paraphernalia.

6 The Centers for Disease Control and Prevention and the Substance Abuse and Mental Health
7 Services Administration encourages the use of federal funds to purchase FTS to curb the
8 dramatic spike in in drug overdose deaths from the use of synthetic opioids which include
9 illicitly manufactured fentanyl. There were 74 fatal opioid posionings in Hawaii in 2021, 50 of
10 which came from synthetic opioids including fentanyl. FTS may be useful to find out if drugs
11 were mixed with fentanyl, thus giving communities information on illicit drug supply and what
12 steps we should take to prevent and reduce overdoses..

13 Thank you for the opportunity to testify.

14 **Offered Amendments:** None

TESTIMONY IN SUPPORT OF HB 573

TO: Chair Tarnas, Vice Chair Takayama, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 17, 2022 (2:00 PM)

Hawaii Health & Harm Reduction Center (HHRC) **strongly supports** HB 573, which excludes fentanyl test strips from the definition of drug paraphernalia under the state's Controlled Substances Act. We hope that the bill can be amended to reflect the more expansive provisions of SB 671.

HHRC operates Hawaii's statewide syringe exchange program, [*which has effectively kept HIV rates among persons who inject drugs and their intimate partners low for over three decades*](#), in every county. We first obtained fentanyl test strips using private grant funding from the Comer Family Foundation in 2019. Fentanyl test strips and other drug checking tools are critical in helping to prevent accidental and fatal overdoses. Broader access to drug checking tools, including portable spectrometers, is a policy reality in other jurisdictions.

Due consideration should also be given to repealing Hawaii's drug paraphernalia statute entirely, [as currently proposed in HB 431](#). Paraphernalia laws [do not advance individual or public health](#). Instead, they serve as a gateway to protracted criminal legal system involvement for those with behavioral health problems, including those who are unhoused or are from under-resourced communities. The baseline penalty provided by [HRS Section 712-1243](#) for possession of non-cannabis Schedule I & II drugs for personal use, including unusable traces and residue, [is among the nation's most draconian](#).

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawaii and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions, and have been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.



HB-573

Submitted on: 2/16/2023 2:12:06 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Drug Policy Forum of Hawaii	Support	In Person

Comments:

Chair Tarnas, Vice-Chair Takayama, & Committee Members:

Drug Policy Forum of Hawai‘i supports HB 573, which excludes fentanyl test strips from the definition of drug paraphernalia under the state’s Controlled Substances Act.

DPFH recommends that Hawai‘i’s drug paraphernalia statute be repealed entirely, as proposed in HB 431.

DPFH also re-affirms the posture of the American Public Health Association (APHA), which observes that a criminal legal approach to substance use is “ineffective and leads to other public health problems.” APHA calls for “ending the criminalization of drugs and drug consumers, prioritizing proven treatment and harm reduction strategies, and expanding (and removing barriers to) treatment and harm reduction services.” (APHA Policy Statement, “[Defining and Implementing a Public Health Response to Drug Use and Misuse.](#)”)

Mahalo for the opportunity to provide testimony.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

February 17, 2023

Room 325

2:00 PM

STRONG SUPPORT FOR HB 573 - FENTANYL TEST STRIPS

Aloha Chair Tarnas, Vice Chair Takayama 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 more than two decades. This testimony is respectfully offered on behalf of the 4,043 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 918 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 Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to testify in strong support of HB 573, an effective harm reduction and life-saving strategy.

Fentanyl test strips (FTS) are a low-cost method of helping prevent drug overdoses and reducing harm. FTS are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables).² FTS provide people who use drugs and communities with important information about fentanyl in the illicit drug supply so they can take steps to reduce risk of overdose.³

In April 2021, CDC and the Substance Abuse and Mental Health Services Administration (SAMHSA) announced⁴ federal funding could be used to purchase FTS. This purchase approval applies to all federal grant programs, like CDC's multiyear Overdose Data to Action cooperative agreement, if the purchase of FTS is consistent with the purpose of the program. Allowing federal grant programs to purchase FTS helps create opportunities for

¹ Department of Public Safety, Weekly Population Report, February 6, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/02/Pop-Reports-Weekly-2023-02-06_George-King.pdf

² <https://www.healthaffairs.org/doi/10.1377/forefront.20210601.974263/>

³ <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>

⁴ <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>

people who use drugs to interact with community-based organizations who may also offer mental health and behavioral services a person needs.

In Hawai'i, fentanyl test strips are considered as paraphernalia. Here is the first two paragraphs of the summary and Hawai'i's laws⁵:

SUMMARY

Drug overdose statistics in the United States remain grim. Provisional data from the National Center for Health Statistics, Centers for Disease Control and Prevention, shows that just under 106,000 Americans died of a drug overdose in the United States during the 12-month period from November 2020 to October 2021. This represents a 15.9 percent increase in fatal overdoses compared to the same period the year before and a 46.6 percent increase over calendar year 2019. Successfully combatting this overdose trend will be challenging and will require federal, state, and local policymakers to implement a variety of programs designed to help people who use drugs (“PWUD”).

Two of the many emerging policies are: (1) increasing the distribution and use of drug test strips and other testing equipment by harm reduction organizations and PWUD; and (2) expanding the number and scope of syringe services programs. However, state criminal laws pertaining to drug paraphernalia can hamper state efforts regarding both policies. In many jurisdictions, needles, syringes, drug test strips and/or other testing equipment fall within the state's statutory definition of drug paraphernalia and their possession or use is not exempt from criminal penalty. Even if local law enforcement and prosecutors do not actively enforce drug paraphernalia laws with respect to these items, the existence of the prohibition still serves to chill the use of testing equipment and syringe services program services.

HAWAII Statute(s) and initial effective dates(s)

- HAW. REV. STAT. ANN. § 325-114 (West 2021) (eff. 1992) (syringe services program exception).
- HAW. REV. STAT. ANN. § 329-1 (West 2021) (eff. 1972) (definition).
- HAW. REV. STAT. ANN. § 329-43.5 (West 2021) (eff. 1988) (criminalizes drug paraphernalia).
- HAW. REV. STAT. ANN. § 329-43.6 (West 2021) (eff. July 7, 2015) (overdose assistance exception).
- HAW. REV. STAT. ANN. § 329-55(a)(8) (West 2021) (eff. 1972) (forfeitures).

Substantive amendment(s) to law(s) (non-marijuana related)

July 3, 2017 – Criminal penalties for drug paraphernalia violations substantially reduced.

Does paraphernalia include drug test strips or other testing equipment?

Yes.

Does paraphernalia include needles/syringes?

Yes.

⁵ DRUG PARAPHERNALIA: SUMMARY OF STATE LAWS, LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION, Hawai'i at pages 32-33, April 2022. <http://legislativeanalysis.org/wp-content/uploads/2022/09/Drug-Paraphernalia-Summary-of-State-Laws-FINAL.pdf>

Penalties for possession/use of paraphernalia

- The following violations are subject to a fine up to \$500:
 - Using or possessing with intent to use drug paraphernalia to make or ingest a controlled substance in violation of the law; or
 - Delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to make or ingest a controlled substance in violation of this chapter.
- A person aged 18 or older who delivers drug paraphernalia to a person under age 18 at least three (3) years younger is guilty of a class B felony.
- It is unlawful for any person to publish an advertisement to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a Class C felony.

Is paraphernalia allowed in any context?

- Exchanges under the syringe services program provided in HAW. REV. STAT. ANN. §§ 325-111 to -117 (West 2021) do not constitute an offense under HAW. REV. STAT. ANN. § 329-43.5 (West 2021) for the program participant or employees of the program or state department of health.
- The offense of possession of drug paraphernalia does not apply to persons meeting the requirements for applicability of the overdose assistance exception in HAW. REV. STAT. ANN. § 329-43.6 (West 2021).

Forfeiture

All drug paraphernalia is subject to forfeiture.

Other provisions of note

HAW. REV. STAT. ANN. § 329-1 (West 2021) contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia

Recently proposed legislation

None

Is paraphernalia allowed in any context?

- Exchanges under the syringe services program provided in HAW. REV. STAT. ANN. §§ 325-111 to -117 (West 2021) do not constitute an offense under HAW. REV. STAT. ANN. § 329-43.5 (West 2021) for the program participant or employees of the program or state department of health.
- The offense of possession of drug paraphernalia does not apply to persons meeting the requirements for applicability of the overdose assistance exception in HAW. REV. STAT. ANN. § 329-43.6 (West 2021).

Forfeiture

All drug paraphernalia is subject to forfeiture.

Other provisions of note

HAW. REV. STAT. ANN. § 329-1 (West 2021) contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia

Recently proposed legislation

None

Fentanyl test strips save lives. Instead of demonizing people who use drugs, Hawai`i should be treating drug use as a public health issue instead of a criminal legal system issue. We will never end the War on Drugs – one of the biggest drivers of mass incarceration – if we continue to stigmatize people struggling with drug addiction.

We must address the poverty and mental health issues in our communities to tackle the many social issues that drive people to unhealthy behaviors.

We salute Hawai`i Health and Harm Reduction Center and their incredible outreach workers who reach deeply into the community to help people addicted to drugs. Harm reduction is an important strategy to save lives and fentanyl test strips are vital to this effort.

Community Alliance on Prisons urges the committee to pass this important legislation that will save lives.

“With [one person dying every 11 days](#) on the Big Island from a drug overdose, often involving fentanyl, experts say it’s hard to believe that fentanyl test kits are not readily available at local drug stores, health clinics or nonprofits that serve addicts in Hawaii.”⁶

⁶Fentanyl Test Strips Save Lives. Why Are They Illegal In Hawaii?, State Sen. Joy San Buenaventura plans to introduce a bill this session to decriminalize the test strips as Hawaii confronts more overdoses, By [Paula Dobbyn](#) / January 19, 2023. <https://www.civilbeat.org/2023/01/fentanyl-test-strips-save-lives-why-are-they-illegal-in-hawaii/>

HB-573

Submitted on: 2/15/2023 3:01:49 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Anika Martin	Individual	Support	Written Testimony Only

Comments:

I support excluding fentanyl test strips from the definition of drug paraphernalia in the controlled substances act.

HB-573

Submitted on: 2/15/2023 3:15:02 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
RUSSELL ABORDO	Individual	Support	Written Testimony Only

Comments:

I support the passage of HB 573

HB-573

Submitted on: 2/15/2023 4:56:20 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Wendy Gibson-Viviani	Individual	Support	Written Testimony Only

Comments:

TO: COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

FROM: Wendy Gibson-Viviani RN/BSN

RE: HB573—in Strong Support/Fentanyl Test Strip decriminalization

Dear Honorable, Rep. David A. Tarnas, Chair, Rep. Gregg Takayama, Vice Chair and Members of the Committee,

My name is Wendy Gibson-Viviani. I am an RN who has been working to help shape drug policy in Hawaii for 8 years.

I believe that Fentanyl test strips are harm reduction tools and should be decriminalized so they can be used. They can be used to determine if an unknown substance has Fentanyl in it or not. This has the potential to avert opiate overdose deaths. That is why I strongly support HB573.

Thank you for the opportunity to provide testimony.

Wendy Gibson-Viviani RN/BSN

Kailua

(808) 321-4503

HB-573

Submitted on: 2/15/2023 10:14:00 PM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Thaddeus Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas, Vice Chair Takayama, and JHA Committee Members,

As a public health professional and concerned citizen, I write in strong support of HB573, which would exclude fentanyl test strips from the definition of drug paraphernalia in the controlled substances act.

As the opioid overdose crisis continues to impact local communities, we need all the public health tools available in order to ensure that people in Hawai'i do not die from preventable deaths. Fentanyl test strips are a proven intervention to help people reduce the risk from overdose, thereby improving community health and social cohesion.

Please pass this necessary and important bill.

With thanks,

Thaddeus Pham (he/him)

HB-573

Submitted on: 2/16/2023 3:03:48 AM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
August K Ahuna Jr	Individual	Support	Written Testimony Only

Comments:

To:

HOUSE OF REPRESENTATIVES

THE THIRTY-SECOND LEGISLATURE

REGULAR SESSION OF 2023

[COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Rep. Sonny Ganaden Rep. Greggor Ilagan
Rep. Daniel Holt Rep. Sam Satoru
 Kong
Rep. Troy N. Rep. John M. Mizuno
Hashimoto
Rep. Linda Ichiyama Rep. Kanani Souza

I am writing in support of reclassification of fentanyl strips away from the classification as "Drug Paraphernalia," towards a **medical termed, testing classification**. With fentanyl's reach having touched many close people near me and those I've personally helped stay alive; from 2007 to 2015 in the Chinatown club scene, I did not know what fentanyl was until it caused an overdose of a customer/club goer near me. Their eyes are still burned into to my memory as we all tried and waited for an ambulance to get to The Dragon Upstairs. They were lucky as a RN who worked for HRCCC happened to be in the crowd with a naloxone vial and saved their life.

All I could do at the time was hold the poor person up in the restaurant/club as we all tried to help.

Since 2015, I've only seen continuous ramping up of exposures to the fentanyl because it is a legal, surgical level sedative; as well as, a cutting agent for other street dealt narcotics. I agree with the **logic based** rules used as guidelines and I ABSOLUTELY hope the jda and house will take the ease of consideration, my story, and the power that a simple strip of testing paper can save lives.

Thank you for your time.

HB-573

Submitted on: 2/16/2023 3:42:31 AM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Heather Lusk	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas, Vice Chair Takayama and Members of the Comittee:

My name is Heather Lusk and while the agency I lead, Hawaii Health and Harm Reduction Center is also testifying in strong suport of this bill, I felt the need to also personally testify in support of HB 573 which would make it legal to use fentanyl test strips in Hawaii.

2022 had the most fatal overdoses in Hawaii due to fentanyl on record and we are worried there may be even more in 2023. Most of those who died of a fentanyl-related overdose did not know there was fentanyl in the substance they ingested and if people could legally use fentanyl test strips (FTS) it will save lives.

The Centers for Disease Control and Prevention as well as the Substance Abuse and Mental Health Services Administraiton both strongly suport the use of FTS in order to save lives. Please join other states in demonstrating that saving lives is a priority by passing HB 573

thank you

Heather Lusk

HB-573

Submitted on: 2/16/2023 8:13:37 AM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jeremy Sakamaki	Individual	Support	Written Testimony Only

Comments:

Testimony in Support of HB573

My name is Jeremy Sakamaki, and I am an advocate for the decriminalization of fentanyl test strips in the state of Hawaii. The current criminalization of such strips creates an obstacle to the public's access to a tool that can help prevent overdoses.

HB573 seeks to decriminalize kits used to test for controlled substances, including fentanyl test strips. These kits are used primarily to detect the presence of fentanyl in a person's system, allowing them to make informed decisions about their safety and health. This will also allow individuals who use drugs to take steps towards harm reduction. Decriminalizing these kits allows people to make sure they do not consume potentially lethal doses without fear or repercussions.

The current criminalization of these kits creates an obstacle for those seeking access, and disproportionately affects marginalized communities who are already over-policed by law enforcement agencies. According to the Drug Policy Alliance, "Drug arrest data shows that black people were nearly three times more likely than white people to be arrested for drug possession offenses in 2018" (DPA). Criminalizing the possession of these kits only further exposes populations already in harm's way due to systemic racism and classism. It also prevents effective implementation of harm reduction strategies which could save lives and reduce community-wide overdose rates statewide.

By passing HB573, we can take real action towards reducing overdoses across Hawaii, as well as provide safe access for those who need it most without risk or recourse from law enforcement officials. We cannot forget that behind every statistic there is a person with a story – stories that are often forgotten or overlooked when discussing policy reform but which are just as important when considering how legislation can affect our communities on an individual level.

Decriminalizing the possession and use of fentanyl test strips is one way we can ensure justice and equitable outcomes for all residents regardless of race or socioeconomic status while at the same time saving lives across our state.

Thank you for your time and consideration regarding this important issue that affects so many in our state today.

HB-573

Submitted on: 2/16/2023 9:19:15 AM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Erin Furuichi	Individual	Support	Written Testimony Only

Comments:

I support the passage of HB 573. Thank you.

HB-573

Submitted on: 2/16/2023 11:21:16 AM

Testimony for JHA on 2/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

This is a common sense policy that will save lives as we work toward genuine solutions to drug abuse that involve ending poverty and restoring justice to our communities. Please pass HB573.