



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony in SUPPORT of HB573  
RELATING TO FENTANYL TEST STRIPS**

SENATOR. JOY SAN BUENAVENTURA , CHAIR  
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date: March 17, 2023

Room Number: 225

1 **Fiscal Implications:** Undetermined

2 **Department Testimony:** The Department of Health supports this measure however defers to  
3 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

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON HEALTH AND HUMAN SERVICES

Sen. Joy SanBuenaventura, Chair

Sen. Henry Aquino, Vice Chair

Friday March 17, 2023

Room 225

1:00 PM

### **STRONG SUPPORT FOR HB 573 - FENTANYL TEST STRIPS**

Aloha Chair SanBuenaventura, Vice Chair Aquino 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 3,981 Hawai`i individuals living behind bars<sup>1</sup> and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 917 - 24.4% of the male imprisoned population<sup>2</sup> - 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).<sup>3</sup> 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.<sup>4</sup>

In April 2021, CD and the Substance Abuse and Mental Health Services Administration (SAMHSA) announced<sup>4</sup> federal funding could be used to purchase FTS. This purchase approval applies to all federal grant programs, like CDC’s multiyear Overdose Data to

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<sup>1</sup> Department of Public Safety, End of Month Population Report, February 28, 2023.

[https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-EOM-2023-23-28\\_George-King.pdf](https://dps.hawaii.gov/wp-content/uploads/2023/03/Pop-Reports-EOM-2023-23-28_George-King.pdf)

<sup>2</sup> Why are 24.4% of Hawai`i’s male prison population sent thousands of miles from home when the following prisons in Hawai`i have room here: Halawa is at 75%; Halawa Special Needs Facility is at 60%; Kulani is at 44%; Waiawa is at 53% of operational capacity.

<sup>3</sup> <https://www.healthaffairs.org/doi/10.1377/forefront.20210601.974263/>

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

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 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 laws<sup>5</sup>:

## **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.

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<sup>5</sup> 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

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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.

**HB-573**

Submitted on: 3/14/2023 3:55:04 PM

Testimony for HHS on 3/17/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Wendy Gibson-Viviani	Individual	Support	Written Testimony Only

Comments:

TO: COMMITTEE ON HEALTH AND HUMAN SERVICES

FROM: Wendy Gibson-Viviani RN/BSN

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

Hearing Date/Time: March 17, 2023 at 1:00 P.M., Room 225 and video

Dear Chair San Buenaventura, Vice Chair, Aquino 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 strongly support HB573.

I believe that Fentanyl test strips are harm reduction tools with the potential to help drug users avoid accidental Fentanyl poisonings and overdose deaths.

Please remove FTS from the list of drug paraphernalia.

Thank you for the opportunity to provide testimony.

Wendy Gibson-Viviani RN/BSN

Kailua

(808) 321-4503



**HB-573**

Submitted on: 3/15/2023 7:34:31 AM

Testimony for HHS on 3/17/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

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**HB-573**

Submitted on: 3/16/2023 7:25:48 AM

Testimony for HHS on 3/17/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Support

**HB-573**

Submitted on: 3/15/2023 7:07:31 PM

Testimony for HHS on 3/17/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Thaddeus Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair San Buenaventura, Vice Chair Aquino, and HHS 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. For more info on the public health importance of these tools, go to: <https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html>.

Please pass this necessary and important bill.

With thanks,

Thaddeus Pham (he/him)