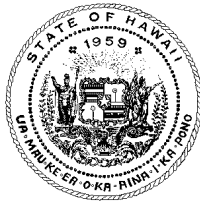


JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
**DEPARTMENT OF CORRECTIONS  
AND REHABILITATION**  
*Ka 'Oihana Ho'omalu Kalaima  
a Ho'oponopono Ola*  
1177 Alakea Street  
Honolulu, Hawaii 96813

**TOMMY JOHNSON**  
DIRECTOR

**Melanie Martin**  
Deputy Director  
Administration

**Pamela J. Sturz**  
Deputy Director  
Correctional Institutions

**Sanna Muñoz**  
Deputy Director  
Rehabilitation Services  
and  
Programs

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 1953, HOUSE DRAFT 1  
RELATING TO PENAL CODE.

By  
Tommy Johnson

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

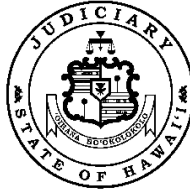
Tuesday, March 12, 2024; 10:00 a.m.  
State Capitol, Conference Room 016 & via Videoconference

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

The Department of Corrections and Rehabilitation (DCR) supports the intent of House Bill (HB) 1953, House Draft (HD) 1, which requires the Judicial Council to conduct a comprehensive review of the Hawai'i Penal Code and to recommend proposed changes. This measure also requires the Judiciary to appoint an advisory committee to assist in the review and allows the Council to also appoint a reporter and other staff as necessary and requires the advisory committee to report to the legislature.

Periodic reviews of Hawai'i's Penal Code and subsequent recommended changes to the Penal Code are imperative to having an effective, fair, and balanced penal code. For these reasons, the DCR supports the intent of HB 1953, HD 1 and respectfully defers to the Judiciary on Advisory Committee issues and concerns.

Thank you for the opportunity to provide testimony in support of the intent of HB 1953, HD 1.



## *The Judiciary, State of Hawai‘i*

### Testimony to the Thirty-Second Legislature, 2024 Regular Session

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Muke Gabbard, Vice Chair

Tuesday, March 12, 2024, 10:00 a.m.  
Conference Room 016 & Videoconference

By  
Rodney A. Maile  
Administrative Director of the Courts

### **WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 1953, H.D. 1, Relating to the Penal Code.

**Purpose:** Requires the Judicial Council to conduct a comprehensive review of the Hawai‘i Penal Code and to recommend proposed changes. Requires the Judicial Council to appoint an advisory committee to assist in the review, and allows the Council to also appoint a reporter and other staff as necessary. Requires the advisory committee to report to the Legislature. Appropriates funds. Effective 7/1/33000. (HD1)

### **Judiciary's Position:**

The Judiciary takes no position and offers the following comments.

Reviews of the penal code are large undertakings that require extensive time commitments by numerous stakeholders across the state, and since 1972 have occurred approximately every 10 years. Just eight years ago, in 2016, the Legislature considered recommendations from a 29-member penal code review committee representing nearly 20 different departments, organizations, and interests, who contributed more than 1,000 hours to the 2015 penal code review. After considering 84 proposals, the Legislature passed the 137-page Act 231 (SLH 2016) (HB2561, HD1, SD1, CD1).



House Bill No. 1953, H.D. 1, Relating to the Penal Code  
Senate Committee on Judiciary  
Tuesday, March 12, 2024  
Page 2

Penal code reviews typically involve a comprehensive examination of the penal code and are historically chaired by a sitting judge. The work of a penal code review also requires modest funding for a reporter, the holding of meetings, and research/clerical staff. The Judiciary appreciates the funding contemplated in this measure for this large and comprehensive undertaking, and respectfully requests that any appropriation not supplant the Judiciary's existing funding and current budget requests.

Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
**HAWAII PAROLING AUTHORITY**  
*Ka 'Ākena Palola o Hawai'i*  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN  
CHAIR

GENE DEMELLO, JR.  
CLAYTON H.W. HEE  
MILTON H. KOTSUBO  
CAROL K. MATAYOSHI  
MEMBERS

COREY J. REINCKE  
ACTING ADMINISTRATOR

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 1953, HD1  
RELATING TO THE PENAL CODE

by  
Edmund "Fred" Hyun, Chair  
Hawaii Paroling Authority

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

Tuesday, March 12, 2024; 10:00 a.m.  
State Capitol, Conference Room 016 and via Video Conference

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

The Hawaii Paroling Authority (HPA) stands in support of HB 1953, HD1 requiring the Judicial Council to conduct a comprehensive review of the Hawaii Penal Code and recommend changes.

Thank you for the opportunity to present testimony on HB 1953, HD1. We will be available to answer questions the committee members may have.

JON N. IKENAGA  
STATE PUBLIC DEFENDER

**DEFENDER COUNCIL**  
1130 NORTH NIMITZ HIGHWAY  
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**FAMILY COURT DIVISION**  
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**FELONY DIVISION**  
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**FACSIMILE**  
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STATE OF HAWAII  
**OFFICE OF THE PUBLIC DEFENDER**

HAYLEY Y.C. CHENG  
ASSISTANT PUBLIC DEFENDER

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**KAUAI OFFICE**  
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**MAUI OFFICE**  
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WAILUKU, HAWAII 96793  
TEL. No. (808) 984-5018  
FAX No. (808) 984-5022

**February 21, 2024**

**TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER STATE OF HAWAII  
TO THE COMMITTEE ON JUDICIARY**

**HB 1953, HD1: RELATING TO THE PENAL CODE  
March 12, 2024 at 10:00 a.m.**

**Chair Karl Rhoads  
Vice Chair Mike Gabbard  
Honorable Committee Members**

The Office of the Public Defender (OPD) supports this bill.

The Legislature has started on a path of moving away from the antiquated carceral focus of penal law to a more progressive, rehabilitative approach. In order to ensure that the Hawai'i Penal Code accurately reflects the focus on treatment and rehabilitation it is important for a comprehensive review to occur of existing offenses and punishment. Many of the offenses and punishment schemes in the Penal Code are based on carceral policies and ideologies which are outmoded and obsolete.

The OPD supports this bill. Thank you for the opportunity to comment on HB 1953, HD1.

# COMMUNITY ALLIANCE ON PRISONS

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

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



## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Tuesday, March 12, 2024

10:00 AM

## **STRONG SUPPORT FOR HB 1953 HD1 - PENAL CODE REVIEW**

Aloha Chair Rhoads, Vice Chair Gabbard 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 thirty years. This testimony is respectfully offered on behalf of the 3,838 Hawai'i individuals living behind bars<sup>1</sup> and under the "care and custody" of the Department of Corrections and Rehabilitation of March 4, 2024.

We are always mindful that 858 men who are serving their sentences abroad (43.5% of the male prison population of 1,972) - 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 1953 HD1** that requires the Judicial Council to conduct a comprehensive review of the Hawai'i Penal Code and to recommend proposed changes, it also requires the Judicial Council to appoint an advisory committee to assist in the review, allows the Council to also appoint a reporter and other staff as necessary, and requires the advisory committee to report to the Legislature forty days prior to the 2026 session.

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<sup>1</sup> DPS/DCR Weekly Population Report, March 4, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/01/Pop-Reports-Weekly-2024-03.04.pdf>

We support this measure because the Hawai`i Penal Code must be evolving as society changes with the times. A Hawai`i Penal Code that is in concert with the Aloha Spirit Law would be a welcome change from Hawai`i's 'tough on crime' statutes that have caused, and continue to cause, great harm to our families, communities, and the state budget.

The recommendations of the comprehensive review will ensure that the Hawai`i Penal Code is consistent and proportional, aligned with National best practices based on evidence-based strategies, cost effective in deterring crime, reducing recidivism, providing restitution to victims in a way that provides equity and justice regardless of socioeconomic class, and appropriately responding to mental illness.

I served on the 2015 Penal Code committee as Community Alliance on Prisons' representative. It is important to have wide representation on the advisory committee as we all live here and the statutes in the penal code impact all families and communities across Hawai`i nei.

Mahalo!



Committee: Judiciary  
Hearing Date/Time: Tuesday, March 12, 2024, at 10:00am  
Place: Conference Room 016 & Videoconference  
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1953 HD1 Relating to the Penal Code**

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

The American Civil Liberties Union of Hawai'i **SUPPORTS HB1953 HD1** which requires the Judicial Council to appoint an advisory committee to conduct a comprehensive review of the Hawai'i Penal Code and recommend proposed changes. This measure also allows the Council to appoint a reporter and other staff as necessary and requires the advisory committee to submit a report to the Legislature.

ACLU of Hawai'i's Smart Justice campaign seeks an end to excessively harsh crime policies that result in mass incarceration and criminalization and stand in the way of a just, equal, and humane society. Our campaign, along with the recommendations of the H.C.R. 85 Task Force, supports periodic review and evaluation of existing offenses and punishment under the Hawai'i Penal Code to transition from a system primarily based on punishment to greater focus on rehabilitation.

To reduce the number of people entering the criminal punishment system, we support the adoption and implementation of best practices within the penal code that will divert people from the carceral system to prevent over-criminalization and over-incarceration at the "front end" of the system.

We also need to end unnecessary and unjust pretrial detention through bail reform and other abusive pretrial practices; challenge prosecutorial abuses of power; and reform our punitive drug policies, which have failed to achieve public safety and health while eroding constitutional rights and criminalizing unprecedented numbers of people, particularly Native Hawaiians and people of color.

Please pass **HB1953 HD1**.

Sincerely,  
**Carrie Ann Shirota**  
Policy Director  
ACLU of Hawai'i  
cshirota@acluhawaii.org

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](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for over 50 years.*





**HB-1953-HD-1**

Submitted on: 3/10/2024 12:04:38 PM

Testimony for JDC on 3/12/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carolyn Eaton	Individual	Support	Written Testimony Only

Comments:

Aloha, Chair Rhoads, Vice Chair Gabbard and members of the Committee,

My name is Carolyn Eaton and I voice my support for this big undertaking. In no way should the excuse that the review has historically followed a 10-year pattern keep you from passing this excellent proposal from the House Committee on Judiciary and Hawaiian Affairs this session.

Mahalo for your allowing focus to widen to the timely review and improvement of our Penal Code.

Law Office of Georgette A. Yaindl, LLLC  
Georgette Anne Yaindl 8940  
P.O. Box 307  
Kailua-Kona Hawai`i 96745-0307  
(808) 224-0219 v/txt (877) 300-8869 fax  
gyaindl@gyattorney.com

---

March 11, 2024

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Judiciary  
House of Representatives, State of Hawai`i

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

Dear Committee leadership and members,

Re: **STRONG SUPPORT FOR HB1953 HD1 RELATING TO THE PENAL CODE**

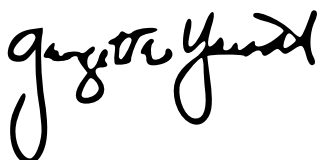
Hearing Date: Tuesday, March 12, 2024  
Time: 10:00 a.m.  
Location: Conference Room 016  
State Capitol  
415 South Beretania Street

I write in strong support of this bill. In its comments on the bill submitted during House deliberations, the Judiciary stated that the comprehensive penal code review has taken place approximately every ten years in the State of Hawai`i, and that the last one conducted resulted in enactment of Act 231 (2016). Accordingly, it appears this proposed legislation timely is before the legislature in 2024.

It is not clear from the current draft of the bill if the reference to the State's "penal code" refers only to HRS Title 37, entitled "Hawai`i Penal Code", or if the legislature intends that the review also encompass HRS Title 38: [Criminal] Procedure and Supplementary Provisions." Respectfully, in consideration of the five enumerated purposes of the review set forth in Section 2 of the bill, please consider amending HB1953 HD1 to expressly provide that the review shall encompass both Title 37 and Title 38.

Thank you for your attention to this issue and attention to my letter. Mahalo.

Sincerely,



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**HB-1953-HD-1**

Submitted on: 3/11/2024 11:39:07 AM

Testimony for JDC on 3/12/2024 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Isis Usborne	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Gabbard, and Memembers of the Committee,

I strongly support this bill to review and revamp Hawai'i's penal code. We need to focus on building up restorative justice, rehabilitation, and most importantly, preventative policies that address community needs before crimes are committed rather than centering laws on punishment post-conviction.

Mahalo,

- Isis Usborne  
Student at William S. Richardson School of Law

**HB-1953-HD-1**

Submitted on: 3/11/2024 11:32:30 PM

Testimony for JDC on 3/12/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Individual	Support	Written Testimony Only

Comments:

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

I am writing in **strong support** of HB 1953, HD 1.

A review of HRS provisions impacting the criminal legal system is desperately needed given the increasing costs and its toll on our state's families, particularly those from under resourced communities.

The current composition of the proposed committee is unlikely to facilitate the broad types of public inquiry and exploration that are required to make the state's criminal legal system more just, equitable, and efficient.

At minimum, the composition of the Judicial Council's Advisory Committee should include the Office of Wellness and Resilience and representatives of the Department of Health and Department of Human Services given the larger impact of criminalization on its programmatic work. The Committee should also include representatives of those working with Native Hawaiian, Pasifika, Filipino, LGBTQ+ and immigrant communities.

[California established a Committee on Revision of the Penal Code fairly recently](#), which produces an annual report. The Committee's objectives, outlined in statute, are to:

- Simplify and rationalize the substance of criminal law;
- Simplify and rationalize criminal procedures;
- Establish alternatives to incarceration that will aid in the rehabilitation of offenders; and
- Improve the system of parole and probation.

Chief among the tasks of a prospective penal code review should be an overhaul of this state's overwrought sentencing regime, which is an aberration among states given the ongoing role of the Hawaii Paroling Authority that is routinely far too punitive.

This state also features the longest average term of probation in the nation, helping to ensure perennially overcrowded carceral facilities.

As noted by numerous reports by the Office of Hawaiian Affairs and decades of available data from the Uniform Crime Report, the state's criminal legal system disproportionately impacts

Native Hawaiians. Along with overly punitive sentencing structures in statute and in application, police and prosecutorial practices could also endeavor to be more rational and otherwise equanimous, especially with respect to the ongoing criminalization of poverty and behavioral health issues.

One hopes that this review can produce positive substantive changes that the Legislature has not been willing to offer through more piecemeal reforms in recent years.

Mahalo for the opportunity to provide testimony.