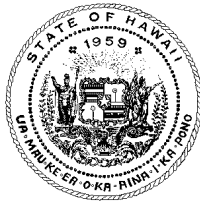


JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
**DEPARTMENT OF CORRECTIONS  
AND REHABILITATION**  
*Ka 'Oihana Ho'omalu Kalaima  
a Ho'oponopono Ola*  
1177 Alakea Street  
Honolulu, Hawaii'i 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, SENATE DRAFT 1  
RELATING TO PENAL CODE.

By  
Tommy Johnson

Senate Committee on Ways and Means  
Senator Donovan M. Dela Cruz, Chair  
Senator Sharon Y. Moriwaki, Vice Chair

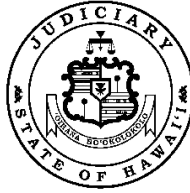
Thursday, April 4, 2024; 10:15 a.m.  
State Capitol, Conference Room 211 & via Videoconference

Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) supports the intent of House Bill (HB) 1953, House Draft (HD) 1, Senate Draft (SD) 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, SD 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, SD 1.



## *The Judiciary, State of Hawai‘i*

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

**Senate Committee on Ways and Means**  
Senator Donovan M. Dela Cruz, Chair  
Senator Sharon Y. Moriwaki, Vice Chair

Thursday, April 4, 2024, 10:15 a.m.  
Conference Room 211 & 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, S.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. Declares that the general fund expenditure ceiling is exceeded. Appropriates funds. (SD1)

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

The Judiciary supports this measure 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).

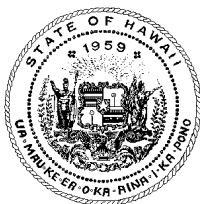


House Bill No. 1953, H.D. 1, S.D. 1, Relating to the Penal Code  
Senate Committee on Ways and Means  
Thursday, April 4, 2024  
Page 2

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 after reviewing our records, we believe we could administratively support the work of the penal code review for closer to \$10,000. We respectfully request 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 HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

**Ke Komikina Uku Luaahi Kalaima**

1164 Bishop Street, Suite 1530

Honolulu, Hawaii 96813

Telephone: 808 587-1143

Fax: 808 587-1146

**MARI McCAIG BELLINGER**  
Chair

**CLIFTON Y.S. CHOY**  
Commissioner

**JO KAMAE BYRNE**  
Commissioner

**PAMELA FERGUSON-BREY**  
Executive Director

**LATE**

TESTIMONY ON HOUSE BILL 1953, HD1, SD1  
RELATING TO THE PENAL CODE

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

Senate Committee on Ways and Means  
Senator Donovan M. Dela Cruz, Chair  
Senator Sharon Y. Moriwaki, Vice Chair

Thursday, April 4, 2024; 10:15 AM  
State Capitol, Conference Room 211 & Videoconference

Good morning Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Senate Committee on Ways and Means. Thank you for providing the Crime Victim Compensation Commission (Commission) with the opportunity to testify before you today. House Bill 1953, HD1,SD1, requires the Judicial Council to conduct a comprehensive review of the Hawai'i Penal Code and to recommend proposed changes. The bill also requires the Judicial Council to appoint an advisory committee to assist in the review. The Commission supports HB 1953, HD1, SD, with an amendment to specifically include members from victim service providers the Sex Abuse Treatment Center (SATC), the Hawai'i State Coalition Against Domestic Violence (HSCADV), Mothers Against Drunk Driving (MADD), the Crime Victim Compensation Commission (Commission), and Hawai'i Moms Demand Action for Gun Sense in America on the Advisory Committee.

Criminal justice reform must not only serve the interest of offenders but must also include meaningful protection of the interests and rights of crime victims to avoid harmful, unintended consequences.

The Commission provides compensation for victims of violent crime to pay un-reimbursed expenses for crime-related losses due to physical or mental injury or death. The Commission also administers a Restitution Recovery Project (Project) to collect court-ordered restitution from inmates and parolees and to disburse those funds to their crime victims. Since the inception of the Project, the Commission has collected over \$5.6 million. Based on the success of the Project, the Commission and the Council of State Governments co-authored an article titled *Victim Restitution Matters: Four Lessons from Hawai'i to Ensure Financial*

*Justice for Crime Victims* published in January 2021. Additionally, the Commission has represented the needs of victims and survivors on the Justice Reinvestment Working Group and the 2015 Penal Code Review Committee and currently serves on the HCR 23 Task Force.

The Commission is requesting that the Commission together with SATC, HSCADV, MADD, and Hawaii Moms Demand Action for Gun Sense in America be included among the membership of the Penal Code Advisory Committee to ensure that any recommendations are informed by the needs of victims, survivors, and community safety.

Thank you for providing the Commission with the opportunity to support this bill with an amendment to include the Sex Abuse Treatment Center, the Hawaii State Coalition Against Domestic Violence, Mothers Against Drunk Driving, the Crime Victim Compensation Commission, and Hawaii Moms Demand Action for Gun Sense in America on the Penal Code Advisory Committee.



Committee: Ways & Means  
Hearing Date/Time: Thursday, April 4, 2024, at 10:15am  
Place: Conference Room 211 & Via Videoconference  
Re: **Testimony of the ACLU of Hawai'i in SUPPORT of HB1953 HD1 SD1 Relating to the Penal Code with Amendments**

Dear Chair, Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

The ACLU of Hawai'i **SUPPORTS HB1953 HD1 SD1**, which requires the Judicial Council to conduct a comprehensive review of the Hawaii Penal Code and to recommend proposed changes, requires the Judicial Council to appoint an advisory committee to assist in the review, allows the Council to appoint a reporter and other staff as necessary, requires the advisory committee to report to the Legislature, and appropriates funds.

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.

### **Proposed Amendments**

To ensure data-driven penal reforms consistent with best practices and consistent with recommendations from past Task Force Commissions (i.e., H.C.R. 85, Pretrial Task Force, etc.), we recommend the following additions to the Advisory Committee:

1. Add a representative from the Office of Wellness and Resiliency;
2. Add a representative from the Department of Health;
3. Add a representative from the Department of Human Services;

4. Add a representative from an organization with expertise in harm reduction;
5. Add a representative from the University of Hawaii system trained in data-driven criminal legal reforms; and
6. Add representatives from organizations that serves communities disparately impacted by the criminal legal system – including Native Hawaiians, Pasifika, Filipino, immigrants, LGBTQ+ and persons with disabilities.

Please pass **HB1953 HD1 SD1** with the proposed amendments.

Sincerely,

**Carrie Ann Shirota**

Carrie Ann Shirota

Policy Director

ACLU of Hawai'i

[cshirota@acluhawaii.org](mailto:cshirota@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.*

# 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 WAYS AND MEANS

Senator Donovan DelaCruz, Chair

Senator Sharon Moriwaki, Vice Chair

Thursday, April 4, 2024

10:15 AM

## **STRONG SUPPORT FOR HB 1953 HD1, SD1 - PENAL CODE REVIEW**

Aloha Chair DelaCruz, Vice Chair Moriwaki, 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 3,866 Hawai`i individuals living behind bars<sup>1</sup> and under the “care and custody” of the Department of Corrections and Rehabilitation of March 25, 2024.

We are always mindful that 857 men who are serving their sentences abroad (40% of the male prison population of 2,166) 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, SD1 that requires the Judicial Council to conduct a comprehensive review of the Hawai`i Penal Code and to recommend changes. It also requires that the Council appoint an advisory committee to assist in the review and add new members, who then must file a report to the Legislature, and appoint a reporter and other staff, as necessary.

We support this measure because the Hawai`i Penal Code must evolve 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 and communities.

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<sup>1</sup> DPS/DCR Weekly Population Report, March 25, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/03/Pop-Reports-Weekly-2024-03-25.pdf>



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 individuals, families, and the larger community.

We urge the committee to support this review!

Mahalo!

**HB-1953-SD-1**

Submitted on: 4/3/2024 9:16:36 AM

Testimony for WAM on 4/4/2024 10:15:00 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 Dela Cruz, Vice Chair Moriwaki and members of the Committee,

Please pass this measure for Penal Code review. My own support is strong.

Mahalo for your hard work in service to the people of Hawai'i.

Dennis M. Dunn

Kailua, HI 96734

[\(dennismdunn47@gmail.com\)](mailto:dennismdunn47@gmail.com)



Re: HB 1953, HD 1, SD 1,

Hearing: Senate Committee on Ways and Means

April 4, 2024, 10:15 AM, Conference Room 211

Good morning, Chair Dela Cruz, Vice Chair Moriwaki, and members of the Committee on Ways and Means. I am testifying today in support of HB 1953, HD 1, SD 1, with proposed amendments. The purpose of this Bill is to initiate a comprehensive review of the Hawai'i Penal Code. The last time a review of this nature took place in 2016, I was privileged to participate at the invitation of then Circuit Court Judge Steve Alm who insured on his own initiative that a broad spectrum of victim advocate organizations and individuals participated in this critically important process. As a result of victim advocate participation in the 2016 Penal Code Review several important changes to our restitution and sexual assault statutes were proposed and ultimately enacted into law. This new proposed Penal Code Review will only be seen as successful and legitimate if those who are most knowledgeable about the real life impact of criminal statutes on crime victims. The insights provided by victim advocates are often appreciated and seen as enlightening by other Penal Code Review members who often acknowledge that the crime victim perspective is often overlooked in the criminal justice process. It is critical however, that the most appropriately knowledge victim advocacy organizations and individuals participate in the Penal Code review process. Individual Advocacy groups and individuals often have very extensive and specific expertise in the subject areas covered by their victim constituency such as Domestic Violence, Sexual Assault, Drunk Driving, Victim Compensation and Restitution, and Gun Violence. Thus, the amendments that I am suggesting would include the naming of some specific "Victim Advocacy Organizations" in the Bill to be included in the Penal Code Review. The Hawai'i State Coalition Against Domestic Violence, the Sex Abuse Treatment Center, Mothers Against Drunk Driving, the Hawai'i Crime Victim Compensation Commission, and Hawai'i Moms Demand Action for Gun Sense in America each have unique expertise about the experiences of crime victims and survivors of specific types of crimes. And each of these areas of expertise encompass specific issues within the Penal Code which have been unresolved through the normal legislative process and would benefit from the opportunity for a more in depth review afforded by the Penal Code Review process. Hopefully critical areas of the Penal Code covering the crimes of domestic violence, sexual assault, drunk driving, and gun violence can

**benefit from a review that ensures that all perspectives and areas of expertise are included. In addition, crime victim compensation and restitution remain at the cornerstone of our criminal justice system and needs the unparalleled knowledge and experience of the Crime Victim Compensation Commission to ensure that these topic areas receive adequate coverage.**

**In summation, I support HB 1953, HD 1, SD 1 with the proposed addition of the specific crime victim advocacy groups referenced in my testimony above. Failure to adequately incorporate crime victim expertise in the Proposed Penal Code Review may result in the perception that the resulting report and recommendations lack completeness (and ultimately, legitimacy) if crime victims' advocacy organizations and individuals have incomplete or token representation. Thank you for your time and consideration.**

**HB-1953-SD-1**

Submitted on: 4/3/2024 7:07:30 PM

Testimony for WAM on 4/4/2024 10:15:00 AM

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

Comments:

Aloha Chair Dela Cruz, Vice Chair Moriwaki, & WAM Committee Members:

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

[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.

