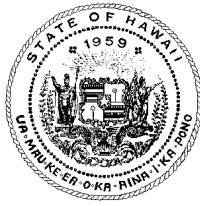


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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 2340, HOUSE DRAFT 1
RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Finance
Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair

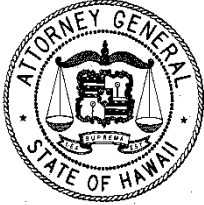
Thursday, February 22, 2024; 11:30 a.m.
State Capitol, Conference Room 308 & via Videoconference

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) **supports** the passage of House Bill (HB) 2340, House Draft (HD) 1.

DCR appreciates the Legislature's support in providing the funding for the settlement amount in *Kevin A. Lifofoi v. State of Hawaii, Department of Public Safety and Leinette Reyes, et. al v. Eric Tanaka* identified on page 4, lines 18-27, in the amount of \$2,060,000.

Thank you for the opportunity to provide testimony in **support** of HB 2340, HD 1.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2340, H.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 22, 2024 **TIME:** 11:30 a.m.

LOCATION: State Capitol, Room 308 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Skyler G. Cruz, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

The purpose of this bill is to seek appropriations to satisfy claims against the State, its officers, or its employees, including claims for legislative relief, judgments against the State, settlements, and miscellaneous claims.

The bill contains 28 claims that total \$13,408,296.37. Of this total, \$6,208,296.37 are general funds appropriation requests allocated among twenty-three claims, and \$7,200,000.00 are appropriation requests from a departmental fund, allocated among five claims. Attachment A provides a brief description of each claim in this bill.

Since the bill was last amended, one new claim was resolved for an additional \$401.00. An appropriation is needed from the general fund to satisfy this claim. Attachment B provides a brief description of this claim.

Including the new claim, the appropriation request totals \$13,408,697.37 allocated among 29 claims. Of this total, \$6,208,697.37 is a general fund appropriation request and \$7,200,000.00 is an appropriation request from a departmental fund.

The Department has a longstanding policy of advising agencies as to how to avoid claims such as those in this bill. The Department also has complied with section 37-77.5, Hawaii Revised Statutes, which requires the Attorney General to develop and implement a procedure for advising our client agencies on how to avoid future claims.

We respectfully request passage of this bill with amendments to add the new claim.

ATTACHMENT “A”

AGRIBUSINESS DEVELOPMENT CORP:

Ohana Best LLC v. State of Hawaii
Civil No. 1CC-19-1001640, First Circuit

\$1,250,000.00 *(General Fund)*
Settlement

The Agribusiness Development Corporation (ADC) acquired the former Galbraith Estates (Estates) in December 2012. ADC advertised for farmers to license the Estates in February 2013, despite knowing that there was insufficient water available for all the properties. Ohana Best LLC submitted a farming application to ADC requesting a large parcel of land. In January 2014, ADC granted Ohana Best a license to farm 160 acres of the Estates. The Executive Director of ADC, James Nakatani (Nakatani), assured Ohana Best that water for farming would shortly be available. Based on these assurances, Ohana Best prepared the land, purchased irrigation infrastructure, installed farm buildings, and incurred other expenses while waiting for water delivery. Each time Ohana Best asked ADC when water would be delivered, Nakatani told them “soon.” By August 2016, Ohana Best abandoned the farm when it became apparent that water would not be provided as promised.

DEPARTMENT OF THE ATTORNEY GENERAL:

Rodney Pagba v. Anne E. Lopez
Civil No. 22-cv-00521 JMS-KJM USDC

\$ 5,707.00 *(General Fund)*
Settlement

Plaintiff was convicted of third-degree assault, a misdemeanor under Hawaii law, in 1988. In 2022, he applied for a permit to acquire a firearm under section 134-2, Hawaii Revised Statutes (HRS), and was denied. Section 134-7, HRS, imposes an indefinite prohibition on persons convicted of crimes of violence from owning or possessing firearms. Plaintiff sued the City and County of Honolulu and the Attorney General, arguing that the denial of his application violated the Second Amendment to the United States Constitution. The parties agreed to stay this case pending the Legislature’s consideration of Act 52 of 2023 (S.B. No. 1230) which, among other things, adopted a twenty-year disqualification from firearms possession, rather than an indefinite disqualification, for persons convicted of misdemeanor crimes of violence. The parties agreed to a nominal settlement in order to provide for an orderly resolution of this case and to avoid further litigation.

Michael Santucci v. City & County of Honolulu
Civil No. 22-cv-00142 DKW-KJM, USDC

\$ 28,000.00 *(General Fund)*
Judgment

This lawsuit sought declaratory relief and an injunction against enforcement of section 134-7(c), HRS, which prohibits the possession of firearms by a person who “[i]s or has been diagnosed as having a significant behavioral, emotional, or mental disorders (sic)

DEPARTMENT OF EDUCATION:

John Roe No. 122 v. State of Hawaii
Civil No. 1CCV-19-0002046, First Circuit

\$ 450,000.00 *(General Fund)*
Settlement

Plaintiff alleged that in 1976-1977 when he was a minor student at Highlands Intermediate School, he was repeatedly sexually abused by a school security officer, Joseph Moisa. Plaintiff alleged that the abuse occurred on school grounds, at a camping trip allegedly arranged by Moisa for participants in the Campus Police Officer (CPO) program, and in a hotel room. Because the records retention period had long since lapsed, the State was unable to find any relevant records to confirm or refute Plaintiff's allegations. The State was able to find school yearbooks that seemed to support the claim that Moisa was working at the school as a security officer and was involved in the CPO program during the relevant period of time. Due to the enactment of section 657-1.8, HRS, in 2018, the statute of limitations was waived for adult survivors of child sexual abuse if they could prove gross negligence on the part of the State. All the State employees who would have been in any position to know any facts or information regarding this matter are dead. Therefore, the Department of Education (DOE) was unable to offer evidence to contradict Plaintiff's claims and decided to settle the case to avoid the risk of an adverse judgment.

Amanda Kelly v. Debra Farmer
Civil No. 1CCV-20-0000825, First Circuit

\$ 50,000.00 *(General Fund)*
Settlement

Plaintiff provided private services as a Board Certified Behavior Analyst to DOE students while employed as a private contractor. Plaintiff commonly participated in special education Individualized Education Plan (IEP) meetings with her clients. Defendants are current or former DOE employees. Plaintiff asserted defamation claims against the Defendants, in their individual capacities, for allegedly disseminating written and oral statements to Plaintiff's employer and supervisors complaining of Plaintiff's "aggressive" or "negative" conduct, some of which included the threat of withholding future DOE contracts unless Plaintiff was transferred or removed from all DOE-related work. Plaintiff claimed that the Defendants' statements caused her to suffer significant damage to her reputation for which she sought damages.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Courtney Ledford v. Ethan Ferguson
Civil No. 17-1-0416, Third Circuit

\$1,250,000.00 *(General Fund)*
Settlement

Plaintiff brought this lawsuit against the State of Hawaii and Ethan Ferguson, a former Department of Land and Natural Resources Conservation and Resources Enforcement Officer, alleging that she had been sexually assaulted by Ferguson at the Lalakea Beach Park on Hawaii island. Ferguson was prosecuted and convicted on five counts of sexual assault. In a Second Amended Complaint, Plaintiff claimed that the State

should not have hired Ferguson based upon information disclosed in his employment application relating to his termination from the Honolulu Police Department. Plaintiff asserted claims against the State for negligent hiring, retention, and supervision, and negligent infliction of emotional distress.

DEPARTMENT OF PUBLIC SAFETY:

Kevin A. Lifoifo v. State of Hawaii, Department of Public Safety \$ **60,000.00** *(General Fund)*
Civil No. 2CCV-21-0000067(2), Second Circuit **Settlement**

Plaintiff alleged that he suffered a broken jaw due to an assault by another inmate during a riot that occurred on March 11, 2019, at the Maui Community Correctional Center. Plaintiff alleged that four or five Adult Correction Officers were about fifty to sixty feet away at the time of the incident, but did nothing to control the situation. Due to multiple fractures being discovered in Plaintiff's jaw, Plaintiff was required to undergo a surgical stabilization procedure and his jaw was wired shut to minimize nerve injury.

Leinette Reyes, et al. v. Eric Tanaka **\$2,000,000.00** *(General Fund)*
Civil No. 17-cv-00143 JAO-KJM, USDC **Settlement**

Plaintiffs are current and former female inmates at the Women's Community Correctional Center (WCCC) who asserted civil rights claims under 42 U.S.C. § 1983 and state law claims alleging that they were sexually assaulted by four Adult Corrections Officers (ACOs). The State prosecuted the ACOs on sexual assault charges, and two of the ACOs pleaded guilty or no contest to the charges. Plaintiffs alleged that Eric Tanaka, who was the warden at WCCC during the relevant time period, failed to supervise the ACOs and condoned a culture, pattern, and policy of sexual abuse.

HAWAII PUBLIC HOUSING AUTHORITY:

Edwin Kalamau, Sr. v. State of Hawaii \$ **107,695.12** *(General Fund)*
Civil No. 1CCV-22-0000701, First Circuit **Judgment**

Plaintiff slipped and fell in a puddle of water in the underground parking garage of the Pumehana Federal Housing Project, where he was a resident. The property is managed by the Hawaii Public Housing Authority. Plaintiff suffered injuries to his cervical spine. The arbitrator found that Plaintiff sustained damages in the amount of \$205,405.23 but reduced the amount by fifty percent for Plaintiff's contributory negligence. With costs, Plaintiff was awarded a total of \$103,313.50. Neither party appealed and judgment was entered. With interest, the total appropriation amount is \$107,695.12.

DEPARTMENT OF TRANSPORTATION:

Michelle Banks v. State of Hawaii
Civil No. 1CCV-22-0000089, First Circuit

\$ 3,900,000.00 (Dept. Appropriation)
Settlement

This case arose out of a single motor vehicle accident fatality that occurred on the H-3 freeway beyond Exit 11 in Kaneohe. Joshua Banks was heading northeast toward Marine Corps Base Hawaii and drove off the freeway and into the guardrail. Approximately 18 months prior to Mr. Banks' accident, there had been another accident where a driver drove off the freeway and into the guardrail. At that time, there was an ET-Plus terminal system on the guardrail. ET-Plus complies with Federal Highway Administration crash test criteria and the driver survived. A DOT crew cut away the damaged guardrail and terminal and put a temporary end on the guardrail that is referred to as a "boxing glove," which is a curved or rounded guardrail end. The "glove" is not an approved crashworthy guardrail end treatment for the speed of the site. The DOT Oahu District had a contract with GP Roadway Solutions for guardrail repairs and replacements, but the district did not make a request to GP Roadway Solutions to repair the subject guardrail or replace the ET-Plus terminal. The DOT's temporary repair and "glove" remained on the subject guardrail when Mr. Banks' accident occurred. His vehicle was speared by the "glove" and the guardrail. The ET-Plus terminal and other approved crashworthy guardrail terminals prevent the type of "spearing" accidents that "glove" end treatments are unlikely to prevent. Mr. Banks died of his injuries at the scene. He was 21 years old.

Bianca Chavez v. Department of
Transportation
Civil No. 1CC191001542, First Circuit

\$ 125,000.00 (Dept. Appropriation)
Settlement

The DOT owns and operates Kamehameha Highway. On one side of the highway is a City and County of Honolulu driveway that leads to the Pali Golf Course (PGC) and on the other side is a private driveway that leads to the Hawai'i Pacific University Hawaii Loa (HPU) windward campus parking lot. There is a crosswalk between the PGC side of the highway and the HPU side of the highway. A bus stop is located on the PGC side of the highway. The speed limit is 35 mph in that location. There is a history of student-pedestrian versus motor vehicle accidents in the crosswalk. In addition, prior to this accident, the area neighborhood board notified the DOT of their concerns that the crosswalk was "dangerous." The DOT was proactive in its response and installed a Rectangular Rapid Flashing Beacon (RRFB) system at the crosswalk in August 2011. After testing, the system went into operation in October 2011.

Approximately one month after the installation of the RRFB in 2011, an HPU student walking across the highway in the crosswalk was struck and killed by a hit-and-run driver. There was no evidence that she had activated the RRFB before she began to cross the highway. There were no other reported pedestrian versus motor vehicle incidents at the subject crosswalk until the evening of October 8, 2017, when the

plaintiff, Bianca Chavez, an HPU student, was walking in the crosswalk with a friend to her dormitory. Unlike the prior accident, the plaintiff had activated the RRFB before crossing the highway. A driver of a van hit both pedestrians and the plaintiff was severely injured. The driver claimed that he did not see the pedestrians until "a second" before he hit them, and he also claimed that the "flashing yellow lights" from the RRFB "confused" him. Although the driver was primarily liable to the plaintiff, and the RRFB system is known to be effective in getting driver compliance to stop or yield to pedestrians, the adequacy of the lighting in the vicinity of the subject site became an issue when the plaintiff's lighting expert opined that the street lighting was inadequate and did not meet the current engineering standards. Virginia Tech Transportation Institute (VTTI) was hired to study the highway street lighting by collecting illumination data and performing analyses that included a comparison of the illumination prior to and after the replacement of High Pressure Sodium light fixtures with Light Emitting Diodes (LED) fixtures in 2013. The VTTI report showed that the illumination had decreased rather than increased in some areas along the highway after the LED fixtures were installed.

David Lawrence v. State of Hawaii
Civil No. 2CCV-22-0000273, Second Circuit

\$ 2,950,000.00 (Dept. Appropriation)
Settlement

Plaintiff David Lawrence was injured when he encountered a "bump and crack" in the pavement surface created by tree roots while he was bicycling southbound on Kekaulike Avenue in Kula, Maui. Mr. Lawrence sustained a traumatic brain injury as well as fractures and loss of earnings and will incur future medical care expenses. Plaintiffs, Mr. Lawrence and his wife, Sandra Lawrence, brought this lawsuit against the State claiming, among other things, that the State had notice of the condition described, that the condition was hazardous, that the State had negligently breached its duty to inspect, repair, or maintain the highway in a reasonably safe condition or warn of defects in the road. Mrs. Lawrence made claims for loss of consortium and emotional distress.

Patrick Mitchell v. State of Hawaii
Civil No. 3CCV-20-0000024, Third Circuit

\$ 125,000.00 (Dept. Appropriation)
Settlement

Defendants Goodfellow Bros., Inc. (GBI) and DOT had a design-build contract for the "Queen Kaahumanu Highway Widening Phase 2" (Contract). Under the Contract, GBI contracted with and hired its own design engineer and all subcontractors through the completion of the project. GBI was to manage traffic control during construction in compliance with standards and guidelines as well as other federal and state guidelines, including those pertaining to safety. On May 20, 2018, Patrick Mitchell was riding his bicycle northbound on Queen Kaahumanu Highway approaching Honokōhau Street. A pick-up truck driver was making a left turn from Honokōhau Street onto the highway southbound. As Mr. Mitchell approached the intersection, the truck driver accelerated from the stop line into Mr. Mitchell's path. Mr. Mitchell and his bicycle impacted the left driver side rear door of the truck. There was no liability insurance covering the truck.

Mr. Mitchell sustained severe and permanent injuries that resulted in permanent disability and extensive health care costs. The plaintiffs, Mr. Mitchell and his wife, filed a lawsuit against GBI, the pick-up truck driver, and the owner of the pick-up truck. One of the claims was that the left turns should have been eliminated early in the project, and then the subject accident would not have occurred. The plaintiffs also claimed that there was a dispute between GBI and the DOT as to whether GBI failed to comply with contract procedures to submit a recommendation to eliminate left turns at the intersection prior to the subject accident. Although the driver was primarily at fault, and although the elimination of left turns at the intersection during construction was not mandated by standards or guidelines, under section 663-10.9, HRS, there was a risk that the State and GBI would be found jointly and severally liable for the driver's share of fault.

Charles David Yandell v. State of Hawaii, Department of Transportation Civil No. 5CCV-21-0000100, Fifth Circuit	\$ 100,000.00 <i>(Dept. Appropriation)</i> Settlement
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Before sunrise on October 25, 2019, Cindy Yandell and her sister-in-law, Kristi Molz, were struck by a vehicle while walking in an unsignalized crosswalk at the junction of Kuhio Highway and Ala Road in Kapaa, Kauai. There is a streetlight above the crosswalk. Kuhio Highway has a northbound lane, a southbound lane, and a two-way left turn lane for either direction of travel that separates the two through lanes. The pedestrians were struck by a car driven by a tourist who was heading south on the highway. The driver said that he did not see the pedestrians in time to avoid hitting them. The accident was captured on surveillance video from a nearby shop. Ms. Yandell died of her injuries. Ms. Molz sustained multiple fractures and remained in the hospital for approximately two weeks before returning home to the mainland. The plaintiffs reached a confidential settlement with the driver before the lawsuit was filed. The plaintiffs then filed a lawsuit against the DOT for negligent design and operation of the highway and against Kaua'i Island Utility Cooperative (KIUC) for inadequate street lighting. When the video revealed that the lights were on and operating properly, the plaintiffs dismissed their claims against KIUC and proceeded against the DOT only.

MISCELLANEOUS CLAIMS:

Employers Insurance Company of Wausau	\$ 147,657.77 <i>(General Fund)</i>
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Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

Matthew W. Payne \$ **445.00** *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

Chaniel Ramo \$ **167.00** *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

Two Spirits, Inc. \$ **358,413.97** *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

Wallace K. Yashima \$ **3,916.04** *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

**Wallace Yashima and
Hyang-Suk Yashima** \$ **746.00** *(General Fund)*

Claimants request reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimants have shown good cause for any delay.

ATTACHMENT “B”

DEPARTMENT OF PUBLIC SAFETY:

Civil Beat Law Center for the Public Interest v. Department of Public Safety Civil No. 1CCV-23-0000943, First Circuit	\$	401.00 <i>(General Fund)</i> Settlement
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In April 2023, Civil Beat Center for the Public Interest (Civil Beat) requested records from the Department of Public Safety (PSD), referred to in the request as “data dictionaries,” that are maintained by PSD’s Intake Service Center (ISC) in the Offendertrak program PSD uses to keep track of its inmates. PSD denied the records request because the Offendertrak’s “data dictionaries” are part of a commercial proprietary computer program purchased by PSD in 1993 from a company that was later taken over by Motorola and a program that ISC developed in-house. PSD also denied the records request pursuant to section 92F-13(3), HRS, on the basis that the disclosure of the ISC and Offendertrak “data dictionaries” would jeopardize the security of the programs and increase the risk of a computer hack. Civil Beat filed this suit alleging that PSD improperly denied its records request.

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/22/2024
Time: 11:30 AM
Location: 308 VIA VIDEOCONFERENCE
Committee: House Finance

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 2340, HD1 MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

Purpose of Bill: Makes appropriations and approves payments for claims against the State, its officers, and its employees. Effective 7/1/3000. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) supports the passage of HB 2340, HD1.

The Department appreciates the Legislature's support in providing the funding to settle these claims against the Department. The Department requests that the funding source identified in this administration proposal retain the funding source which is the state's general fund.

Thank you for the opportunity to provide testimony on this measure.