

ACLU OF HAWAI'I

2024

LEGISLATIVE WRAP-UP REPORT

Aloha kākou,

Together, with the support of coalitions, partners and community members, we fought hard to protect liberty, equity and justice at the Hawai'i Legislature. The 2024 legislative session wrapped up with some wins, losses, and fertile ground for policy changes on the horizon!

- We passed a historic “Clean Slate” Task Force bill and a Cannabis Record Expungement Pilot Project bill that sets the foundation for people to move beyond their past criminal records and have access to jobs, housing, and other life opportunities.
- ACLU of Hawai'i spearheaded the Change 23 Steering Committee and helped to pass a Constitutional Amendment “Marriage Equality” bill that gives voters the opportunity to remove discriminatory language from our Hawai'i Constitution at the ballot box this November.
- Cannabis legalization got the furthest it has ever gotten in the Hawai'i Legislature, passing the Senate and clearing three House Committee hearings, only to die just short of the finish line. These efforts will continue as members of the Hawai'i Alliance for Cannabis Reform.
- While lawmakers rejected several data driven criminal legal reforms that would address the root causes of crime, they also passed a bill that requires the State to share law enforcement officer certification suspension and revocation information with other states through the National Decertification Index. In addition, Hawaii's hiring agencies are now required to review the same information before hiring new officers.

Recognizing that it often takes multiple legislative sessions to pass bills that we champion, you can count on us to persist! Our mission is to safeguard our civil rights and liberties enshrined in the U.S. and Hawai'i Constitutions.

Please stay connected by joining our e-mail list at acluhi.org, following us on social media [@acluhi](https://twitter.com/acluhi) and taking collective action. We appreciate your continued support and most of all, your commitment to a more just, fair and equitable Hawai'i!

In solidarity,

Carrie Ann Shirota, Policy Director

September 2024

ACLU

Hawai'i

ACLU Hawai'i Legislative Wrap-Up Report 2024

is a report by the ACLU of Hawai'i.

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DECRIMINALIZING POVERTY

We reimagine a Hawai'i where no one is locked up behind bars because of a lack of resources, and people have all their needs met regardless of wealth. In alignment with our Decriminalizing Poverty Campaign, we advocated for measures that would advance fundamental fairness and reduce unjust economic and racial disparities within our criminal legal system.

PRETRIAL FAIRNESS

HB1603 AMENDS VARIOUS PROVISIONS OF PRETRIAL RELEASE (SUPPORT - DEFERRED)

Introduces reforms to pretrial release, including requiring courts to set bail in an amount that the defendant is able to afford. The bill also prohibits the denial of pretrial release based solely upon certain factors, such as the defendant having one positive drug test.

OUR LEGISLATIVE STRATEGY

Hawaii's current pretrial system of wealth-based detention perpetuates cycles of poverty, increases the likelihood of future criminal legal system involvement, and disproportionately harms Native Hawaiians, Pacific Islanders, and communities of color, who are overrepresented in the criminal legal system. It also contributes to overcrowding in our jails and horrific conditions of confinement.

Our testimony acknowledged HB1603's proposed reforms as incremental steps toward pretrial fairness. Yet, we also pushed for stronger amendments to protect our constitutional rights to due process and to uphold the presumption of innocence in our criminal legal system.



FINES AND FEES

HB2722/SB2323 PROHIBITING YOUTH FINES AND FEES (SUPPORT - DEFERRED)

Prohibits the assessment of fines, fees, or court costs against youth in court under the age of eighteen years.

SCR213 YOUTH FINES AND FEES DATA COLLECTION (SUPPORT - PASSED)

Requests the Administrative Director of the Courts to collect, compile, and share data on the assessment of fees, court costs, fines, and restitution against minors.

WHY IT MATTERS

There's a national movement to adopt best practices and eliminate fines and fees for youth impacted by the carceral system. SCR213 will equip legislators with Judiciary data to better understand the impacts of youth fines and fees and enact debt-free justice policies in the future.

SMART JUSTICE



Our criminal legal policies and practices have created a system of mass incarceration. This hurts our communities and disproportionately harms low-income families and communities of color. Too many of our neighbors who commit nonviolent offenses are ensnared in a severely overcrowded carceral system. Existing tough-on-crime policies, particularly around the war on drugs, have failed to achieve public safety while putting an unprecedented number of people behind bars and violating constitutional rights. This system also erodes economic opportunity, family stability, and results in criminal records that creates barriers to success long after a person has paid their debt to society.

Our Smart Justice Campaign focuses on reducing the number of people in our jails and prisons by 50%, and reducing racial disparities in our criminal legal system. We achieve these outcomes by addressing the root causes of crime and investing in what makes us safe - supportive housing, health care, drug treatment, education, after school programs for youth, job opportunities, living wages, strengthened families and communities. This solutions driven approach will unclog courtrooms and overcrowded jails and prisons, reduce crime and recidivism and help people become contributing members of communities.

HB1601 CITATIONS IN LIEU OF ARREST FOR CERTAIN OFFENSES (SUPPORT - DEFERRED)

Requires law enforcement officers to issue citations instead of arrests for certain misdemeanors, petty misdemeanors, or violations. If enacted, this measure would decrease the pretrial population.

HB1602 FAILURE TO APPEAR IN COURT GRACE PERIOD (SUPPORT - DEFERRED)

Provides a 48-hour grace period after a missed initial court appearance before a court may issue an arrest warrant.

HB1604 PRETRIAL SUBSTANCE ABUSE ASSESSMENT AND TREATMENT (SUPPORT - DEFERRED)

Allows the court to order substance abuse assessment and treatment of a defendant before trial. Prohibits the revocation of parole or arrest of a person under parole supervision solely due to one positive test for drug or alcohol use.

SB2347 HABITUAL VIOLENT CRIME (OPPOSED - PASSED)

Establishes a new habitual violent crime offense that increases incarceration from a maximum of one year for a misdemeanor to a Class C felony, subject to up to 5 years in prison. Requires the Department of the Attorney General to submit reports to the Legislature in 2025 and 2026. This bill will sunset in 2027.

OUR STRATEGY AND GOALS

We championed bills to reduce the number of people locked up in jail who are accused, but not convicted of any crime. At the same time, we fought against bills that increased longer prison terms. Despite our efforts, the Legislature passed and Governor Green signed SB2347, which creates the new offense of habitual violent crime.

Our steadfast commitment to enact Smart Justice policies remain. We will continue to push for investments in diversion from the criminal legal system, instead of bills based on ineffective “tough on crime” rhetoric.

CLEAN SLATE

Every person deserves a fair chance to support themselves and their families. Over 25% of people in Hawai'i have criminal records, which create barriers to accessing jobs, housing, education, starting a business, and participating fully in social and civic community life. Having the State of Hawai'i initiate the expungement and sealing of qualifying criminal records for people creates a smoother path to re-entry, reduces recidivism, and makes safer communities for all of us.

Clean Slate is rooted in the notion that people who have made mistakes, paid their "debt to society," and now want to make a better life for themselves and their families deserve a shot at redemption. Expungement can also offset the well-documented racial disparities of policing, prosecution, and sentencing caused by the War on Drugs.

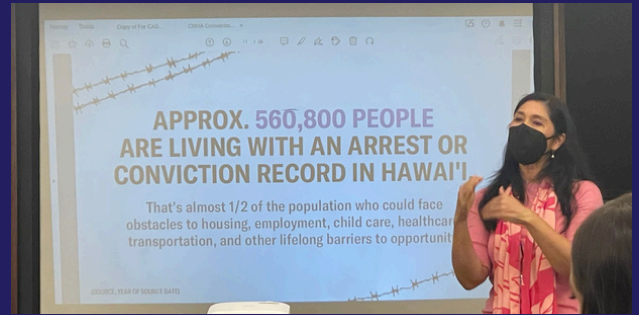
Read our [Clean Slate Fact Sheet](#).

HB1595 CANNABIS POSSESSION EXPUNGEMENT PILOT PROJECT (PASSED - SUPPORTED)

Creates a pilot project for a state-initiated expungement process of arrest records relating to certain cannabis offenses under HRS 712-1249. Requires Hawai'i Criminal Justice Data Center to submit reports to the legislature.

SB2706 EXPUNGEMENT TASK FORCE (PASSED - SUPPORTED)

Establishes the Clean Slate Expungement Task Force to develop a state-initiated record-clearing program and requires the Task Force to submit reports to the legislature. ACLU of Hawai'i is a named stakeholder of the Task Force. We will work alongside governmental stakeholders, advocacy organizations and directly impacted community members to push for the broadest Clean Slate laws possible.



OUR STRATEGY AND THE PATH FORWARD

The Clean Slate Task Force and Cannabis expungement bills are first steps to the long term goals to expand eligibility criteria for expungement and simplify the expungement process by harnessing the power of technology.

HB1595's state-initiated cannabis arrest record expungement pilot project will offer insight into scaling up the process statewide.

HB2706's Task Force will conclude by offering the legislature recommendations for implementing Clean Slate reforms. The pilot project and task force will create a roadmap to Clean Slate, ensuring that individuals with criminal records can re-enter the community and thrive. ACLU of Hawai'i is a named stakeholder to the Clean Slate Task Force.



CANNABIS LEGALIZATION & DECRIMINALIZATION

Drug-related cases are the largest contributor to Hawai'i's incarceration population. Too many youth and adults are still arrested and convicted for drug possession, including marijuana. This entangles people in the criminal legal system and creates barriers to housing, jobs and other life opportunities.

The enforcement of cannabis laws generates financial waste, and racial disparities. Criminalizing the personal possession or use of drugs does not fix the problem of mass incarceration. In fact, it contributes to the overcrowding of the carceral system in Hawai'i, which house a disproportionate number of Native Hawaiians and Pacific Islanders.

Cannabis reform is also the fiscally responsible thing to do. Hawai'i currently spends over \$250 a day or over \$90,000 to incarcerate one adult. It's far past time to legalize cannabis and, at minimum, decriminalize cannabis possession of higher quantities and paraphernalia.

HB1596 CANNABIS DECRIMINALIZATION (DEFERRED - SUPPORTED)

Makes the possession of less than one ounce of recreational marijuana a non-jailable violation punishable by a fine of \$25. Exempts drug paraphernalia for marijuana from certain penalties.



SB2487 CANNABIS POSSESSION AND PARAPHERNALIA (DEFERRED - SUPPORTED)

Exempts paraphernalia for marijuana from certain penalties. Lowers the penalties for the possession of certain amounts of marijuana, or marijuana products. Makes smoking marijuana in a public place a violation under the offense of promoting a detrimental drug in the third degree.

SB3335 RECREATIONAL ADULT USE CANNABIS LEGALIZATION (DEFERRED - SUPPORTED)

Establishes the Hawai'i Cannabis and Hemp Authority and Cannabis and Hemp Control Board within the Department of Commerce and Consumer Affairs to regulate all aspects of the cannabis plant. Beginning 1/1/2026, legalizes the personal adult use of cannabis.

OUR COALITION WORK AND NEXT STEPS

The Attorney General's office drafted SB3335, which established a cannabis legalization regulatory scheme. SB3335 nearly made it to the Governor's desk, only stalling out before reaching its final committee. We worked with our partners in the Hawai'i Coalition for Cannabis Reform to advocate for amendments to SB3335 that root legalization in justice and equity, rather than punishment and law enforcement. We will continue this work to shape the cannabis legalization bill introduced in the 2025 session.

Check out our [Cannabis Legalization Fact Sheet](#) and learn more about our work with the [Hawai'i Alliance for Cannabis Reform](#).

CIVIL RIGHTS & CIVIL LIBERTIES



Since 1965, ACLU of Hawai'i has worked to ensure that the government does not violate the fundamental constitutional rights of everyone – regardless of race, socioeconomic status, gender expression, sexual orientation, and other protected based under the law. We continue to fight for due process protections for vulnerable populations, gender equity and a safer, more just Hawai'i.

HB1812 RESTRICTS USE OF SOLITARY CONFINEMENT (DEFERRED - SUPPORTED)

Restricts the use of solitary confinement in state-operated and state-contracted correctional facilities, with certain specified exceptions.

HB2159 RELATING TO MENTAL HEALTH (PASSED - OPPOSED)

Repeals language entitling a subject of a petition for Assisted Community Treatment (ACT) to legal representation by a public defender. ACLU of Hawai'i argued that due process requires the guaranteed right to legal counsel for indigent persons subject to ACT proceedings which allows Courts to order forced treatment and medication.

SB2236 NOTICE FOR SEARCHES ON PRIVATE PROPERTY (DEFERRED - SUPPORTED)

Requires law enforcement to post notice that a warranted or warrantless search has been conducted on a property.

SB2557 RELATING TO LEGAL REPRESENTATION (VETOED - OPPOSED)

Allows the court to appoint an attorney for a subject of a petition for assisted community treatment if the interests of justice require one be appointed and repeals entitlement the subject to legal representation by a public defender.

HB2802 MARRIAGE EQUALITY (PASSED - SUPPORTED)

Proposes a constitutional amendment to repeal the Legislature's authority to limit marriage to opposite-sex couples.

VICTORY!

Same-sex couples in Hawai'i deserve full dignity and respect and the certainty that no matter what happens in the future, whether at the U.S. Supreme Court or in our legislature, their marriages and families are protected. The passing of HB2802 was a major victory because ballot amendments are a rarity and because of how the community mobilized to get this measure passed. The proposed State constitutional amendment guaranteeing marriage equality will be on the state ballot this November.

Learn more about the [Yes on Marriage Equality](#) campaign, and sign up to volunteer [here](#).



REPRODUCTIVE FREEDOM & BODILY AUTONOMY

Reproductive freedom does not simply mean access to abortion. The phrase “my body, my choice” encompasses a person's right to make decisions relating to procreation, contraception, abortion, in vitro fertilization, reproductive health care, how one gives birth, and whom they wish to share their birthing experience with.

While many lawmakers in Hawai'i champion reproductive freedom, the vast majority failed to support a legislative remedy during the 2024 session that would stop the criminalization of traditional midwifery and traditional and customary birthing practices under Act 32.

In 2019, the Legislature passed [Act 32](#), the Midwifery Restriction Law, which criminalizes trusted midwives, doulas, lactation consultants, counselors, childbirth educators, and cultural practitioners, simply because they fail to meet bureaucratic licensing regulations.

In 2024, the Center for Reproductive Rights and the Native Hawaiian Legal Corporation [filed a case](#) in the First Circuit Court of Hawai'i challenging the Midwifery Restriction Law that is preventing pregnant people in Hawai'i from using skilled midwives for their pregnancies and births, as they have for generations.

The ACLU of Hawai'i agrees that Act 32 is unconstitutional and an assault on the right to reproductive freedom and bodily autonomy. It threatens to criminalize traditional midwives and Indigenous healers, and intimidates the families who seek their services, which disproportionately impacts Native Hawaiian and Pacific Islander women.

During this legislative session, we joined traditional midwives, cultural birth practitioners and allies and advocated for a legislative solution. We hand delivered letters to the House of Representatives and requested support for a motion to recall [HB955 \(2023\)](#) for a floor vote as the Finance Committee refused to schedule a hearing.

Although the motion failed to pass, ACLU of Hawai'i will continue to support a legislative solution that supports reproductive freedoms, including access to traditional midwives and cultural birth practitioners. We will not go back!



DEFENDING OUR DEMOCRACY:

TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY

This session, we made it our priority to ensure that Hawai'i's prisons and jails have adequate oversight, the public can meaningfully participate in legislative and rulemaking processes, and that the State operates transparently.

HB1800 STATE BUDGET (PASSED - COMMENTS)

Appropriates funds for the state budget in the executive branch of government. Includes increased funding for and funding for new positions within the Correctional System Oversight Commission, which is tasked with improving the corrections system.

HB1599 PUBLIC MEETING NOTICES (PASSED - SUPPORTED)

Requires public meeting notices to inform the public how to provide remote oral testimony in a manner that allows the testifier, upon request, to be visible to board members and other meeting participants.

HB1611 PUBLICLY FUNDED ELECTIONS (PASSED - SUPPORTED)

Requires law enforcement agencies and the Law Enforcement Standards Board to consult the National Decertification Index and report certain information related to a law enforcement officer's certification status to the Index.

OUR SUCCESSES AND THE IMPACT

Through our testimony on the State Budget bill, we successfully advocated for the creation and funding of a new investigator position within the Correctional System Oversight Commission. The Commission regularly visits jails and prisons and highlights issues with overcrowding, facility mismanagement, and the well-being of individuals in Hawai'i's carceral system. This new position will create more transparency for conditions within the facilities and help us hold the State accountable.

We also submitted testimony to support HB1599, which was enacted! Act 12 will ensure the meaningful participation of our community members living across the islands and those living with disabilities or health conditions, which make testifying in person a health risk or impossible.



2024 LEGISLATIVE SCORECARD

Bill Number	Subject Matter	Link to ACLU of Hawai'i Testimony	Status
<u>HB1601</u>	Citations in Lieu of Arrest	<u>Support</u>	Deferred
<u>HB1602</u>	Failure to Appear in Court Grace Period	<u>Support</u>	Deferred
<u>HB1603</u>	Bail Reform	<u>Comments</u>	Deferred
<u>HB1604</u>	Pretrial Substance Abuse Assessment and Treatment	<u>Support</u>	Deferred
<u>HB1608</u>	Public Defender Staffing	<u>Support</u>	<u>Deferred</u>
<u>HB2722</u>	Youth Fines and Fees	<u>Support</u>	Deferred
<u>SB2323</u>	Youth Fines and Fees	<u>Support</u>	Deferred
<u>SCR213</u>	Youth Fines and Fees Data Collection	<u>Support</u>	Adopted
<u>HB1800</u>	State Budget	<u>Opposed</u>	<u>ACT 230</u>

Bill Number	Subject Matter	Link to ACLU of Hawai'i Testimony	Status
<u>SB2706</u>	Clean Slate Expungement Task Force	<u>Support</u>	<u>ACT 241</u>
<u>HB1595</u>	Cannabis Possession Expungement Pilot Project	<u>Support</u>	<u>ACT 62</u>
<u>HB1596</u>	Cannabis Possession Decriminalization	<u>Support</u> ¹	Deferred
<u>SB2487</u>	Cannabis Possession Decriminalization	<u>Support</u>	Deferred
<u>SB3335</u>	Adult Use Cannabis Legalization	<u>Support</u>	Deferred
<u>HB2159</u>	Repeals Right to Public Defender; Assisted Community Treatment	<u>Opposed</u>	<u>ACT 87</u>
<u>SB2557</u>	Repeal Legal Representation for Assistant Community Treatment Petitions	<u>Opposed</u>	Vetoed
<u>HB1812</u>	Restrict Use of Solitary Confinement	<u>Support</u>	Deferred
<u>HB2802</u>	Constitutional Amendment Repealing Legislature's Authority to Limit Marriage to Opposite-Sex Couples	<u>Support</u>	Passed (On Nov. Ballot)
<u>SB2236</u>	Notice of Search on Private Property	<u>Support</u>	Deferred

1. Initial testimony submitted providing "comments" until the bill was substantially improved by the House Committee on Judiciary and Hawaiian Affairs (JHA)

Bill Number	Subject Matter	Link to ACLU of Hawai'i Testimony	Status
<u>HB1913</u>	Court-Appointed Representation	<u>Support</u>	Deferred
<u>SB2556</u>	Community Outreach Courts	<u>Support</u>	Deferred
<u>HB1953</u>	Penal Code Review	<u>Support</u>	<u>ACT 245</u>
<u>HB1611</u>	Law Enforcement Officers Decertification Index	<u>Support</u>	<u>ACT 246</u>
<u>HB1599</u>	Public Meeting Notices	<u>Support</u>	<u>ACT 12</u>
<u>SB2381</u>	Publicly Funded Elections	<u>Support</u>	Deferred
<u>SB2474</u>	Paid Family and Medical Leave	<u>Support</u>	Deferred
<u>SB2605</u>	Insurance Coverage for Reproductive Health	<u>Support</u>	Deferred
<u>SB2347</u>	Habitual Violent Crime	<u>Opposed</u>	<u>ACT 213</u>

STRATEGY FOR THE FIGHT AHEAD

The 2024 legislative session has ended, but our advocacy and policy work is not done.

We are also planning a number of public education events around the islands this fall and winter. We hope to see you! Look out for updates for more info about opportunities to engage and build safe thriving communities with us. Let's advocate for the Hawai'i we all deserve!



Mahalo nui to our friends, allies, partners, and community members for engaging in the legislative process and fighting for a safer, more just Hawai'i. Your testimony, calls, emails, meetings with lawmakers, posts on social media, advocacy, and hard work sent a signal that the status quo of our criminal legal system is unacceptable.

A heartfelt thank you to these organizational partners who helped to advance collective legislative efforts:

- ACLU National
- Beyond Guilt Clinic
- Cannabis Society of Hawai'i
- Ceeds of Peace
- Chamber of Sustainable Commerce
- Clean Slate Initiative
- Code for America
- Community Alliance on Prisons
- Council for Native Hawaiian Advancement (CNHA)
- Doctors for Drug Policy Reform
- Drug Policy Forum of Hawai'i
- 'Ekolu Mea Nui
- Equality Caucus
- Going Home Hawai'i Consortium
- Hawai'i Alliance for Cannabis Reform
- Hawai'i Appleseed Budget & Policy Center
- Hawai'i Association of Broadcasters
- Hawai'i Disability Rights Center
- Hawai'i Health & Harm Reduction Center (HHHRC)
- Hawai'i Innocence Project
- Hawai'i Friends of Restorative Justice
- Hawai'i LGBT Legacy Foundation
- Hawai'i State Judiciary
- Hawai'i Workers Center
- HPC Task Force
- HOPE Services Hawai'i
- Japanese American Citizens' League
- Last Prisoner Project
- Office of the Public Defenders
- Marijuana Policy Project
- Native Hawaiian Legal Corporation
- NYU Law Policing Project
- Papa Ola Lōkahi
- Pacific Birth Collective
- Planned Parenthood
- Public First Law Center
- 'Ohana Ho'opakele
- Reimagining Public Safety Coalition
- Share Your Mana
- Stonewall Caucus of the DPH
- University of California Berkeley Law Policy Advocacy Clinic
- University of Hawai'i at Mānoa