



ACLU OF HAWAII

2023

LEGISLATIVE WRAP-UP REPORT

Thank you, everyone, for your support and fierce advocacy during the 2023 state legislative session. Because of our collective efforts, some significant bills that advanced social justice, equity, accountability, transparency, and civil rights and liberties made it to the governor's desk.

In spite of these victories, there is still much work to be done! Throughout this session, lawmakers deferred bills that would have significantly advanced genuine public safety and justice reform, instead pushing forward measures and appropriating funds for projects that only further the systemic harms we've advocated against.

While resistance to change and meaningful reform can sometimes seem like the dominant narrative, we are committed to our campaigns for [Smart Justice](#), [Decriminalizing Poverty](#), and [Reimagining Policing](#) and energized by all we have and can accomplish together. The fight for justice and equity continues in the capitol, the courts, in the streets, and in the stories we share about those most impacted.

Since we started this year focused on [legislative priorities](#) related to Pretrial Fairness, Clean Slate, and Policing Data Collection (see [one-pager](#) here) and responded nimbly to the changing tides at the capitol, here are some key takeaways from this session. This report also provides information about our ongoing legislative and campaign priorities and ways we will continue pushing for change across Hawaii'.

Please stay updated by following us on social media or joining our e-mail list at www.acluhi.org.

**In solidarity & gratitude,
ACLU of Hawaii'**

ACLU Hawai'i Legislative Wrap-Up Report (May 2023)

is a report by the ACLU of Hawai'i

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DECRIMINALIZING POVERTY

We reimagine a Hawai'i where no one is in jail because of a lack of resources and people have all their needs met regardless of wealth. As one of our top priorities, we advocated for measures aimed at fine and fee reforms, and strategies that eliminate economic and racial disparities for those most systemically oppressed.

JUVENILE JUSTICE

Transforming our juvenile system requires a long-term commitment to governmental and community collaboration and implementing and funding proven strategies that advance rehabilitation and reduce recidivism.

SR202 Data Collection Relating to Monetary Sanctions Against Minors (Passed)

This resolution requests the Judiciary collect and share data relating to the assessment of fees, court costs, fines, and restitution against minors.

HCR72 Youth Rehabilitation (Passed)

This resolution urges the Office of Youth Services and Family Court to collaborate with community organizations to maximize rehabilitation and minimize recidivism for youth, considering best practices and lessons learned from programs with proven outcomes.

HB317 Eliminating Youth Fees and Fines (Deferred)

This measure eliminates monetary fines/fees for minors and parents/guardians and modifies circumstances under which police issue citations in lieu of arrests.

PRETRIAL FAIRNESS

Our current pretrial system is a destructive form of wealth-based detention that perpetuates cycles of poverty, increases the likelihood of criminal legal system involvement, and disproportionately harms Native Hawaiians, Pacific Islanders, and communities of color who are overrepresented in the criminal legal system. This session we championed several measures that advanced pretrial reform, fair processes for people awaiting trial, more equitable sentences, and reduced jail overcrowding, while carefully balancing constitutional rights and public safety.

HB1336 Pretrial Reform (Deferred)

This bill modifies circumstances under which police issue citations in lieu of arrests, authorizes a grace period after a missed initial court appearance, amends various provisions related to pretrial release, allows court-ordered substance abuse assessment and treatment, removes punitive drug use screenings from parole and probation processes, and requires in certain cases that bail be set only in amounts that people are able to afford.

SB1092 Decriminalize Driving without a License (Deferred)

This bill makes driving without a license a civil violation and establishes fines. Debt-based driver's license suspension laws do not ensure driver compliance with the law; they harm vulnerable residents, waste valuable resources, increase unnecessary law-enforcement interactions, and worsen cycles of poverty.



REIMAGINE POLICING

The guiding principles of reimagining policing are that A) Law enforcement responses do not address the root causes of crime, B) We must reduce police contact by limiting when and why police are called upon in the first place, and C) There needs to be increased investment in genuine public safety: housing, health care, education, food, and jobs to build healthy, safe, and equitable communities. This session, we advocated for measures that require police departments and law enforcement agencies to be transparent, accountable, and responsible to the communities they serve.

SB151 Police Use of Force Policies (Passed)

This bill mandates all law enforcement agencies and departments to maintain publicly available policies on minimum standards on the use of force that shall include: de-escalation techniques, guidelines about drawing or pointing a firearm, filing of citizen complaints, duty to intercede when observing an officer using force beyond what is necessary. A common-sense measure modeled after best practices already in place in the state and nationwide, it will help reduce the number of violent and fatal interactions between police and community members and keep officers sworn to serve and protect accountable.

SB372 Police Duty to Intervene (Passed)

This measure codifies “the duty to intervene” if law enforcement officers believe other officers are using unnecessary or excessive force on an individual and requires them to report the incident to a supervisor. It requires county police departments to submit annual reports to the legislature. This is a vital step in keeping the public and law enforcement officers safe, improving mutual trust between the community and law enforcement, and helping build safe, effective, and fully constitutional police departments statewide.

HB880 Policing Data Collection (Deferred)

A top legislative priority earlier in the session, this bill is a measured step in advancing transparency and accountability related to policing in Hawai'i. It requires county police departments to collect, report, and publicly publish specific data regarding police stops, arrests, uses of force, and trends. Making data on policing public and accessible helps us analyze the effectiveness of policing in Hawai'i and holds police departments accountable.

(See [Policing Data Collection Fact Sheet](#) here)



SMART JUSTICE

Current tough-on-crime policies, particularly around punitive drug policies, have failed to achieve public safety while putting an unprecedented number of people in overcrowded jails and prisons and eroding constitutional rights. This system erodes economic opportunity, family stability, and civic engagement during incarceration, and oftentimes creates life-long challenges upon release.

Mass incarceration harms not just those who are detained, but their families and our extended communities. This especially impacts low-income families, communities of color, and Native Hawaiians who are disproportionately incarcerated, arrested, criminalized, and marginalized in their ancestral lands. Smart Justice means safer communities, fewer people behind bars, and fewer taxpayer dollars wasted on unnecessary incarceration.

HB823 Deaths in Custody Reporting (Passed, enacted into law as ACT 22!)

This bill expands the scope of reports on correctional facility/community correctional center deaths that are submitted to the governor and legislature and requires certain reports to be published on the Department of Corrections and Rehabilitation website.

HB451 Waiawa Family Visitation Pilot Program (Passed)

This bill establishes a pilot visitation and family resource center at Waiawa Correctional Facility on O’ahu, supporting healthier relationships for incarcerated people and their loved ones that strengthen family ties and reduce recidivism.

HB877 Criminal Legal Institute for Healing and Restoration (Deferred)

This bill establishes the “Ho’okaulike: A Criminal Legal System Institute for Restoration and Healing” at the University of Hawai’i William S. Richardson School of Law.

HB67 Higher Education Pu’uhonua Project (Deferred)

This bill provides continued support to Windward Community College in offering college credit courses to incarcerated people through its Pu’uhonua Program. Education reduces recidivism and uplifts people OUT of incarceration.

HB1132 Hawai’i Correctional System Oversight Commission (Deferred)

This bill extends the Oversight Commissioner’s position from two to six years and expands their independent oversight duties, promoting transparency and accountability in our jails/prisons.

CLEAN SLATE

Every person living with a record deserves a fair chance to support themselves and their families. Over 50% of people in Hawai'i are saddled with records, which creates barriers to accessing jobs, housing, education, starting a business, and participating fully in social and civic community life. Automatically sealing or expunging qualifying records for people after a reasonable period of time creates a smoother path to re-entry, reducing

recidivism, and creating safer communities for all of us. Clean Slate is rooted in the notion that people who've 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. These bills are incremental steps to expanding eligibility criteria for expungement and automating the expungement process.

(See [Clean Slate Fact Sheet](#) here)

SB410 Expungement (Passed)

This bill prohibits the inclusion of traffic citations that have been dismissed from a person's driving record and requires the court to automatically seal or remove arrest records and information relating to expungement orders in the Judiciary's publicly accessible electronic databases.

SB1079 Expungement (Passed)

This bill requires courts to expunge records if sentencing occurred before 1998, for first-time offenses involving: (1) operating a vehicle after consuming a measurable amount of alcohol while under the age of 21; and (2) certain property offenses.

SB1168 Clean Slate (Deferred)

This comprehensive bill for automated expungement expands the eligibility for and automates the expungement of peoples' records if certain criteria were met. The current expungement process is time-consuming, costly, complicated, and relies on an outdated paper system. Having an effective automatic expungement process makes expungement more accessible to those who are eligible.



CANNABIS LEGALIZATION & DECRIMINALIZATION



Drug-related cases are the largest contributor to Hawai'i's incarceration population. Far too many people are arrested and convicted for simple marijuana possession, needlessly entangling them in a criminal legal system that ruins lives.

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

This session we advocated for cannabis reform, legalization, decriminalization, expungement, and clemency for cannabis-related offenses.

Clemency can correct injustices and offset the well-documented racial disparities of policing, prosecution, and sentencing caused by the War on Drugs. Cannabis reform is also the fiscally responsible thing to do. Hawai'i currently spends \$238 a day to incarcerate someone. It's far past time to decriminalize those targeted by the racist and unjust War on Drugs.

HCR51 Cannabis Clemency (Passed)

This resolution urges the Governor to initiate a clemency program for individuals who have been prosecuted for cannabis-related offenses. Clemency is the process by which a governor, president, or administrative board may commute (reduce) a sentence or grant a pardon.

SB669 Cannabis Reform (Deferred)

This bill is a measured step toward comprehensive, equitable policies to legalize, tax, and regulate adult use of cannabis and redress the devastating effects of marijuana prohibition policies. It decriminalizes and establishes regulations for the cultivation, manufacture, sale, and personal use of small amounts of cannabis.

HB237 Cannabis Legalization (Deferred)

Legalizes, regulates, and taxes cannabis and manufactured cannabis products for responsible, adult use. Exempts sales of cannabis and manufactured cannabis products for medical use from the general excise tax.

(Read our full "[Statement on Cannabis Reform](#)" on our website.)



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, or anything else. We continue to fight for abortion access, gender equity, transgender rights, due process protections for vulnerable populations, and a safer, more just Hawai'i.

HB485 Marriage Certificates (Passed)

This measure requires the Department of Health provide a process for transgender, nonbinary, and other individuals to update marriage certificates to reflect their gender identity and, if applicable, name and sex. Forcing anyone to carry documents contradicting their identity is unjust and unconstitutional, and further marks transgender and non-binary folks for further mistreatment and discrimination.

SB 1057 Pay Transparency & Equity (Passed)

This measure requires certain job listings include an hourly rate or salary range and prohibits employers from discriminating because of any protected category established under state law.

SB671 Fentanyl Strips (Passed)

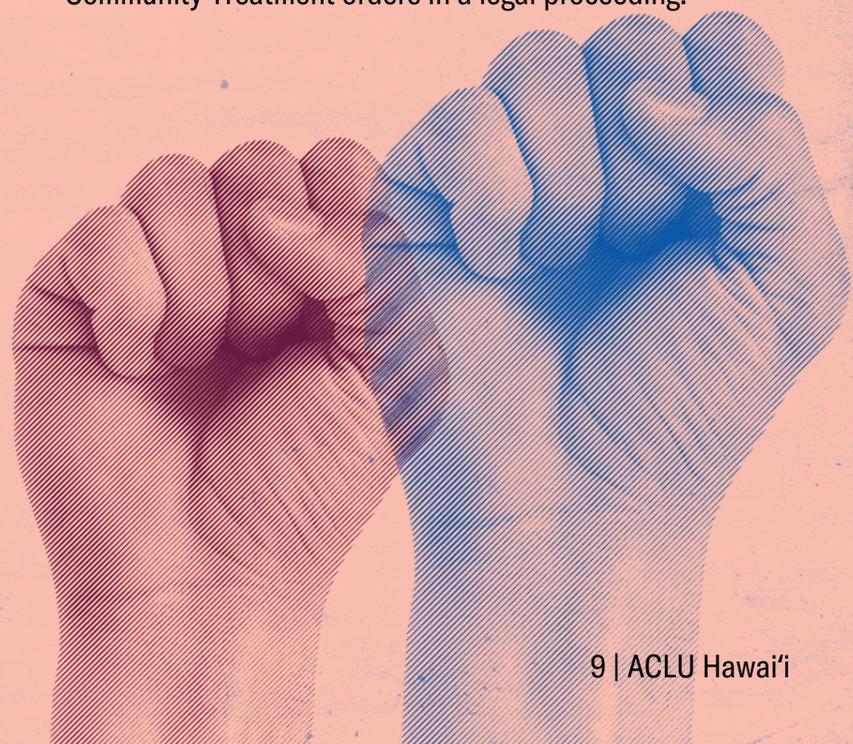
Excludes fentanyl testing strips (FTS) from the definition of drug paraphernalia in the Uniform Controlled Substances Act and defines it. Detecting the presence of fentanyl in unregulated drugs allows people to implement harm reduction strategies to reduce the risk of overdose.

HB 1154 Guardianship (Deferred) – OPPOSED

Too often people experiencing mental health conditions, regardless of their seriousness or management, are stripped of virtually all of their civil rights and liberties through guardianships. We opposed this measure proposing to amend the uniform probate code to allow court-appointed emergency guardians for respondents who merely reside in mental health facilities, hospitals, and homeless shelters.

HB 950 Assisted Community Treatment (Passed) – OPPOSED

The right of each person to determine his or her medical treatment is one of the most valued liberties in a democratic society. We opposed this measure due to the lack of procedural safeguards – namely legal representation afforded to indigent persons with mental health and/or co-occurring disorders who are subjected to Involuntary Community Treatment orders in a legal proceeding.



REPRODUCTIVE RIGHTS & ABORTION ACCESS

With the devastating overturn of Roe v. Wade and the continued effort to block the FDA's approval of the abortion pill mifepristone, and pass anti-choice legislation criminalizing abortion, abortion access is under attack across the United States.

Despite Hawai'i being the first state to legalize abortion, abortion and healthcare access remains inaccessible to many women and other people across Hawai'i and the Pacific. This is especially true for those who are poor, those who live in rural areas or on islands without easily accessible clinics, and for Native Hawaiians, Pacific Islanders, Indigenous people, and people of color who already experience significant health disparities. Now and always, we champion body autonomy and equitable access to healthcare in the Legislature and in the courts.

During this legislative session, we joined the Hawai'i Women's Coalition and Hawai'i Abortion Collective to successfully advance reproductive rights in Hawai'i at the capitol.

SB1 Reproductive Rights (Passed, enacted into law as ACT 2!)

This measure removes unnecessary barriers to abortion and expands accessible and equitable health care services for all by protecting and expanding access to abortion. Allows licensed physician assistants to perform certain abortions, repeals the location requirement, and protects the privacy rights of those who seek abortions.

Go to hawaiiabortioncollective.com for a comprehensive guide to abortions in Hawai'i!



Despite success at the state capitol, our fight for abortion access continues in the courts. In October 2017, the ACLU filed a lawsuit, Chelius v. Azar, challenging the constitutionality of federal regulations restricting access to medication abortion. Our case is one of a handful of active lawsuits pending nationwide that could impact access to mifepristone, a medication used in half the abortions in the U.S. The abortion pill is the next frontier in the fight for reproductive freedom.

Go to the [ACLU Case Page](#) for more info or sign the [ACLU Petition](#) at the bottom of this article.

DEFENDING OUR DEMOCRACY:

TRANSPARENCY & ACCOUNTABILITY



We spend nearly \$80K a year to incarcerate one adult but less than \$10K to educate a keiki in our public schools.



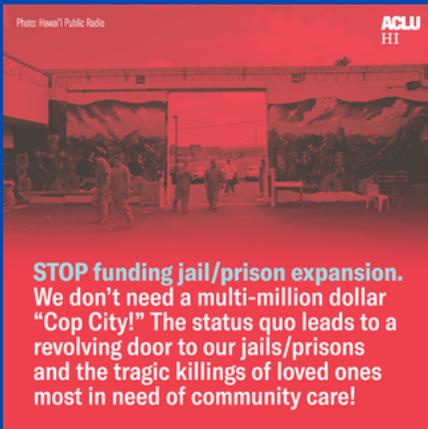
Photo: Honolulu Civil Beat

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Photo: Hawai'i Public Radio

ACLU HI

STOP funding jail/prison expansion. We don't need a multi-million dollar "Cop City!" The status quo leads to a revolving door to our jails/prisons and the tragic killings of loved ones most in need of community care!



INVEST in diversion programs, collaborative evidence-based practices, affordable housing, healthcare and crisis response teams, de-escalation, harm reduction, culturally appropriate trauma-informed care, and community-based resources.



Photo: Historic Hawai'i Foundation

ACLU HI

Our campaigns focus on diverting people from the criminal legal system, reducing the number of people in our jails and prisons, eliminating racial disparities, shrinking the prison system, and shifting wasteful spending away from incarceration. This session we advocated for reinvestment in things that keep our communities safe: housing, health care, jobs, education, and restorative justice.

STATE BUDGET

HB300 State Budget (Passed)

This bill appropriated funds for the state budget in the executive branch of government. We support a Peoples' Budget that reflects the needs and values of our communities, protects our civil rights and liberties, and invests in healthy, safe, thriving, and just communities. We urged lawmakers to speak out during the floor vote against funding for racist, ineffective, and overly punitive policing and incarceration policies, and in favor of investment in collaborative equitable evidence-based decarceration approaches. Several of them did! (However, despite strong community opposition, high rates of homelessness, and a shortage of healthcare workers, funding for the O'ahu Community Correctional Center (OCCC) jail expansion and a new "Cop City" are still included in the budget.

Read our full statement "[Relating to the State Budget](#)" on our website.

Visit Honolulu Civil Beat for video link: "[The Hawaii Legislature is Broken.](#)"

HB719 Public Records (Deferred)

This bill recognizes the fundamental principle of the public's right to access public records in a free society, promoting transparency about governmental operations, decision-making, and fiscal spending.

2023 LEGISLATIVE SCORECARD

| Bill Number | Subject Matter | Position Links to ACLU testimony below | Status (July 2023) |
|-----------------------------------|---|---|-----------------------|
| SB1 SD2 HFA5 | Abortion Access | Supported | Passed, Act 002 |
| HB950 HD1 SD1 CD1 | Assisted Community Treatment (A.K.A. Involuntary Supervision and Treatment) | Opposed | Passed, Act 153 |
| SB1492 SD2 HD2 | Assisted Community Treatment | Opposed | *Deferred |
| HB1156 SD1 | Assisted Community Treatment | Opposed | Deferred |
| HB300 HD1 SD1 CD1 | Budget | Commented | Passed, Act 164 |
| SB669 SD2 | Cannabis Decriminalization | Supported | Deferred |
| HB237 | Cannabis Legalization | Supported | Deferred |
| HCR51 HD1 | Cannabis Clemency | Supported | Passed |

*Carryover Bills. The Hawaii State Constitution provides that any bill pending at the adjournment of a regular session in an odd-numbered year will automatically carry over with the same bill number and status for consideration in the next regular session. All bills that were deferred in 2023 will carry over to 2024. For more info on bill status definitions, visit the [LRB website](#).

| Bill Number | Subject Matter | ACLU Hawai'i Position | Status (July 2023) |
|---|--|-----------------------|--------------------|
| <u>SB1543 SD2 HD2</u> | Campaign Public Financing | <u>Supported</u> | Deferred |
| <u>HB877 HD1</u> | Criminal Legal Institute for Healing and Restoration at UH Law School | <u>Supported</u> | Deferred |
| <u>HB823 HD2</u> | Deaths in Custody Reporting | <u>Supported</u> | Passed, Act 22 |
| <u>SB1079 SD1 HD1 CD1</u> | Expungement (Expand eligible offenses) | Supported | Passed, Vetoed |
| <u>SB410 HD2</u> | Expungement (Traffic abstract and auto-sealing of expunged orders) | <u>Supported</u> | Passed, Act 159 |
| <u>SB671 SD1 HD1</u> | Fentanyl Strips (Exclude from definition of "drug paraphernalia") | Supported | Passed, Act 111 |
| <u>HB1154 HD2</u> | Guardianship | Opposed | Deferred |
| <u>HB67 SD2</u> | Higher Education Pu'uhonua Project at Windward Community College | <u>Supported</u> | Deferred |
| <u>HB317 HD2</u> | Juvenile Justice (Eliminate Monetary Fines and Fees) | Supported | Deferred |
| <u>HCR72 HD1</u> | Juvenile Justice Resolution (Rehabilitation) | <u>Supported</u> | Passed |
| <u>SR202</u> | Juvenile Justice Resolution | Supported | Passed |
| <u>HB485 HD3 SD2</u> | Marriage Certificate Gender Identity/Transgender Equity | <u>Supported</u> | Passed, Act 179 |
| <u>HB1132 HD1 SD1</u> | Oversight Commission (Extend Coordinator Term and Expand Investigation Powers) | <u>Supported</u> | Deferred |

| Bill Number | Subject Matter | ACLU Hawai'i Position | Status |
|---|---|----------------------------------|-----------------|
| <u>HCR 23 HD1</u> | Hawai'i Paroling Authority Task Force | <u>Supported</u> | Passed |
| <u>SB1057 SD2 HD2 CD1</u> | Pay Equity Transparency in Job Postings & Similar Pay | <u>Supported</u> | Passed, Act 203 |
| <u>HB880 HD1</u> | Policing Data Statewide Collection | <u>Supported</u> | Deferred |
| <u>SB151 SD2 HD2 CD1</u> | Policing Use of Force Policies | <u>Supported</u> | Passed Act 190 |
| <u>SB372 SD1 HD1</u> | Policing Duty to Intervene | <u>Supported</u> | Passed, Act 55 |
| <u>SCR40 SD1</u> | Policing Partnership HPD and DOE | <u>Opposed</u> | Passed |
| <u>HB1336 HD2</u> | Pretrial Fairness | <u>Supported</u> | Deferred |
| <u>HB719 SD1</u> | Public Records Waiver of Fees for Public Interest Request | <u>Supported</u> | Deferred |
| <u>HB451 SD1</u> | Visitation Pilot Program at Waiawa Prison | <u>Supported</u> | Passed, Act 133 |

STRATEGY FOR THE FIGHT AHEAD

The 2023 legislative session has ended, but our advocacy and policy work is not done. We will be tracking these bills to the finish line! We'll be submitting comments to the Governor to request his support on bills we championed and vetoes on those that infringe on our civil rights and liberties. We'll urge him to fulfill his campaign promise to use his Clemency powers to correct injustices in our criminal legal system. We'll keep fighting to stop the release of funding for "Cop City" and the expansion of the OCCJ jail.

We'll also see you at future public education events. Look out for updates on the release of our forthcoming Clean Slate Report and for more info about new opportunities to engage and build safe thriving communities with us. Let's advocate for the Hawai'i we all deserve!



MAHALO

Photo: Hawai'i Public Radio

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.

Mahalo to our organizational partners and allies who helped to advance collective legislative efforts this past session:

- ACLU National
- Clean Slate Initiative
- Civil Beat Law Center
- Code for America
- Community Alliance on Prisons
- Drug Policy Forum of Hawai'i
- 'Ekolu Mea Nui
- Generation Action Hawai'i
- Going Home Hawai'i Consortium
- Hawai'i Abortion Collective (HAC)
- Hawai'i Alliance for Cannabis Reform
- Hawai'i Alliance for Progressive Action (HAPA)
- Hawai'i Disability Rights Center
- Hawai'i Health & Harm Reduction Center (HHRC)
- Hawai'i Innocence Project
- Hawaii Friends of Restorative Justice
- Hawai'i State Commission on the Status of Women
- Hawai'i State Judiciary
- Hawai'i Workers Center
- Hawai'i Women's Coalition
- HPC Task Force
- Ke Ola Mamo
- Lāhui Foundation
- Last Prisoner Project
- Office of the Public Defenders
- Our Hawai'i
- Marijuana Policy Project
- Medical Legal Partnership for Children in Hawai'i
- Native Hawaiian Legal Corporation
- NYU Law Policing Project
- Papa Ola Lōkahi
- Planned Parenthood
- Stonewall Caucus of the DPH
- United Self Help (USH)
- University of California Berkeley Law Policy Advocacy Clinic
- Wisdom Circles Oceania