WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022

ON THE FOLLOWING MEASURE:
S.B. NO. 2514, S.D. 1, RELATING TO PROBATION.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Monday, February 28, 2022 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Albert Cook,
Deputy Attorney General, at 808-586-0940, or
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Chair Rhoads and Members of the Committee

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

This bill amends chapter 706, Hawaii Revised Statutes (HRS), to create a system where persons on probation can shorten their probation supervision periods by merely complying with their probation conditions. It also amends section 706-624(2), HRS, discretionary conditions of probation, to (1) prohibit the court from restricting the probationer from associating with individuals not directly related to the crime for which they are on probation; (2) prohibit the court from restricting a probationer from using alcohol, narcotic drugs, or controlled substances without a prescription unless their underlying crime is "reasonably related to" alcohol, narcotics, or controlled substances; and (3) prohibit the court from ordering a probationer to undergo a substance abuse treatment program if none is available in the probationer's county or if the probationer is not accepted into a program. The bill also amends section 706-625, HRS, to prohibit the court from sentencing a probationer to incarceration for failing to comply with their probation conditions if the failure is considered a "technical violation." The bill defines a "technical violation" as any violation of a condition of probation other than a new conviction for a felony, or a misdemeanor under chapter 134 or 707 or section 709-906, HRS. The bill also prohibits the court from revoking probation based upon failure to complete a substance abuse treatment program if none is available in the probationer's

county or if the probationer is not accepted into a program, or for failure to refrain from using alcohol, narcotic drugs, or controlled substances without a prescription unless the underlying crime is “reasonably related to” alcohol, narcotics, or controlled substances. Finally, the bill amends section 706-626, HRS, to allow the court to issue a written notice of a court hearing instead of arresting the probationer, and prohibit the court from arresting a probationer for a "technical violation" of probation, as defined.

The Department opposes this bill as it unnecessarily limits the court's discretion and ability to impose appropriate sentences as required by section 706-606(2), HRS, and for the court to consider public safety concerns in its attempts to supervise and rehabilitate those sentenced to a term of probation.

The "good time credit system" effectively shortens probation terms simply for complying with the terms of probation. The court currently has the discretion to terminate probation early when a probationer does well on probation and the court regularly does so. The "good time credit system" would remove the court's discretion and mandate reduced probation terms. It would also require additional staff to administer this program, which requires the calculation of the "good time credit," and if there is a discrepancy, parolees would likely litigate whether the credit given or taken away by this system is accurate.

The amendments to section 706-624(2), HRS, that limit a court's ability to prohibit association with certain people, to prohibit consumption of alcohol, narcotics, and non-prescription drugs, and to require substance abuse treatment all undermine the court's ability to promote rehabilitation and protect the public from further crimes of the defendant, and to provide the defendant with correctional treatment in the most effective manner as required by section 706-606(c) and (d), HRS.

The amendments to section 706-625, HRS, also limit a court's ability to revoke probation in certain circumstances, including conviction of new crimes unless they fall into a few categories of offenses. Notably, the amendments would prohibit revocation of probation for conviction of: (i) all misdemeanor property crimes, including possession of burglar's tools (section 708-812, HRS), criminal trespass in the first and second degrees (sections 708-812 and 708-814, HRS), criminal property damage in the third

and fourth degrees (sections 708-822 and 708-823, HRS), aggravated criminal property damage (section 708-823.5, HRS), theft in the third and fourth degrees (sections 708-832 and 708-833, HRS), unauthorized control of a propelled vehicle in the second degree (section 708-836, HRS), unauthorized entry into motor vehicle in the second degree (section 708-836.5, HRS), forgery in the third degree (section 708-853, HRS), arson in the fourth degree (section 708-8254, HRS); (ii) all misdemeanor offenses under chapter 710, HRS, including false reporting to law enforcement authorities (section 710-1015, HRS), impersonating a public servant (section 710-1016, HRS), impersonating a law enforcement officer in the second degree (section 710-1016.7, HRS), resisting arrest (section 710-1026, HRS), tampering with a witness (section 710-1072, HRS), tampering with physical evidence (section 710-1076, HRS) and criminal contempt of court (section 710-1077, HRS); (iii) any misdemeanor offenses under chapter 711, HRS including disorderly conduct (section 711-1101, HRS), harassment (section 711-1106, HRS), desecration (section 711-1107, HRS), abuse of a corpse (section 711-1108, HRS), cruelty to animals in the second degree (section 711-1109, HRS), violation of privacy in the second degree (section 711-1111, HRS); (iv) any misdemeanor offenses in chapter 712, HRS, including prostitution (section 712-1200, HRS), commercial sexual exploitation (section 712-1200.5, HRS), commercial sexual exploitation near schools or public parks (section 712-1209, HRS), promoting pornography (section 712-1214, HRS); and (v) all misdemeanor drug offenses. The amendment also interferes with the court's ability to revoke probation for failing to undergo substance abuse treatment.

This bill further also appears to fail to consider the underlying crimes of the probationers, the impact of the crimes on their victims, and the rehabilitative effect of the court's ability to oversee probationers and exercise the court's discretion in that process.

The Department opposes this bill and requests that it be held.

The Judiciary, State of Hawaii

Testimony to the Thirty-First State Legislature
2022 Regular Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Monday, February 28, 2022 at 10:30 a.m.
Via Videoconference

by
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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2514, SD1, Relating to Probation.

Purpose: Creates a good time credit system, by which criminal defendant on probation may reduce their time on probation through compliance with conditions of probation. Provides that a condition of probation that prohibits unnecessary associations may only apply with respect to certain persons having a connection to the underlying crime or the prosecution of the crime. Provides that a condition that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it reasonably

related to the crime for which the defendant was convicted. Provides that substance abuse treatment shall not be required of a defendant on probation if a program is not available in the county of the defendant's residence or if the defendant has not been accepted into a program. Prohibits incarceration for certain technical violations.

Judiciary's Position:

The Judiciary respectfully submits testimony in strong opposition to the current version of this measure because it endangers public safety and severely hampers the ability of the Adult Client Services Branch ("ACSB") to fulfill its obligations to its probationers. The Judiciary supports criminal justice reforms and reduced incarceration, however, a significant portion of the proposed legislation will remove many of the tools that the highly trained Adult Client Services Branch ("ACSB") probation officers and social workers utilize to effectuate the purposes of probation and protect public safety.

"Technical Violation"

This legislation sets forth an overly broad definition of "technical violation"[1] and severely limits courts' ability to revoke probation and/or incarcerate a probationer based on that overly broad definition. The Judiciary opposes the use of this overbroad definition as it does not allow adult probation officers to effectively supervise the probationers under their supervision, lessens probation officers' authority, and disregards probation officers' ability to evaluate when violations of the terms and conditions of a probation sentence warrant incarceration. In addition, this definition will effectively eliminate the HOPE probation program and the Hawai'i Drug Court and other treatment courts, which are programs that utilize a variety of intermediate sanctions, modifications of probation, and revocations of probation when working with probationers who need the highest level of supervision and were established to fulfill the obligations of Section 706-605.1 of the Hawai'i Revised Statutes.[2]

Indeed, this overly broad definition would prevent the court from imposing a jail sanction for a domestic violence offender whose offense involves an intimate partner and the defendant continues to harass that person, or a convicted sex offender whose offense involves child pornography who has a restriction against contact with minors (not just minors involved in the case) and was subsequently found to be taking photographs of minors at a public park.

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[1] According to the bill, a "technical violation" is ANY violation of a condition of community supervision, except the commission of a limited number of criminal acts, specifically, a new misdemeanor offense under Hawai'i Revised Statutes Chapter 134 (Firearms, Ammunition, and Dangerous Weapons), Chapter 707 (Offenses Against the Person) or Section 709-906 (Abuse of Family or Household Members), or a new felony offense.

[2] HRS § 706-605.1 states in significant part: "The judiciary shall implement alternative programs that place, control, supervise, and treat selected defendants in lieu of a sentence of incarceration."

Adult Probation Officers are tasked with managing convicted felons in the community, and work diligently to maintain these probationers in the community and facilitate individual needs of rehabilitation and treatment, all while balancing the needs of public safety. Removing the possibility of revocation of probation for certain violations, and further removing the prospect of any jail term associated with a violation of the terms of probation unless the defendant commits a new crime, leaves the ACSB officers and social workers without the means to adequately address those violations in the community.

In FY 2020-2021, the statewide probation offices managed 18,505 offenders. From the 18,505 offenders, 495 offenders were returned to court (not necessarily placed in custody) for violations not related to new charges and 160 were returned to court for new convictions. This is approximately 3.54% of offenders that were revoked over the last Fiscal Year. For non-HOPE and non-Drug Court probationers, absent the defendant failing to report to the probation office such that his or her whereabouts have become unknown or a new criminal arrest, the vast majority of these probationers were returned to court by way of a summons and not a bench warrant for their arrest.

In fact, regular probationers (non-HOPE and Drug Court probationers) are not returned to custody simply because they failed to meet with their probation officer due to child care obligations, or due to work obligations, or because they failed a single drug test; they are returned to custody only when they have failed to comply with a substantial term and condition of probation and failed to work with their probation officer to address these violations through the other non-jail sanctions available to the probation officer.

The Adult Client Services is committed to making long term cognitive behavior changes with defendants placed on probation. Compliance with probation conditions does not equate to behavior changes. The tools utilized by the adult probation officer are the Level of Service Inventory-Revised (LSI-R), the Adult Substance Use Assessment (ASUS), and Cognitive Behavioral Therapy (problem solving, assertiveness withoutaggression, and managing emotions). The adult probation officers are trained and certified to utilize these tools and strategies to facilitate change. Built into these tools are incentives and sanctions for creating long-lasting behavioral changes.

"Good Time" Credit System

With respect to the establishment of a good time credit system, the Judiciary offers the following comments. Currently, there is no system in place to calculate good time credit, however, probationers have the option to seek early termination of probation and the probation officers routinely recommend to qualified probationers that they file a motion with the court.[3] As the establishment of the system will be time consuming and will impact statewide operations, ACSB

[3] Upon the filing of a motion with the court, the probation officer will file a report with the court outlining the probationer's conduct on probation for the court's consideration.

will need to develop statewide policy, procedures, and training and a database would be necessary to ensure fairness, consistency, and accuracy. The development and adoption of a statewide system will require additional funding to purchase a new database or to create an enhancement to the current database used by probation officers. In addition, there will be increased annual costs associated with maintaining the database and system. Moreover, while time without inappropriate conduct is certainly preferable to the alternative, the *quality* (i.e., as noted above, probationers' cooperation with probation officers and progress towards long-term cognitive behavior change) of the time is also important, if not more important.

Discretionary Terms and Conditions of Probation and the Limitation on the Revocation of Probation for Violations of those Terms

With respect to the proposed legislative restrictions on the discretionary terms and conditions of probation, the Judiciary opposes these provisions. First, it should be noted that the court imposes the provisions for drug treatment and prohibited associations when the Level of Service Inventory indicates that they are necessary for the probationer being sentenced or alternatively they may be imposed due to the intermediate sanctions programs established pursuant to Hawai'i Revised Statute Section ("HRS") 706-605.1[4] such as the Hawai'i Drug Court program or the HOPE probation program.

More specifically, however, with respect to the prohibition on associations, social learning theory suggests that we learn from the groups we have the greatest amount of contact. Companions, associates, and friends that are pro-criminal is a high risk factor for crime. Conversely, having pro-social companions, associates, and friends can support a defendant and steer the probationer away from participation in criminal behavior. Limiting association only if the other individuals had involvement in the present offense would promote association with gang members, convicted felons, drug dealers, violent offenders, and potentially leave minors unprotected and vulnerable against sex crimes. The crime for which the defendant was convicted may not necessarily reflect gang affiliations nor persons or places that would adversely affect the defendant's rehabilitation.

With respect to the proposed legislation's reference to substance treatment and use, it should be noted that substance abuse by probationers is generally a precursor for criminal conduct, impulsive behavior, lack of judgment, lowered inhibitions, increased violence and general instability.[5] Alcohol and drug abuse contribute to poor self-regulation and mood instability. Untreated substance abuse interferes with employment, housing, health care, child custody, and other life opportunities that negatively impact families and communities. Further, illegal possession and use of illegal drugs is just that—a criminal act. Permitting probationers to possess and use illegal drugs is directly counter to the

[4] See footnote 1 above.
[5] On Oahu in FY 2020-2021, 10,863 defendants were on probation supervision. During the same period, 5,763 defendants received substance abuse treatment. More than half or 53.05% of defendants had a substance abuse disorder.

goals of rehabilitation and a pro-social lifestyle.

If this condition of probation (or the ability to revoke probation based on this condition) was only applied if drugs or alcohol were related to the present offense this would essentially allow all other probationers who do not meet this criteria to use illegal drugs and alcohol without consequences or be left untreated. Without this condition and the condition that a defendant submit to drug and alcohol testing, probation officers may not learn of a probationer's drug or alcohol addiction and would not reasonably be able to assist the individual with their substance abuse challenges. The continued use of illegal drugs or alcohol by high-risk probationers could have further negative impact on the safety of the community as probationers may continue to commit further crimes against person or property while intoxicated or to support their addiction. Additionally, continued alcohol and drug abuse could put further strain on law enforcement, emergency rooms, substance abuse treatment providers, mental health providers, jails and the courts.

The measure's proposed elimination of the treatment requirements for certain probationers who reside on the outer islands and proposed prohibition on revoking the probation of a probationer who does not complete treatment that has been ordered are a disservice to the probationers that require a specific level of treatment that cannot be accommodated by the county in which they reside.[6] A defendant left without the proper level of treatment or care for substance abuse, mental illness, or a dual diagnosis issue, may pose a serious threat or danger of harm to themselves and the community.

Limiting the discretion of the court to order such conditions of probation, and prohibiting the revocation of probation in some instances of violation or where those conditions were already ordered, especially where there is an established history of drug and alcohol abuse, will be counterproductive to the goals of probation.

Limitations on Revocations and Incarceration

The proposed measure also limits the discretion of the court to revoke the probation or incarcerate an individual probationer. As noted above, incarceration and revocation are tools utilized to deter non-compliance. If courts are prohibited from imposing incarceration for the probationer's "technical violations" as defined by this legislation (again, this includes every violation except the commission of a new felony, or a very limited number of misdemeanor offenses), there will be little to no consequences for continued violation of the terms and conditions of probation.[7] For those

[6] Maui County currently has treatment programs ranging from outpatient to residential treatment. The county does not have a long term residential treatment facility nor a dual diagnosis program which may be more appropriate for certain defendants. Hawai'i County has a limited amount of outpatient mental health providers. The county does not have long term dual diagnosis residential treatment. Kauai County has mental health providers and outpatient services. Kauai County does not have any residential treatment facilities or dual diagnosis programs. If a defendant is determined to need long-term residential treatment facility, defendants are referred to neighbor island facilities for specific treatment needs.

[7] While a possible alternative to incarceration would be the expanded use of electronic monitoring, again, if the probationer violates the parameters of electronic monitoring, there is no incentive for the defendant to comply if incarceration is not a

repeat violators, this would further reinforce that criminal behavior is tolerated and there is far less likelihood of pro-social change. Without the possibility of serious consequences such as incarceration, there will be far less likelihood of probationers diligently pursuing services such as sex offender treatment, anger management, domestic violence programs, substance abuse treatment, and mental health treatment. Additionally, there will be far less likelihood for probationers making payments for restitution, fines, and fees; to meet with their probation officer; or to refrain from use of illicit substances. Defendants who violate the conditions of their probation will not be held accountable to their victims or the community.

In addition, these provisions will likely have a chilling effect on courts' imposition of a probation sentence at the initial sentencing. There are numerous occasions wherein the defendant facing sentencing is granted probation as a "one last chance" in light of their criminal history or the instant crime itself. Without the possibility of resentencing the defendant to incarceration upon a revocation of the defendant's probation, courts will be reluctant to take the chance of probation on such a high-risk defendant. Indeed, as noted, these provisions will effectively eliminate the intermediate sanction programs established pursuant to Hawai'i Revised Statute Section 706-605.1, such as the Hawai'i Drug Court and the HOPE probation program for those high-risk defendants.

In Summary

To reiterate, a single failure to make an appointment with their probation officer because they had to work or could not find childcare or they failed a single drug or alcohol test does not lead to arrest or incarceration of regular probationers; nor is their probation revoked and they are resentenced to incarceration.[8] Bench warrants are issued for regular probationers when a probationer has failed repeatedly to report to the probation officer and their whereabouts have become unknown or they have been arrested for new crimes. Otherwise, the probation officers use their training and expertise using all of the tools available to them which are founded upon evidence-based principles of risk and need to provide resources to those who present the greatest risk, to work with probationers to maintain the probationer in the community.

This measure will in many instances completely eliminate, and in other instances severely restrict, the use of revocation, jail sanctions, and potential incarceration. As a result, it will greatly impact the ability of probation officers to meet their goals of rehabilitation, particularly for those higher-risk probationers, and will negatively impact public safety.

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possible consequence. In addition, the Adult Client Services are not currently staffed or equipped to handle an expansion of electronic monitoring. Statewide funding would be needed to create and staff an electronic monitoring unit for each county (Oahu, Maui, Molokai, Lanai, Hilo, Kona, and Kauai), to pay for the cost of electronic monitoring for indigent individuals, and to pay for electronic monitoring equipment that were damaged or destroyed by defendants while absconding.

[8] In contrast to the much higher-risk probationers that are on HOPE probation or in Drug Court, where limited jail sanctions are imposed when the probation officer deems it appropriate and that are only now imposed after the exhaustion of community-based sanctions.

Thank you for the opportunity to testify on Senate Bill No. 2514.

DEPARTMENT OF THE PROSECUTING ATTORNEY

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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICARY
Thirty-first State Legislature
Regular Session of 2022
State of Hawai`i

February 28, 2022

RE: S.B. 2514, S.D. 1; RELATING TO PROBATION.

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 2514, S.D. 1.

The primary effect of S.B. 2514, S.D. 1, if passed, would be to *prohibit* courts from revoking probation or imposing any incarceration, for essentially any violation of the terms and conditions of probation, unless the person commits one of several offenses listed in the bill.

The Department strongly believes in the rehabilitative opportunity provided by probation, and further believes that all of the treatments, services, mandates and restrictions that probationers are required to follow—as specifically crafted by the court for each offender—are part of that rehabilitative process. Refraining from the consumption of alcohol and illicit drugs, for example, gives probationers the best possible chance to think clearly and comply with all the other conditions of their probation. Poor association can lead to a probationer reoffending, such as spending time with their former drug dealer, even though they were not recently convicted of a drug offense. Treatment is perhaps one of the most important conditions of probation, and provides offenders the best possible chance of overcoming substance abuse, mental health, or many other issues that may have contributed to the underlying offense, and would potentially lead to further offenses while someone is on probation, or thereafter, if left untreated.

Of particular concern is that failure of a probationer to complete sex offender treatment, domestic violence intervention, or any other mandated treatment programs would be considered a "technical violation" for which the courts could never revoke probation. The Department notes that some specialty courts maintained by the Judiciary are built upon the court's ability to impose brief periods of incarceration, as an immediate ramification for certain violations, as necessary to further the

rehabilitative process. In particular, the HOPE Program—which targets the most challenging probationers, has been the focus of numerous top quality studies, and has been adopted by courts across the nation—has used this approach for many years, to the benefit of many prior offenders. One study conducted by researchers from Pepperdine University and the University of California, Los Angeles, found that:

> In a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer and 53 percent less likely to have their probation revoked. As a result, they also served or were sentenced to, on average, 48 percent fewer days of incarceration [i.e. prison] than the control group.

Notably, the study found that jail bed days for HOPE probationers and those on regular probation were the same, while HOPE probationers were sentenced to 48% fewer days in prison. Additionally, Native Hawaiians in HOPE were 42% less likely to have their probation revoked and sent to prison compared to Native Hawaiians in regular probation.

While proponents of S.B. 2514, S.D. 1 seem to fear that people on probation are having their probation revoked for a single, insignificant violation of their terms and conditions of probation, that has not been the Department's observation or experience in these proceedings. In fact, courts in the First Circuit are widely known to allow probationers multiple chances, and great efforts are taken to weigh the severity of an offender's particular violations and circumstances, sometimes to the frustration of the Department and crime victims who are affected by the offender's underlying crime.

As a final note, S.B. 2514, S.D. 1 defines "technical violations" so broadly that it would only allow courts to revoke probation, or order someone to incarceration, if the probationer commits one or more of a very limited number of offenses. Upon reviewing the short list of offenses that *would* allow courts to revoke probation (page 15, lines 17-20), the Department is deeply concerned that S.B. 2514, S.D. 1 would literally allow someone to commit a wide variety of serious offenses—or arguably multiple offenses—without any possibility of having their probation revoked, or being ordered to incarceration, for violating their probation. Some examples of offenses that would be allowed, are:

- Violation of a domestic violence order for protection (HRS §586-11)
- Violation of a temporary restraining order or injunction against harassment (HRS §604-10.5)
- [Fleeing the scene of motor vehicle] Collisions involving bodily injury (HRS §291C-12.6)
- Operating a vehicle under the influence of an intoxicant, as 1st or 2nd offense (HRS §291E-61)
- Operating a vehicle after license and privilege have been suspended or revoked for OVUII (HRS §291E-62)
- Circumvention of, or tampering with, an ignition interlock device by a person who has been restricted to operating a vehicle equipped with an ignition interlock device (HRS §291E-66)
- Criminal property damage in the third or fourth degree (HRS §708-822 or §708-823)
- Unauthorized control of a propelled vehicle in the second degree (HRS §708-836)
- Unauthorized entry into motor vehicle in the second degree (HRS §708-836.5)
- Endangering the welfare of a minor in the second degree (HRS §709-904)

- Endangering the welfare of an incompetent person (HRS §709-905)
- Harassment by stalking (HRS §711-1106.5)
- Violation of privacy in the second degree (HRS §711-1111)
- Commercial sexual exploitation (HRS §712-1200.5)
- Promoting minor-produced sexual images in the first degree (HRS §712-1215.5)

While S.B. 2514, S.D. 1 appears to have good intentions, in terms of wanting to recognize those who comply with the terms and conditions of their probation, the courts already have ample authority to lighten restrictions on probationers, reconsider any terms and conditions of probation, or even terminate probation early, and it does so with the specific circumstances of each individual in mind. While the Department may not always agree with every sentencing decision made by the courts, it does recognize that a case-by-case assessment of each offender is far more effective and far more beneficial to rehabilitation—and to public safety—than any of the propositions contained in S.B. 2514, S.D. 1.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes passage of S.B. 2514, S.D. 1. Thank for you the opportunity to testify on this matter.

STATE OF HAWAI'I
OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender,
State of Hawai'i to the Senate Committee on Judiciary

February 28, 2022

S.B. No. 2514, SD 1: RELATING TO PROBATION

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

The Office of the Public Defender supports S.B. No. 2514, SD 1. This measure (1) creates a good time credit system to reduce probationary period; (2) provides that a condition of probation that prohibits unnecessary associations may only apply to persons with a connection to the defendant's underlying crime; (3) provides that a condition of probation that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it is reasonably related to the crime for which the defendant was convicted; (4) provides that substance abuse treatment shall not be required of a defendant on probation if a program is not in the county of the defendant's residence and if the defendant has not been accepted into a program; and (5) prohibits incarceration for certain technical probation violations. This measure will, in fact, reduce pre-trial over-incarceration and prevent long-term prison sentences.

Good time credit system to reduce probationary period

Although usually associated with reducing prison time, a good time credit system will work just as well with defendants who are on probation. Especially for first time offenders whose underlying criminal conduct would appear to be an aberration in an otherwise law-abiding life, shortened probationary periods would be well received. But even for the less "innocent" defendants, a good time credit system would encourage model behavior by defendants and an enthusiastic compliance with terms and conditions of probation. Defendants who are motivated to succeed on probation would have a better understanding of how their conduct and compliance are directly related to a reduction of their probationary period. Rather than the common and well-accepted model of punishment as a means of rehabilitation, a good time credit system implements the notion of positive reinforcement, or "the act of rewarding a positive behavior in order to encourage it to happen again in the future." I imagine that Adult Client Services would be in support of this measure and would support the idea of a good time credit system because (1) it would assist

probation officers with difficult or non-compliant defendants and (2) reduce the caseload of probations officers, as probationary periods will be shortened.

Prohibiting incarceration for certain technical violations

In HRS Section 706-625 (11), defining "technical violation," this measure correctly and appropriately places recidivism, or a return to crime, as the top priority of probation. Other violations, aside from re-offending and committing certain misdemeanors or a new felony offense, are deemed "technical violations." While failing to comply with terms and conditions of probation is not a good thing, it is wholly appropriate that a defendant's probation should not be revoked because of a "technical violation."

Many OPD clients are homeless. It is unfortunate, but for many defendants on probation, every day life is rife with challenges, hardship, and struggle. Many of the clients the OPD represent, on a day-to-day basis, do not know where they will sleep at night or where they will get their next meal. They live in constant fear of having their few possessions stolen and being the victim of random violence on the street. Life for these individuals is more about survival, and the sad truth is that these individuals often have difficulty in complying with each and every term and condition of probation.

Many OPD clients have jobs that are not always accommodating for a person on probation. They work long, hard hours. They do not have vacation or sick leave. Absences are discouraged. They must decide to risk losing their job (which they need to keep in order to provide for their family) or to keep an appointment with the probation officer or their substance abuse counselor. These clients may or may not have time to go to substance abuse treatment, or to call and check-in with their probation officer, or to rush over to Adult Client Services to provide a urine sample. It is truly heart-wrenching to see these individuals get arrested on a probation revocation bench warrant because they were guilty solely of a technical violation of probation.

While HOPE[1] probation boasts high-intensity supervision and a zero-tolerance policy (meaning a bench warrant will issue for even the slightest violation),

[1] "HOPE" is an acronym for "Hawai'i's Opportunity Probation with Enforcement," a high-intensity supervision program to reduce probation violations by drug offenders and others at high risk of recidivism. Probationers in HOPE Probation receive swift, predictable and immediate sanctions -- typically resulting in several days in jail -- for each detected violation. *See* https://www.courts.state.hi.us/special_projects/hope/about_hope_probation

"regular" probation sometimes waits too long to bring in a poorly performing defendant. With the language found in HRS § 706-626 (1)(b), allowing that a written notice of a court hearing to issue to the defendant (and not a bench warrant) when only a technical violation has occurred, judges are able to reach out to that defendant that needs a stern word or words of encouragement to get onto the right track and to start performing on probation. These court dates might also be used to discover if the multitude of programs and resources available to Adult Client Services might be helpful to the defendant's success.

Rather than issuing a bench warrant on a minor technical violation to be served on a defendant which, often times, results in pulling the defendant out of his/her life, humiliating the defendant at home or at work, and sometimes causing the defendant to lose his/her livelihood and possibly their home and their family, a letter that directs the defendant to appear before a judge is a more fair and humane practice.

We strongly support S.B. No. 2514, SD 1 and thank you for the opportunity to present testimony to this committee.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Monday, February 28, 2022
9:30 AM

SB 2514 SD1– STRONG SUPPORT for PROBATION REFORM

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 more than two decades. This testimony is respectfully offered on behalf of the more than 4,052 Hawai`i individuals living behind bars under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that 1,111 of Hawai`i's imprisoned people are serving their sentences abroad -- 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.

Probation is now the most common criminal sentence in the United States, the specter of probation detention hangs over the nearly four million adults living under probation supervision.[1] In the United States, "liberty is the norm" — unless you are on probation or any other form of community supervision.[2]

Hawai`i has 18,000 people on probation and PEW reported that Hawai`i had one of the longest probation sentences – 59 months! Technical violations should not send a person to jail that disrupts their employment, family, and other obligations. Community Alliance on Prisons asserts that there are better ways to encourage compliance. We support incentives for people to earn their way out of probation.

This bill presents some strategies to encourage outcomes that provide hope and employs proven practices. SB 2514 prevents people on probation from facing immediate incarceration when accused of certain misdemeanors (specifically, those not involving weapons, offenses against the person, or domestic violence); requires that conditions of probation be reasonably related to the crime of conviction and tailored to an individual's

[1] Fiona Doherty, Obey All Laws and Be Good: Probation and the Meaning of Recidivism, 104 GEO. L.J. 291, 292, 354 (2016).
[2] United States v. Salerno, 481 U.S. 739, 755 (1987).

circumstances and abilities. It also prohibits restrictions on association – this is a problem for people who have gone through treatment together, especially for women who form bonds and need that support outside.

And, importantly, the bill creates a good time credit system for persons on probation. It is vital that people have something to work toward, instead of facing endless surveillance.

According to the February 14, 2022 DPS Population Report[3], currently there are 408 probation violators statewide – almost 10% of the total imprisoned population. Most of these folks are imprisoned for substance misuse or technical violations of the conditions of their probation. This is a HUGE expense. At $219 a day this costs taxpayers $89,352 a day, $625,464 a week, $2,501,856 a month, and $30,022,272 a year to imprison people who are innocent until proven guilty.

Wouldn‘t it make more sense to use our resources to help people succeed by providing the desperately-needed programs and services? Helping people realize a better life for themselves and their families is a more positive approach.

Reforming probation so the state doesn't incarcerate so many people for violating technical conditions and encouraging 'good time' credits for compliance are strategies that work. The former head of Hawai`i Probation who was on the HCR 85 Task Force spoke about the efficacy of incentivizing people to encourage behavioral change. This is a more effective and humane strategy than threatening someone with imprisonment.

To understand how probation is working, a graph on page 4 from the latest Interagency Council on Intermediate Sanctions[4] report shows the recidivism rate of Hawai`i probationers, parolees, and those who service their maximum sentences. It examines the time-period recidivism rates for probationers, parolees, and maximum term released prisoners. Probationer recidivism is defined as any new arrest, or the revocation of probation within three years of the start of supervision. The data reveal a 54.6% recidivism rate for probationers;

From the supervision start date:

- 859 (39.9%) offenders recidivated within the first 12 months of supervision,
- 272 (12.7%) recidivated between 12 through 24 months (52.6% cumulative recidivism rate),
- 26 (1.2%) offenders recidivated between 24 through 36 months (53.8% cumulative recidivism rate) from the follow-up start date.

[3] Department of Public Safety, Weekly Population Report, February 14, 2022 https://dps.hawaii.gov/wp-content/uploads/2022/02/Pop-Reports-Weekly-2022-02-14.pdf

[4] Interagency Council on Intermediate Sanctions (ICIS), State of Hawaii, FY 2016 Cohort, 2019 Recidivism Update, Timothy Wong, ICIS Research Analyst, March 2021. https://icis.hawaii.gov/wpcontent/uploads/2021/05/2019-Hawaii-Recidivism-Update.pdf

This shows that there needs to be more services in the first 12 months as we see the decline in recidivism the 2nd year, and a very small number of people recidivating in the 3rd year. This the one of the main problems with probation – it's too long; Hawai`i should be embarrassed to have people on probation for almost 5 years. This is an indication that it's not working. Hawai`i needs to provide better services in the first year of probation.

Hawai`i needs to implement alternatives to help people who don't comply with the conditions of probation, which should be reasonable and address the underlying offense that led to probation. There needs to a clear path to freedom so that people can plan for success.

Research has been proven that incarceration only enhances criminality. Why would we send someone to criminal college when there are other ways to address wrongdoing?

Incentivizing people is a way to introduce new ways of living to someone. Offering good time for compliance with conditions is a good incentive. Humans respond positively to a reward system – we do it with our kids to encourage good behavior! Hawai`i needs to abandon punishment a way to change behavior; this has been a failed experiment. It is time for new thinking about how address wrongdoing without totally denigrating and dehumanizing the person who is responsible for it.

Equitable and humane treatment would go a long way toward demonstrating the behavior we want to see in our communities.

Please pass this bill and mahalo for scheduling it!

Mahalo for this opportunity to send in testimony in strong support of this measure!

Here's a quote from Michelle Alexander that is tells it like it is…

One in three young African American men is currently under the control of the criminal justice system in prison, in jail, on probation, or on parole – yet mass incarceration tends to be categorized as a criminal justice issue as opposed to a racial justice or civil rights issue (or crisis).

Michelle Alexander

HAWAIʻI HEALTH
& HARM REDUCTION CENTER
The New Chapter for Life Foundation and The CHOW Project

TESTIMONY IN SUPPORT OF SB 2514, SD 1

TO: Chair Rhoads, Vice Chair Keohokalole, & Judiciary Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 28, 2022 (10:30 AM)

Hawaiʻi Health & Harm Reduction Center (HHHRC) **strongly supports** SB 2514, SD 1, which creates a good time credit system, places limits on technical violations of probation, and provides that substance treatment is not required of probationers under certain circumstances. The amendments strengthen this bill's reach.

The continued absence of substantive bail reform, sentencing reform, and probation reform sets the stage for perennially overcrowded jails. The Department of Public Safety relayed a critical data point to the HCR 85 Prison Reform Task Force, which published its final report in January 2019: ***only 26% of the combined jail and prison population is incarcerated for class A or B felony, while the remaining 74% are incarcerated for a class C felony or lower (misdemeanor, petty misdemeanor, technical offense, or violation)***. The continued criminalization of persons who use drugs contributes to overcrowding and perpetuates lasting social, medical, and legal stigma. Over-incarceration is exacerbated by Hawaiʻi having the longest average term of probation in the nation (59 months).

The continued criminalization of personal drug use and possession also helps drive the overcrowding of carceral facilities and subjects persons from under-resourced communities to prolonged periods of criminal legal supervision. The enforcement of drug laws pertaining to personal use and possession of drugs has disproportionately impacted Native Hawaiians. In this regard, the criminal legal system's enforcement of punitive drug laws embodies the kind of structural racism that this Legislature declared a public health crisis in HCR 112.

HHHHRC is strongly opposed to the continued criminalization of behavioral health problems and supports the decriminalization of personal drug use and possession. Many of those we work with have behavioral health problems, including those related to substance use and mental health conditions. HHHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawaiʻi and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse. Criminalization compounds their suffering and further jeopardizes their health and well-being.

Thank you for the opportunity to testify on this measure.

LATE

Committee:	Judiciary
Hearing Date/Time:	Monday, February 28, 2022 at 10:30AM
Place:	Via Videoconference
Re:	*Testimony of the ACLU of Hawai'i in Support of SB 2514 SD1 Relating to Probation*

Dear Chair Rhoads, Vice Chair Keohokalole and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") strongly **supports S.B. 2514 SD1 and proposes an amendment.**[1] The original version of this bill eliminates incarceration as a sanction for technical violations of probation, creates a good time credit system for reduction of probation terms, and prohibits the imposition of certain unreasonable probation conditions.

The ACLU of Hawai'i is committed to transforming Hawaii's criminal legal system and building a new vision of safety and justice. First and foremost, we advocate for decarceration strategies to reduce the number of people in our jails and prisons, the majority of whom are Native Hawaiians, Pacific Islanders and people of color. Simultaneously, we advocate for **conditions of community supervision grounded in evidence-based practices**, humane conditions of confinement. meaningful rehabilitation opportunities, and comprehensive re-entry support services that starts from the first day of incarceration.

There is Room for Improvement in Hawaii's Probation System

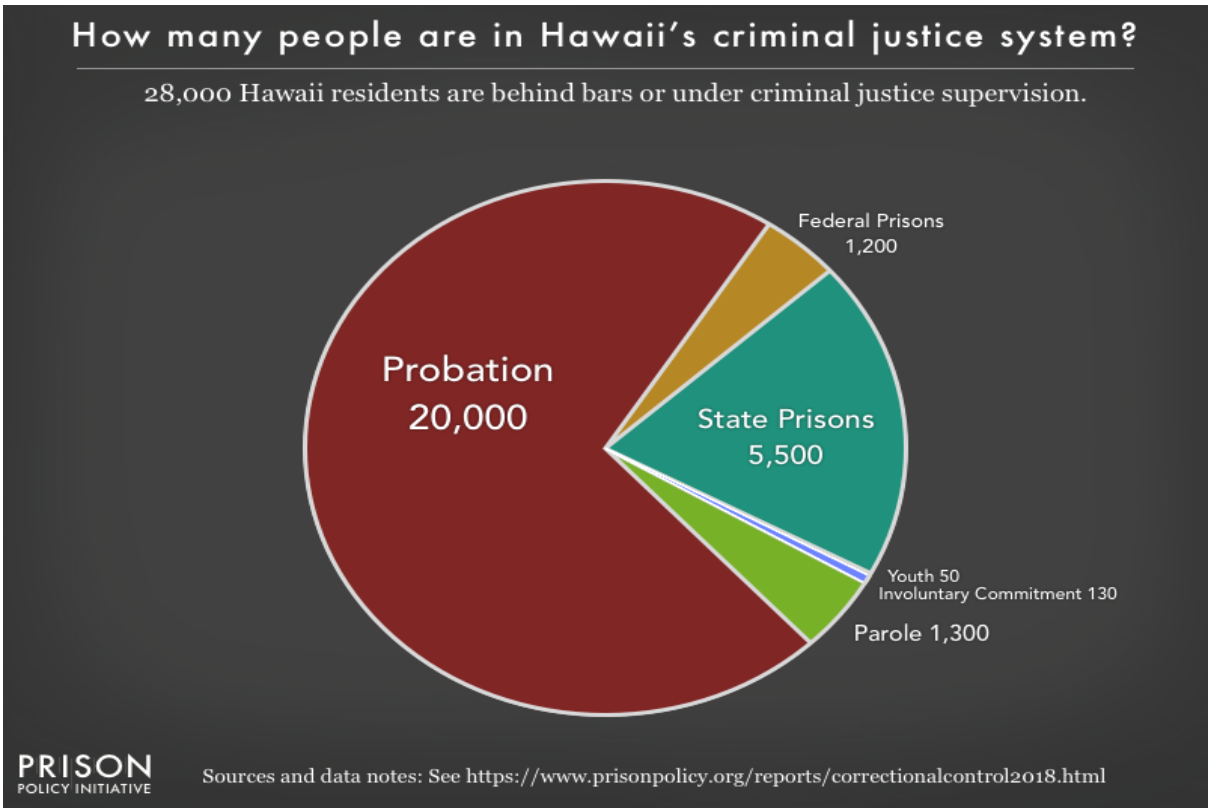
Probation is a part of the criminal legal system in Hawai'i. As the national and local data below illustrates, Hawai'i has an opportunity for probation reform - to reduce the length of probation, to reduce rates of technical revocations and recidivism, and to reduce racial disparities.

In 2020, the Pew Trust issued a report titled "States Can Shorten Probation and Protect Public Safety," highlighting concerns about the growth and size of the probation population.

> "At its best, probation—court-ordered correctional supervision in the community —gives people the opportunity to remain with their families, maintain employment, and access services that can reduce their likelihood of reoffending while serving their sentences. But, as previous research by The Pew Charitable Trusts has shown, the growth and size of this population have overloaded local and state agencies and stretched their resources thin, weakening their ability to provide the best return on taxpayers' public safety investments, support

rehabilitation, and ensure a measure of accountability. One key factor driving the size of the probation population is how long individuals remain on supervision."[2]

Nationwide, on any given day, there are more people on probation than prisons and jails and on parole combined.[3] This is also true in Hawai'i as illustrated by Prison Policy Initiative's pie chart.[4] In December 2018, Hawai'i had 20,000 under probation supervision, and 8,000 in federal or state prison, youth confinement commitment and parole supervision.[5] As of December 2019, Hawai'i had a **combined community supervision population of 21,285 people**.[6] Of this number, 19,619 individuals were serving probation sentences.[7]



<u>Hawai'i Ranks First as having the Longest Average Probation Length Nationwide</u>

The Pew Report noted that Hawai'i has the highest average length of probation supervision within the United States, at 59 months.

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[2] https://www.pewtrusts.org//media/assets/2020/12/shorten_probation_and_public_safety_report.pdf
[3] https://www.pewtrusts.org//media/assets/2020/12/shorten_probation_and_public_safety_report.pdf
[4] https://www.prisonpolicy.org/graphs/correctional_control2018/HI_correctional_control_2018.html
[5] https://nicic.gov/state-statistics/2019/hawaii-2019.
[6] *Id.*

Pew Report Probation lengths across the U.S. (2020)[8]
National average (2018) = **22.4 months**

Rank (1 = longest)	State	Average probation term in months, 2018
1	Hawaii	59 months
2	New Jersey	52 months
3	Rhode Island	44 months
4	Oklahoma	42 months
5	Arkansas	41 months
46	Indiana	15 months
47	Delaware	15 months
48	West Virginia	15 months
49	Massachusetts	10 months
50	Kansas	9 months

Additionally, the Pew Report highlighted the following data points for Hawai'i:

- **Hawaii's probation rate for adults in 2018 was 1 in 55**
- From **2000-2018, Hawaii's average probation term length increased by 92%**
- In a 50-state survey of 2017 statutes, Alaska, Hawaii, and Texas had the longest felony probation maximum term at 10 years.

Recidivism Rates for Probation Remain High

Recidivism rates for persons on probation in Hawai'i remain high. According to the **Attorney General's Interagency Council on Intermediate Sanctions Recidivism Update Report in 2019,** the State of Hawai'i, fiscal year 2016 Cohort, had a recidivism rate[9] of nearly 54%. In other words, 1 out of 2 persons on probation recidivate during their probation term.

Recidivism Rates	(FY 2016 Cohort)	Baseline 1999	Difference
Probation	54.6%	53.7 %	+0.9 increase
Parole	50.1%	72.9 %	-22.8 decrease
Max Term Release	57.1%	76.1%	-19 decrease

Total Statewide Average Recidivism Rate: 53.8%

[8] *Id.*
[9] The Attorney General's Interagency Council on Intermediate Sanctions defines recidivism as a felony, misdemeanor, petty misdemeanor arrest, or **probation or parole revocation** to record the recidivism event. https://icis.hawaii.gov/wp-content/uploads/2021/05/2019-Hawaii-Recidivism-Update.pdf

Racial Disparities Exist within Hawaii's Probation System

For decades, numerous reports have highlighted racial and ethnic disparities in Hawaii's criminal legal system. According to *The Disparate Treatment of Native Hawaiians in the Criminal Justice System, Office of Hawaiian Affairs Report* (2010**), Native Hawaiians continue to be disparately represented at every stage of the criminal legal system, including probation[10]:**

- In 2008 – of the 1,826 charges filed that resulted in probation, 486 or 27% were filed against Native Hawaiians.
- **In 2009, 40% of the people sent to prison for a probation violation were Native Hawaiian.** All other racial and ethnic groups except for Hispanics, receive shorter probation sentences than Native Hawaiians.

Reincarcerating People for Technical Violations Destabilizes Individuals, Families and Communities and Contributes to Overcrowding in our Jails and Prisons

Under our current probation system, people may be incarcerated for community supervision infractions – even if they are not arrested or convicted of a new crime. Imposing incarceration on people for technical violations—things like a missed appointment, being late for curfew because of work, associating with someone with a criminal record, relapse, or failing to report a change of address—contributes heavily to overcrowding in our jails and prisons.

As of January 24, 2022, 1,016 out of 4099 people, were in Hawai'i's jails and prisons due to probation and parole revocations. **On average, approximately one-fourth of jail and prison population in Hawai'i are the result of parole and probation infractions**.[11]

This system feeds mass incarceration, costs the state exorbitant amounts of money better spent on re-entry programs, and disproportionately impacts Native Hawaiians, Pacific Islanders, Black people, and low-income communities.

Critically, there is no evidence that incarcerating people for non-criminal probation infractions improves public safety. Instead, it destabilizes individuals on probation by erasing their progress made in the community. Upon release from incarceration, people must start over again—thrust back into a cycle of struggling to obtain stable housing, maintain employment, and support their families. This result is much more likely to lead to *more* crimes of poverty, not fewer.

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[10] https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/2015/01/native-hawaiians-criminal-justice-system.pdf

[11] E.g., Department of Public Safety, Weekly Population Report, January 24, 2022.

Incarceration for Technical Violations of Probation is Costly

Probation reform that results in less incarceration will save the State taxpayer dollars. It **costs $219 a day or approximately $80,000 a year to incarcerate an adult.**

The Judiciary's Adult Client Intake Services Branch highlighted the following data in their written testimony relating this bill and its companion bill HB2344:

FY2020-2021:	18,505 statewide probation offices managed these offenders
PROB REVOC:	**495 technical violations**
New CONV:	160 returned to court for new convictions
	3.54% of offenders revoked over the fiscal year

Based on Adult Client Intake Services data, 495 people had their probation revoked for technical violations, not new convictions, in the fiscal year 2020-2021. This impacted 495 individuals and their families, and had a ripple effect on impacted communities.

PROB REVOC: 495 people in Fiscal year 2020-2021
Cost: $219 x 495 people = $108,405 per day or $39,567,825 per year

The stark reality is that the public foots the bill for incarceration in response to technical violations even though there is no evidence that reincarcerating people for technical violations improves public safety compared to other non-carceral alternatives. Cost-savings from less incarceration should be invested into health care, treatment and services that are more effective at helping people transform their lives and enhancing community safety.

Earned Time Credit Policies Encourage Compliance with Probation Conditions and Can Contribute to Reducing the Probation Supervision Population and Probation Officer Caseloads

To ensure compliance with technical probation conditions, **the bill offers good time credits to individuals who successfully follow conditions**, **thus shifting the system from a punitive to an incentive-based one**. This system also encourages people to seek assistance when necessary—like when dealing with a substance abuse disorder or struggling to find a job—instead of being afraid they will be returned to prison if they report these challenges.

According to a recent Pew Report, "**Many people on supervision serve longer terms than are necessary for public safety**." For example, data from Oregon and South Carolina showed that "among people who were on probation for a year without being arrested, more than 90% could have spent less time on supervision without an impact on recidivism (as measured by re-arrests)."[12]

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[12] https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety

Moreover, the Pew Report concludes that "**Cutting the length of supervision can play an important role in shrinking probation populations.** And reducing the number of people on supervision can allow **agencies to direct resources where they** can have the biggest impact on public safety. For example, **research has shown that when officers have smaller caseloads and implement evidence-based practices, it can reduce recidivism."**[13]

Research also shows that offering people "the opportunity to reduce their sentences via earned time credits encourages compliance and **increases successful outcomes without compromising public safety, especially if the incentive is perceived as significant, such as receiving 15 to 30 days off a sentence for each month of compliance."**[14]

Currently, 16 states have statutes that allow for earned time credits on probation supervision. In addition, states such as **Alaska, Arkansas, Delaware, Missouri, and Utah have "30 for 30" policies, in which the person on probation gets 30 days of credit for 30 days of compliance with probation conditions.**[15]

Earned Time Credits May be Forfeited as an Intermediate Sanction To Technical Violations

At a prior hearing on this measure, **Adult Client Intake Services raised concerns about not having the option of threatening incarceration or incarceration in response to technical violations**. Rather than resorting to the most punitive sanction of incarceration for technical violations, **the proposed measure allows for the loss of accrued time credits if people violate the terms of their supervision to a sufficient degree.** For example, the proposed bill states: "Credit may be forfeited, but only for failure to comply with a condition of a sentence of probation, and only in proportion to the severity of the defendant's failure to comply with the condition." Page 5, lines 9-12.

Proposed Amendment to SB 2514 SD1

In closing, we respectfully request that this Committee pass **SB2514 SD1 with the following amendment:**

1) page 5, lines 5-8. (2) A defendant shall earn a credit that is worth a reduction of **30** days from the defendant's sentence for every **30** days the defendant is in compliance with the conditions of a sentence of probation.

This proposed measure and amendment reflects data driven strategies to improve the probation system in Hawai'i. Projected outcomes include reducing the number of people who are incarcerated for technical violations, and shortening probation lengths through earned time credits. In turn, this will save taxpayer dollars and promote community safety.

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[13] *Id.*
[14] https://ciceroinstitute.org/research/employment-based-earned-time-credits-in-adult-supervision/):
[15] https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety

Thank you for the opportunity to submit testimony in support of SB2514 SD1 with the proposed amendment.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota
Policy Director
ACLU of Hawai‘i
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.

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SB-2514-SD-1
Submitted on: 2/24/2022 10:26:08 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Diana Bethel	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

I am writing in strong support of SB 2514 SD1 which creates a good time credit system that enables those on probation to reduce their time on probation through compliance with conditions of probation. It provides that the restriction against unnecessary associations may only apply to persons involved in the underlying offense or the prosecution of the offense, allows for prohibition of alcohol or unauthorized drug use only if related to the offense, requires that substance abuse treatment be mandated only if the program is available or the person has been accepted into the program, and prohibits incarceration for certain technical violations.

The provisions in SB 2514 SD1 take a more focused approach that associates the conditions of probation and parole with the underlying offense. Rather than imposing a long term probation period that is unreasonably restrictive, punitive, and psychologically demoralizing, the good time credit system to shorten the probation period would enable individuals to proactively work toward self-improvement. A shorter period would help avoid reincarceration due to insignificant technical violations.

According to a 2018 study by the PEW Charitable Trusts, Hawaii has by far the longest probation period in the entire country. The length of Hawaii's probation period has increased by almost 100% since the year 2000. There is evidence that longer probation periods lead to higher rates of incarceration due to technical violations. This is a major reason that we have an overcrowding problem in our jails and prisons and why we spend so much, not only on managing our probation population (Hawaii now has 18,000 people on probation), but also on warehousing people who do not pose a danger to public safety and who do not really need to be in prison.

To be incarcerated for a technical violation seems like an incredible waste of time and money. Technical violations include the following:

1) missing an appointment with the probation officer,

2) working at a job that extends past the curfew;

3) using alcohol or drugs;

4) failing to report a change of address;

5) associating with another person under legal supervision, even if that person had nothing to do with the underlying offense.

It seems almost laughable that these kinds of violations would cause a person to be reincarcerated. An appropriate sense of proportionality is sorely missing. The unnecessary expense of these short-sighted policies robs our criminal justice system of resources to apply towards recently released individuals as well as more high-risk individuals who may need more support. According to a 2017 report, 53% of Hawaii's prison admissions were for technical violations. Shouldn't we be figuring out how to reduce recidivism rather than increasing it through nit-picky restrictions?

Regarding the prohibition against associating with other individuals under legal supervision, it has been noted that the associations that develop in drug treatment and other programs provide an important source of social support upon release from prison and may reduce the risk of recidivism.

In the interests of public safety and cost-effective criminal justice policy, please pass SB 2514 SD1.

Mahalo,

Diana Bethel, Honolulu

SB-2514-SD-1
Submitted on: 2/25/2022 12:14:22 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Thaddeus Pham	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and JDC Committee Members,

As a public health professional and concerned community member, I am testifying in **strong support of SB2514 SD1** relating to probation.

Currently, people in Hawaiʻi on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people.

Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

Not surprisingly, such instability increases poor health, safety, and economic outcomes for both individuals and the State.

Please support this important bill.

With gratitude,

Thaddeus Pham (he/him)

SB-2514-SD-1
Submitted on: 2/25/2022 4:39:30 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carla Allison	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and Committee Members,

My name is Carla Allison and I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawaiʻi on probation or parole can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on parole, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people.

Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a felony record. This also leaves many on parole even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill will help address Hawaii's prison overcrowding conditions and will help ensure those on parole or probation have a better chance at success. SB2514 allows people to safely remain with their families in their communities as they readjust to life outside of incarceration.

A big plus of this bill is that it shifts parole from a punitive system to an incentive-based system, encouraging people to follow the rules and seek assistance when necessary.

Please vote yes on SB2514 and keep our loved ones together, our jails less crowded and give offenders a higher probability of success as they transition back in to our communities.

Mahalo for your consideration,

Carla Allison

SB-2514-SD-1
Submitted on: 2/25/2022 7:19:33 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
B.A. McClintock	Individual	Support	No

Comments:

Please support this important bill!

SB-2514-SD-1
Submitted on: 2/25/2022 7:40:03 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dave Kisor	Individual	Support	No

Comments:

If this is an improvement, then the current system must be patently awful.

SB-2514-SD-1
Submitted on: 2/25/2022 10:54:55 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Pablo Wegesend	Individual	Support	No

Comments:

Probation conditions are supposed to be about preventing the person on probation from being a threat to society again. But some of the current conditions are unrelated to that. Rules that require people on probation to get a job harshly affects those who have difficulty being hired due to their criminal records, lack of credentials or a lack of job interview skills. Rules that imprisons people on probation who don't respond to phone calls immediately because of phone damage, being enrolled in a class, or dealing with an emergency are too harsh. Rules that require curfew can cause problems for those who have to take the bus home late, especially when there's a traffic jam. These types of technical violations under supervision should not trigger reentry into our incarceration system.

If anything the conditions for probation should be along the lines of "do no harm while you're on probation". That's a simple rule that can be followed. Keep it simple.

SB-2514-SD-1
Submitted on: 2/26/2022 7:28:34 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Chuck Taylor	Individual	Support	No

Comments:

I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawaiʻi on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote yes on SB2514 and keep our loved ones together.

SB-2514-SD-1
Submitted on: 2/25/2022 6:01:29 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
ANDREW ISODA	Individual	Support	No

Comments:

Aloha Chair Rhoads & Vice Chair Keohokalole,

My name is ANDREW ISODA and I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawaiʻi on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote yes on SB2514 and keep our loved ones together.

Mahalo for your consideration,

Andrew Isoda

Maui

SB-2514-SD-1
Submitted on: 2/26/2022 11:35:24 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara L Franklin	Individual	Support	No

Comments:

I support SB2514 SD1. It's common sense approach to probation will reduce prison populations (often these populations are racially impacted due to economic factors and cultrual factors) for minor probation offenses that have nothing to do with rehabilitation but force a type of judgmental punishment on individuals by those who believe they are the leading citizens and have a right to punish nonconformity.

SB-2514-SD-1
Submitted on: 2/26/2022 9:46:41 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Greg Puppione	Individual	Support	No

Comments:

Hawaiʻi desperately needs probation and parole reform. Currently, people on community supervision can have their freedom taken away for simply spending time with family members who have a record, or for making an honest mistake – such as missing a meeting or failing to report a change in address. **This is a travesty of justice.** We must end incarceration for probation and parole technical violations, so that no one will ever again be locked in a cage over a technicality. Please support this bill to help us get closer to a more just and fairer system.

STATE OF HAWAI‘I

Chair Clarence K. Nishihara
Vice Chair Lynn DeCoite
House Committee on Public Safety, Intergovernmental, & Military Affairs

Thursday, March 3, 2022 at 10:00 a.m.
Hawaii State Capitol, Room 430, Via Videoconference

In support of S.B. 2514, Relating to Probation

Good time credit system to reduce probationary period

A good time credit system will work just as well with defendants on probation, even though it is usually associated with reducing prison time. Shorter probationary periods would be welcomed, particularly by first-time offenders whose criminal behavior appears to be an outlier in an otherwise law-abiding life. Even for less "innocent" defendants, a good time credit system would encourage model behavior and enthusiastic adherence to probation.The system uses positive reinforcement, which is defined as "the act of rewarding a positive behavior in order to encourage it to occur again in the future." Adult Client Services, I believe, would support this measure and the concept of a good time credit system because it would help people. Probation officers with difficult or non-compliant defendants will have their caseloads reduced, and probationary periods will be shortened, reducing the caseload of probation officers. I was a product of this method of probation. I was released early due to good behavior. I am now at UH Manoa working on my bachelors and have a chance for an advanced masters. I also work for Oxford House, a clean and sober living organization helping with re-entry and sober living. I am able to give back. The reward system promoted good merit. I also am with the Paipai o koolau program at Windward Community College helping give scholarships to those in need.

Thank you for the opportunity to testify in support of this bill.

Duane Dias

SB-2514-SD-1
Submitted on: 2/26/2022 1:18:20 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shay Chan Hodges	Individual	Support	No

Comments:

Aloha Chair Rhoads & Vice Chair Keohokalole,

My name is Shay Chan Hodges and I am testifying in **strong support of SB2514** relating to probation.

Currently, people in Hawaiʻi on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. **Please vote yes on SB2514** and keep our loved ones together.

Mahalo for your consideration,

Shay Chan Hodges

Haiku, Maui, Hawaii

SB-2514-SD-1
Submitted on: 2/26/2022 9:20:12 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Emily Sarasa	Individual	Support	No

Comments:

Aloha Chair Rhoads & Vice Chair Keohokalole,

My name is Emily Sarasa and I am testifying in strong support of SB2514 relating to probation. Currently, the state of Hawaiʻi reincarcerates people on probation for making simple mistakes like missing a probation appointment or struggling to find a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty; we should not continue to punish these individuals. Passing this bill will allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please act with compassion by voting yes on SB2514 and keep our loved ones together.

Mahalo for your consideration,
Emily Sarasa

SB-2514-SD-1
Submitted on: 2/27/2022 9:48:08 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lee Curran	Individual	Support	Yes

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole and Members of the Judiciary Committee,

My name is Lee Curran and I am testifying in STRONG SUPPORT of SB2514SD1 relating to probation reform.

Our nation is addicted to mass incarceration. This started prior to the founding of the United States as a nation and has progressively escalated to the point of an addiction that is a public health and well-being crisis. Policing, surveillance and the carceral system, which includes probation, have always been grounded in classism, racism and a lack of human decency. In this system, minor probation violations lead to re-incarceration.

Note that Probation, Parole and Prison are all grounded in Punitive actions and start with the letter "P". Let's evolve to a new letter…. "R".... Reimagine, Refocus, Reform, Rehabilitate. Legislation that reflects this evolution is needed to allow people to safely REMAIN with their families in their communities as they READJUST to life outside of incarceration. Please vote YES on SB2514SD1 and keep our loved ones together.

I am grateful for this opportunity to testify and ask that this message of change, grounded in care, compassion and community, sits on your hearts and impacts your decision-making as you create laws that Recognize and Restore the humanity and inherent dignity and worth of the people of Hawai'i now and in future generations.

Mahalo nui!

Lee Curran, Makaha

SB-2514-SD-1
Submitted on: 2/27/2022 8:56:38 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
nicole rhoton	Individual	Support	No

Comments:

Aloha Chair Rhoads & Vice Chair Keohokalole,

My name is Nicole Rhoton and I am testifying in strong support of SB2514 relating to probation.

Please do not water down this bill. Please support keeping people out of cages especially when they have not committed any new crime(s).

Currently, people in Hawai‘i on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote yes on SB2514 and keep our loved ones together.

Mahalo for your consideration,

Nicole Rhoton

LATE

SB-2514-SD-1
Submitted on: 2/27/2022 1:28:56 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mara Davis	Individual	Support	No

Comments:

My name is Mara Davis and I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawai‘i on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote yes on SB2514 and keep our loved ones together.

Mara Davis

LATE

SB-2514-SD-1
Submitted on: 2/27/2022 6:00:03 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dr. RaeDeen M. Keahiolalo	Individual	Support	No

Comments:

Dear Committee,

I offer my strongest support for this bill. Punitive treatment does not equate to real public safety or community reintegration. Please pass the bill.

Dr. RaeDeen Keahiolalo

LATE

SB-2514-SD-1
Submitted on: 2/27/2022 10:41:35 PM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carolyn Eaton	Individual	Support	No

Comments:

Aloha, Chair Rhoads, Vice Chair Keohokalole and members of the Committee. My name is Carolyn Eaton and I strongly support this bill. The changes it will bring are sorely needed. The technical violation of conditions of probation and parole, which currently result in readdission, swell the populations of our jails and prisons. The State shows both reasonableness and responsibility when revocation of probation or parole is no longer the certain result of a technical violation.

The aspect of the bill which addresses the motivation of an individual on probation by rewarding good behavior with a shortened surveillance time is also a wise reform. Do we hope these men and women succeed, now that a sentence has been served? These reforms say we do!
Mahalo for the opportunity to place my views for the well-being of the State and all its people before you.

LATE

SB-2514-SD-1
Submitted on: 2/28/2022 6:35:56 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nanea Lo	Individual	Support	No

Comments:

Hello Chair Rhoads & Vice Chair Keohokalole,

My name is Nanea Lo and I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawai‘i on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote yes on SB2514 and keep our loved ones together.

Vote through ,

Nanea Lo

LATE

SB-2514-SD-1
Submitted on: 2/28/2022 7:51:41 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
DeVaughn Ward	Individual	Support	No

Comments:

Aloha Chair Rhoads & Vice Chair Keohokalole,

My name is DeVaughn Ward and I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawaiʻi on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and Black people. Most people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

Prior to moving to Hawai'i, I lived in Connecticut where they adopted a similar approach as to the one outlined in SB2514. In Connecticut, the Department of Correction was able to close two prisons (including one supermaxium prison) utilizing an evidence based, compassionate parole relief approach. Public safety in Connecticut was not eroded by this approach and former offenders were allowed to begin the difficult task of transitioning back into their communities.

Please vote yes on SB2514.

Mahalo for your consideration,

DeVaughn Ward

Honolulu, HI

LATE

SB-2514-SD-1
Submitted on: 2/28/2022 8:38:02 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John A. H. Tomoso	Individual	Support	No

Comments:

02-28-22

RE: SB2514 SD1

Aloha Chair Rhoads & Vice Chair Keohokalole,

My name is John A. H. Tomoso+, and I am testifying in strong support of SB2514 relating to probation.

Currently, people in Hawaiʻi on probation can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. These conditions hurt public safety by destabilizing individuals on probation, their families, loved ones, and their communities; namely Native Hawaiians, Pacific Islanders, and People of Identified Color. As a former Probation Officer, I have seen too many people released from prison struggle to obtain stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a record. This also leaves many on probation even more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty. As a Priest, I am very concerned about this reality!

This bill would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote yes on SB2514 and keep our loved ones together.

Mahalo for your consideration,

John A. H. Tomoso+, MSW, ACSW

51 Ku'ula Street, Kahului, Maui, HI 96732-2906

808-280-1749, john.a.h.tomoso@gmail.com

cc: Maui Reentry Hui, Bail Reform Committee

LATE

SB-2514-SD-1
Submitted on: 2/28/2022 9:37:14 AM
Testimony for JDC on 2/28/2022 10:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Raymond Kong	Testifying for HI Appleseed	Support	No

Comments:

We strongly support this bill.