

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee
on Judiciary & Hawaiian Affairs**

February 24, 2022

H.B. No. 2344, HD 1: RELATING TO PROBATION

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender supports the intent of H.B. No. 2334, HD 1. This measure (1) requires a probation officer to conduct a formal review of the defendant’s progress at the halfway point in their probation; (2) requires the probation officer to provide the defendant with information on how to file a motion for early termination of probation; and (3) allows for a probation officer or law enforcement officer who believes that the defendant has failed to comply with a discretionary condition of probation to issue a written notice to the defendant, informing him/her of a court hearing, the alleged violation, and the date, time, location, and purpose of the hearing.

While this measure is well-intentioned and a good start, H.B. No. 2334, HD 1, unfortunately, falls short of what is necessary to genuinely yield successful probationers and reduce jail and prison populations.

Formal progress review of defendant

The original version of H.B. No. 2334 provided a “good time credit system” by which a defendant could shorten his/her probationary period. The very prospect of “getting off probation early” would motivate, even inspire, a good number of defendants to perform well on probation. Unfortunately, the current measure fails in providing actual tangible benefits to the defendant for “good behavior” or satisfactory performance on probation. This measure does nothing more than require that a formal review be conducted by the probation officer. Following this formal review, the probation officer, however, has no obligation or expectation to do anything, aside from explaining how to file a motion for early termination of probation.

If this measure is to make a real difference, it should require the probation officer to submit a report after the formal review of the defendant to the presiding/sentencing

judge, and the probation officer should be required to justify why the defendant continues to need supervision on probation. If the defendant does not need to continue to be on probation, the probation officer should also have the authority, with the judge's approval and signature, to file an order terminating the defendant's probation. This would streamline the early termination process and obviate the need to seek the assistance of an attorney.

Technical violations

The original version of H.B. No. 2334 provided that a court shall not impose incarceration upon a defendant whose probation violation was only a "technical violation." The original measure correctly and appropriately placed recidivism, or a return to crime, as the top priority of probation. The current measure, however, has turned away from "technical violation" and has settled on the less-clear "failure to comply with a discretionary condition."

Rather than abandon "technical violation" altogether, work could be done to define and clarify the term "technical violation" as it is used in the context of acceptable grounds for revoking a defendant's probation. Between the standard (or mandatory) terms and conditions and the discretionary (or special) terms and conditions of probation, work should be done to specify which terms and conditions are deemed "technical" and which are deemed worthy of grounds for revocation of probation. But, to be clear, it is wholly appropriate that a defendant's probation should not be revoked because of a minor "technical violation."

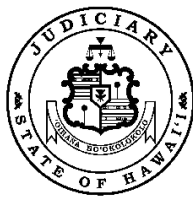
Written notice rather than a bench warrant and arrest

The current measure allows for a probation officer or law enforcement officer, in their discretion, to issue a written notice of a court hearing (rather than a bench warrant and arrest) if there exists probable cause that a violation of a discretionary condition has occurred. While this part of the measure is well-intentioned, it does not go far enough as to *require* that there only be a written notice, and not a bench warrant and arrest, when there is probable cause that a minor technical violation has occurred.

Rather than issuing a bench warrant on a minor technical violation to be served on a defendant which, often times, results in law enforcement officers 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 written notice that directs the defendant to appear before a judge

is a more fair and humane practice. 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.

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



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2022 Regular Session

House Committee on Judiciary and Hawaiian Affairs

Representative Mark Nakashima, Chair
Representative Scott Matayoshi, Vice Chair

Thursday, February 24, 2022 at 2:00 p.m.
Via Videoconference

by

Brook M. Mamizuka
Probation Administrator
First Circuit Court

Craig S. Hirayasu
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Second Circuit Court

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Bill No. and Title: House Bill No. 2344, House Draft 1, Relating to Probation.

Purpose: Requires the probation officer to conduct a formal review of the defendant's progress halfway through the defendant's period of probation and provide the defendant information on how to file a motion with the court for early termination of probation, if the defendant so chooses. Gives a probation or law enforcement officer who has probable cause to believe a defendant has failed to comply with a discretionary condition of probation under section 706-624(2), Hawai'i Revised Statutes, the discretion to issue the defendant a written notice of a court hearing that states the defendant's alleged violation and the date, time, location, and purpose of the hearing. Effective 7/1/3000. (HD1)



House Bill No. 2344, H.D. 1, Relating to Probation
House Committee on Judiciary & Hawaiian Affairs
February 24, 2022 at 2:00 p.m.
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Judiciary's Position:

The Judiciary supports criminal justice reform and House Bill 2344, H.D. 1 with amendments to early termination. The mission of the Judiciary's Adult Client Services is to facilitate defendants' compliance with the orders of the Court and to enhance the safety of the community through efficient crime-reduction and prevention services and activities that assist and guide offenders in their rehabilitation. The Adult Client Services is responsible to victims of crimes and must provide them with proper notification and the ability to respond to the disposition of case.

It is recommended that review and early termination be conducted on probation cases with the exception of cases involving Habitually Operating a Vehicle Under the Influence; Possession of Firearm (Chapter 134); Domestic Violence (Violation of Temporary Restraining Order and Abuse of Household Member) 586-4, 586-11, 709-906; and Crimes Against Person Chapter 707 (Sexual Assault and violence involving minors). These types of cases involve deceased victims and their families and/or victims that suffered physical and/or psychological trauma. In crimes of a sexual nature, plea agreements often indicate that early termination cannot be given.

We do not oppose the discretion to issue a written notice of a court hearing for violations.

Thank you for the opportunity to testify on House Bill 2344, H.D. 1.

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THE HONORABLE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-first State Legislature
Regular Session of 2022
State of Hawai'i

February 24, 2022

RE: H.B. 2344, H.D. 1; RELATING TO PROBATION.

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following **comments** regarding H.B. 2344, H.D. 1.

If enacted, H.B. 2344, H.D. 1, would require probation officers to review someone’s progress halfway through their period of probation, and ensure the probationer knows how to file for early termination of probation, if they so choose.

The Department appreciates the amendments made by the House Committee on Corrections, Military, and Veterans, and believes that requiring probation officers to conduct a formal review of the individual’s progress halfway through their probation period, and specifically assess his or her potential for early termination, is a prudent and beneficial change. In addition, the removal of all “technical violation” provisions helps to ensure that all of the specialty courts maintained by the Judiciary, which utilize treatment and social services as part of their rehabilitative process, will remain effective.

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. Treatment, in particular, is one of the most important conditions of probation, and provides offenders the best possible chance of overcoming substance abuse, mental health, domestic violence, and many other issues that may have contributed to the underlying offense, and would potentially lead to further offenses while the defendant is on probation, or thereafter, if left untreated. Thank for you the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Representative Mark Nakashima, Chair

Representative Scot Matayoshi, Vice Chair

Thursday, February 24, 2022

2:00 PM

HB 2344 HD1 - PROBATION REFORM

Aloha Chair Nakashima, Vice Chair Matayoshi 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 or under the "care and custody" of the Department of Public Safety or the corporate vendor 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.

The original version of HB 2344 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 circumstances and abilities. It also prohibits restrictions on association - this is important 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 important that people have something to work toward, instead of endless surveillance.

Sadly, the HD1 strips out the incentives by deleting the 'good time' provision, limiting the proposed limitations on conditions of probation, deleting all references to technical violations - a cost driver of mass incarceration AND justification for building a humongous new jail to warehouse Hawai'i's challenges, and made other changes and disincentives.

According to the February 14, 2022 DPS Population Report¹, currently there are 408 people on probation statewide - 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 \$89,352 a day, \$625,464 a week, \$2,501,856 a month, and \$30,022,272 a year. 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.

¹ 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>

Community supervision has turned into surveillance instead of helping people realize their goals and the benefits of living their lives as contributing community members. Though probation is often seen as a way to combat mass incarceration, many people in jail are there because they are suspected of violating probation. The February 14th Department of Public Safety population report shows that 9.8% of the total statewide incarcerated population (4,052) are probation violators (408).

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.² In the United States, “liberty is the norm” – unless you are on probation or any other form of community supervision.³

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 Probation who was on the HCR 85 Task Force spoke about the efficacy of incentivizing people to promote change. This is more effective and humane.

A graph on page 4 from the latest (March 2021) Interagency Council on Intermediate Sanctions 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.

<https://icis.hawaii.gov/wp-content/uploads/2021/05/2019-Hawaii-Recidivism-Update.pdf>

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.

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 in year number three.

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.

Hawai`i needs to abandon punishment a way to change behavior. Equitable and humane treatment would go a long way toward demonstrating the behavior we want to see in our communities.

Please pass this bill in its original form. Mahalo for this opportunity to testify

² Fiona Doherty, Obey All Laws and Be Good: Probation and the Meaning of Recidivism, 104 GEO. L.J. 291, 292, 354 (2016).

³ United States v. Salerno, 481 U.S. 739, 755 (1987).

LATE



Hawai'i

Committees: Committee on Judiciary & Hawaiian Affairs
 Hearing Date/Time: Thursday, 2:00PM, February 24, 2022
 Place: Via Videoconference
 Re: Testimony of the ACLU of Hawai'i in Support of H.B. 2344 HD1 Relating to Probation With Amendments

Dear Chair Nakashima, Vice Chair Matayoshi and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in **support of H.B. 2344 HD1 contingent upon the incorporation of amendments included below**. 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 sensible conditions of community supervision, 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

The probation system is a part of the criminal legal system in Hawai'i. As the data below illustrates, there are ways to improve the probation system, particularly in reducing the length of probation, the rates of technical revocations and recidivism, and racial disparities.

Pew Report Probation lengths across the U.S. (2020)

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

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

AG's Interagency Council on Intermediate Sanctions (2019) Recidivism Update (State of Hawai'i, FY 2016 Cohort) reports recidivism as a felony, misdemeanor, petty misdemeanor arrest, or probation or parole revocation to record the recidivism event.

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 Average Recidivism Rate: 53.8%

The Disparate Treatment of Native Hawaiians in the Criminal Justice System, Office of Hawaiian Affairs, (2010).

- 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

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. **On average, approximately one-fourth of jail and prison admissions in Hawai'i each week are the result of parole and probation infractions.**¹

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. It also affects tens of thousands of people: as of December 2019, Hawai'i had a **combined community supervision population of 21,285 people.**² Of this number, 19,619 individuals were serving probation sentences.³

¹ E.g., as of January 24, 2022, 1,016 out of 4099 people, or approximately 25% of all new admissions to jails and prisons in Hawai'i were the result of parole and probation revocations. Department of Public Safety, Weekly Population Report, January 24, 2022.

² <https://nicic.gov/state-statistics/2019/hawaii-2019>.

³ *Id.*

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.

Data Driven Strategies Have Proven Effective in Reducing Jail and Prison Populations without Compromising Community Safety

To ensure compliance with technical probation conditions, **the original version of this 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.

In addition to reducing probation technical revocations and offering good time credits, Hawai'i can dramatically reduce its incarcerated population by implementing sensible reforms outlined in the *Blueprint for Smart Justice Hawai'i*⁴:

- Invest in alternatives to incarceration that divert people from jails and prisons.
- Prioritize criminal pretrial justice reform and end Hawaii's overreliance on cash bail.⁵
- End the expansion of the criminal code and supporting decriminalization.
- Eliminate mandatory minimum sentences.

⁴ https://www.acluhi.org/sites/default/files/SJ-Blueprint-HI_1.pdf Other states have achieved substantial reductions in its incarcerated populations through data-driven policy reforms, high profile leadership, bipartisan support, inter-branch collaboration, and community engagement. Decarceration strategies were successful in New Jersey, Connecticut, Michigan, Mississippi, Rhode Island, New York, California, and South Carolina, as outlined in "*Decarceration Strategies: How 5 States Achieved Substantial Prison Population Reductions*" (2018) and "*Fewer Prisons, Less Crime: A Tale of Three States*" (2014) by The Sentencing Project. Significantly, states that pursued comprehensive criminal legal reforms simultaneously experienced decreases in crime rates.

⁵ See SB2778/SB2871 and HB2017 Relating to Pretrial Release (2022). These bills will establish a presumption that a person charged with a crime is entitled to unconditional release unless proven otherwise and requires the consideration of nonfinancial conditions of release before bail is ordered. See also, *Hawaii's Accused Face an Unequal Bail System: As Much Justice As You Can Afford*, ACLU Smart Justice, ACLU Hawaii (January 2018). <https://www.acluhi.org/sites/default/files/2018/01/aclu-of-hawaii-bail-report.pdf>

Earned Time Credit Policies Encourage Compliance with Probation Conditions and Effectively Reduces the Probation Supervision Population and Probation Officer Caseloads

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).”⁶

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.**”⁷

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.**”⁸

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.**⁹

At the last hearing on this measure, Adult Client Intake Services raised concerns about not having the threat of incarceration or incarceration to respond to technical violations. Rather than resorting to the most punitive sanction of incarceration, the proposed amendments to the statute allows for the loss of accrued time credits if people violate the terms of their supervision to a sufficient degree or are revoked to prison.

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.** 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.

⁶ <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety>

⁷ *Id.*

⁸ <https://ciceroinstitute.org/research/employment-based-earned-time-credits-in-adult-supervision/>:

⁹ <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety>

Written testimony from the Judiciary's Adult Client Intake Services Branch highlighted the following data:

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 of probation even though there is no evidence that reincarcerating people for technical violations improves public safety compared to other alternatives.

Amendments to HB2344 HD1 are Necessary to Effectuate Meaningful Probation Reform

The ACLU of Hawai'i recommends that this Committee adopt the following amendments:

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§706- Good time credit system. (1) Notwithstanding any law to the contrary, there shall be a good time credit system through which a defendant may earn credit for compliance with the conditions of a sentence of probation.

(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.

(3) Credits 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.

(4) Credits earned under this section shall be earned in addition to any other credits for a criminal sentence that may be earned under applicable law."

SECTION 3. Section 706-624, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment to be determined by the court at sentencing in class A felony cases under section 707-702, not exceeding two years in class A felony cases under part IV of chapter 712, not exceeding eighteen months in class B felony cases, not exceeding one year in class C felony cases, not exceeding six months in misdemeanor cases, and not exceeding five days in petty misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant's gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;
- (b) Perform a specified number of hours of services to the community as described in section 706-605(1)(d);
- (c) Support the defendant's dependents and meet other family responsibilities;
- (d) Pay a fine imposed pursuant to section 706-605(1)(b);

- (e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
- (f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons~~;~~; provided that the court shall not prohibit association with any person unless the person has or had any involvement in the crime for which the defendant was convicted, or in any events leading to the arrest, prosecution, or conviction of the defendant; including [the] any victim of the crime, any [witnesses,] witness, regardless of whether [they] the witness actually testified in the prosecution[;]; any law enforcement [officers, co-defendants,] officer; any co-defendant; or any other [individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;] relevant individual;
- (h) Refrain from the use of alcohol or any use of narcotic drugs or controlled substances without a prescription; provided that this condition may only be imposed if the possession or use of alcohol or prohibited drugs is reasonably related to the offense for which the defendant was convicted;
- (i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;
- (j) Undergo available medical or mental health assessment and treatment, including assessment and treatment for substance abuse dependency, and remain in a specified facility if required for that purpose; provided that the court shall not

require the defendant to undergo a substance abuse treatment program if no qualifying substance abuse treatment program is available in the county in which the defendant resides, or if no qualifying substance abuse program accepts the defendant, in spite of the defendant's good faith efforts to enter into qualifying substance abuse treatment programs;

- (k) Reside in a specified place or area or refrain from residing in a specified place or area;
- (l) Submit to periodic urinalysis or other similar testing procedure;
- (m) Refrain from entering specified geographical areas without the court's permission;
- (m) Refrain from entering specified geographical areas without the court's permission;
- (n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements;
- (o) Comply with a specified curfew;
- (p) Submit to monitoring by an electronic monitoring device;
- (q) Submit to a search by any probation officer, with or without a warrant, of the defendant's person, residence, vehicle, or other sites or property under the defendant's control, based upon the probation officer's reasonable suspicion that illicit substances or contraband may be found on the person or in the place to be searched;
- (r) Sign a waiver of extradition and pay extradition costs as determined and ordered by the court;
- (s) Comply with a service plan developed using current assessment tools; and

(t) Satisfy other reasonable conditions as the court may impose."

SECTION 4. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

"§706-625 Revocation, modification of probation conditions. (1) The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke probation except as otherwise provided in [~~subsection (7),~~] this section, reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

(2) The prosecuting attorney, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Hawaii rules of evidence, except for the rules pertaining to privileges.

(3) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(4) The court shall not impose incarceration upon a defendant for the defendant's failure to comply with a condition of probation if the defendant's failure to comply constitutes solely a technical violation.

(5) The court shall not revoke probation based on the defendant's failure to undergo and complete a substance abuse treatment program if there is no qualifying substance abuse treatment program available in the county in which the defendant resides, or if no qualifying

substance abuse program accepted the defendant, in spite of the defendant's good faith efforts to enter into qualifying substance abuse treatment programs.

(6) The court shall not revoke probation based on the defendant's failure to refrain from the use of alcohol, or any use of narcotic drugs or controlled substances without a prescription, unless the possession or use of alcohol or prohibited drugs is reasonably related to the offense for which the defendant was convicted.

~~[(4)]~~ (7) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

~~[(5)]~~ (8) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted.

~~[(6) As used in this section, "conviction" means that a judgment has been pronounced upon the verdict.~~

~~(7)]~~ (9) The court may require a defendant to undergo and complete a substance abuse treatment program when the defendant has committed a violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section ~~[712-1240.6,]~~ 712-1240.7, or involving possession or use of drug paraphernalia under section 329-43.5. If the defendant fails to complete the substance abuse treatment program or the court determines that the defendant cannot benefit from any other suitable substance abuse treatment program, the defendant shall be subject to revocation of probation, except as provided in subsection (5), and incarceration~~[-]~~, except as provided in subsection (4). The court may require the defendant to:

- (a) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (b) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (c) Contribute to the cost of the substance abuse treatment program; and
- (d) Comply with any other terms and conditions of probation.

~~[As used in this subsection, "substance abuse treatment program" means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.]~~

(10) Nothing in [this subsection] subsections (5) or (9) shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.

(11) As used in this section:

"Convicted" means that a judgment has been pronounced upon the verdict.

"Substance abuse treatment program" means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

"Technical violation" means any conduct that violates a condition of community supervision, other than the commitment of a new misdemeanor offense under chapter 134, chapter 707, or section 709-906, or a new felony offense."

SECTION 5. Section 706-626, Hawaii Revised Statutes, is amended to read as follows:

"§706-626 Summons or arrest of defendant on probation; commitment without

bail. ~~[At]~~ (1) The following may apply any time before the discharge of the defendant or the termination of the period of probation~~[-]~~, to the extent applicable:

~~[(4)]~~ (a) The court may, in connection with the probation, summon the defendant to appear before it or may issue a warrant for the defendant's arrest;

(b) A probation or law enforcement officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may, if the failure to comply was a technical violation, issue the defendant a written notice of a court hearing that states the defendant's alleged violation and the date, time, location and purpose of the hearing;

~~[(2)]~~ (c) A probation or law enforcement officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may, if the failure to comply was not a technical violation, arrest the defendant without a warrant, and the defendant shall be held in custody pending the posting of bail pursuant to a bail schedule established by the court, or until a hearing date is set; provided that when the punishment for the original offense does not exceed one year, the probation or law enforcement officer may admit the probationer to bail; or

~~[(3)]~~ (d) The court, if there is probable cause to believe that the defendant has committed another crime or has been held to answer therefor, may commit the defendant without bail, pending a determination of the charge by the court having jurisdiction thereof.

(2) As used in this section, "technical violation" has the same meaning as in section 706-625."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

In closing, we respectfully request that this Committee incorporate the proposed amendments to HB2344 HD1 to improve the probation system in Hawai'i, reduce the number of people who are incarcerated for technical violations, and save taxpayer dollars.

Thank you for the opportunity to submit testimony.

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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HB-2344-HD-1

Submitted on: 2/22/2022 2:57:38 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lauren Taijeron	Individual	Support	Yes

Comments:

Aloha,

My name is Lauren Taijeron and I am testifying in strong support of HB2344 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 HB2344** and keep our loved ones together.

Mahalo for your consideration,

Lauren Taijeron

HB-2344-HD-1

Submitted on: 2/22/2022 3:03:46 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christy MacPherson	Individual	Support	No

Comments:

I am in strong support of HB2344 HD1.

Mahalo for your consideration.

HB-2344-HD-1

Submitted on: 2/22/2022 10:29:48 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

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

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi, and JHA Committee Members,

As a public health professional and concerned community member, I am testifying in **strong support of HB2344 HD1** 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 homelessness 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)

HB-2344-HD-1

Submitted on: 2/23/2022 10:01:31 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lee Curran	Individual	Support	No

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi and Committee Members,

My name is Lee Curran, my pronouns are she, her, hers and I am testifying in support of HB2344HD1 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.

In addition, consider the sobering financial aspects of the high incarceration rates under our criminal legal system. Due to the expanded capacity, the proposed new OCCC is projected to cost \$1 billion. We know from our experience with the rail project, it will most likely cost even more. The prison industrial complex has a huge profit motive, there is a lot of money to be made when building a new prison.

Much has been in the news recently about corruption in the accepting of bribes both at the State and City and County of Honolulu levels. Our confidence and trust in government is low, at best. Building a \$1 billion dollar carceral facility is never a good idea and especially now with public trust so low. Unlike what a member in this committee previously voiced, I believe that criminal legal reform that includes probation, parole and cash bail has a lot to do with building a new OCCC. This is an opportunity to jump off that hamster wheel of bad outcomes, and embrace a new vision for our criminal legal system where we don't have to plan for substantial expansion and bed capacity because the hard truth is, build it and we will fill it.

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 HB2344 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!

HB-2344-HD-1

Submitted on: 2/23/2022 12:25:49 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lisa Cates	Individual	Oppose	No

Comments:

Aloha Representatives of the Committee on Judiciary and Hawaiian Affairs,

I am in strong opposition to HB2344 HD1. Although amendments removed the most damaging aspects of the bill, not holding a person convicted of a crime accountable to the courts, probation officers, or the law will not solve overcrowded prisons or the problems facing Hawaiian communities. Rather, it will create a mentality of entitlement among habitual offenders of non-violent, low level criminals.

Property crimes such as theft, burglary, and car theft are the most committed crimes in Hawaii and victims rarely receive justice. Property crime arrests are difficult because victims are not aware of the crime until after the fact. Many offenders are fueled by addiction, as well as the knowledge that pleading guilty to petty and misdemeanor charges will ensure a quick release. Meanwhile, victims can take months or years to recover, especially when items of significant sentimental value are taken.

The probation code is to ensure that all offenders comply with conditions set forth by the court in order to protect the public and prevent further criminal activity. Any attempt to restrict the powers of the court or not hold convicts accountable is a failure that will fall upon every legislator that supports this bill.

Mahalo,

Lisa Cates

LATE

HB-2344-HD-1

Submitted on: 2/23/2022 8:02:44 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

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

Comments:

I am writing in strong support of HB2344 HD1 which requires the probation officer to conduct a formal review of the defendant's progress halfway through the defendant's period of probation and provide the defendant information on how to file a motion with the court for early termination of probation, if the defendant so chooses. It gives a probation or law enforcement officer who has probable cause to believe a defendant has failed to comply with a discretionary condition of probation under section 706-624(2), Hawaii Revised Statutes, the discretion to issue the defendant a written notice of a court hearing that states the defendant's alleged violation and the date, time, location, and purpose of the hearing.

The original bill - HB2344- included provisions for a good time credit system by which an individual could reduce their time on probation through compliance with the conditions of probation and also required that only those associations directly related to the crime be prohibited. Unfortunately, these provisions were stripped out of the original bill. Overly strict and unreasonable conditions of probation contribute to technical violations that may lead to unnecessary reincarceration. These are the kinds of poorly conceived criminal justice policies that are responsible for our overcrowded correctional facilities and constantly increasing costs of incarceration.

Please restore the above provisions in HB2344 HD1. Mahalo.

LATE

HB-2344-HD-1

Submitted on: 2/23/2022 9:29:11 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
nicole rhton	Individual	Support	Yes

Comments:

Please restore this bill to its original form. If changes are needed to clarify what technical violations are, please address instead of removing meaning from the bill. Terms of probation and violations are clearly defined so it should not be difficult to understand what technical violations are--anything that is not an actual crime that can put someone in a cage—should not be permitted. The people being criminalized here need your support. The system supporting keeping people in cages does not need your support so please stop supporting that system and start dismantling it. This is an incremental reform that should not be this hard. Please do better by people. Thank you.

-Nicole Rhton

LATE

HB-2344-HD-1

Submitted on: 2/24/2022 12:05:45 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Peter Koulogeorge	Individual	Support	Yes

Comments:

Dear Chair Nakashima and Vice Chair Matayoshi,

I am writing in support of HB2344 with the caveat that the amendments recommended by the ACLU of Hawaii be added. This bill must include a good time credit system and an end to incarceration for technical violations of probation. Probation reform is necessary as we work to de-carcerate our state and work towards a more safe and just Hawaii.

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 homelessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

We need to focus on keeping people out of jails and prisons and instead turn towards policy solutions that will get to the core of these issues. Ending incarceration for technical violations of probation is a good place to start.

Thank you for considering my written testimony,

Peter Koulogeorge

LATE

HB-2344-HD-1

Submitted on: 2/24/2022 12:14:14 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ansley Calandra	Individual	Support	No

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi, and other committee members:

I'm testifying in strong support of HB2344, with the caveat that the bill be amended to again include a good time credit system and an end to incarceration for technical probation violations. No one should ever have their freedom ripped away for simply missing a meeting or failing to report a change in address. There is **no evidence** that incarcerating people for technical violations improves public safety. In fact, doing so *decreases* public safety by destabilizing individuals, their families, and our communities, while increasing the likelihood of crimes of poverty. Our current probation system wastes taxpayer dollars and is both ineffective and incredibly cruel. It is long overdue that we create a functioning system, and so please pass HB2344 with amendments that include good time credits and an end to incarceration for technical violations of probation.

Thank you for your consideration.

Ansley Calandra

LATE

HB-2344-HD-1

Submitted on: 2/24/2022 7:10:50 AM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
E. Ileana Funakoshi	Individual	Support	No

Comments:

Sorry for lateness. I humbly ask the committee to favorably consider this bill for passage. It is a much needed bill to help the inmates be motivated to do better. Right now, there are no goals.

mahalo,

e. ileina funakoshi

LATE

HB-2344-HD-1

Submitted on: 2/24/2022 1:41:22 PM

Testimony for JHA on 2/24/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John Miki	Individual	Support	No

Comments:

My name is John Miki and I am testifying in strong support of HB2342 relating to parole.

Reincarcerating people for technical violations is an abhorrent overstep of the judiciary system. Even before the pandemic, what steps was the state taking to ensure that people succeeded in their completion of parole? That's the whole reason the state uses parole, right? To get people out of prison and rehabilitate them back into the real world. So why is it then that so many people end up right back in prison for non-criminal technical violations.

Contrary to what some want you to believe, parolees pose virtually no risk to the general public.

In 2020, I know that seems like forever ago, but in 2020, in the middle of a full blown pandemic. The Hawaii Parole Authority locked up 321 parolees, and not a single one had committed a new crime, every single one of those parolees was jailed again on the grounds of a technical violation.

We're all here today because we want better for our state, and I firmly believe that. And it's no secret that something needs to be done about our carceral system. We have overflowing jails and a crumbling infrastructure. People have been ringing the alarms on all sides now for years. But it's now that I think we have an opportunity to look at the solutions being put forth before us, and ask ourselves, how are we investing in Hawai'i? How do you fix a system that is hemorrhaging this state in every facet possible? We don't need a new shiny prison and a new reason to keep it full. We need to dismantle a system that has cost this state so much.

Thank you for holding this space, and giving me the time to speak to you all today. I'd like to end with a few last words from Audre Lorde

“For the master’s tools will never dismantle the master’s house. They may allow us to temporarily beat him at his own game, but

they will never enable us to bring about genuine change.” - Audre Lorde