

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 Public Safety,  
Intergovernmental, & Military Affairs**

February 3, 2022

S.B. No. 2514: RELATING TO PROBATION

Chair Nishihara, Vice Chair Decoite, and Members of the Committee:

The Office of the Public Defender supports S.B. No. 2514. 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 probation 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<sup>1</sup> probation boasts high-intensity supervision and a zero-tolerance policy (meaning a bench warrant will issue for even the slightest violation),

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<sup>1</sup> “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](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), requiring that a written notice of a court hearing shall 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 and thank you for the opportunity to present testimony to this committee.

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# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Senator Clarence Nishihara, Chair

Senator Lynn DeCoite, Vice Chair

Tuesday, February 2, 2022

1:10 PM

### **SB 2514 – SUPPORT FOR PROBATION REFORM**

Aloha Chair Nishihara, Vice Chair DeCoite 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 4,100 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 1,113 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.

Community Alliance on Prisons supports incentives for people to earn their way out of probation. This bill presents some strategies to encourage outcomes that provide hope and employs proven strategies.

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 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.

According to the January 24, 2022 DPS Population Report<sup>1</sup>, currently there are 401 people on probation statewide. Most of these folks are there for substance misuse or technical violations of the conditions of their probation. This is a HUGE expense. At \$219 a day this costs \$87,819 a day, \$614,733 a week, \$2, 458,932 a month, and \$29,507,184 a year.

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 change their behavior. This is more effective and humane.

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.

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?

Hawai`i needs to abandon punishment as a way to change behavior. Violence only brings on more violence. Why do we ~~allow~~ promote this abuse?

Please pass this bill onto the Judiciary for more discussion and action.

Mahalo for this opportunity to testify

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<sup>1</sup> Department of Public Safety, Weekly Population Report, January 24, 2022.  
<https://dps.hawaii.gov/wp-content/uploads/2022/01/Pop-Reports-Weekly-2022-01-24-.pdf>

## TESTIMONY IN SUPPORT OF SB 2514

TO: Chair Nishihara, Vice Chair DeCoite, & Committee Members

FROM: Nikos Leverenz  
Grants & Advancement Manager

DATE: February 1, 2022 (1:00 PM)

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Hawai'i Health & Harm Reduction Center (HHHRC) **strongly supports** SB 2514, 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 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 [Hawai'i 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.

HHHRC 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 Hawai'i 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.



Hawai'i

Committees: Committee on Public Safety, Intergovernmental, and Military Affairs  
Hearing Date/Time: Thursday, 1:10PM, February 3, 2022  
Place: Via Videoconference  
Re: Testimony of the ACLU of Hawai'i in Support of S.B. 2514 Relating to Probation

Dear Chair Nishihara, Vice Chair DeCoite, and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in **strong support of S.B. 2514**. 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 probation system in Hawai'i needs urgent reform. 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, 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.<sup>1</sup>

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**.<sup>2</sup> Of this number, 19,619 individuals were serving probation sentences.<sup>3</sup>

**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 fragile progress. Upon release they 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.

To ensure compliance with technical probation conditions, **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

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<sup>1</sup> 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.

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

<sup>3</sup> *Id.*

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.

Finally, S.B. 2514 **proposes critical prohibitions on the use of certain unreasonable conditions of probation**, including restrictions on association with individuals who have a criminal record.<sup>4</sup> This type of condition disproportionately impacts marginalized communities and people of color, and severely restrict individuals’ ability to rebuild a productive life in their neighborhood by maintaining important family and other social connections. Among other things, the bill also stops individuals on probation from being **penalized for drug or alcohol use** when it is unrelated to the crime of conviction, and includes a requirement that when an individual must complete a substance abuse program, that such a program be available in the county in which the person resides. These are important reforms that ensure people are not punished for failing to comply with unrelated, impossible, or overly punitive conditions.

S.B. 2514 is a comprehensive bill that would improve the probation system in Hawai‘i in significant ways. For these reasons, the ACLU of Hawai‘i **strongly supports S.B. 2514**. Thank you for the opportunity to testify.

Sincerely,

**Carrie Ann Shirota**

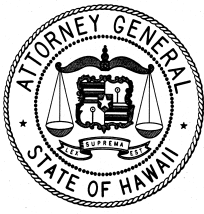
Carrie Ann Shirota  
Policy Director  
ACLU of Hawai‘i

*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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<sup>4</sup> HRS § 706-624 lists possible discretionary conditions of probation. Relevant to restrictions on association is § 706-624(2)(g), which allows the court to require that the defendant “[r]efrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted,” as well as § 706-624(2)(t), which, operating as a catch-all, allows the court to require the defendant “[s]atisfy other reasonable conditions as the court may impose.” HRS § 706-624. Although these provisions suggest there may be some limitations to the possible restrictions on association, the broad, all-encompassing language of § 706-624(2)(t) still warrants—and necessitates—an explicit prohibition on blanket conditions that restrict association.





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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2514, RELATING TO PROBATION.

**BEFORE THE:**

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS

**DATE:** Thursday, February 3, 2022      **TIME:** 1:10 p.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Albert Cook, Deputy Attorney General

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Chair Nishihara 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 Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Lynn DeCoite, Vice Chair**

Thursday, February 3, 2022 at 1:10 p.m.  
Via Videoconference

by  
Brook M. Mamizuka  
Probation Administrator  
First Circuit Court

Craig S. Hirayasu  
Probation Administrator  
Second Circuit Court

Dean T. Hiraki  
Probation Administrator  
Third Circuit Court

Rennette S. Garma  
Probation Administrator  
Fifth Circuit Court

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

**Purpose:** Creates a good time credit system, by which a defendant on probation may reduce their time on probation through compliance of probation conditions. 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 imposed if it reasonable 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:**

Although the Judiciary is not opposed to the concept of criminal justice reform efforts to reduce incarceration, we respectfully submit testimony in strong opposition to this bill because it would negatively impact public safety. According to this bill, the definition of "technical violation" means any condition 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. We oppose the use of this definition as it does not allow the adult probation officer to effectively supervise. The bill lessens the authority of the adult probation officer and disregards the probation officers ability to evaluate when violations (be they technical or not) warrant incarceration. Sex offenders whose offense involves child pornography may have a restriction against contact with minors (not necessarily minors involved in the case). Domestic Violence offenders who's offense involves an intimate partner may have a restriction against direct or indirect contact with the victims (the indirect contact may involve family member or employers who are not necessarily the victims of the crime). The Adult Probation Officers are tasked with managing convicted felons in the community and work to maintain individuals in the community, facilitate individual needs of rehabilitation and treatment while balancing the needs of public safety.

In FY 2020-2021, the statewide probation offices managed 18,505 offenders. From the 18,505 offenders, 495 offenders were returned to court for technical violations and 160 were returned to court for new convictions. This is approximately 3.54% of offenders that were revoked over the last Fiscal Year.

The Judiciary opposes this bill for the following reasons:

### **Section 2. Chapter 706, Hawaii Revised Statutes:**

#### **Good Time Credit System (Page 5)**

The Adult Client Services is committed to making long term cognitive behavior changes with defendants placed on probation. Compliance to probation conditions does not equate behavior changes. There are many times that probation will need the entire length of the probation term to address the defendant's criminogenic needs. 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 without aggression, and managing emotions). The adult probation officers are trained and certified on



how to utilize these tools and strategies to facilitate change. Built into these tools are incentives and sanctions for creating long lasting behavioral changes.

The LSI-R and ASUS assist probation with classification of an offender to determine their risk to recidivate. As the offender's risk is reduced, there is a reduction in the frequency of reporting to the probation office. If the offender's risk increases, his/her reporting to the probation office will increase.

There is no system in place to calculate good time credit. This will be time consuming and will impact statewide operations. If this were to be implemented, the Adult Client Services would need to develop statewide policy, procedures, and training. If a statewide credit system is adopted a database would be necessary to ensure fairness, consistency, and accuracy. This database would need to include:

- 1) The amount of credit that a person can earn on a daily basis.
- 2) The total amount a person can earn.
- 3) Criteria of compliance to earn credit for compliance.
- 4) System to calculate earned credit, forfeiture of credit, and an expiration date based on earned and forfeited credit.

The development and or adoption of a statewide system would add additional costs to purchase a database or to create an enhancement to the current database. Further, annual cost would be required to maintain the database.

Currently, defendants have the option to seek early termination of probation.

#### **Section 706-606(2)(g): Prohibited Association**

Refrain from frequenting specified kinds of places or from associating unnecessarily with specified person.

Social learning theory suggests that we learn from the groups we have the greatest amount of contact. Companions/Associates/Friends that are pro-criminal is a high risk factor for crime. Conversely, having pro-social associates and friends can support a defendant and stir him/her 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 leave minors unprotected/vulnerable against sex crimes.



The interstate compact for adult offender supervision currently requires that a defendant's transfer request contain information as to whether the defendant has a known gang affiliation and the gang which the defendant is known to be affiliated. This information was deemed by all states to be vital to officer safety.

The crime for which the defendant was convicted may not reflect the gang affiliation nor persons/places that would adversely affect the defendant's rehabilitation.

**Section 706-606 (2)(h): Refrain from the use of drugs and/or alcohol**

Substance abuse is a precursor for criminal conduct, impulsive behavior, lack of judgment, lowered inhibitions, increased violence and general instability. 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.

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 disorders.

If this condition of probation was only applied if drugs/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/alcohol testing, probation may not know if a defendant has a drug or alcohol addiction and would not reasonably be able to assist the individual with their substance abuse issue. The continued abuse of illegal drugs or alcohol by defendants could have further negative impact on the safety of the community as defendants 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.

On the island of Hawai'i, the courts take certain factors into consideration when imposing drug/alcohol related conditions. The courts impose the drug/alcohol conditions if there is an established history of drug and alcohol abuse.

**Section 706-606 (2) (j): Medical or Mental Health assessment and treatment, 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 program.**

This condition is a disservice to the defendants that require a specific level of treatment that cannot be accommodated by the county in which they reside. A defendant left without the proper level of treatment or care for mental illness or a dual diagnosis issue may pose a serious threat/danger of harm to themselves and/or the community.

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.

**Section 706-625 Revocation, modification of probation conditions.**

Incarceration is a tool utilized to deter non-compliance. If the courts are prohibited from imposing incarceration for technical violations of probation, there needs to be an alternative sanction for the court to impose. There cannot be violations (s) of court orders by defendants without consequences for the violations. This would further reinforce that criminal behavior is tolerated and there are no reasons for pro-social change. A possible alternative to incarceration could be the expanded use of electronic monitoring for technical violations. However, if they violate the parameters of electronic monitoring, there is no incentive for the defendant to comply if incarceration is not a possible consequence. Currently, the Adult Client Services are not staffed and equipped to handle an expansion of electronic monitoring. Statewide funding would be a need to create and staff an electronic monitoring unit for each county (Oahu, Maui, Molokai, Lanai, Hilo, Kona, and Kauai). Additionally, there would also be a need for funding to pay for the cost of electronic monitoring for indigent individuals and for electronic monitoring equipment that were damaged or destroyed by defendants while absconding.

Without having the possibility of serious consequences such as incarceration, there is no motivation for defendants to complete services such as sex offender treatment, anger management, domestic violence programs, substance abuse treatment, and mental health treatment. Additionally, there will be no incentive for the defendant to make payment to





restitution, fines, and fees nor meet with their probation officer or refrain from illicit substance use. Defendants who violate the conditions of their probation will not be held accountable to their victims or the community.

**Section 706-625 (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 effort to enter into qualifying substance abuse treatment program.**

This condition is a disservice to the defendants that require a specific level of treatment that cannot be accommodated by the county in which they reside.

Maui County has treatment programs ranging from outpatient to residential treatment; however, Maui does not have a long term residential treatment or dual diagnosis treatment program. This may have a critical impact should the availability of the programs decrease.

Hawai'i County has limited drug/alcohol treatment programs that provide outpatient to therapeutic living program treatment. Defendants requiring long term residential treatment programs are referred off island.

Kauai County is limited to outpatient and low intensive outpatient treatment. Over the last 2-3 years, the Kauai programs have decreased. Kauai County does not have any residential or long term residential treatment nor a dual diagnosis program. The defendants that are assessed and recommended to attend residential or dual diagnosis treatment are referred to a program on the neighboring islands.

**Section 706-625 (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.**

If the courts do not have the ability to revoke probation for continued use of drugs or alcohol, this would continue to reinforce criminal behavior. This may have a negative impact to public safety as there is a possibility that the individual would spiral further into their addiction and commit crimes against persons or property while intoxicated or to support their addiction. Continued drug or alcohol abuse could put further strain on law enforcement, emergency rooms, substance abuse treatment providers, mental health providers, and the courts. If a defendant is on probation for Habitual DUI cannot be revoked due to alcohol use or a person become violent



when using methamphetamine cannot be revoked when they test positive for continued use that is a potential public safety issue.

Again, continued drug/alcohol use could also interfere with employment, housing, health care, child custody, other life opportunities that have a negative impact on family and communities.

Further, it is unclear as to what “reasonably related to the offense for which the defendant was convicted.” This ambiguity will cause a disparity in sentencing.

**Section 706-626: Summons or arrest of defendant on probation; commitment without bail**

The intent of this amendment as it pertains to technical violations is vague and unclear.

In Maui County, this would replace the need to forward the request for a Motion to Revoke Probation through the Prosecutor’s Office. The probation office would create and issue Penal Summons immediately upon an individual. It is not clear if the intention of this section is to by-pass the Prosecutors Office or make the service of the Motion for Revocation easier.

In Hawai’i County, probation officers efile Motions for Revocation/Modification of Probation with a Notice to Appear signed by the defendant. The drawbacks in this process are obtaining an available courtroom clerk that can issue a hearing date and the amount of time it takes from the probation officers and clerical staff normal duties and responsibilities. This lengthy process caused defendants to become frustrated and has placed a strain on the adult probation officers and clerical staff.

In Kauai County, affidavits are forwarded to the Office of the Prosecuting Attorney for filing of the Motion for Revocation/Modification of Probation. A determination will need to be established on how to address technical violation and when a summons or arrest is required.

In Honolulu, warrants are issued for probationers that absconded and those which pose a safety risk. The service of summons or a Notice To Appear must take into consideration the safety of the adult probation officer and the other staff in the office. Probationers receiving a summons have been known to lash out or confront the adult probation officer serving the summons. Probationers have also refused to sign for the summons and have fled the office before the service could be completed.

Both the Summons and the Warrants provides the courts and attorneys with an operational procedure that allows for the court to calendar the hearing and provides for proper



Senate Bill No. 2514, Relating to Probation.  
Senate Committee Public Safety, Intergovernmental, and Military Affairs  
February 3, 2022  
Page 8

notice of the hearing. Although the Notice To Appear is being utilized by the Third Circuit it has not been adopted by Honolulu, Maui or Kauai.

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



**STATE OF HAWAII**  
**HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION**

February 3, 2022

TO: Honorable Senator Clarence Nishihara  
Senate Committee on Public Safety, Intergovernmental, and Military  
Affairs

FROM: Mark Patterson, Chair Hawaii Correctional System Oversight  
Commission.

SUBJECT: **SB2514 Related to Probation**

POSITION: STRONG SUPPORT

Chair Nishihara, Vice Chair DeCoite and Members of the Committee

The Hawaii Corrections System Oversight Commission was created by Act 179, SLH 2019, to provide independent oversight over our correctional system. The Commission's statutory responsibilities include monitoring and reviewing the comprehensive offender reentry program of the Department of Public Safety and ensuring that the comprehensive offender reentry system under chapter 353H is working properly to provide programs and services that result in the timely release of inmates on parole. [See Hawaii Revised Statutes 353L-3(b).]

This bill's purpose would come under our commission's purview " ...formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility:"

Probation works by allowing defendants to retain many of their freedoms, if they meet strict conditions mandated by the court. Probation involves court-ordered formal supervision, with stringent terms, for a given length of time. Violating the terms of probation can result in additional charges and penalties.

There is a need for probationers to achieve success and maintain stability of family and employment without having to beholden to technical violations and the potential for reduction time can add to a more successful transition. A return to jail for technical violation can cause strain on family financial income and total wellbeing.

**LATE**

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

STEVEN S. ALM  
PROSECUTING ATTORNEY

THOMAS J. BRADY  
FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL AND MILITARY AFFAIRS  
Thirty-first State Legislature  
Regular Session of 2022  
State of Hawai'i**

February 3, 2022

**RE: S.B. 2514; RELATING TO PROBATION.**

Chair Nishihara, Vice-Chair DeCoite and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to S.B. 2514.

The primary effect of S.B. 2514, 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 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 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 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 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:

- [Fleeing the scene of motor vehicle] Collisions involving bodily injury (HRS §291C-12.6)
- Operating a vehicle under the influence of an intoxicant, as 1<sup>st</sup> or 2<sup>nd</sup> 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)
- 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)
- 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 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.

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. Thank for you the opportunity to testify on this matter.

**LATE**

**SB-2514**

Submitted on: 2/2/2022 4:29:38 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Lorenn Walker	Testifying for Hawai'i Friends of Restorative Justice	Support	No

Comments:

We strongly support this bill to help reform our probation system including creating "good time credit" (aka: compliance credit) for people on probation and prohibits certain technical rule violations.

Our organization has worked with people involved in the legal system for almost 20 years. We have developed programs and studied what [helps people desist](#) from crime.

Please refer to the Pew Foundation's 2020 report about reforming our parole and probation systems including using compliance credits that would shorten the time of community supervision: [Policy Reforms Can Strengthen Community Supervision: A framework to improve probation and parole.](#)

Sadly, our probation and parole agencies, which government created to make our community safer, and which many people work for with the very best intentions of helping others, have led to [making people more vulnerable to injustice and crime](#). Some of the rules that these agencies follow are unhelpful and harmful. For example, parole or probation conditions that order a person to work for a specified number of hours a week, to stay out of a certain neighborhood or away from certain people, can create violations that often lead to revocations and re-incarceration that come at a high cost to the individual, their families, and to our community. The person loses their job, a family loses a loved one, and the community pays for re-incarceration with their hard earned tax dollars—the sense of injustice too that the person on parole or probation suffers can also damage their ability to stay optimistic and hopeful in desisting from crime and substance use. Moreover, these kinds of revocations often have little or no bearing on the crime that the individual was incarcerated for.

Please pass this measure and work to meaningfully reform our parole and probation systems. Please contact Lorenn Walker, JD, MPH at [lorenn@hawaiifriends.org](mailto:lorenn@hawaiifriends.org) for further information about our support for the bill. Mahalo for your public service.



SB2514 & SB2515

Hearing

February 3, 2022

1:10 PM

Testimony in Support

Since 2015, Waikiki Health's ( FQHC non-profit) Pu'uhonua Prison Program has assisted at least 4,000 individuals transitioning from incarceration. While providing transitional support to those in need during the last 45 days of incarceration and the first 45 after release, we see a vast community with an array of backgrounds, barriers, and health issues. We write in support of bills SB2514 & SB2515, as we believe it will cut costs, improve budgets for Federally Qualified Health centers like Waikiki Health, and improve the quality of life one transitioning from jail or prison one can provide themselves with.

Everyday patients are lost to care, or in other words, fail to manage their health in the absence of clinical support. As a reentry program, we notice numerous patients experiencing disruption in their medical-social services due to technical violations that are hard to avoid. Upon their eventual release, they must start from the beginning with benefits that are not easy to reinstate. The Supplemental Nutritional Assistance Program, for example, has suffered long delays in distribution of funds to qualified Hawaii residents due to the pandemic. Our previously incarcerated community is no exception and may even be more affected. We hear the frustration and work directly with patients who struggle keeping away from violations. From running late to their appointment with their parole officer, not being able to find a job, to not being able to reapply and reobtain identification within 45 days – there are so many obstacles that our community tries to eliminate for this special population. There is an abundance of valid reasons that a person cannot meet the requirements that this bill aims to do away with.

If we can vote in some changes and reevaluate what "violation" means, we can reduce the amount spent on imprisoning and redirect funds into reintegration. The greatest possible solution for reentry efforts is guaranteeing a safety net for our formerly incarcerated individuals.

**LATE**

**SB-2514**

Submitted on: 2/2/2022 7:47:14 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Lisa Seikai Darcy	Testifying for Share Your Mana	Support	No

Comments:

Aloha Chair Nishihara & Vice Chair DeCoite,

My name is Lisa Seikai Darcy from Maui County and I am testifying in **strong support of SB2514 / SB2515.**

As I dive into the abyss of probation and it's structures, I am finding strong interest in supporting community members to create recovery based supports and allowing probation or parole vs. incarcerating individuals 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. Many I work with released from prison have NO stable housing, are unable to find and maintain employment in their conditions, or 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 is an immensely time consuming process which negates the ability to grow a healthy community.

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 / SB2515** and keep our loved ones together.

Mahalo for your consideration,

Lisa Seikai Darcy

Founder, Share Your Mana

Maui County

**SB-2514**

Submitted on: 2/1/2022 9:13:29 AM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Wendy Gibson-Viviani	Individual	Support	No

Comments:

Aloha Chair, Vice Chair and Members of the Committee,

Please consider supporting SB2514. It will prohibit incarceration for certain technical violations and create a good time credit system, by which criminal defendant on probation may reduce their time on probation through compliance with conditions of probation.

I believe too many people are incarcerated for technical violations of parole and this needs to be fixed.

Thank you,

Wendy Gibson-Viviani RN/BSN

Kailua

**SB-2514**

Submitted on: 2/1/2022 12:27:23 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
E. Ileina Funakoshi	Testifying for Pearl City Neighborhood Board #21	Support	No

Comments:

Aloha Chair, Vice Chair and Committee Members

This legislation is very important because, at present, there is no incentive for good behavior.

I'm sorry but have doctor's appointment so may this testimony suffice. Time is so limited.

I humbly ask for your favorable consideration for passage of SB2514, and thank you for this opportunity to provide my meager testimony.

Mahalo and Aloha,

e. ileina funakoshi

Chair, Public Safety Committee

PC NH#2

**SB-2514**

Submitted on: 2/1/2022 1:38:30 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

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

Comments:

Chair Nishihara, Vice-Chair DeCoite and Members of the Committee on Public Safety, Intergovernmental and Military Affairs,

I request your support of SB2514.

Mahalo,

Dr. RaeDeen M. Keahiolalo



**Testimony of Faith Action for Community Equity  
IN SUPPORT OF SB2514, Relating to Parole  
To the Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
February 3, 2022 1:10pm via video conference**

Aloha Chair Clarence K. Nishihara, Vice Chair Lynn DeCoite, and Senate Committee on Public Safety, Intergovernmental, and Military Affairs,

We at Faith Action for Community Equity believe in the inherent worth and dignity of all. Our members work together to address the root causes of systemic justice challenges facing our communities. We are writing in **SUPPORT** of SB2514 because it creates a good time credit system, by which criminal defendants on probation may reduce their time on probation through compliance with conditions of probation and prohibits incarceration for certain technical violations.

Creating methods for defendants to reduce their probation by good credit will reduce our incarcerated population and incentivize good behavior by defendants. In Hawai'i, like many other states, people on probation or parole can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. According to the Department of Public Safety's Weekly Population Count, 61 or 29% of the women incarcerated at WCCC (Women's prison) were locked up due to parole and probation revocations. Overcrowding in our prisons is financially costly to the state and to those incarcerated, their families, and communities.

Thank you for your care of our communities by working to reduce our incarcerated population.

If you have any questions, please contact the Community Organizer at Faith Action for Community Equity: Cassandra Chee (she/her) at [cchee@faithactionhawaii.org](mailto:cchee@faithactionhawaii.org) or 425-381-3868

Mahalo for this opportunity to testify.

Cassandra Chee

**SB-2514**

Submitted on: 2/1/2022 12:30:17 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Diana Bethel	Individual	Support	No

Comments:

Aloha Chair Nishihara and Vice Chair DeCoite, and Members of the Committee,

I am writing in strong support of SB 2514 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 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, but also on warehousing people who do not pose a danger to public safety and who do not really need to be in prison. The unnecessary expense of these short-sighted policies robs our criminal justice system of resources to apply towards recently released individuals who need more support as well as more high-risk individuals.

Regarding the prohibition against associating with other convicted individuals, 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.

Mahalo,

Diana Bethel, Honolulu



**SB-2514**

Submitted on: 2/1/2022 1:43:13 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Danielle Sears	Individual	Support	No

Comments:

I support the SB2514 bill. Good behavior time to decrease supervision time is a great motivator for probationers and alleviate the need for supervision of clients who are no longer in need of supervision. Further, conditions of probation should have a nexus to the behavior that creates the need for supervision. For example, drug testing should not be required when there was no indication of a drug problem. In addition, there should not be automatic jail time for technical violations. Increased supervision, additional classes and other conditions of probation can be the consequences for such violations instead of incarceration.

## Testimony of Jacquie Esser to the Senate Committee on Public Safety, Intergovernmental, and Military Affairs

February 3, 2022

S.B. No. 2514: RELATING TO PROBATION

Chair Nishihara, Vice Chair DeCoite, and Members of the Senate Committee:

I write in strong support of Senate Bill 2514 which creates a good time credit system, limits the conditions that can be included in a term of supervision and prohibits the use of incarceration for certain technical violations.

The probation system as it currently operates must be changed back to what it was originally intended to do: a system to address people's needs in order to reduce crime in the community.<sup>1</sup> "Technical violations" of probation are actions that may violate the conditions of supervision but do not break any criminal laws and do not result in criminal charges. They may include such actions as forgetting to update your address, showing up to a meeting late, or missing a curfew – but often result punishment and incarceration. Incarcerating someone for technical violations does not increase public safety; it does the opposite. It destabilizes people by uprooting them from their community ties and perpetuates the cycle of crime.<sup>2</sup> As a public defender, I have seen how these "violations" have a disparate impact on low-income people, many of whom may not have access to transportation or childcare, which results more often in technical violations than people with access to these services and exacerbates the system's already deep disparities.

Additionally, conditions of supervision are often so onerous that people on probation face greater challenges securing employment and maintaining community connections, two factors that are shown to reduce criminal activity.<sup>3</sup>

In response to the failures of probation and in recognition of the fact that "the fundamental mission of community corrections as well as the broader system of

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<sup>1</sup> Cecelia Klingele, Rethinking the Use of Community Supervision, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1024 (2013), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7463&context=jclc>.

<sup>2</sup> Executive Session on Community Corrections, Toward an Approach to Community Corrections for the 21<sup>st</sup> Century: Consensus Document of the Executive Session on Community Corrections. Program in Criminal Justice Policy and Management, Harvard Kennedy School (2017) at 4, [https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/Consensus\\_Final2.pdf](https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/Consensus_Final2.pdf).

<sup>3</sup> Noah Atchison, Community Organizations Have Important Role in Lowering Crime Rates, <https://www.brennancenter.org/our-work/analysis-opinion/community-organizations-have-important-role-lowering-crime-rates>.

criminal justice is the well-being and safety of ... communities,”<sup>4</sup> major changes are needed to make our system smaller and more focused, less punitive, more humane, and more widely guided by best practices. It will be impossible to meaningfully reduce mass incarceration in Hawai‘i without solving the challenges of probation and fulfilling its initial purpose and promise. This bill is a step in the right direction.

Mahalo for the opportunity to provide testimony on this bill.

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<sup>4</sup> Id.

**LATE**

**SB-2514**

Submitted on: 2/2/2022 1:14:29 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Gladys C Baisa	Individual	Support	No

Comments:

None

**LATE**

**SB-2514**

Submitted on: 2/2/2022 1:30:07 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Echo Wyche	Individual	Support	No

Comments:

I fully support this bill as a means to reduce the revolving door of incarceration for technical violations within our prison system.

At this time our state has a high recidivism rate and much of this is related to non-crime probation violations. We need to be working towards lessening our incarcerated population, not penalizing citizens for lack of resources, and encouraging compliance through positive reinforcement.

**LATE**

**SB-2514**

Submitted on: 2/2/2022 6:39:13 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Inge Detlefsen	Individual	Support	No

Comments:

**Aloha Chair Nishihara & Vice Chair DeCoite,**

**My name is Inge Detlefsen and I am testifying in strong support of SB2514 relating to probation.**

**Currently, people in Hawai'i 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 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,**

**Inge Detlefsen**

**LATE**

**SB-2514**

Submitted on: 2/2/2022 6:42:41 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
nicole rhton	Individual	Support	No

Comments:

**Aloha Chair Nishihara & Vice Chair DeCoite,**

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

**Currently, people in Hawai'i 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 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**

**LATE**

**SB-2514**

Submitted on: 2/2/2022 7:42:44 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Raymond Pintor	Individual	Support	No

Comments:

**Aloha Chair Nishihara & Vice-Chair DeCoite,**

**My name is Raymond Pintor 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 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 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,**

**Raymond Pintor**



**LATE**

**SB-2514**

Submitted on: 2/2/2022 11:49:21 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Emily Sarasa	Individual	Support	No

Comments:

**Aloha Chair Nishihara & Vice Chair DeCoite,**

**My name is Emily Sarasa and I am testifying in strong support of SB2514 relating to probation.**

**Currently, people in Hawai'i 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 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,**

**Emily Sarasa**

**LATE**

**SB-2514**

Submitted on: 2/2/2022 8:21:12 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dhyan Sandhya	Individual	Support	No

Comments:

Aloha Chair Nishihara & Vice Chair DeCoite,

My name is Dhyan Sandhya and I am testifying in **strong support of SB2514** relating to probation.

Currently, people in Hawai'i 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 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 felony 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,

Dhyan Sandhya

**LATE**

**SB-2514**

Submitted on: 2/2/2022 8:25:16 PM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ansley Calandra	Individual	Support	No

Comments:

Aloha Chair Nishihara & Vice Chair DeCoite,

My name is Ansley Calandra and I am testifying in **strong support of SB2514** relating to probation.

Currently, people in Hawai'i 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 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 felony 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,

Ansley Calandra

**LATE**

**SB-2514**

Submitted on: 2/3/2022 12:09:50 AM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Andrew Littlejohn	Individual	Support	No

Comments:

Aloha Chair Nishihara & Vice Chair DeCoite,

My name is Andrew Littlejohn and I am testifying in strong support of SB2514 relating to parole

Still today, people in Hawai'i on probation or parole can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to find a job. These conditions hurt public safety by destabilizing individuals on parole, their families, and their communities that are mainly Native Hawaiians, Pacific Islanders, and African Americans.

Unlike some that are more privileged where they can post bail and avoid the hardships that go on the prison system, most people that are released from prison struggle to obtain stable housing and job, and being able to pursue their education, because of systemic injustices, community disinvestment, and the stigma and discrimination associated with a felony record. This leaves many on parole more vulnerable to homelessness, unemployment, and increases the likelihood that they will be back in the prison system again.

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 SB2515 and keep our loved ones together.

Mahalo Nui Loa,

Andrew Littlejohn

**COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

Senator Clarence K. Nishihara, Chair

Senator Lynn DeCoite, Vice Chair

**LATE**

Thursday, February 3, 2022 at 1310 HST

RE: Testimony in SUPPORT of SB2835 Relating to Insurance

Aloha Chair Clarence K. Nishihara, Vice Chair Lynn DeCoite, and the members of the Committee on Public Safety, Intergovernmental, and Military Affairs:

Mahalo for hearing SB2514 and SB2515 relating to probation and parole respectively. I am writing in **strong support** of both bills.

The concept of our jails and prisons originate from feudal England where dreaming of the death of a king warranted capital punishment; therefore, it is cruel by design. There are other forms of criminal punishment such as bail, parole, and probation that serve as an extension of such cruelty.

For example, technical violations for people who are out on parole or probation will result in the person being incarcerated. The United States Constitution prohibits one from being tried twice for the same crime (double jeopardy clause, 5th amendment), prohibits cruel and unusual punishment (8th amendment), and maintains that every person has the right to be treated fairly in the court system (due process, 4th and 15th amendments). Due process is the only command that is mentioned twice.

If one cannot be tried twice for the same crime, it makes even less sense that they can forgo the entire trial and “head directly to jail” due to a technical violation. Technical violations can be as arbitrary as showing up late to an appointment or missing a phone call. Additionally, criminal punishment for a technical violation disproportionately affects poor people, the working class, and disabled people:

- A majority of employers prohibit the use or possession of mobile devices while on the job; therefore, it can be hours before a missed call can be returned.
- Unsurprisingly, many people who are out on parole or probation live in poverty. Traffic is already an issue on the island for people who own personal vehicles. A poor person who relies on the bus will face far more hurdles when needing to get from point A to point B.
- Last, there is a shortage of care-related services including a shortage of over 1800 physicians on the island of O’ahu alone according to pre-pandemic figures. Another cruel technical violation is the failure to attend treatment, especially when there is a shortage of service providers. This issue is addressed specifically in the bill which is why I will reaffirm that I **strongly support** SB2514 and SB2515.

Mahalo for considering my testimony,

Soon Kim

Senate District 15

**LATE**

**SB-2514**

Submitted on: 2/3/2022 1:46:09 AM

Testimony for PSM on 2/3/2022 1:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kristen Young	Individual	Support	No

Comments:

Aloha Chair Nishihara & Vice Chair DeCoite,

I strongly support SB2514 relating to probation.

Under current laws, people in Hawai‘i who are on probation or parole can be reincarcerated for making simple mistakes like missing a probation appointment or struggling to get a job. This is extremely destabilizing for individuals on parole, their families, loved ones, and their communities. Most people released from prison struggle to acquire stable housing, find and maintain employment, and further their education because of systemic injustices, community disinvestment, and the stigma and discrimination that often comes with a felony record. For those on parole, this also leaves them more vulnerable to houselessness and unemployment, increasing the likelihood that they will be rearrested for crimes of poverty.

We cannot allow these harmful cycles to continue. SB2514 would allow people to safely remain with their families in their communities as they readjust to life outside of incarceration. Please vote YES in support of SB2514 and keep our loved ones together.

Mahalo for your consideration,  
Kristen Young  
Honolulu resident, District 11