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STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF PUBLIC SAFETY
KA 'OIHANA HO'OPALEKANA LEHULEHU
1177 Alakea Street
Honolulu, Hawai'i 96813

No. _____

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL 223
RELATING TO PROBATION
By
Tommy Johnson, Director

Senate Committee on Public Safety and Intergovernmental and Military Affairs
Senator Glenn Wakai, Chair
Senator Brandon J.C. Elefante, Vice Chair

Wednesday, February 1, 2023; 3:00 p.m.
CR 225 and Via Videoconference

Chair Wakai, Vice Chair Elefante, and Members of the Committee:

The Department of Public Safety (PSD) supports Senate Bill (SB) 223, which seeks to the Hawai'i Opportunity Probation with Enforcement Program to be administered by the Judiciary.

PSD applauds and supports initiatives designed to reduce recidivism, cease victimization in our communities, hold offenders accountable, and provide meaningful pathways to successful reintegration.

The Oahu Community Correctional Center (OCCC) has a design capacity of 629, an operational capacity of 954, but currently houses 1,099 (966 male and 133 female) justice involved individuals. Most PSD's jails statewide are operating well above design and operational capacities.

Thank you for the opportunity to provide testimony SB 223.

The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature
2023 Regular Session

Senate Committee on Public Safety,
Intergovernmental, and MilitaryAffairs
Senator Glenn Wakai, Chair
Senator Brandon J.C. Elefante, Vice-Chair

Wednesday, February 1, 2023 at 3:00 PM.
Via Videoconference
Conference Room 225 & Videoconference

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 223, Relating to Probation.

Purpose: Establishes the Hawai'i Opportunity Probation with Enforcement Program to be administered by the Judiciary.

Judiciary's Position:

The Judiciary strongly opposes this bill. Significant questions have been raised which call into question the initial results of the one-year randomized control study of 2007 referred to in the bill[1] which has led the Judiciary to reevaluate the program and confer with experts in the field to revise and implement the best evidence-based practices to ensure public safety, promote rehabilitation, and prevent recidivism.

Further, contrary to the statements in the bill on page three, the previous expansion of the HOPE program in fact required an additional courtroom and numerous additional staff,

[1] Hawken, Angela and Mark Kleiman. *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, National Institute of Justice, December 2009. Available online at https://www.ojp.gov/pdffiles1/nij/grants/229023.pdf

including, along with various volunteers, a second judge, two additional court clerks, and a second law clerk. All of these positions have been defunded and will require additional appropriations should this bill move forward.

The HOPE program as codified in this bill mandates the imposition of rigid, pre-determined jail sanctions for specific probation violations. The cornerstone of the Judiciary is to adjudicate each defendant, each matter, on a case-by-case basis. The bill, however, mandates the imposition of mandatory, pre-determined jail sanctions for specified probation violations, without any consideration of the particular defendant's criminogenic factors, the severity of those factors, or the facts and circumstances of each violation. This results in jail sanctions that may be too lenient for high risk offenders, jeopardizing public safety. Conversely, this also results in jail sanctions that are unnecessarily harsh for lower risk offenders, setting back rehabilitation, hurting rather than helping. Codification of the jail sanction portion of the bill would be contrary to the data we have collected on the best evidence-based practices available.

Moreover, this measure would constrain judicial and staff resources by law regardless of a change in circumstances—e.g., further refinement or shifts in best evidence-based practices, a pandemic or other event forcing a significant change in the manner in which cases are heard, a decline in judicial resources that requires even more focus on jury trials, or other. The Judiciary must be able to flexibly manage its own resources in the best interest of the public to fulfill its mission.

A. Recent Research Does Not Support the Efficacy of This HOPE Model

The bill relies upon a 2007 one-year trial that found 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.[2] While this initial research on HOPE appeared to demonstrate positive outcomes for probationers and lower recidivism rates, subsequent studies (including the HOPE follow-up study of 2016) have revealed at least three important considerations.

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[2] To the extent the reference on page 1 to a "growing body of research" that "indicates that over sixty percent of persons who are arrested for a felony offense … test positive for recent drug use at the time of booking" relies on the ADAM II studies, that statement is incorrect. The ADAM II studies are not in fact studies of **felony** arrests, rather, of all adult male arrests (felony, misdemeanor, traffic, etc.) within the collection period at a fixed number of sites (10 sites in 2011 and 5 sites in 2013), regardless of type of arrest. *See* Hunt, Dana and Sarah Kuck Jalbert. *ADAM II, 2011 Annual Report, Arrestee Drug Abuse Monitoring Program II,* Office of National Drug Control Policy, May 2012. Available online at https://obamawhitehouse.archives.gov/sites/default/files/email-files/adam_ii_2011_annual_rpt_web_version_corrected.pdf. *Also see* Hunt, Dana and Meg Chapman, *ADAM II, 2013 Annual Report, Arrestee Drug Abuse Monitoring Program II*, Office of National Drug Control Policy, January 2014. Available online https://www.abtassociates.com/sites/default/files/migrated_files/91485e0a-8774-442e-8ca1-5ec85ff5fb9a.pdf. In the 2013 study cited, only 56 percent of those adult males arrested and booked in the five sites were arrested for or charged with a felony. *2013 Study, p. 4.* The study conducted in 2011 was a study of 5,051 interviews and 4,412 urine specimens in 10 ADAM II sites. *2011 Study, p ix, 9.* The data cited in both studies comes from a probability-based sample of adult males within 48 hours of their arrest. *Id. and 2013 Study, p xiii.* In 2011, the most commonly detected drug in all sites was marijuana (between 36 – 56 percent of those 60 percent who tested positive) with 45 percent or more testing positive in 9 of the 10 sites. *2011 Study, p vii, 18.* In the 2013 study cited, only 1,681 bioassay samples were collected at five sites and marijuana remained the most commonly detected drug ranging from 34 to 59 percent amongst the five sites. *2013 Study, p2, 20.*

First, while prior deterrence-based programs advocating swift and certain sanctions (e.g., HOPE) were created to target drug offenders, three methodologically sound studies (in Washington, Delaware, and a four-site demonstration field experiment ("DFE")) have now highlighted a limited effect of such a program on drug offenders and recidivism.[3] Second, jail sanctions have been found to be no more or less effective than community-based sanctions when responding to substance abuse transgressions (and are in fact less cost-efficient) and there is no evidence that combining a jail sanction with enhanced treatment improves the efficacy of the enhancement in substance abuse treatment.[4] Third, while HOPE probationers may have had significantly lower rates of violations relating to drug use, **there is no evidence to demonstrate that HOPE, as proposed in this bill, either successfully reduces recidivism for violent and property offenses**,[5] **or recidivism in general** as demonstrated by a meta-analysis of the studies done in Hawai'i, Washington, Delaware, and the DFE.[6] There have been numerous studies conducted in the past several years that support the conclusion that a mandatory, uniform jail sanction as required by this bill is, in fact, **not** an evidence-based practice.

The most recent update to the HOPE program profile in 2020 by the National Institute of Justice's Crime Solutions (a web-based clearinghouse of programs and practices that are identified, screened, reviewed, and rated using a standardized process) rated the program as "No

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[3] *See* Lattimore, P., MacKenzie, D., Zajac, G., Dawes (2018) *Evaluation of the Honest Opportunity Probation with Enforcement Demonstration Field Experiment (HOPE DFE)* (Report No. 251758), Washington, DC, Office of Justice Programs, available online at https://www.ojp.gov/pdffiles1/nij/grants/251758.pdf ; O'Connell, D., Brent, J. and Visher, C. 2016. *Decide Your Time: A randomized trial of a drug testing and graduated sanctions program for probationers*, Criminology & Public Policy, 15(4): 1073-1102, available online at https://www.researchgate.net/publication/310822858_Decide_Your_Time_A_Randomized_Trial_of_a_Drug_Testing_and_Graduated_Sanctions_Program_for_Probationers; *and* Hamilton, Z., Campbell, C. M., Van Wormer, J., Kigerl, A., & Posey, B. (2016), *Impact Of Swift And Certain Sanctions: Evaluation Of Washington State's Policy For Offenders on Community Supervision,* Criminology and Public Policy, 15(4), 1009-1072, available online at https://www.researchgate.net/publication/310110280_Impact_of_Swift_and_Certain_Sanctions_Evaluation_of_Washington_State%27s_Policy_for_Offenders_on_Community_Supervision.

[4] Boman, John & Mowen, Thomas & Wodahl, Eric & Miller, Bryan & Miller, J. Mitchell (2019), *Responding to substance-use-related probation and parole violations: are enhanced treatment sanctions preferable to jail sanctions?* Criminal Justice Studies, 32:4, 356-370 (Finding: 1) jail sanctions are no more or less effective than community-based sanctions when responding to substance abuse transgressions; 2) responding to substance-use-related violations with enhanced treatment significantly improves the likelihood that a client will successfully complete an intensive supervision probation program and 3) there is no evidence that combining a jail sanction with enhanced treatment improves the efficacy of the enhancement in substance abuse treatment). Available online at https://www.researchgate.net/profile/Bryan-Miller-4/publication/335803870_Responding_to_substance-use-related_probation_and_parole_violations_are_enhanced_treatment_sanctions_preferable_to_jail_sanctions/links/5d7eb264299bf1d5a98081d8/Responding-to-substance-use-related-probation-and-parole-violations-are-enhanced-treatment-sanctions-preferable-to-jail-sanctions.pdf

[5] This was specifically demonstrated by the follow-up study of HOPE in 2016. *See,* Hawken, Angela, et al. *HOPE II: A follow-up to Hawaii's HOPE Evaluation*, National Institute of Justice, May 2016, p. 50. Available online at https://www.ojp.gov/pdffiles1/nij/grants/249912.pdf ("The difference in recidivism between HOPE and control subjects is primarily due to new drug charges. The average number of charges for … violent and property crime trend in favor of HOPE, but this difference is not statistically significant.")

[6] Cullen, F. T., Pratt, T. C., & Turanovic, J. J. (2016). *It's Hopeless: Beyond Zero-Tolerance Supervision*. Criminology and Public Policy, 15(4), 1219-1220 (asserting that the magnitude of the overall effect of HOPE on reoffending is .07 which they "note that we know of no instance in criminological history where a mean effect size of .070 for a correctional intervention has been paraded as anything other than weak.")

Effects" based on the evidence provided by a DFE conducted across four states. **Crime Solutions noted that there was no statistically significant difference in new convictions or new arrests between those probationers in HOPE versus probation as usual.** The DFE study was a four-site (Arkansas, Massachusetts, Oregon, and Texas) randomized controlled trial study of the HOPE program design by researchers from Research Triangle International (RTI) and Pennsylvania State University and supported by the National Institute of Justice that found that **HOPE-modeled probation was generally not an improvement over traditional probation in terms of key success metrics such as new arrests, revocation of parole, and new convictions**.[7]

Indeed, the overwhelming implication from the studies completed post-2007 is that it is necessary to reevaluate the HOPE jail sanction concept and make adjustments to HOPE's primary canons in order to utilize the best parts of the program to the benefit of probationers and the public.[8]

B. HOPE's Mandatory Jail Sanctions Fail to Consider the Facts and Circumstances Underlying Probation Violations and Unnecessarily Sets Back Rehabilitation for Lower Risk Defendants

The bill codifies a process to issue mandatory jail sanctions by a single judge for each and every HOPE probationer for missing an appointment with the probation officer or for missing, testing positive for, or tampering with, a drug test. These mandatory terms are for periods of seven hours, two days, fifteen days, or thirty days based solely on the specific violation asserted regardless of cause.

Significantly, this bill does not mention strategies for treatment, cognitive-behavioral techniques for teaching offenders what to do as opposed to what not to do, any allowance for community based sanctions, or any specific supervision procedures. With respect to treatment, the bill only asserts that the "strategy," "[w]orks in coordination with various treatment programs, including sex offender treatment, mental health treatment, substance abuse treatment, and domestic violence intervention." In fact, however, the only "strategy" codified in this bill, and the only time a probationer will see the judge beyond the original HOPE warning hearing, is the imposition of pre-determined jail sanctions for specific violations.

While the evidence clearly suggests that swift and certain responses may be effective, it does not follow that a mandatory jail sanction is the singularly appropriate response or that

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[7] *See,* Lattimore, P., *infra note 3.*

[8] Even the authors of the "top quality studies" of HOPE of 2007 and the 2016 follow-up have specifically addressed their disagreement with the jail sanction provision of the HOPE program stating:

> [The idea] that a jail sanction is disruptive and can motivate behavior change . . . has been a bone of contention for those of us involved with implementation. We know of no empirical basis for considering jail stays an optimal response under an SCF approach and whether it should be considered an essential feature of HOPE. We have recommended experimentation with alternative responses. Several SCF pilots are underway that do not include jail time among their responses to technical violations.

Hawken, A. (2016), *All Implementation Is Local. Criminology & Public Policy*, 15(4) 1235. Available online at https://www.scfcenter.org/wp-content/uploads/2017/03/Hawken-All-Implementation-is-Local-C-and-PP-2016.pdf

"rational choice" is in fact the only cause of offender recidivism. By treating every probationer the same, this bill ignores the strong individual differences in criminality that clearly exist.[9] Further, compelling research has indicated that even a short stay in jail can be criminogenic.

For probationers who are progressing well, having technical violations met with a jail sanction can result in serious familial and employment consequences that would bring them back to "square one." Instead, a technical violation may be rectified by a community-based sanction such as increased supervision and increased level of treatment rather than perversely instigating job loss and drug program expulsion.

It is imperative that judges and probation officers be able to use all of the supervision tools at their disposal to address violations by probationers with an appropriate, proportionate response. The focus of the probation supervision should be on the imposition of a range of sanctions and rehabilitative tools to achieve trust between defendants and their probation officers, in pursuit of long-lasting behavioral change.

C. HOPE's Mandatory Jail Sanctions Force Courts to Continue High Risk Offenders on Probation Supervision, Jeopardizing Public Safety

The bill sets forth an index of jail sanctions for each HOPE probation violation without considering the risk level of the defendant. For some high risk defendants, a violation should in fact immediately lead to revocation/termination of probation and imprisonment, not a few days jail. Put simply, this one-size-fits all sanctioning scheme gives high risk offenders too many chances at probation. In this way, the bill jeopardizes public safety.

As an analogy, when a patient presents at a doctor's office with COVID symptoms, the doctor will evaluate the patient's risk factors and prescribe a course of treatment accordingly. Though presenting with the same symptoms (i.e., violations), a doctor may prescribe a high risk patient more aggressive treatment (i.e., jail or imprisonment) and a lower risk patient less aggressive treatment (i.e., increased supervision and level of programming). As professionals, physicians would not give patients with different prognoses the same treatment. So too, when judges (or probation officers) have information about a defendant's risk factors, needs, and circumstances, the public is best served by judges (or probation officers) being able to able to apply the particular approach to address the issues presented by that single defendant before them based on the best evidence-based practices available.

By mandating a pre-determined index of jail sanctions, HOPE severely under-sanctions high risk offenders, permitting them to remain on probation and accrue further violations (including new criminal charges) as opposed to being sentenced to an open term of imprisonment. Some probationers remain unconcerned about a day or two in jail, and will actively assume that risk and sanction, knowing that they will not be subject to the open term.

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[9] For example, the court should consider "[c]ertain offenders might be well suited to being diverted into treatment … [o]thers require intensive monitoring and consistent consequences for noncompliance in treatment. Just as clinical intervention should be targeted to the specific needs of each individual, the degree to which criminal justice authorities and drug treatment providers actively coordinate their functions for a particular client should be based upon a careful assessment of that client's risk status and ongoing monitoring of his or her progress in treatment." Marlowe, D. *Integrating Substance Abuse Treatment and Criminal Justice Supervision,* Science & Practice Perspectives – August 2003, p.13.

Treating these types of high risk probationers the same can increase recidivism and jeopardize public safety.

D. Respectfully, the Judiciary is in the Best Position to Allocate Supervision Duties and Manage Pending Cases

The bill insists that the HOPE "strategy" be implemented by one "primary judge and one backup judge" per circuit to promote "consistency." As noted above, the HOPE program was not operated solely by one judge, nor was it operated without significant additional staff and resources.

The Judiciary, like our counterpart State agencies, is just emerging from the COVID-19 pandemic, and its concomitant effects on the operations of the Judiciary over the last three years. Currently, we lost funding in the First Circuit for one circuit court judge and staff, staff positions for the outer islands, as well as the staff positions that were operating the previous iteration of the HOPE program. In the First Circuit, utilization of one judge solely for the implementation of fixed jail sanctions is not feasible given our current caseload and lack of staffing. Our available trial judges must focus on our core function: conducting criminal trials. As such, the Judiciary has concluded that the most efficient allocation of our resources is to have all criminal divisions cover the HOPE probation cases in the manner outlined below.

E. Swift Consequences – the Most Effective Strategy of HOPE – Continues to be Implemented Along with the Risk Need Assessment

Probation has two goals: protecting public safety while rehabilitating the offender. To accomplish these goals the Judiciary develops policies that incorporate evidence-based practices. The Judiciary is focused on implementing supervision strategies that have been proven to be effective rather than on implementing a specific program that, to date, has yielded mixed results at best. We are committed to delivering evidence-based supervision practices because we take seriously our responsibility to protect public safety and also rehabilitate our criminal defendants.

Currently, the Judiciary is working to ensure that we retain the "swift" aspect of the HOPE model, while providing the probation officers and our judges with the flexibility and discretion to protect the public and work towards long-term behavior changes in probationers. For example, the probation office assesses offenders to determine if they warrant being placed under the current HOPE program for high risk offenders (low risk offenders with high needs are referred to other appropriate programs). HOPE probationers continue to participate in the HOPE Hotline for drug testing. For all violations, probation officers explore both non-incarceration and incarceration sanctions based on the risk level of the defendant, the nature of the violation, and any other pertinent information. At their discretion, probation officers may file a motion for modification or a motion to revoke probation. Probation officers who file a motion for modification can request a warrant, take the probationer immediately into custody, or request a summons for the probationer to appear before the court. If the probationer is immediately taken into custody or a summons is issued, a hearing will be set in a timely manner. Further, the Office of the Prosecuting Attorney always retains the discretion to file a motion for revocation of probation at any time.

F. Conclusion

In conclusion, a review of the numerous studies conducted subsequent to the 2007 Hawai‘i HOPE study, the total lack of evidence supporting the use of a one size fits all solution for probation supervision, and a review of our own practices make clear that the proposed codified jail sanction program for technical violations is not the panacea it purports to be. While the Judiciary believes in swift consequences, we also know from our experience and the most current research that it is far more beneficial to be able to use all options at our disposal to rehabilitate an offender and maintain public safety. Ultimately, the goal of the Judiciary is to create the best evidence-based probationary program for high risk probationers. The rigidity of the bill is inconsonant with this aim.

The Judiciary remains committed to exploring all options to reduce recidivism, increase public safety, and seek the rehabilitation of probationers in collaboration with our community partners, including the Office of the Prosecuting Attorney and the Office of the Public Defender. Should the bill be adopted, the Judiciary respectfully requests additional funds for the staffing positions outlined above (including but not limited to, an additional circuit court judge, three court clerk positions, and two law clerk positions) and that any appropriations for this bill not supplant the Judiciary's existing funding and current budget requests.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAIʻI

OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender, State of Hawaiʻi to the Senate Committee on Public Safety and Intergovernmental and Military Affairs

February 1, 2023

S.B. No. 223: RELATING TO PROBATION

Chair Wakai, Vice Chair Elefante, and Members of the Committee:

The Office of the Public Defender respectfully opposes S.B. No. 223 because the Hawaiʻi Opportunity Probation with Enforcement ("HOPE") program relies on jail as the primary sanction to implement its goals.

S.B. No. 223 seeks to codify the HOPE program statewide. The program implements a 2004 model designed to help probationers comply with the rules of probation, succeed on probation, and avoid going to prison. The HOPE program aims to hold participants immediately accountable for probation violations, provides for certain, consistent, and proportionate jail sanctions for probation violations, and focuses on higher risk probation participants. The program offers support in the form of specially trained HOPE probation officers, HOPE specialized defense and prosecuting attorneys, and a single, dedicated HOPE judge. The goal of this bill is to reduce crime, recidivism, and mass incarceration while supporting probationers' desire to be contributing, law-abiding citizens, through a combined system of accountability and treatment options.

We do not disagree with the intent of this bill – to avoid mass incarceration and lengthy prison terms. Our jails and prisons are filled above not only design capacity, but also operational capacity. Based on the Final Report of the House Concurrent Resolution No. 85 Task Force on Prison Reform (submitted to the legislature before the 2019 regular session), the incarcerated population is increasing at a much faster rate than the State's general population.[1] In 2017, 27,508 Hawaiʻi residents were incarcerated or under some form of probation, parole, or other form

[1] From 1978 to 2016, the State's overall population increased by 53%, while the State's combined jail and prison population increased by 670%. HCR 85 Task Force, "Creating Better Outcomes, Safer Communities; Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawaiʻi Legislature," p. 1. *See* https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf

of community supervision.[2] According to States of Incarceration: The Global Context 2021, a report of the Prison Policy Initiative, Hawai'i has 439 incarcerated persons for every 100,000 overall persons, or an incarcerated population at 0.43% of the overall population, which is higher than in the Philippines (0.200%), South Africa (0.248%), Vermont (0.288%), Russia (0.329%), Turkey (0.332%) and New York (0.376%).[3] Current state laws relating to certain violations of community supervision such as probation are resulting in unnecessary, counterproductive, skyrocketing rates of incarceration and severe overcrowding in our local jails.

Because the HOPE program relies on ***jail*** as the primary sanction to implement its goals, the Office of the Public Defender opposes S.B. No. 223. Recent studies show that time in jail, even if brief, has minimal impact on reducing crime, yet entails significant costs. The legislature has recently received many recommendations, testimonies, and studies relating to the devasting impact of incarceration and jail time on individuals, their families, and our communities. *See* Costs of Detention, Hawai'i Criminal Pretrial Reform, Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i (Dec. 2018),[4] citing various studies, pages 24-26. In reaching this conclusion, the Task Force quoted the Vera Institute of Justice (2017):

> These consequences—in lost wages, worsening physical and mental health, possible loss of custody of children, a job, or place to live—harm those incarcerated, and, by extension, their families and communities. Ultimately, these consequences are corrosive and costly for everyone because no matter how disadvantaged people are when they enter jail, they are likely to emerge with their lives further destabilized and, therefore, less able to be healthy, contributing members of society.

Id. at page 25.

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[2] *See* id. at p. 2.

[3] Prison Policy Initiative, "States of Incarceration: The Global Context 2021, https://www.prisonpolicy.org/global/2021.html

[4] Recommendations of the Criminal Pretrial Task Force report can be found at https://www.courts.state.hi.us/wp-content/uploads/2018/12/POST_12-14-18_HCR134TF_REPORT.pdf

The consequences of S.B. No. 223 conflict with the various initiatives, such as HCR 85, Prison Reform Task Force (2016), to reduce the prison and jail population. Should this measure become law, we can expect state-wide budgets to increase across the entire criminal justice system. HOPE probation entails significant costs and is a program that requires substantial resources. Any person who violates ***any*** condition of probation, substantial or not, will be immediately arrested and taken into custody. Currently 22.3% of all jail and prison admissions in Hawai‘i are the result of probation or parole technical violations, which are violations of the terms of legal supervision, other than the commission of certain crimes.[5] Technical violations include missing an appointment with a probation officer, being late to an appointment with a probation officer, working at a job during times that extended past curfew, using alcohol or drugs, or failing to report a change in address or telephone number. Under S.B. No. 223, any of the aforementioned technical violations ***will result in a mandatory jail sanction***.[6]

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[5] Department of Public Safety, Corrections Division, Weekly Population Report- 01-23-2023, https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-23_George-King.pdf

[6] SECTION 2(i) of HB No. 122 (page 10, line 16 to page 12, line 2) requires the imposition of mandatory jail sanctions:

> (1) For failing to appear for an appointment or drug test as scheduled but appearing within twenty-four hours of the missed appointment or drug test, and testing negative, ***no more than seven hours of confinement in the courthouse cellblock***;
> (2) For a positive drug test result, following which the participant admits drug use, ***two days of jail***;
> (3) For a positive drug test result, following which the participant denies drug use, and the positive result is confirmed by a laboratory, ***fifteen days of jail***;
> (4) For failure to provide a sufficient urine sample for drug testing as directed, ***fifteen days of jail***;
> (5) For tampering with the drug testing procedure, including but not limited to providing diluted samples, using urine adulterants, or swapping or otherwise providing altered samples, ***thirty days of jail***;
> (6) For failure to appear for an appointment or drug test as scheduled, following which the participant does not appear within five or more days after the missed appointment or drug test, ***thirty days of jail***; and
> (7) For conviction of a new crime, failure to attend or complete treatment, or other violations of the terms and conditions of probation or deferral not otherwise specified, ***either a period of jail to be determined by the court, or revocation of probation or setting aside of the deferral***.

(Emphasis added).

Incarceration and jail for technical violations of probation is expensive and costly. The State of Hawai‘i currently spends $238 per day, or $86, 870 per year, to incarcerate just one person.[7] These costs will increase when a probation violator is arrested, processed, and cycled in and out of jail for each technical violation. For example, under this proposed bill, a written motion must be filed with the HOPE court immediately following a violation, and that court will schedule a hearing, usually within two business days of the violation. The Department of Public Safety will then be tasked with going out into the community to arrest the individual, processing him/her, housing that person in jail, and then transporting them to and from the courthouse. Under the HOPE program, the swift and immediate sanctions exponentially increase the costs of incarceration.

In 2016, the HOPE program had over 2,000 participants. The prior HOPE program did not necessitate courtroom expansion, additional court staffing, law enforcement positions, or jail cells. However, under S.B. No. 223, additional funding is necessary to fill at least two full-time attorney positions on Oahu from both the Office of the Public Defender and the Department of the Prosecuting Attorney of the City and County of Honolulu. A HOPE-dedicated Deputy Public Defender's job does not end after a day in court. Much time is spent advising clients prior to the court hearing, consulting with probation officers, formulating treatment plans, submitting applications to substance abuse treatment programs, communicating with the family members of clients, filing legal motions, and coordinating with various treatment programs for release once bedspace becomes available. In addition, the judiciary's budget must also be adjusted to account for an increase in private, court-appointed attorneys' fees and time spent doing the same for individuals who the Office of the Public Defender cannot represent for conflict reasons or otherwise. In addition to the aforementioned budget increases that will be required, further funding must be secured to expand drug testing capacities, laboratory testing, and drug treatment due to the program's primary focus which centers around swift and immediate drug screening of its participants.

Most HOPE program participants are low-level property and drug offenders. Rather than expend time and resources toward these non-violent, low-level offenders, the Office of the Public Defender recommends that these resources be directed towards longer-term solutions. The Vera Institute of Justice 2017 study,

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[7] State of Hawai‘i Department of Public Safety Annual Report FY 2021 at p. 18, https://dps.hawaii.gov/wp-content/uploads/2021/12/PSD-ANNUAL-REPORT-2021x.pdf

referenced above, has shown that incarceration is a particularly expensive and ineffective response to the public health problem of personal drug use. Research has shown that community-based services come at a fraction of the cost of incarceration and more effective at reducing recidivism.[8]

Finally, the Final Report of the House Concurrent Resolution No. 85 Task Force on Prison Reform recommended that the State create alternative (non-jail) housing for sanctioned HOPE probation violators and low-risk parole violators.[9] Indeed, the Task Force questioned whether it is necessary and cost effective to put probation violators in jail.[10] Thus**,** the Office of the Public Defender prefers that the State invests their resources into employment access programs, housing, social services, substance abuse and mental health treatment programs, and re-entry programs. The Office of the Public Defender also recommends that resources be dedicated to programs and specialty courts (e.g., drug court, women's court, veterans' court, mental health court) that divert these individuals out of the court system and put them directly into programs that would keep them out of our prisons and jails.

Thank you for the opportunity to testify on this measure.

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[8] *See* generally HCR 85 Task Force, "Creating Better Outcomes, Safer Communities; Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai'i Legislature," https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf. *See also* footnote 4, supra.

[9] *See* HCR 85 Task Force, "Creating Better Outcomes, Safer Communities; Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai'i Legislature," at p. 93, https://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf.

[10] *See* id.

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THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE GLENN WAKAI, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

February 1, 2023

RE: S.B. 223; RELATING TO PROBATION.

Chair Wakai, Vice-Chair Elefante and members of the Senate Committee on Public Safety and Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong support** of S.B. 223. This bill is part of the Department's 2023 legislative package, and we thank you for hearing it.

"HOPE" (Hawaii Opportunity Probation with Enforcement) was launched in 2004, with the support of this Department, the Office of the Public Defender, and Honolulu treatment providers, to hold probationers accountable for substance abuse and other probation violations. The procedures and sanctions structure used in "probation as usual" failed to address violations quickly and consistently, which is critical for effective behavioral change. HOPE presented a unique rehabilitative approach that imposed swift, certain, consistent and proportionate consequences for non-compliance with the terms and conditions of probation for some of the Judiciary's most challenging probationers, all in a caring and supportive setting. This was not punishment for its own sake—quite the opposite—it was to teach accountability (i.e. actions have consequences; honesty is valued) and to help correlate bad behavior with a consequence.

Over time, it became apparent that this system of pairing randomized drug testing (the frequency of which was based on objective risk assessment tools), with the imposition of very brief but standardized periods of jail time, kept HOPE probationers sober, kept them seeing their probation officers on an as-needed basis, and kept t hem attending and persevering in treatment. HOPE's fairness is procedural justice in action and got probationers buy-in from the start.

Based on this successful track record, HOPE has been the focus of numerous top-quality studies, and has been adopted by jurisdictions across the nation, to the benefit of many offenders. A one-year, randomized controlled trail, conducted by researchers from

Pepperdine University and the University of California Los Angeles, found that 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.[1]

Notably, the study found that "jail bed days" (at Oahu Community Correctional Center) for HOPE probationers and those on regular probation were the same, yet HOPE probationers ultimately served 48% fewer days in prison (at Women's Community Correctional Center, Halawa Correctional Facility, or Saguaro Correctional Center in Arizona). Additionally, Native Hawaiians in HOPE were 42% less likely to have their probation revoked (and be sent to prison) compared to Native Hawaiians on regular probation, and women in HOPE were 50% less likely to have their probation revoked.

It costs more than $50,000 to house a prison inmate in Hawaii per year. When HOPE was run in its original form, there were 2,500 probationers in HOPE. Because they went to prison about half as often as those in regular probation, the State saved millions of taxpayer dollars every year.

Since HOPE's inception in 2004, this Department has worked collaboratively with the Office of the Public Defender, the Judiciary, and the Legislature, to not only provide the necessary resources for this program, but also to provide the structure and consistency that gives these probationers the best possible chance of staying out of prison and turning their lives around. Over the past year, the Department has been in discussions with the Judiciary, with hopes of returning the HOPE program to its successful format, to improve outcomes for its probationers, and improve public safety and well-being for the larger community. From experience, we know that HOPE works best with a **single dedicated judge** who can provide swift, certain, consistent, and proportionate treatment of participants. While we appreciate the Legislature's longstanding commitment to funding HOPE, starting with $1.2 million in the 2006 session, we would also appreciate your support in realigning the program with its original design.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **strong support** of S.B. 223. Thank for you the opportunity to testify on this matter.

[1] The PEW Charitable Trusts, "The Impact of Hawaii's HOPE Program on Drug Use, Crime and Recidivism," January 15, 2010. Available online at https://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/the-impact-of-hawaiis-hope-program-on-drug-use-crime-and-recidivism. Last accessed January 30, 2023.

Rebecca V. Like
Prosecuting Attorney

Keola Siu
First Deputy
Prosecuting Attorney

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January 30, 2023

RE: S.B. 223; RELATING TO PROBATION

Chair Wakai, Vice-Chair Elefante, and Members of the Public Safety and Intergovernmental and Military Affairs Committee, the Office of the Prosecuting Attorney for the County of Kaua'i submits the following testimony in **opposition** of SB 223.

While the bill intends to enhance compliance with probation by discouraging substance abuse and promoting prosocial behaviors, the proposed penalties for substance use-related sanctions are deterrents for defendants to seek and maintain employment, treatment, and housing. Furthermore, the bill disallows supervising probation officers from weighing the defendants' mitigating and/or aggravating circumstances that may have caused their clients' violation. Failing to consider the individual situation of each defendant makes sanctions less meaningful. Using a formulaic approach limits the discretion of the Judges, who are most familiar with the defendants.

Further, subjecting defendants to longer jail sanctions than necessary not only fills limited jail beds but increases the likelihood of long-term unemployment. Intermittent employment further exacerbates a convicted felon's chances of securing employment in a job market that already shuns the formerly incarcerated. More incarceration perpetuates a counterproductive system of poverty. A focus on accessibility to treatment would greatly enhance the efficacy of Hawaii Opportunity Probation with Enforcement (HOPE).

For these reasons, the Office of the Prosecuting Attorney for the County of Kaua'i respectfully submits the above comments opposing the passage of S.B. 223. Thank you for the opportunity to testify on this matter.

Department of the Prosecuting Attorney

City and County of Honolulu

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THE HONORABLE GLENN WAKAI, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai'i

February 1, 2023

RE: S.B. 223; RELATING TO PROBATION.

Chair Wakai, Vice-Chair Elefante and members of the Senate Committee on Public Safety and Intergovernmental and Military affairs, my name is Rosemarie Albano and I am a former Adult Client Services Probation Officer, last position being Supervisor to the Sex Offender Unit, and now as a Victim Witness Kokua Service Director at the Department of the Prosecuting Attorney in Honolulu, I am in **strong support**, of S.B. 223.

HOPE provides immediate interventions to support probationers during a period in which a probationer is demonstrating instability, whether the instability is related to substance abuse issues, mental illness, co-occurring disorders, etc. Through HOPE, probationers are held accountable for poor choices through a swift, certain, consistent, and proportionate consequence while being given the opportunity to demonstrate critical reflection through counseling and/or therapy that then leads to effective behavioral change. It is fair. It is predictable. It is an attention-getter when needed.

Higher risk and higher needs probationers need ongoing interventions as they navigate through a four- or five-year probation term. Effective behavioral change takes time while immediate interventions for accountability are critical. Without these interventions, probation as usual is often not taken seriously and the offender's poor behavior is enabled through the criminal justice system.

HOPE is particularly critical for sex offenders whose relapsing behavior can be addressed promptly by removing the offender from the community, rather than the months it takes under probation-as-usual.

For the foregoing reasons, I am in **strong support** of S.B. 223. Thank you for the opportunity to testify on this matter.

HAWAII SUBSTANCE ABUSE COALITION

SB223 HOPE Program: Establishes the Hawaii Opportunity Probation with Enforcement Program to be administered by the Judiciary.

COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS
Senator Glenn Wakai, Chair
Senator Brandon J.C. Elefante, Vice Chair

- Tuesday, Jan 31, 2023: 3:00
- Room 225

HAWAII SUBSTANCE ABUSE COALITION (HSAC) Supports and Recommends changes to add "Diversion to treatment including screening and assessments" for SB223.

Aloha Chair, Vice Chair and Distinguished Committee Members My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

HSAC recommends that Project HOPE (Hawaii's Opportunity Probation with Enforcement) evolves to be a "diversion to treatment" program as well as a "sanctions program."

RECOMMENDED CHANGES

SECTION 1. Page 5 (last line) The goal of the program is to reduce crime, recidivism, and mass incarceration while supporting probationers' desire to be contributing, law-abiding citizens, through a combined system of accountability and diversion to treatment options.

SECTION 2. (a) There is established the Hawaii opportunity probation with enforcement program to help participants comply with conditions of supervision, succeed on probation or deferral, be diverted to treatment, if applicable, and avoid going to prison. The program shall follow the Hawaii opportunity probation with enforcement model, as developed and implemented in the city and county of 15 Honolulu from 2004 through 2019; however, with a greater emphasis on diversion to treatment, including the use of screening and assessment tools by working.

Section 2 (b) (4) Allow for screening and assessments as part of diversion to treatment, if appropriate, as well as coordinate with various treatment programs, including sex offender treatment, mental health treatment, substance abuse, treatment, and domestic violence intervention;

SECTION 2 (h) At any hearing on a motion to enlarge the conditions of probation or deferral, revoke probation, diversion to treatment or set aside deferral,

One of the reasons that HOPE was most effective was because offenders realize that if they are motivated yet unable to change by sanctions alone, HOPE will refer them to treatment. Many offenders feel supported to make changes.

- Mandated treatment can be effective. Treatment combined with sanctions from HOPE produces better outcomes than just treatment alone.
    - HOPE probationers are definitely more responsive because the reality of immediate consequences holds them accountable and helps to motivate probationers to be more engaged in treatment, which results in improved outcomes.
    - Evaluation results indicate that HOPE, by referring to treatment instead of imposing sanctions only is highly successful at reducing drug use and crime, even among difficult populations such as methamphetamine abusers and domestic violence offenders.
- Project HOPE when supported by treatment is most cost-effective. When HOPE uses sanctions as a means to refer to treatment, offenders are motivated such that that a very few are incarcerated. As a front line response and alternative to expensive incarceration, the savings per year are tremendous and also have future savings. Even more, those in recovery become productive tax payers.

HSAC supports a continuum of care (e.g., outpatient and residential substance abuse treatment) for substance use disorders and mental health counseling for participants of the HOPE program. As treatment providers, we look forward to working with HOPE to reduce the number of probationers that are re-incarcerated due to revocation of their probation status.

We appreciate the opportunity to provide testimony and are available for questions.

Richard Mizusawa

From: Peter Young
Sent: Tuesday, January 31, 2023 5:28 PM
To: Richard Mizusawa
Cc: Harris Ichida
Subject: FW: Testimony submitted on behalf of SB223

Richard –

Here is the second of the two testimonies that had an error from their original submission. You can use this full version.

E mālama pono –

Peter

Peter F. Young, Committee Clerk- PSM
Office of Senator Glenn Wakai
Senate District 15
Hawai'i State Capitol, Room 407
+1 808 586 8587 (o) | +1 650 296 4987 (m)
p.young@capitol.hawaii.gov

From: Jeff Nash <jnash@habilitat.com>
Date: Monday, January 30, 2023 at 12:40
To: Peter Young <p.young@capitol.hawaii.gov>
Subject: Re: Testimony submitted on behalf of SB223

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Big Mahalo,

Here is my testimony….

Honorable Senator Glenn Wakai

Chairman

Senate Committee on Public Safety and Intergovernmental and Military Affairs

My name is Jeff Nash, Executive director for Habilitat, Inc, the largest capacity residential substance abuse treatment center in Hawai'i. Habilitat is in full support of SB223. It is our sincere desire than H.O.P.E. be returned to its former state of operation, as designed. In recent years the program has seen changes that have rendered it ineffective. We would also highly recommend that SB223 include revisions that provide for diversions for substance use treatment options along with screening and assessments for placement in licensed treatment programs as an alternative to incarceration.

Some years ago, H.O.P.E. became an alternative to regular probation for those probationers who needed a higher level of supervision. The program provided a graduated system of consequences for minor to mid-level violations, provided close supervision of every single offender, including regular testing for substance use. That version of H.O.P.E. worked well. Those who struggled to meet the programs abstinence expectations were provided an option to attend treatment for their drug problems. The program was very helpful to many people who would have otherwise slipped through the cracks of normal probation. Reducing recidivism is not a "one size fit all." Having more options prior to hugely expensive incarceration just makes sense.

The hard truth is incarceration is expensive and treatment works. Judiciary leveraged treatment through H.O.P.E. saved many lives and countless tax dollars. Some offenders, especially those with substance use disorder, need treatment. Many studies indicate that incarceration doesn't curb substance use. Diversion to treatment is based on evidence, its cost effective and beneficial to the community.

We continue to hear about crime in Hawaii. We all agree we need to act to solve these problems. Today we have a bill that will go a long way toward addressing these issues. Returning H.O.P.E. to its former operational standards will decrease reoffending. We are blessed to have several high-quality community partners in our state who are experienced and willing to work with the judiciary to reduce recidivism, working along side H.O.P.E.

Thank you for consideration in these matters.

Mahalo,

Jeff Nash

Executive Director

Habilitat, Inc.

Jeffrey V. Nash
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SB-223
Submitted on: 1/28/2023 3:56:10 PM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Why probation ? You don,t do your jobs now. You just let all the Criminals out any way.

End the Bull shit our We the people will have do something about it. Cut all you Pay!!!!

SB-223
Submitted on: 1/30/2023 8:19:14 AM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Melanie Boehm	Individual	Support	Written Testimony Only

Comments:

HOPE probation has been an effective intervention for the substance use disorder (SUD) population. Recommend that screening/assessment and referral (diversion) to a full continuum of SUD treatment be an integral part of the intervention.

Thank you for the opportunity to provide this testimony.

SB-223
Submitted on: 1/30/2023 11:40:42 AM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Colleen Fox	Individual	Comments	Written Testimony Only

Comments:

I recommend adding diversion to substance abuse and mental health treatment, including screening and assessments, to the Hawai‘i Opportunity Probation with Enforcement Program.

Dr. Colleen Fox

Honolulu, Hawaii

SB-223
Submitted on: 1/30/2023 9:52:02 PM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

HB 122 establishes the Hawai`i Opportunity Probation with Enforcement
Program to be administered by the Judiciary. HB122 cites research conducted in 2007 that supports the efficacy of the HOPE program.

However, The National Institute of Justice Office of Justice Programs Crime Solutions rated the HOPE program in 2020 and 2021 and, based on studies conducted in 2016 and 2018, found that it had NO EFFECT ON RECIDIVISM.

While the HOPE program has some commendable aspects, ultimately, it is ineffective in reducing recidivism and may have negative impacts on people in the program. It would be far better to reform the probation system and stop imprisoning people for minor technical violations such as missing an appointment, missing curfew, etc. Not only is it an expensive use of taxpayer dollars to imprison someone unnecessarily, but also imprisonment for even a few days can have disastrous consequences on a person's life.

It has been said that the HOPE program has thus far escaped rigorous scrutiny because it is a popular idea. Perhaps the money would be better spent on offering more drug treatment programs and other evidence-based programs that are more effective.

Please oppose SB223.

Mahalo for your consideration.

Diana Bethel

ROBERT K. MERCE
2467 Aha Aina Place
Honolulu, Hawai'i 96821
(808) 398-9594

January 31, 2023

TO: Committee on Public Safety and Intergovernmental and Military Affairs
RE: SB 223
HEARING: Wednesday, February 1, 2023
TIME: 3:00 PM
ROOM: Conf. Rm. 223 & videoconference
POSITON: Strongly Oppose

Chair Wakai, Vice Chair Elefante, and members of the commitee:

My name is Bob Merce. I am a retired lawyers and have been active in prison reform for the past ten years. I served as vice-chair of the HCR 85 Task Force on Prison Reform and I was the principal author of the Task Force's final report to the 2019 Legislature. I also served on the Reentry Commission from 2018 until its responsibilities were transferred to the Hawaii Correctional System Oversight Commission in 2019.

I strongly oppose SB 223 which would expand the HOPE probation program to all islands and codify its rules, procedures, and sanctions. The HOPE program is costly and studies have shown that it is largely ineffective and does not produce better outcomes than probation as usual.

1. **CONTINUING TO JAIL PROBATION VIOLATORS WILL COST TAX PAYERS HUNDREDS OF MILLIONS OF DOLLARS**

HOPE Probation seeks to reduce recidivism by high-risk probationers through the use of swift, certain, consistent and proportionate punishment for violating a condition of probation. Any violation results in a guaranteed sanction–typically a few days in jail for the first violation, and escalates to longer jail time with subsequent violations.

In the six months prior to the COVID-19 virus closing down the State (October 2019 to April 2020) there were, on average, 370 probation violators at the Oahu Community Correctional Center (OCCC), almost all of whom were in the HOPE program.[1] That means that if the State proceeds with its plans to replace OCCC with a new jail, the plans will have to include approximately 370 beds to accommodate HOPE probation violators. Current plans call for the new jail to have approximately 1,300 beds, and cost about $1 billion dollars, or around $770,000

[1] See Hawaii Department of Public Safety End of Month Population Reports at https://dps.hawaii.gov/about/divisions/corrections/.

per bed.[2] Thus, to meet the new jail's capacity requirements, the State will have to build roughly 370 beds for HOPE probationers at a cost of $700,000 per bed, or around $285 million.

On top of the construction cost, the State will also have to pay to house the probation violators in the jail. It now costs $238 per day to house an inmate in Hawaii, and therefore to house 370 inmates will cost the State around $88,000 per day *just for the probation violators on the island of Oahu.* At this point we do not know how many HOPE probation violators there will be on Hawaii Island, Maui and Kauai, but it will likely be enough to push the cost of housing the HOPE probation violators statewide to well over $100,000 a day. Additionally, the State will have to pay for a full-time judge plus staff in each circuit to administer the program and train judges and probation officers statewide on program rules, regulations, and procedures.

Worse yet, SB 223 ignores the fact that the Hawaii Community Correctional Center (HCCC) and the Maui Community Correctional Center (MCCC) are already so badly overcrowded and so understaffed that prisoners rioted at MCCC in 2019 and at HCCC in 2020, and the planned expansion of those facilities to relieve overcrowding **does not include new beds for projected HOPE probation violators.** The HOPE probation program would make the already egregious overcrowding even worse, and would result in men and women being subjected to overcrowded and inhumane conditions that clearly violate the "cruel and unusual" provisions of the U.S. Constitution and Article I, Section 12 of the Hawaii Constitution. The Kauai Community Correctional Center (KCCC) is not currently overcrowded, but it is near capacity and would certainly become overcrowded if it had to house HOPE probation violators.

2. THE EFFECTIVENESS OF THE HOPE PROGRAM IS QUESTIONABLE AT BEST

The initial evaluations of the Hawaii Hope program in 2009 and 2016 showed some positive results, at least for non-violent offenders, and that led to the program being introduced in several other states. Evaluations of the "swift and certain" programs in those state were, for the most part, negative and showed little difference between the people in the swift-and-certain programs and those in probation-as-usual. A four-site randomized controlled trial replicating Hawaii's HOPE probation program prepared for the National Institute of Corrections in 2018 (the HOPE Demonstration Field Experiment or DFE) , showed, among other things, that "[o]verall HOPE did not reduce recidivism, as measured by arrest, revocation, and new convictions" and that "there is little to support a conclusion that HOPE or HOPE-like programs

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[2] Kevin Dayton, "Planning Costs Climb for New Oahu Jail as Debate Drags on Over its Scope," Honolulu Civil Beat, January 3, 2022. Accessed January 29, 2023. https://www.civilbeat.org/2022/01/ige-asks-for-15-million-more-to-plan-new-oahu-jail-butwants-to-cut-costs/. The article states in relevant part: "Robert Merce, a lawyer and former member of the Department of Public Safety's Reentry Commission, predicted last month the new jail will probably cost on the order of $1 billion. Ige does not dispute that estimate, remarking last month that "I do think that we heard that that's what jail facilities cost today."

will produce substantial improvements over PAU [probation as usual] when implemented widely."[3]

A 2018 economic evaluation of the HOPE Demonstration Field Experiment (DFE) showed that HOPE is associated with higher rates of incarceration and residential treatment, leading to an increase in total costs when compared with probation as usual. Thus "jurisdictions choosing to implement programs like HOPE to hold probationers accountable would need additional resources from the criminal justice system to support the program."[4]

Additionally, the many studies and reports cited by the Hawaii Judiciary in its testimony to the House Committee on HB 122 (SB 223's companion bill) is compelling and strongly militates against any expansion of the HOPE program.

Expanding the HOPE program is a bad idea. SB 223 should be deferred.

Thank you for allow me to testify on SB 223.

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[3] Pamala K. Lattimore, Debbie Dawes, Doris L. MacKenzie, and Gary Zajac. 2018. "Evaluation of the Honest Opportunity Probation with Enforcement Demonstration Field Experiment (HOPE DFE) (Final Report," Document 25178. (Washington, D.C: National Institute of Justice). Accessed January 29, 2023. https://www.ojp.gov/pdffiles1/nij/grants/251758.pdf

[4] Cowell, Alexander J., Alan Barnosky, Pamela K. Lattimore, Joel K. Cartwright, and Matthew DeMichele. "Economic Evaluation of the HOPE Demonstration Field Experiment," *Criminology & Public Policy*, 17: 875–899 (2018).

SB-223
Submitted on: 1/30/2023 10:02:53 PM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn Eaton	Individual	Oppose	Written Testimony Only

Comments:

Aloha, Chair Wakai, Vice Chair Elefante and Members of the Committee,

My name is Carolyn Eaton and I oppose this measure. HOPE is relatively new and the research results which have been published are not persuasive, in my opinion. The State deserves the sort of probation reform which ends the practice of probation revocation for technical violations. If an individual on probation shows evidence of substance abuse, treatment must be made available, not reimprisonment. Your constituents want effective, proven programs instituted. Help those on probation with the "hand up" they have earned.

Mahalo for your consideration of this testimony.

January 31, 2023

To: Senator Glen Wakai, Chair; Senator Brandon Elefante, Vice Chair, and Members of the Senate Committee on Public Safety and Intergovernmental and Military Affairs

From: Barbara Polk, Ph.D. Social Psychology

TESTIMONY IN OPPOSITION TO SB 223 RELATING TO PROBATIION

I strongly oppose instituting the HOPE program. Through my education in Social Psychology, I am aware of the many, many studies that have shown that punishment rarely changes behavior for the better. It may result in short term compliance, but it does not build responsibility for behavior and often produces resentment and worse behavior. That is why punishment has become rare in K-12 education and few parents spank their children now.

Unfortunately, the HOPE Program relies on punishment, with the intent of preventing recidivism. Research has shown that it is not effective in doing so, which is no surprise, given the extensive research on the impact of punishment.

In addition, the HOPE program flies in the face of the direction of changes in thinking about corrections, both in Hawaii and nationally:

In 2018, the Hawaii legislature's **Task Force on Prison Reform recommended that "the state stop using incarceration to sanction HOPE probation violators."** This recommendation came despite the fact that prompt and certain terms of re-incarceration for failures, not only of drug tests, but of technical violations of probation, are the essential part of the HOPE program.

In addition, the **Hawaii Correctional Systems Oversight Commission** has been charged by the legislature with working toward a rehabilitative model for corrections, as opposed to a punitive model. Governor Green recently endorsed this move as one of his priorities.

Since attitudes about drugs and about incarceration as we know it are changing rapidly, this is not the time to set in law a program which is based on a punitive model that is rapidly losing favor.

At one time the HOPE program held promise as a positive reform of probation. Unfortunately, it is based on flawed assumptions about human behavior and no longer consistent with the developing changes in corrections, both nationally and in Hawaii.

I urge you to defer SB 223.

Thank you for considering my testimony.

SB-223
Submitted on: 1/31/2023 10:48:45 AM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Becky Harrison	Individual	Support	Written Testimony Only

Comments:

Committee on Public Safety and Intergovernmental and Military Affairs

Senator Glenn Wakai, Chair

Senator Brandon J.C. Elefante, Vice Chair

Becky Harrison

(808) 221-8550

Wednesday, February 1, 2023: Conference Room 225 & Videoconference

Strong Support to SB223

Aloha Chair, Vice Chair, and Committee Members.

For years H.O.P.E. probation helped people who were on probation and needed a higher level of supervision. They were closely supervised and tested for substances regularly. This allowed people to be better assessed and offered substance abuse treatment when that's what they needed.

Recently, the standards have been changed and H.O.P.E has become ineffective.

H.O.P.E. should be returned to its original operational standards as it helped countless people learn to build a successful life and not return to their old habits. It will help countless more once its original standards are back in place.

Treatment helps people build successful lives and become productive members of our community. This reduces recidivism which is the goal.

Thank you for the opportunity to give testimony in support of SB223,

Becky Harrison

SB-223
Submitted on: 1/31/2023 6:24:20 AM
Testimony for PSM on 2/1/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	Written Testimony Only

Comments:

I am submitting testimony in opposition to SB223 as recent findings do not show this probation program to be effective at bringing more positive outcomes. SB223 states this program was initiated in 2004 and evaluated in 2007. There are no findings stated in this bill as to the results in the years since. Please do not waste precious time and resources on a program that has not been proven to be effective. There are other, proven opportunities and programs that give positive results. Let's put our focus there!

Thank you-

Raelyn Reyno Yeomans

LATE

COMMUNITY ALLIANCE ON PRISONS
P.O. Box 37158, Honolulu, HI 96837-0158
Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com

COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS
Senator Glenn Wakai, Chair
Senator Brandon Elefante, Vice Chair
Wednesday, February 1, 2023
3:00 PM

OPPOSITION TO SB 223 – HOPE Probation

Aloha Chair Wakai, Vice Chair Elefante 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 4,058 Hawai`i individuals living behind bars[1] and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 965 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.

HB 122 establishes the Hawai`i Opportunity Probation with Enforcement Program to be administered by the Judiciary. Community Alliance on Prisons appreciates this opportunity to testify and to share our research with the committee. After reviewing lots of research, CAP respectfully OPPOSES this measure.

THE RESEARCH

The National Institute of Justice Office of Justice Programs Crime Solutions:[2]

The ratings from the National Institute of Justice in 2020 and 2021 of HOPE rated this program as NO EFFECT.[2] The program is described as a community supervision strategy that includes swift, certain, and fair responses to probation violations. **The program is rated No Effects.** The treatment group had a statistically significant lower likelihood of having a positive drug test at the 12-month follow-up,

[1] Department of Public Safety, Weekly Population Report, January 23, 2023.
https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-23_George-King.pdf

[2] Program Profile: Honest Opportunity Probation with Enforcement (HOPE)
https://crimesolutions.ojp.gov/ratedprograms/675#programcost

but a statistically significant greater number of probation violations, compared with the control group. **There were no statistically significant effects on recidivism (any arrest) or new convictions.**

A No Effects rating implies that implementing the program is unlikely to result in the intended outcome(s) and may result in a negative outcome(s). This program's rating is based on evidence that includes at least one high-quality randomized controlled trial. This program's rating is based on evidence that includes either 1) one study conducted in multiple sites; or 2) two or three studies, each conducted at a different site. Learn about how we make the multisite determination.

Date Modified: March 23, 2021

In January 2020, Honest Opportunity Probation with Enforcement (HOPE) received a final program rating of No Effects based on review of Lattimore and colleagues (2016) that focused only on measures of recidivism. In February 2021, CrimeSolutions conducted a re-review of the full study by Lattimore and colleagues (2018), examining measures of recidivism (any arrest charge, new convictions, and any probation violations), and measures of substance misuse (drug test results). ***The program maintained a final rating of No Effects.***

University of Cincinnati:[3]

A September 2014 article in Federal Probation entitled, "Is Project HOPE Creating a False Sense of Hope? A Case Study in Correctional Popularity,"[3] has a section on page 59:

The Effectiveness of HOPE

Does HOPE work? The answer to this question is an important one. The empirical evidence needs to be fairly presented and carefully evaluated before we can argue (as we do) that this intervention has been inappropriately and prematurely adopted by policy makers and practitioners alike. Project HOPE is designed to reduce probationers' violations while on probation, and, ideally, to reduce recidivism for new criminal behavior. It is believed that HOPE does so because it uses swift-and certain punishment and graduated sanctions to lower noncompliance on supervision.

Conclusion: The High Cost of Popularity

The emergence of HOPE as a popular choice in community supervision is not without some merit. Judge Alm was not content to see offenders repeatedly violate conditions of probation and inevitably end up imprisoned. He designed a program based on clear guidelines applied in a fair and firm manner, offender accountability, certain but non-severe graduated sanctions, and support for those deserving of it. He was masterful in securing cooperation from other components of the justice system to ensure that the program would be conducted with fidelity to its principles. He also invited empirical

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[3] Is Project HOPE Creating a False Sense of Hope? A Case Study in Correctional Popularity
Stephanie A. Duriez, Francis T. Cullen, Sarah M. Manchak, University of Cincinnati
https://www.researchgate.net/publication/279755432_Is_Project_HOPE_creating_a_false_sense_of_hope_A_case_study_in_correctional_popularity

evaluation that has produced positive findings. At the very least, he has created a model program — one that is worthy of further investigation — for the management of those on probation who are unable to comply with supervision conditions, especially drug tests.

Even so, evaluations of HOPE and its adaptations are few in number and have produced mixed results. They also are methodologically limited, in that these tests have not included various offender populations, an extended follow-up period, or direct assessments of the program's "logic model." Further, this logic model may be misguided. Theory and research would suggest that swift-and-certain sanctions are unlikely to drive HOPE's effects alone, and that other, somewhat organically occurring practices (i.e., those not explicitly emphasized, taught, or viewed as central to the model) within the HOPE program are actually more likely to explain its effectiveness.

More broadly, as Merton (1973) notes, a core norm of science is "organized skepticism." When new discoveries or startling findings are announced, science cautions against a ready acceptance. Instead, as an evidence-based enterprise, the appropriate response is to call for further study and replication. Similarly, in the pharmaceutical field, drugs with seemingly remarkable curative powers are not brought to market until properly vetted. Rushing to market on limited trials could result in a drug being ingested without sufficient study to determine if harmful side-effects might occur. In recent years, a more sobering reality has been uncovered: Many well-publicized, widely accepted experimental findings, from medicine to the social sciences, have not been replicated in subsequent research (Lehrer, 2010; Ioannidis, 2005a, b).

In corrections, such organized skepticism and reliance on careful evaluation to discern iatrogenic effects of interventions are sorely lacking—often leading to the implementation of programs that are sheer quackery (Latessa, Cullen, & Gendreau, 2002). Clearly, the HOPE program was carefully designed and did not shy away from empirical assessment. Still, it is an initiative that was widely heralded and not subjected to careful scrutiny. Due to a convergence of circumstances (reviewed above), it was seen as an important invention. The correctional audience—policy makers, practitioners, and scholars—might have paused to wonder whether a program based on a limited theory of crime that has rarely succeeded in producing effective interventions (specific deterrence) might have only limited effects and not be effective in courtrooms not led by a charismatic judge.

In the end, correctional popularity risks having a high opportunity cost. When offenders are placed into popular but unproven programs, they are not given correctional services that are evidence-based and of proven effectiveness. Thus, when drug and other offenders are sanctioned, the issue is this: Why should they receive HOPE rather than a treatment based on the RNR model (Andrews & Bonta, 2010; Cullen, 2012a; see also Van Voorhis, 1987)? Of course, it might be possible to merge a program that attempts to diminish revocations (such as HOPE) with an evidence-based rehabilitation component. Still, HOPE has been largely celebrated not as an add-on to proven interventions but as a remarkable panacea in and of itself.

The obligation of policy makers and practitioners thus is to use the best science to intervene in the lives of offenders. **Evidence that is extensive and that shows a program's reliable efficacy, not popularity, should guide how corrections is undertaken.** Although experimentation with new programs such as Project HOPE should be welcomed, if not encouraged, the embrace of such fresh inventions should be cautious and not marked by unfounded hubris. Ultimately, the use of popular but ineffective programs consigns offenders to a life in crime and diminishes public safety. We owe correctional populations and the citizenry better than this.

Research Triangle International (RTI) and Penn State University:[4]

In a four-site (Arkansas, Massachusetts, Oregon, and Texas), randomized controlled trial study of the HOPE program design, researchers from Research Triangle International (RTI) and Pennsylvania State University, supported by the National Institute of Justice, **found that HOPE-modeled probation was generally not an improvement over traditional probation in terms of key success metrics such as new arrests, revocation of parole, and new convictions.** The study team stressed, however, that the results do not rule out circumstances where HOPE-based probation or a similar model would be preferable to probation as usual.

The heart of HOPE, modelled on a widely emulated Hawaii probation system reform – Hawaii's Opportunity Probation with Enforcement – is "swift, certain and fair" sanctioning meant to keep persons convicted of an offense on probation in line, drug-free, and out of prison. They are closely monitored with regular random drug testing and are subject to frequent but graduated sanctions for violations. A single, relatively minor probation violation – for example, a positive drug test or a missed appointment – might warrant a brief incarceration of a few days, but with the individual's probation status restored after the release from jail. Drug treatment is available for those in need.

The researchers did find some comparative positives for the HOPE probationers. For instance, they were significantly less likely than control group counterparts to:

- Miss a probation officer visit (30 percent versus 44 percent).
- Fail to pay their fees and fines (11 percent versus 18 percent).

At the same time, however, researchers found no difference between the recidivism numbers of the HOPE treatment groups and probation as usual control groups, as follows:

- Re-arrest: 40 percent for HOPE, 44 percent for probation as usual.
- Revocation of Probation: 25 percent for HOPE, 22 percent for probation as usual.

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[4] Rigorous Multi-State Evaluation Finds HOPE Probation Model Offers No Advantage Over Conventional Probation in Four Study Sites
Pamela K. Lattimore (PI), Doris L. MacKenzie (PI), Debbie Dawes, Gary Zajac, Elaine Arsenault, Alan Barnosky, Susan Brumbaugh, Joel Cartwright, Alexander Cowell, Derek Ramirez, and Stephen Tueller, November 30, 2018
https://nij.ojp.gov/topics/articles/rigorous-multi-site-evaluation-finds-hope-probation-model-offers-no-advantage-over

- Reconviction: 28 percent for HOPE, 26 percent for probation as usual.

Community Alliance on Prisons reminds legislators that there was a Drug Summit in 2003 convened by then Lt. Governor Duke Aiona with hundreds of people (mostly businesses) and a handful of activists (maybe 50). After three days, the overwhelming conclusion of the participants was TREATMENT ON DEMAND. It was a shock to the administration who were then pushing a three-strikes law and a "walk and talk" federal law at Hawai`i airports.

Treatment on demand never happened, although over $4million was appropriated for treatment that no one has ever been able to track. In the following session, I remember Senator Baker in a hearing with her calculator adding up the expenditures being reported by the Drug Czar and no one could ever determine where all that money went. This is why we are so careful not to just find the quick solution; we want to find the best solution to the challenges that so many of our people face daily.

Hawai`i has attained the dubious distinction of having the longest probation terms anywhere in the U.S. – 59 months! What we don't need is to expand a program that is more costly and less effective than traditional probation. HOPE is a throwback to the "tough on crime" era and is not the first correctional program whose popularity is linked to its embrace of tough love. Boot camps are one obvious example of a previous tough-love intervention that earned widespread support (Cullen, Blevins, Trager, & Gendreau, 2005).

We respectfully ask the committee not to move this expensive bill forward and instead fund probation reform so people are not imprisoned for technical violations. Expanding HOPE will have a negative effect on our broken correctional system. Even a few days in jail can have lifelong effects on a person.

LATE

COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS
Senator Glenn Wakai, Chair; Senator Brandon Elefante, Vice Chair
Wednesday, February 1, 2023 / 3:00 PM

OPPOSITION TO SB 223: HOPE Probation

Dear Chair Wakai, Vice Chair Elefante, and Members of the Committee:

My name is Thea Sebastian, and I am the Policy Director at Civil Rights Corps, a nonprofit organization that has worked nationwide to transform unconstitutional pretrial, probation, prosecution, and related systems — including more than 17 lawsuits challenging wealth-based pretrial detention. I am submitting this testimony today because, based on this experience, my organization respectfully opposes SB 223, which would establish Hawaii Opportunity Probation with Enforcement (H.O.P.E.) as a program administered by the Judiciary. We appreciate this opportunity to share our perspective and present an alternative, supportive, evidence-based vision of where Hawaii might go.

THE TOLL OF PROBATION VIOLATIONS

First, before addressing the HOPE program and its alternatives, I want to share some experiences that may shed light on our approach. Throughout our litigation and policy work over these past seven years, attorneys at my organization have witnessed exactly what causes — and what the consequences are — of both probation violations and short-term jailing.

For our clients, almost all of whom are indigent, probation violations all too often are symptoms of their poverty and of life circumstances that they need assistance — not counterproductive punishment — to manage. Amongst our clients, we have individuals who lack consistent methods of transportation or reliable childcare. We have clients whose employers will not allow brief absences, even for attending probation hearings. We have clients who struggle with substance use and mental illness, but lack stable access to medications, treatment, and helping hands. And, against this backdrop, we know that a missed appointment or failed test often suggests little more than unmet needs that urgently require our assistance.

As part of its model, the H.O.P.E program frequently relies on short-term incarceration. This approach, perhaps more than any other discussed today, is one that we have seen devastate countless individuals and families. Even brief periods of detention can cause job loss, housing loss, and long-lasting health complications while tolling the state billions in avoidable costs. In jail, individuals are often exposed to unsanitary conditions, miss medical appointments, and lose

access to their medications — all of which can make their underlying conditions much, much worse. Parents, unable to watch their children and fulfill other family obligations, may even lose custody of their kids. And research, including expert testimony submitted in our own cases, shows that even brief incarceration significantly increases the likelihood of future arrest and jailing.[1] In short, short-term jailing has cascading consequences that can easily last a lifetime, not to mention undermine the very economic and social stability that probation is meant to reinforce. Moreover, it ultimately renders *all* Hawaiians less safe overall while exacerbating a housing crisis that has damaged far too many families. For these reasons and more, we cannot support a probation model that emphasizes jailing as any part of a theoretically rehabilitative process.

We deeply appreciate that the H.O.P.E program, in its conception, was designed to minimize violations and reincarceration. Fully understanding the human costs of probation and incarceration, we share this goal completely. The approach of "swift and certain" punishment, however, is not a model that we have found to be effective. For a mother who must choose between watching her daughter and attending court, "certain punishment" will not make her decision any easier. For a person who has long struggled with schizophrenia, this approach will not prevent relapse. For someone who has struggled with housing instability or homelessness, jail time will not create a pathway to the safe, stable, and affordable housing that they need. And the data agrees: as other testimony has made clear, H.O.P.E participants have shown no particular improvements in re-arrest, revocation of probation, or reconviction.

We urge this body to consider a different approach that leverages evidence-based practices while fully accepting this outcome data. What if, rather than rely on "swift and certain" punishment and graduated sanctions, the Hawaii judiciary piloted a new model that assisted people through the various challenges that they face? The Supreme Court itself, in *Gagnon v. Scarpelli*, has stated that probation is meant to "help individuals reintegrate into society as constructive individuals as soon as they are able" and to alleviate prison overcrowding. Incarceration for revocations should be rare as, in their words, "revocation… is, if anything, commonly treated as a failure of supervision." What if Hawaii piloted a new program that fully embraced this statement of constitutional law? What if Hawaii funded independent, community-based intermediary organizations that could deploy evidence-based practices — including navigator functions, transportation assistance, and connections to essential services like supportive housing and treatment — to support those who are on supervision?

These sorts of programs are already working elsewhere, but lack the scale and reach needed for true impact. Hawaii has already become a leader in many policy arenas, including probation itself.

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[1] Low-risk defendants who are detained on money bail – even for 2-3 days – are 40% more likely to commit new crimes pending trial than are low-risk defendants who are detained for 24 hours or less.16 Expanding the time frame to two years, low-risk defendants jailed for 2-3 days are 17% more likely to commit new crimes, while those jailed for 4-7 days are 35% more likely. *See* Laura and John Arnold Foundation, Research Summary: Pretrial Criminal Justice Research (2013), discussing results from a study involving the Kentucky jail population. *Also see* Paul Heaton et al., The Downstream Consequences of Misdemeanor Pretrial Detention, 69 STAN. L. REV. 711, 711 (2017), finding that those detained pretrial are more likely to commit future crimes, suggesting that even short-term detention may have a criminogenic effect.

This moment presents a critical opportunity to become a leader yet again, embracing evidence, data, and vision to show the world a different path — and, most importantly, to give all Hawaiians the comprehensive supports that they truly need to thrive.

Our organization stands as a resource for you — both to explain this constitutional mandate and to share the best practices that we have gleaned through our engagement nationwide. And it is based on this expertise that we respectfully urge you to ***oppose*** HB 122 and, instead, to consider a model that can truly deliver safety for all communities.