

**STATE OF HAWAI‘I**  
**OFFICE OF THE PUBLIC DEFENDER**

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

February 1, 2024

S.B. 2395: RELATING TO A PROBATION COMPLIANCE CREDITS PROGRAM

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

The Office of the Public Defender supports the intent of S.B. 2395.

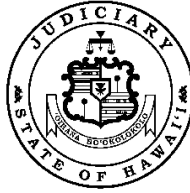
This measure would facilitate the creation of a pilot program to design a probation compliance credit program for adult offenders. The program would research and implement best practices with the shared goals of promoting public safety and creating an incentive for compliance with probationary terms and conditions.

Probationary terms for probationers in full compliance with their terms and conditions can be too long and counter productive. Creating an incentive program to promote early compliance and to provide opportunities for probationers who are serious about reform and committed to their obligations on probation promotes public safety through education, referral to appropriate services, and motivation for probationers to complete their obligations efficiently and effectively.

Establishing a pilot program to review data, to explore what is working or not working in other State’s with these types of programs, and to provide valuable input in how a program can impact the Judiciary and the Department of Corrections and Rehabilitation statewide can only provide needed background and information on how a program would work in our state.

We also submit that a similar program currently exists with the Judiciary for juvenile offenders. The program is called the “Earned Discharged Credit” program and was codified in HRS § 571-48.5(4) and HRS § 571-48.6. This program successfully provides incentives to justice involved youth to comply with their terms and conditions of probation.

Thank you for the opportunity to comment on this measure.



*The Judiciary, State of Hawaii*

**Testimony to the Thirty-Second Legislature, 2024 Regular Session**

**Senate Committee on Judiciary**  
Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

Thursday, February 1, 2024 at 9:00 a.m.  
State Capitol, Conference Room 016 & Videoconference

by  
Brook M. Mamizuka  
Probation Administrator  
First Circuit

Craig S. Hirayasu  
Probation Administrator  
Second Circuit

Robert J. Calma  
Probation Administrator  
Third Circuit

ToriAnn K. Miyazaki  
Probation Administrator  
Fifth Circuit

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**Bill No. and Title:** Senate Bill No. 2395, Relating to Probation Compliance Credits Program

**Purpose:** Requires the Judiciary to establish a compliance credits pilot program for probationers that comply with their conditions of supervision.

**Judiciary's Position:**

The Judiciary supports the intent of Senate Bill No. 2395, however, we respectfully oppose the bill in its current form. The Judiciary respectfully recommends amendments to the bill.



Senate Bill No. 2395, Relating to a Probation Compliance Credits Program  
Senate Committee on Judiciary  
February 1, 2024 at 9:00 a.m.  
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Probation's goal is to rehabilitate the whole individual, not just the crime for which they are placed on probation. An overwhelming number of offenders that are placed on probation have long-standing and ongoing problematic issues, which include substance abuse, mental health, domestic violence, sexual deviance, and anger management. Often, these issues may not be associated with the current crime, however, they are the issues that offenders struggle with that play a role in their poor coping skills and criminal thinking and behavior. Probation is charged with rehabilitating the whole person, and the crime that they are currently on probation for is just the current by-product of unresolved trauma and experiences that they have lived with since childhood. The purpose of probation is not solely to ensure compliance and early release for an offender, it is also about helping an offender address and resolve these long-standing issues they have been dealing with so they can lead healthy and productive lives for themselves, their families, and the community.

There are already mechanisms in place for probationers to seek early termination of their probation term. These mechanisms include the probationer filing a motion for early termination of their probation term or filing a motion to reconsider their sentence. Therefore, there are already viable options for offenders to pursue in obtaining early termination of their court ordered supervision. In Fiscal Year 2021-2022, 1,146 clients received early termination or dismissal prior to expiration of their case. In Fiscal Year 2022-2023, 954 clients received early termination or dismissal prior to expiration of their case.

Another approach would be to have a review hearing halfway through the probation term. This hearing would bring all parties together to determine if early termination of probation is a viable option. If it is determined that early termination should be considered, then the defense counsel at that time shall submit a motion for early termination.

In collaboration with the courts and the probation offices in the counties of Maui, Hawai'i, and Kaua'i, it is recommended that the pilot program be amended from a probation compliance credits program to examining early termination of probation at the halfway period of the term. This would result in the development of systematic statewide policies and procedures regarding early termination of probation terms. It would provide fairness to all probationers and allow for notification to victims and families that suffered physical/psychological trauma during/after the crime.

Thank you for the opportunity to testify on Senate Bill No. 2395.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, February 1, 2024

Room 016

9:00 AM

## **STRONG SUPPORT FOR SB 2395 - PROBATION COMPLIANCE CREDITS**

Aloha Chair Rhoads, Vice Chair Gabbard 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 3,868 Hawai`i individuals living behind bars<sup>1</sup> and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on January 22, 2024. We are always mindful that 874 - 25% of the male imprisoned population - 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 appreciates this opportunity to testify in strong support of SB 2395 that requires the Judiciary to establish a compliance credit pilot program for probationers that comply with their conditions of supervision.

Hawai`i has thousands of people on probation. At the HCR 85 Task Force meetings, the former head of probation strongly recommended using incentives to encourage compliance with conditions of probation as a best practice. Community Alliance on Prisons support this position.

For many years we have testified in favor of good time to shave time off a person’s jail term. This bill encourages compliance with conditions of probation,

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<sup>1</sup> DPS/DCR Weekly Population Report, January 22, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/01/Pop-Reports-Weekly-2024-01-22.pdf>

which is a great idea. This allows the probation office to focus on those individuals who need more focused supervision. Research has shown that our probation terms are too long, making Hawai`i an outlier with 59-month probation terms. This sets people up for failure. In a hearing many years ago, the head of probation at the time was clear that violations generally happen within the first 18 months.

Mahalo.



Committee: Senate Judiciary  
Hearing Date/Time: Thursday, February 1, 2024 at 9:00am  
Place: Conference Room 016 & Via Videoconference  
Re: Testimony of the ACLU of Hawai'i in SUPPORT of S.B.2395  
Relating to a Probation Compliance Credits Program

### **Testimony of the ACLU of Hawai'i in Support of S.B. 2395 with Proposed Amendments**

Dear Chair Rhoads, Vice Chair Gabbard and Committee members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") strongly **supports S.B. 2395 which requires the Judiciary to establish a compliance credits pilot program for probationers that comply with their conditions of supervision.**<sup>1</sup>

#### **There is Room for Improvement in Hawaii's Probation System**

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

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

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

weakening their ability to provide the best return on taxpayers' public safety investments, support rehabilitation, and ensure a measure of accountability. One key factor driving the size of the probation population is how long individuals remain on supervision."<sup>1</sup>

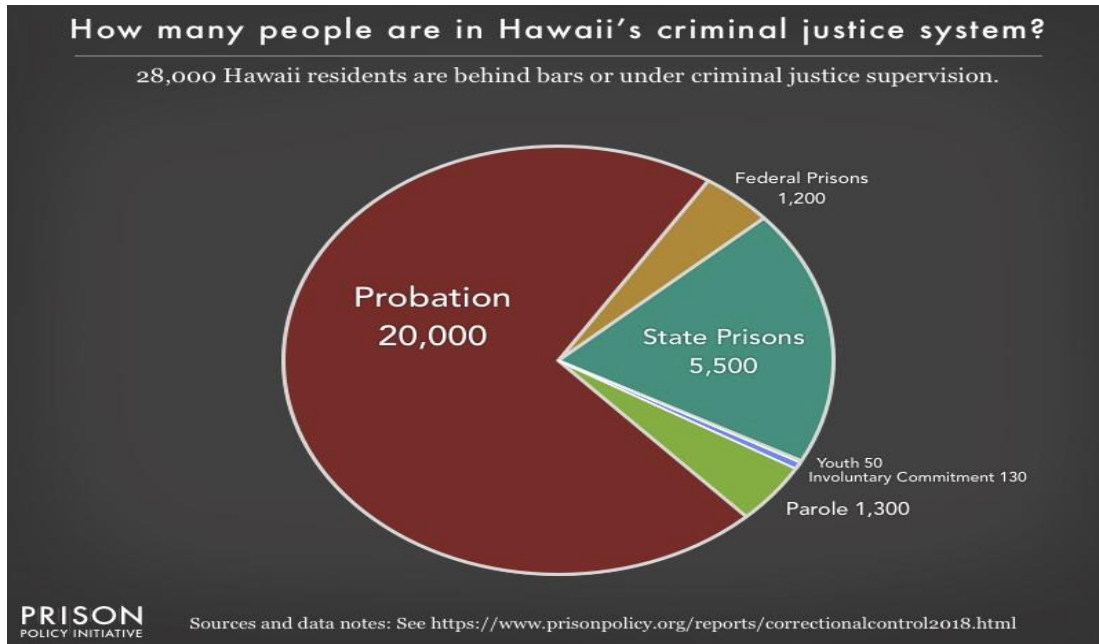
Nationwide, on any given day, there are more people on probation than prisons and jails and on parole combined.<sup>2</sup> This is also true in Hawai'i as illustrated by Prison Policy Initiative's pie

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<sup>1</sup> [https://www.pewtrusts.org//media/assets/2020/12/shorten\\_probation\\_and\\_public\\_safety\\_report.pdf](https://www.pewtrusts.org//media/assets/2020/12/shorten_probation_and_public_safety_report.pdf)

<sup>2</sup> [https://www.pewtrusts.org//media/assets/2020/12/shorten\\_probation\\_and\\_public\\_safety\\_report.pdf](https://www.pewtrusts.org//media/assets/2020/12/shorten_probation_and_public_safety_report.pdf)

chart.<sup>3</sup> In December 2018, Hawai‘i had 20,000 under probation supervision, and 8,000 in federal or state prison, youth confinement commitment and parole supervision.<sup>4</sup> As of December 2019, Hawai‘i had a combined community supervision population of 21,285 people.<sup>5</sup> Of this number, 19,619 individuals were serving probation sentences.



**Hawai‘i Ranks First as having the Longest Average Probation Length Nationwide**

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

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

National average (2018) = 22.4 months

Rank (1 = longest)	State	Average probation term in months, 2018
1	Hawaii	59 months
2	New Jersey	52 months
3	Rhode Island	44 months
4	Oklahoma	42 months
5	Arkansas	41 months
46	Indiana	15 months
47	Delaware	15 months

<sup>3</sup> [https://www.prisonpolicy.org/graphs/correctional\\_control2018/HI\\_correctional\\_control\\_2018.html](https://www.prisonpolicy.org/graphs/correctional_control2018/HI_correctional_control_2018.html)

<sup>4</sup> <https://nicic.gov/state-statistics/2019/hawaii-2019>

<sup>5</sup> *Id.*

48	West Virginia	15 months
49	Massachusetts	10 months
50	Kansas	9 months

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

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

### **Recidivism Rates for Probation Remain High**

Recidivism rates for persons on probation in Hawai'i remain high. According to the **Attorney General's Interagency Council on Intermediate Sanctions Recidivism Update Report in 2019**, the State of Hawai'i, fiscal year 2016 Cohort, had a recidivism rate<sup>6</sup> of nearly 54%. In other words, 1 out of 2 persons on probation recidivate during their probation term.

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

**Total Statewide Average Recidivism Rate: 53.8%**

### **Racial Disparities Exist within Hawaii's Probation System**

For decades, numerous reports have highlighted racial and ethnic disparities in Hawai'i's criminal legal system. According to The Disparate Treatment of Native Hawaiians in the Criminal Justice System, Office of Hawaiian Affairs Report (2010), Native Hawaiians continue to be disparately represented at every stage of the criminal legal system, including probation<sup>7</sup>:

- In 2008 – of the 1,826 charges filed that resulted in probation, 486 or 27% were filed against Native Hawaiians.

<sup>6</sup> The Attorney General's Interagency Council on Intermediate Sanctions defines recidivism as a felony, misdemeanor, petty misdemeanor arrest, or probation or parole revocation to record the recidivism event. <https://icis.hawaii.gov/wp-content/uploads/2021/05/2019-Hawaii-Recidivism-Update.pdf>

<sup>7</sup> <https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/2015/01/nativehawaiianscriminal-justice-system.pdf>



- **In 2009, 40% of the people sent to prison for a probation violation were Native Hawaiian.** All other racial and ethnic groups except for Hispanics, receive shorter probation sentences than Native Hawaiians.

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

This bill requires the Judiciary to design a “pilot program to ensure that probation promotes public safety and effectively uses resources to supervise offenders most in need of services and programs.” **Offering the maximum amount of good time credits to individuals who successfully follow conditions, will shift the system from a punitive to an incentive-based one.** This system will effectuate cognitive behavioral changes and encourage people to seek assistance when necessary—like when dealing with a substance abuse disorder or struggling to find a job—instead of being afraid they will be returned to prison if they report these challenges.

According to a recent Pew Report, “Many people on supervision serve longer terms than are necessary for public safety.” For example, data from Oregon and South Carolina showed that “among people who were on probation for a year without being arrested, more than 90% could have spent less time on supervision without an impact on recidivism (as measured by re-arrests).”<sup>8</sup>

Moreover, the Pew Report concludes that “**Cutting the length of supervision can play an important role in shrinking probation populations. And reducing the number of people on supervision can allow agencies to direct resources where they can have the biggest impact on public safety. For example, research has shown that when officers have smaller caseloads and implement evidence-based practices, it can reduce recidivism.**”<sup>9</sup>

Research also shows that offering people “the opportunity to reduce their sentences via earned time credits encourages compliance and **increases successful outcomes without compromising public safety, especially if the incentive is perceived as significant, such as receiving 15 to 30 days off a sentence for each month of compliance.**”<sup>10</sup>

Currently, 16 states have statutes that allow for earned time credits on probation supervision. In addition, states such as **Alaska, Arkansas, Delaware, Missouri, and Utah** have “**30 for 30” policies, in which the person on probation gets 30 days of credit for 30 days of compliance with probation conditions.**”<sup>11</sup>

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<sup>8</sup> <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probationandprotect-public-safety>

<sup>9</sup> Id.

<sup>10</sup> <https://ciceroinstitute.org/research/employment-based-earned-time-credits-in-adult-supervision/>

<sup>11</sup> <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probationandprotect-public-safety>

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

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

As of January 24, 2022, 1,016 out of 4099 people, were in Hawai'i's jails and prisons due to probation and parole revocations. **On average, approximately one-fourth of jail and prison population in Hawai'i are the result of parole and probation infractions.**<sup>12</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.

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

**Incarceration for Technical Violations of Probation is Costly**

Probation reform that results in less incarceration will save the State taxpayer dollars. **It costs nearly \$250 a day and over \$90,000 a year to incarcerate an adult.**

The Judiciary's Adult Client Intake Services Branch highlighted the following data in their written testimony relating HB2344 and its companion bill relating to Probation Reform in 2022:

FY2020-2021: 18,505 statewide probation offices managed these offenders

**PROB REVOC: 495 technical violations**

New CONV: 160 returned to court for new convictions  
3.54% of offenders revoked over the fiscal year

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

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<sup>12</sup> E.g., Department of Public Safety, Weekly Population Report, January 24, 2022.

**PROB REVOC: 495 people in Fiscal year 2020-2021**  
**Cost: \$219<sup>13</sup> x 495 people = \$108,405 per day or \$39,567,825 per year**

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

### **Proposed Amendments to S.B. 2395**

We respectfully request the following amendments to implement evidence-based practices within our probation system:

1. Require the Judiciary to offer thirty days of credit for every month of compliance as part of this pilot project (on par with other states) given severe over-crowding in our jails and prisons and the fact that Hawai'i has the longest average rate of probation; and
2. Require the Judiciary's pilot study to examine and recommend best practices to reduce technical violations, including the elimination of incarceration for technical violations of probation supervision.

In closing, this proposed measure and recommended amendments reflect data driven strategies to improve the probation system in Hawai'i. Projected outcomes include shortening probation lengths through earned time credits and eliminating incarceration for technical violations. In turn, this will divert people from our severely overcrowded jails and prisons and save taxpayer dollars while enhancing community safety.

In closing, please pass S.B. 2395 with amendments!

Sincerely,

**Carrie Ann Shirota**

Carrie Ann Shirota

Policy Director

ACLU of Hawai'i

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*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>13</sup> The cost of incarceration continues to rise. The \$219 figure reflects the average cost in 2020.

# Opportunity Youth Action Hawai'i

Senate Committee on Judiciary

Hearing Time: 9:00 a.m., February 1, 2024

Location: Hawai'i State Capitol, Room 16 & Videoconference

Re: SB2395, Relating to a Probation Compliance Credits Program

Aloha e Chair Rhoads, Vice Chair Gabbard and members of the Committee:

We are writing in **support** of SB2395, Relating to a Probation Compliance Credits Program

This bill will require the Judiciary to establish a compliance credits pilot program for probationers that comply with their conditions of supervision.

Our collective, the Opportunity Youth Action Hawai'i (OYAH), works to support young people under age 25 who are disconnected from school and work, referred to as "opportunity youth." This developmental time period is extremely consequential to the individual growth and overall life chances of our children. Through this work, we have supported broad policies that promote equity and reduce the harmful effects of incarceration for youth and adults. We support this measure.

The Opportunity Youth Action Hawai'i hui is a collaboration of organizations and individuals committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs. We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth homelessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

**Please support SB2395.**