

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

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

January 31, 2024

H.B. 1626: RELATING TO A PROBATION COMPLIANCE CREDITS PROGRAM

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Office of the Public Defender supports the intent of H.B. 1626.

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

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Wednesday, January 31, 2024 at 2:00 p.m.

State Capitol, Conference Room 325

by

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First Circuit

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Bill No. and Title: House Bill No. 1626, 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 House Bill No. 1626, however, we respectfully oppose the bill in its current form. The Judiciary respectfully recommends amendments to the bill.



House Bill No.1626, Relating to Probation Compliance Credits Program
House Committee on Judiciary & Hawaiian Affairs
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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 HB1626.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

COMMITTEE ON AGRICULTURE & FOOD SYSTEMS

Representative Cedric Asuega Gates, Chair

Representative Kirstin Kahaloa, Vice Chair

Wednesday, January 31, 2024

Room 325

2:00 PM

STRONG SUPPORT FOR HB 1626 – PROBATION COMPLIANCE CREDITS

Aloha Chairs Tarnas and Gates, Vice Chairs Takayama and Kahaloa and Members of the Committees!

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 bars¹ 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

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

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

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, 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.