



**PRESS RELEASE**  
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## **ACLU OF HAWAII'ANNOUNCES 2022 LEGISLATIVE PRIORITIES**

*Honolulu, Hawai'i:* The ACLU of Hawaii's priorities for the 2022 legislative session are concentrated on addressing systemic policies and practices that disproportionately harm Native Hawaiians, Pacific Islanders, and Black people in Hawai'i through over-policing, charging decisions, the criminalization of poverty, and barriers to reentry from jails and prisons. The four key areas on which the ACLU of Hawai'i is focused this year are clean slate legislation, ending incarceration for technical violations of parole and probation, pretrial bail reform, and a moratorium on the construction of new jails in Hawai'i.

### **Clean Slate**

In Hawai'i, 560,800 people have a record. That is 1 in 2 people. Between 70 million and 100,000 million people—or nearly one in three people in the United States—have some type of criminal record. As a result, over 33% of the country's population have criminal records creating barriers that block access to jobs, housing, education, starting a business, professional licenses, credit, volunteer opportunities, voting, and participating fully in social and civic community life. Based on Hawaii's 2020 census figures, as many as 485,000 people in Hawai'i could be affected by this.

In response to the barriers that a criminal record presents, a growing number of states have enacted "Clean Slate" legislation to automate the clearing of records after a period of time, allowing people who have served their debt to society to have second chances and move forward with their lives. These states include Connecticut, Michigan, Delaware, Utah, and Pennsylvania. In 2021, clean slate initiatives were also introduced in Louisiana, Texas, Oregon, New York, Colorado, North Carolina, and Missouri.

The ACLU of Hawai'i is advocating for a Clean Slate bill in Hawai'i. This would afford impacted people a fair chance at finding employment, housing, and accessing other resources needed to support themselves and help their families be successful. This bill would automatically expunge arrest records for all convictions after a certain time period. All misdemeanor convictions would be automatically expunged after 5 years and all felony convictions would be automatically expunged after 7 years. In each case, this

would be contingent on the person with the criminal record not having any subsequent convictions during that period. The proposed bill would also automatically expunge arrest records for non-convictions (a process which currently requires a petition) and seal court records for both expunged convictions and non-convictions.

Although Hawai'i currently allows for expungement orders, eligibility is restricted to arrests that lead to non-convictions and a limited number of convictions. Also, most people who are eligible to have their criminal records expunged have never obtained relief because the expungement petition process is complex, and often requires a lawyer and court fees, which they cannot afford.

Research shows that record clearing creates employment opportunities for people to achieve economic success and help contribute to their community. For example, a year after a record is cleared, people with past criminal records are more likely to be employed and are shown to earn more money at work. Similarly, research shows that criminal records create barriers to obtaining housing—clean slate legislation would help prevent this.

### **Parole and probation reform**

Reducing Hawaii's incarcerated population and addressing the massive overcrowding crisis in our jails and prisons is difficult and takes time, but the solutions are not mysterious. That's why the ACLU of Hawai'i is supporting an end to incarceration for technical violations of probation and parole.

According to the [HCR 85 Task Force Report](#), from 1978 to 2016, Hawaii's overall population increased 53% while our combined jail and prison population skyrocketed by 670%. And in 2018 alone, Hawai'i had over 28,000 people incarcerated or under some form of community supervision (i.e. probation, parole, etc.). Incarcerating people for technical violations of parole and probation is fueling this trend.

Nearly one fourth of all jail and prison admissions in Hawai'i resulted from technical violations of probation and parole. A technical violation means a person has not complied with some condition of supervision, but has not actually been convicted of a new crime. For example, technical violations include things like: missing an appointment with a probation or parole officer, working a job that lasted past curfew, using alcohol or drugs (even if the underlying offense isn't related to alcohol or drugs), failing to report a change in address, or associating with another person under legal supervision, even if that person is a relative. This has a real impact in Hawai'i. In 2020 for example, 100% of parole revocations were the result of technical violations of parole. None were the result of new felony convictions.

Also, incarcerating people for technical violations of probation and parole is expensive. Currently, it costs taxpayers \$219 a day or \$79,935 a year to incarcerate just one

person in Hawai'i. And many of those people are being incarcerated for technical violations.

People accused of committing a technical violation while under probation and parole supervision should not have their parole revoked as a result, and should not be held in custody, jail, or prison while awaiting a violation hearing.

The bill being proposed by the ACLU of Hawai'i would prevent people on parole or probation from facing immediate incarceration when accused of certain misdemeanors (specifically, those not involving weapons, offenses against the person, or domestic violence). The bill would also require that conditions of probation and parole supervision be reasonably related to the crime of conviction and tailored to an individual's circumstances and abilities. Finally, the bill would also prohibit restrictions on association and create a "good time" credit system for people on parole and probation. This would shift the system from a punitive to an incentive-based one for individuals who successfully follow conditions.

### **Pretrial bail reform**

At any given time, one-half or more of the people in Hawai'i jails have not been convicted of the crime they are accused of committing and are in jail simply because they cannot afford to pay for bail.<sup>1</sup>

In other words, we are jailing people who, in the eyes of the law, are innocent.

The ACLU of Hawai'i is supporting the Criminal Pretrial Reform bill. The bill creates a rebuttable presumption that every person charged is entitled to unconditional release. Under the bill, before the court grants a release a hearing must be held within 40 hours of the person's arrest. If the court finds against unconditional release and bail is recommended by the state, non-financial alternatives to bail must be considered before imposing money bail. This bill would also allow that bail can be denied to any person: (1) who is charged with a serious crime (e.g., murder or attempted murder in the first or second degree and certain other felony offenses); and (2) for whom there is a serious risk that the person will abscond; (3) where there is a serious risk of obstruction of justice; or (4) where there is a serious risk that the person poses a significant danger to a specific or reasonably identifiable person based on an articulable risk.

Under the bill, if a court finds no condition or combination of conditions will reasonably assure the appearance of the person when required or the safety of any other person or persons, the court can deny bail.

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<sup>1</sup> As of January 24, 2022, 987 out of 1736 or 57% of people are pretrial status in Hawai'i jails located on O'ahu, Maui, Hawai'i and Kaua'i. There were also 16 people with pretrial status at Halawa Medium Security Prison. Department of Public Safety Weekly Population Report (January 24, 2022).

Setting money bail at unaffordable amounts violates equal protection and due process rights and destroys the lives of thousands of Hawai'i families. Low income families and people of color often can't afford to come up with money for bail, leaving them in jail awaiting trial, sometimes for months or even years. Meanwhile, wealthy people accused of the same crime can buy their freedom and return home.

### **Moratorium on building new jails in Hawai'i**

Before moving ahead with plans for an estimated billion dollar jail, Hawai'i must change its approach to public safety and community health. Hawai'i needs an evidence-based systems approach to improve our criminal legal system and reduce the number of people we jail.

We know a new jail is not a solution to the facts that: nearly half of Hawaii's jailed population are Native Hawaiian and Pacific Islander; most people remain locked up because they cannot afford bail; and the reason many people are in jail or prison in the first place is because they lack housing, healthcare, and mental health services.

Compounding these injustices, the largest COVID-19 outbreaks in Hawai'i have been in jails and prisons. We must invest in community-based approaches to end harm and violence. These evidence-based solutions are proven to have exponentially better outcomes than incarceration. Jailing people should be the last option, not the first.

The ACLU of Hawai'i supports a hearing on a bill that would pause the development of a public-private partnership for a new jail to replace O'ahu Community Correctional Center. We will advocate for the bill to include a five-year Moratorium on building new or expanding any jails or prisons until the state implements data-driven criminal legal reforms to reduce our incarcerated population without compromising community safety.

The passage of this bill would prevent the waste of potentially a billion dollars of taxpayer money while allowing for the use of proven evidence-based practices to reduce incarceration: like bail reform, clean slate legislation, and ending incarceration for technical violations of probation and parole.

More detailed information about the ACLU of Hawai'i priority bills for the 2022 legislative session is found below.

#### **[SB2778](#) Crime; Unconditional Release; Bail**

**RELATING TO PRETRIAL RELEASE.** Establishes a presumption that a person charged with a crime is entitled to unconditional release unless proven otherwise. Requires the consideration of nonfinancial conditions of release before bail is ordered.

**JDC, WAM**

#### **[SB2871](#) Crime; Unconditional Release; Bail**

**RELATING TO PRETRIAL RELEASE.** Establishes a presumption that a person charged with a crime is entitled to unconditional release unless proven otherwise. Requires the consideration of nonfinancial conditions of release before bail is ordered.  
**JDC, WAM (\*Note: Identical bill to SB2778)**

**HB2017 Crime; Unconditional Release; Bail**

**RELATING TO PRETRIAL RELEASE.** Establishes a presumption that a person charged with a crime is entitled to unconditional release unless proven otherwise. Requires the consideration of nonfinancial conditions of release before bail is ordered.  
**JHA, FIN**

**SB2514 Probation; Crimes; Conditions; Revocation; Substance Abuse**

**RELATING TO PROBATION.** Creates a good time credit system, by which criminal defendant on probation may reduce their time on probation through compliance with conditions of probation. Provides that a condition of probation that prohibits unnecessary associations may only apply with respect to certain persons having a connection to the underlying crime or the prosecution of the crime. Provides that a condition that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it reasonably related to the crime for which the defendant was convicted. Provides that substance abuse treatment shall not be required of a defendant on probation if a program is not available in the county of the defendant's residence or if the defendant has not been accepted into a program. Prohibits incarceration for certain technical violations. **PSM, JDC**

**HB 2344 Probation; Crimes; Conditions; Revocation; Substance Abuse**

**RELATING TO PROBATION.** Creates a good time credit system, by which criminal defendant on probation may reduce their time on probation through compliance with conditions of probation. Provides that a condition of probation that prohibits unnecessary associations may only apply with respect to certain persons having a connection to the underlying crime or the prosecution of the crime. Provides that a condition that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it reasonably related to the crime for which the defendant was convicted. Provides that substance abuse treatment shall not be required of a defendant on probation if a program is not available in the county of the defendant's residence or if the defendant has not been accepted into a program. Prohibits incarceration for certain technical violations. **CMV, JHA**

**HB2342 Parole; Crimes; Conditions; Revocation; Substance Abuse**

**RELATING TO PAROLE.** Creates a good time credit system, by which a parolee may reduce the parolee's sentence through compliance with conditions of parole. Provides that a condition of parole that prohibits unnecessary associations may only apply with respect to certain persons having a connection to the parolee's underlying crime or the prosecution of the crime. Provides that a condition of parole that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it reasonably related to the crime for which the parolee was convicted. Provides that substance abuse treatment shall not be required of a parolee if a program is not

available in the county of the parolee's residence or if the parolee has not been accepted into a program. Prohibits incarceration for certain technical violations.  
**CMV, JHA**

**HB2343 Criminal Records; Arrest; Conviction; Automatic Expungement RELATING TO THE EXPUNGEMENT OF CRIMINAL RECORDS.** Expands eligibility for, and automates, the expungement of arrest and conviction records if certain criteria are met, including the lack of a conviction record for a specified time period following the date of an arrest, conviction, or release from incarceration. **CMV, JHA**

**SB3159 Criminal Records; Arrest; Conviction; Automatic Expungement RELATING TO THE EXPUNGEMENT OF CRIMINAL RECORDS.** Expands eligibility for, and automates, the expungement of arrest and conviction records if certain criteria are met, including the lack of a conviction record for a specified time period following the date of an arrest, conviction, or release from incarceration. **JDC**

**HB 2516 Department of the Attorney General; Hawaii Correctional Systems Oversight Commission; Oahu Community Correctional Center; New Jail; Criminal Justice Reform Committee; Appropriation (\$)**  
**RELATING TO CORRECTIONAL FACILITIES.** Pauses development of a new jail to replace the Oahu community correctional center. Requires the Hawaii Correctional Systems Oversight Commission to establish a Criminal Justice Reform Committee. Appropriates moneys. **CMV, JHA, FIN**

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*The mission of the Hawai'i affiliate of the ACLU is to protect the civil liberties contained in the state and federal constitutions through litigation, legislative and public education programs statewide. The ACLU is funded primarily through private donations and offers its services at no cost to the public. The ACLU does not accept any government funds.*