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STATE OF HAWAII  
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No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 1246  
RELATING TO ALTERNATIVES TO INCARCERATION

By  
Nolan P. Espinda, Director

House Committee on Public Safety  
Representative Gregg Takayama, Chair  
Representative Matthew S. LoPresti, Vice Chair

Thursday, February 2, 2017; 11:00 a.m.  
State Capitol, Conference Room 312

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

The Department of Public Safety (PSD) **supports the intent** of House Bill (HB) 1246 and recommends the following changes to ensure that the objectives of HB 1246 are met. This measure proposes to amend Act 217, passed by the 2016 Hawaii State Legislature, by broadening the scope from misdemeanor offenders to all offenders subject to specific exclusions.

PSD recommends that the HB 1246 language in HRS 353-10.5 (c) be amended to state:

“provided further that the person may ~~shall~~ be released for a valid purpose as determined by the Director.”

PSD recommends that language in HRS 353-36 (b) (1) be amended by deleting any bail restriction amount. PSD recommends that in place of a bail restriction the following language be added:

“the offender’s pre-trial risk assessment tool score be moderate or lower.”

PSD also recommends that HRS 353-36 (b) (4) be amended to include arrest or conviction for violation of an order of protection or violation of a temporary restraining order.

PSD would like to request that the Legislature appropriate sufficient funds to ensure the success of the objectives created by HB 1246, as the proposed changes will require additional personnel and operating funds for the Intake Service Centers and the Community Correctional Centers.

Thank you for the opportunity to present this testimony.

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

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**THE HONORABLE GREGG TAKAYAMA, CHAIR  
HOUSE COMMITTEE ON PUBLIC SAFETY  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawai'i**

February 2, 2017

**RE: H.B. 1246; RELATING TO ALTERNATIVES TO INCARCERATION.**

Chair Takayama, Vice-Chair Lo Presti, and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in opposition to H.B. 1246.

The purpose of H.B. 1246 is to reduce the community correctional centers population by releasing defendants convicted of, or awaiting trial for specified felony, misdemeanor or petty misdemeanor offenses. While we have always appreciated the Department of Public Safety's hard work and dedication to protecting the public, this proposal to lower the prison population by releasing defendants with minimal supervision seems directly contrary to the goal of public safety and raises concerns for our Department.

Areas of Concern:

- § 353-36 proposes the release of "an incarcerated person who has been sentenced pursuant to chapter 706." This amendment from "section 706-663" to "chapter 706" is broad. Chapter 706 covers not just sentencing of misdemeanors – which was initially anticipated in Act 217, Session 2016 – but also other sentencing provisions including but not limited to: sentencing for repeat offenders, sentencing for offenses against children, elders and the handicap.
- The language of § 353-36(b)(4) appears to result in the unintended consequence that the offender's current charge for which they are being released is not a determining factor on their eligibility for release. Therefore, an offender incarcerated for a terroristic threatening in the first degree (class C felony) with no other criminal background is

eligible for release, but an offender who is charged with driving without a license (petty misdemeanor) who has a prior conviction for terroristic threatening would not be eligible.

- § 353-36(d) requires that notification be sent to prosecution prior to the defendant's release, "not later than forty-eight hours prior to the time of the actual release." While the Department appreciates this safeguard implemented in Act 217 Session 2016, the Department maintains that 48 hours does not allow victims proper time to plan and/or implement necessary safety measures.
- § 353-10.5(d) which addresses "alternative programs". The proposed bill establishes that "alternative programs" can be established by the department (Department of Public Safety). This amendment appears to be vague, ambiguous and lacks transparency on what types of programs can be established or will be established in the future. Under subsection (d)(1), this bill proposes one form of alternative programs to include "home detention, curfew" while striking out electronic monitoring or surveillance. Without any form of an electronic home monitoring or surveillance in place, this section appears to lack accountability for the offender, and is comparable to being released on recognizance.
- § 353-36 was initially established in Act 217, Session 2016 (release of misdemeanants). This bill however proposes that the director "may" require electronic monitoring and surveillance as a condition of release. The Department does not agree with the proposal to release offenders, but if an offender is released pursuant to this section, it would be more appropriate to say they "shall" be required to submit to electronic monitoring or surveillance.
- § 353-36(f) proposes a deadline in which DPS is to adopt policies and procedures for the release of offenders. For purposes of transparency, the Department believes DPS should be required to have all policies and procedures in place prior to releasing any offenders pursuant to this bill.

Although our Department understands that overcrowding is of great concern for the Department of Public Safety, public safety should always stand alone as a top priority. For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1246. Thank you for the opportunity to testify on this matter.

**African American Lawyers Association  
1188 Bishop St. #1908  
Honolulu, HI 96813**

January 31, 2017

**Committee on Public Safety: Representative Greg Takayama, Chair  
Representative Matt LoPresti, Vice Chair**

**RE: HB1246  
Testimony In Support of Alternative to Incarceration  
for Pretrial Detainees**

**Hearing : Thursday, February 2, 2017, 11:00 AM, Room 312**

Dear Representative Takayama, Representative Lopresti and Committee Members:

The African American Lawyers Association supports HB1246 and suggests that alternatives to Incarceration Pre Trial be extended to all misdemeanor and petty misdemeanor offenses. It is time to ease the overcrowding of pre trial inmates who have not been found guilty. High bail may mean no bail to those who do not have money to pay. Alternatives are greatly needed so we do not end up with a system based upon financial class- those inmates with money are able to bail out, while those with little income remain in jail, unable to post bail. Please pass this bill.

By Daphne E. Barbee Wooten  
President  
African American Lawyers Association













**lopresti1 - Randy**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 8:44 PM  
**To:** pbstestimony  
**Cc:** blawaiianlvr@icloud.com  
**Subject:** Submitted testimony for HB1246 on Feb 2, 2017 11:00AM

**HB1246**

Submitted on: 1/31/2017

Testimony for PBS on Feb 2, 2017 11:00AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We FULLY SUPPORT this bill, since it will help to decrease the jail population. We need more innovative ideas that work towards "building people & not prisons", as Kat Brady correctly asserts on a regular basis!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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