

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on
Judiciary**

March 1, 2017

H.B. No. 464 HD1: RELATING TO BAIL

Chair Nishimoto and Members of the Committee:

We oppose passage of H.B. No. 464 HD 1 which seeks to allow for pretrial release of misdemeanants, petty misdemeanants, and law violators without a requirement that the person post any cash, credit, stocks, bonds or real property as security for bail. The troublesome part of the bill is contained in section 1 which states that a person who violates his/her aforementioned release status by committing any new crime would be guilty of a Class C felony.

While the bill contains an admirable goal by providing for no-surety bail for those accused of minor offenses, it completely abandons this positive aspect by punishing those who commit an additional minor offense while on release as felons. Offenders should be punished by the severity of their crimes. To do otherwise would increase an already overcrowded prison system.

Thank you for the opportunity to provide testimony in this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHRISTOPHER D.W. YOUNG
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE SCOTT NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i

March 1, 2017

RE: H.B. 464, H.D. 1; RELATING TO BAIL.

Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in opposition to H.B. 464, H.D. 1.

The purpose of H.B. 464, H.D. 1 is to allow all defendants who have been charged with a misdemeanor, petty misdemeanor or violation to be released on recognizance while creating the penalty of a class C felony for a defendant who commits a new offense while released and awaiting trial.

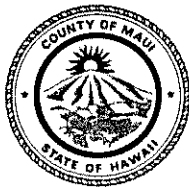
Bail is set in most if not all cases to ensure that the defendant returns for all court proceedings related to their case after being released. By removing the requirement of bail or a surety in all non-felony cases, H.B. 464, H.D. 1 proposes a system, which removes any incentive or obligation for a defendant to return to court. Implementation of H.B. 464, H.D. 1 would create the opposite effect of decreasing inmate population of pre-trial detainees of non-felony offenses. In fact, H.B. 464, H.D. 1 would in effect create more felons while simultaneously increasing the number of pre-trial detainees. The amendments proposed in section 2 could create the unintended consequence of potentially releasing defendants without bail, who have been charged with violent offenses including but not limited to abuse of family or household members (§709-906, H.R.S.), sex assault in the third or fourth degree (§707-732 and §707-733, H.R.S.) or assault in the third degree (§707-712, H.R.S.). **In addition, due to the fact that “serious crime” is defined in §804-3 as “murder or attempted murder in the first degree, murder or attempted murder in the second degree, or a class A or B felony, except forgery in the first degree and failing to render aid under section 291C-12,” the addition of “or required” on page 2, line 7 provides no additional protections as H.B. 464, H.D. 1 involves the release of**

all non-felony offenders. Although the proposed amendments – “or required” – in H.B. 464, H.D. 1 has good intentions, it does not provide the protections that it intended to address and potentially dangerous misdemeanants, petty misdemeanants or violators will still be allowed release on recognizance regardless of the circumstances of the alleged offense.

The creation of a class C felony for the commission of a new offense while released would not provide the proper safeguards as it intends. There are a high number of violators, petty misdemeanants and misdemeanants who re-commit another criminal offense while pending trial. One common example would be the offense of driving without a valid driver’s license (DWOL - §286-102, H.R.S.). Currently, DWOL is a petty misdemeanor for a first or second offense in a five year period while a third or subsequent offense within a five year period is classified as a misdemeanor. In these types of cases, it is common to have a defendant pick up multiple DWOL charges while awaiting arraignment or trial for the initial DWOL charge. H.B. 464, H.D. 1 would transform these common non-violent petty misdemeanor offenses into a class C felony offense which could necessitate a higher bail amount leading to a rise in pre-trial detainees.

For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 464, H.D. 1. Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
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CONTACT: RICHARD K. MINATOYA
Deputy Prosecuting Attorney
Supervisor - Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
HB 464, HD 1 - RELATING TO BAIL

March 1, 2017

The Honorable Scott Y. Nishimoto
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members
House Committee on Judiciary

Chair Nishimoto, Vice Chair San Buenaventura and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly opposes HB 464, HD 1. This measure provides that no financial or property surety shall be required for bail in a case in which no felony is alleged, and that a person who commits a criminal offense while on bail for which no financial or property surety was required shall be guilty of a class C felony.

Bail is set in a vast majority of cases to ensure that the defendant appears at all court proceedings in the defendant's case after the defendant is released from custody. By deleting the requirement of bail or a surety in all non-felony cases, this measure removes any incentive or obligation for a defendant to return to court.

This measure will create the opposite effect of decreasing inmate population of pretrial non-felony detainees. In fact, this measure will create more felons while simultaneously increasing the number of pretrial detainees. The amendments proposed in section 2 could create the unintended consequence of releasing defendants without bail who are charged with violent

offenses, including Abuse of a Family or Household Member (HRS § 709-906), Sex Assault in the Third or Fourth Degree (HRS § 707-732 and § 707-733) or Assault in the Third Degree (HRS § 707-712).

The creation of a class C felony for the commission of a new offense while on release will provide the safeguards that it appears to intend. There are many violators, petty misdemeanants and misdemeanants who recommit another criminal offense while pending trial. The Honolulu Prosecutor's testimony describes a common situation with people who are charged with Driving Without a License. This measure would turn these common non-violent petty misdemeanor offenders into persons charged with a felony offense, which will result in higher bail amounts, which in turn leads to more pretrial detainees.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be HELD.

Thank you very much for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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LATE

KIRK CALDWELL
MAYOR



—LOUIS M. KEALOHA
CHIEF

CARY OKIMOTO
JERRY INOUE
DEPUTY CHIEFS

OUR REFERENCE ST-NC

March 1, 2017

The Honorable Scott Y. Nishimoto, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

SUBJECT: House Bill No. 464, H.D. 1, Relating to Bail

I am Stason Tanaka, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 464, H.D. 1, Relating to Bail.

This bill states that a person who violates his/her release status by committing any new crime would be guilty of a Class C felony. It does not specify the degree of the crime committed, so an arrestee who is awaiting arraignment for trial could potentially be charged with a Class C felony for a Driving Without a License offense, which is either a petty misdemeanor or misdemeanor. This could potentially tie up HPD's detectives who could handle more serious cases.

The HPD urges you to oppose House Bill No. 464, H.D. 1, Relating to Bail.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Cary Okimoto in black ink.

Cary Okimoto
Acting Chief of Police

Sincerely,

Handwritten signature of Stason Tanaka in black ink.

Stason Tanaka, Captain
Criminal Investigation Division

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 4:31 PM
To: JUDtestimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for HB464 on Mar 1, 2017 12:00PM

HB464

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

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

Comments: We continue to STRONGLY SUPPORT this bill.

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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HB464 HD1
RELATING TO BAIL
House Committee on Judiciary

March 1, 2016

12:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** HB464 HD1. OHA supports this measure's intent to alleviate the substandard conditions and overcrowding in Hawai'i's jails, by reducing the high number of inmates held in pretrial detention simply because they cannot afford to post their bail for low-level offenses. **However, OHA requests that this bill be amended to delete Section 1 as regressive and counterproductive to the measure's goals .**

The cash bail system is intended to secure defendants' appearance in court; however, as currently implemented, it frequently acts as a punishment upon the poor even prior to a conviction for a crime. This system subverts the intent stated in HRS 804-9 not to render the "[bail] privilege useless to the poor." **In other words, our current cash bail practices invert the common law principle that those accused of crimes are "innocent until proven guilty," by punishing alleged offenders with imprisonment until they are proven innocent.**

The detention of unconvicted defendants who pose no threat to public safety may also exacerbate the challenges faced by those in poverty. While wealthier defendants can buy their pretrial freedom, poorer defendants must languish in jail, frequently for periods exceeding the sentence carried by their charges and at great cost to taxpayers. Even short jail stays for indigent defendants can disrupt their lives and families resulting in job loss, eviction, loss of custody of their children, and worsened poverty. Moreover, those who are able to pay private bonds can spend years in debt to bondsmen regardless of whether they are convicted for the crime originally charged. **Faced with these consequences, poor defendants may frequently offer guilty pleas at arraignment, notwithstanding potential fines and the permanent collateral consequences of criminal conviction records, in exchange for immediate freedom.**

By allowing certain alleged misdemeanants to be released from pretrial detention without cash bail, HB464 HD1 seeks to mitigate the punitive and long-term consequences of the cash bail system on poor defendants. OHA notes that this measure would allow defendants' risk of flight or public safety threat to be considered in continuing their detention, based on validated risk assessments already in use. OHA also notes that there are alternatives to cash bail or continued detention to ensure court appearances, including release conditions, electronic monitoring, supervised release, or even simple court date reminder alerts. These cost-effective alternatives can save substantial state resources on detentions for mostly nominal bail amounts, without undermining the criminal justice process. For example, since eliminating cash bail altogether in the 1990s, Washington D.C. has utilized alternatives to

pretrial detention for all but its highest risk defendants, and have found that very few fail to appear, or end up re-arrested on new charges. **Accordingly, OHA supports the amendments to the cash bail system found in Section 2 of this measure.**

However, OHA notes that Section 1 of this bill would unnecessarily impose substantial criminal liability on low-level defendants who are released and subsequently convicted of any crime whatsoever. By escalating any crime committed by a defendant awaiting trial on bail to a class C felony, Section 1 may exacerbate the prison overcrowding and potentially unjust punitive consequences this measure seeks to mitigate. Notably, many poor misdemeanor defendants may be unsheltered, and battle substance abuse issues; these individuals would be automatically subject to felony liability for minor offenses, such as trespassing and loitering, committed during their pre-trial release. **As such, this provision would have the potential to create a new volume of felons from those accused of mere misdemeanors.** Accordingly, OHA urges the Committee to delete Section 1 of this measure.

Accordingly, OHA urges the Committee to **PASS WITH AMENDMENTS** HB464 HD1. Mahalo for the opportunity to testify on this measure.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Rep. Scott Nishimoto, Chair

Rep. Joy San Buenaventura, Vice Chair

Wednesday, February 28, 2017

12:00 noon

Room 325

[COMMENTS ON HB 464 HD1 - BAIL](#)

Aloha Chair Nishimoto, Vice Chair San Buenaventura 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 two decades. This testimony is respectfully offered on behalf of the approximately 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,700 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 Native Hawaiians, far from their ancestral lands.

Bail reform is desperately needed in Hawai'i as our houseless population is increasing across the islands. Community Alliance on Prisons would very much like to support this measure to alleviate the sub-standard conditions and overcrowding in our jails, however, Section 1 presents many problems and, in our humble opinion, defeats the good intentions, which we are sure were the impetus for this measure.

The purpose of the cash bail system is to ensure that an individual will show up in court. New York has instituted a successful system that texts a reminder to the individual about his/her pending court date.

The Vera Institute of Justice research found that: *"In misdemeanor cases, pretrial detention poses a particular problem because it may induce otherwise innocent defendants to plead guilty in order to exit jail, potentially creating widespread error in the system."*¹

¹ The Downstream Consequences of Misdemeanor Pretrial Detention, July 2016.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2809840

The misuse of jails is helping to drive mass incarceration and is part of a system that is neither economically sustainable nor beneficial to public safety, community well-being, and individual rehabilitation.²

In 2011, Kentucky lawmakers set out to improve their pretrial system by determining who would be best-suited for release. (Kentucky is one of only four states – the others are Illinois, Oregon and Wisconsin – without commercial bail.) They changed pretrial release by requiring risk assessments and improving pretrial supervision. The reforms emphasized alternatives to jail for defendants who are not dangerous or a flight risk, who have substance abuse or mental health needs, or who are unable to pay their bail fee.

Defendants now undergo a pretrial risk assessment that considers factors linked to pretrial appearance rates and successful reentry into the community, such as employment status, family ties and avoiding substance use. Those determined to be low or moderate risk to the public or alleged victims, and who are likely to appear for court, are released on their own recognizance. For some moderate-risk defendants, courts impose conditions, such as drug testing or GPS monitoring.³

The **Justice Policy Institute**⁴ report “Pretrial Services Programs Refined and Expanded Their Reach, while the Bail Industry Continued to Fight Forfeiture Collection and Non-Financial Release” recommends:

1. Ending the use of money as a proxy for risk in pretrial systems
2. Eliminating the for-profit bail bonding industry in the criminal justice system
3. Increasing the use of pretrial services agencies to measure the public safety and flight risks of arrested individuals and supervise them during pretrial release.

The **Criminal Justice Policy Program at Harvard** recently released a report⁵ asserting that:

1. Jailing people on the basis of what amounts to a wealth-based distinction violates well-established norms of fairness as well as constitutional principles.

² Incarceration’s Front Door: The Misuse of Jails in America, The Vera Institute of Justice, February 2015
<https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>

³ BAIL OR JAIL: MAY 2012 | STATE LEGISLATURES MAGAZINE
<http://www.ncsl.org/research/civil-and-criminal-justice/bail-or-jail.aspx>

⁴ BAIL REFORM UPDATE, 2013: Pretrial Services Programs Refined and Expanded Their Reach, while the Bail Industry Continued to Fight Forfeiture Collection and Non-Financial Release, SEPTEMBER 2013
<http://www.justicepolicy.org/research/6713>

⁵ Moving Beyond Money: A Primer on Bail Reform, Criminal Justice Policy Program, Harvard Law School, October 2016
<http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf>

2. By setting out a simple matrix of offenses and corresponding dollar amounts, bail schedules do not allow for meaningfully individualized considerations of a defendant's circumstances.
3. Electronic monitoring should only be used as an alternative to incarceration, not as a way to monitor low or medium-risk defendants whose detention would clearly not be justified.

*"Communities across the nation are striving to reduce their jail populations and costs through innovative programs such as: diverting individuals with mental health and substance abuse issues to alternative facilities; finding alternatives to bail for individuals who can be safely supervised in the community while awaiting trial; having expedited hearings for prisoners who are jailed for technical probation violations; expediting indigence screening and program referrals; issuing citations for low-level offenses instead of arrest and jail; and offering individuals charged with low-level, non-violent offenses the option of being adjudicated in community courts instead of in the criminal justice system."*⁶

Community Alliance on Prisons respectfully asks the committee to hold this bill if Section 1 is not deleted. Allow the HCR 85 task force to complete their work. Creating more felons is not the path that Hawai'i should be following. **Please acknowledge the extensive research in this area and either amend or hold this measure.**

Mahalo for this opportunity to testify.

⁶ Memo to HCR 85 Task Force, September 2016



HB 464 Bail: Provides that no financial or property surety shall be required for bail in a case in which no felony is alleged. Provides that a person who commits a criminal offense while on bail for which no financial or property surety was required shall be guilty of a class C felony.

HOUSE COMMITTEE ON JUDICIARY:

- Representative Scott Nishimoto, Chair; Representative Joy San Buenaventura, Vice Chair
- Wednesday, Mar. 1st, 2017: 12:00 p.m.
- Conference Room 325

HSAC Recommends changes to HB464 before we could support this bill.

ALOHA CHAIR NISHIMOTO; VICE CHAIR SAN BUENAVENTURA; AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of over 30 non-profit alcohol and drug treatment and prevention agencies.

Many people who lack bail money have substance use disorders or severe mental health challenges, which can lead to being late, missing court dates or even more misdemeanors. Given that one of the definitions of addiction is that they continue using despite adverse consequences, HSAC recommends an assessment be required instead and remove any reference to Class C Felony when actually a felony crime has not been committed.

A Class C Felony for non-compliance for a typical misdemeanor population that has substance abuse problems is counter-productive to removing non-violent offenders out of prison.

Recommended changes:

SECTION 1. Chapter 804, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

(b) Any person who violates this section with a misdemeanor shall be ~~guilty of a class C felony~~ required to obtain a mental health and substance use disorder assessment."

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



House Judiciary Committee
Chair Scott Nishimoto, Vice Chair Joy San Buenaventura

03/01/2017 at 12:00 PM in Room 325
HB464 HD1 –Relating to Bail

TESTIMONY –COMMENTS
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee:

Common Cause Hawaii offers comments on HB464 HD1 which provides that for misdemeanors, petty misdemeanors, or violations, no financial or property surety be required for bail. It also provides that a person who commits a criminal offense while on bail for which no surety was required is guilty of a felony.

Part of the mission of Common Cause is to promote equal rights for all. In light of that, Common Cause Hawaii (CCHI) has been concerned with the unequal treatment of people arrested for misdemeanors. Those who can pay bail, are typically released until their trial date, while those who cannot are held in jail for days, weeks, or even months awaiting trial. Not only is this very costly to the state, but it amounts to punishment for arrestees who, not having been judged guilty, are still considered innocent under the Constitution of the United States.

In light of this, CCHI supports the portion of HB464 HD1 that would bring greater equality of treatment into our justice system by abolishing bail and releasing arrestees charged with misdemeanors, regardless of their ability to pay.

However, we oppose the first part of this bill that would make people guilty of a felony if they committed another crime while awaiting trial. Obviously, if an individual committed a felony at this point, they would be charged with a felony. But we do not see the logic of adding a second felony charge nor of considering two misdemeanors as equal to a felony when that would not otherwise be the case. Instead, we would suggest that, depending on the seriousness of the infractions, persons charged with a second misdemeanor while awaiting trial be held in custody until their trials.

We urge that you delete or modify the first section of this bill while retaining the second section pertaining to abolishing bail and permitting release of people charged with misdemeanors pending their trials. With those changes, we would support this bill.

Thank you for the opportunity to offer comments on HB464 HD1.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 1, 2017 6:49 AM
To: JUDtestimony
Cc: hlusk@chowproject.org
Subject: Submitted testimony for HB464 on Mar 1, 2017 12:00PM

HB464

Submitted on: 3/1/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	The CHOW Project	Oppose	No

Comments: Thank you for the opportunity to testify. CHOW is part of the Hawaii Substance Abuse Coalition. HSAC Recommends changes to HB464 before we could support this bill. ALOHA CHAIR NISHIMOTO; VICE CHAIR SAN BUENAVENTURA; AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of over 30 non-profit alcohol and drug treatment and prevention agencies. Many people who lack bail money have substance use disorders or severe mental health challenges, which can lead to being late, missing court dates or even more misdemeanors. Given that one of the definitions of addiction is that they continue using despite adverse consequences, HSAC recommends an assessment be required instead and remove any reference to Class C Felony when actually a felony crime has not been committed. A Class C Felony for non-compliance for a typical misdemeanor population that has substance abuse problems is counter-productive to removing non-violent offenders out of prison. Recommended changes: SECTION 1. Chapter 804, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows: (b) Any person who violates this section with a misdemeanor shall be guilty of a class C felony required to obtain a mental health and substance use disorder assessment." Thank you. Heather Lusk

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LATE

Committee: Committee on Judiciary
Hearing Date/Time: Wednesday, March 1, 2017, 12:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i with comments concerning H.B. 464, H.D. 1, Relating to Bail for Misdemeanants

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") writes concerning H.B. 464, H.D. 1 which on one hand, provides for no-cash bail for persons charged with a misdemeanor, petty misdemeanor, or violation, but on the other, also makes it a class C felony for a person to commit a new criminal offense while released on no-cash bail.

The ACLU of Hawai'i wants to support H.B. 464, H.D. 1, as no-cash bail is a positive step towards addressing overcrowding at Hawaii's correctional facilities and safely reducing the pretrial incarcerated population, which currently is 20 percent of the total incarcerated population and over 50 percent of the incarcerated population at the Oahu Community Correctional Center. That being said, while a move towards a no-cash bail system for small offenses is a positive step in addressing the unconstitutional conditions at Hawaii's jails and prisons, the adoption of a two-strike system for turning small offenses into felonies would be **a giant leap backwards**.

For example, under Section 1 of H.B. 464, a homeless person charged with violating the City and County of Honolulu's sit-lie ban, a petty misdemeanor with penalties of up to 30 days in prison and a \$1,000 fine,¹ would face a class C felony charge, punishable by up to five years in prison and a \$10,000 fine,² for merely falling asleep on a sidewalk in Chinatown after being released on no-cash bail. Similarly, a person charged with a violation of the open container ordinance for having a beer at the beach, a violation with penalties of up to 30 days in prison and a \$1,000 fine, would be charged with a class C felony for having another beer at the beach after being released on no-cash bail.³ Likewise, a protestor charged with failure to disperse, a misdemeanor punishable with up to one year in prison and \$2,000 fine, would face a class C felony charge for protesting and failing to disperse while released on no-cash bail.⁴ These are but a few examples.

The costs to the State of Hawai'i for having more felons are not only the costs of incarcerating an individual for up to 5 years—which is approximately **\$140,123.50** = \$76.78 per day x 365 day x

¹ Revised Ordinances of Honolulu ("**ROH**") § 29-15A.2; Hawai'i Revised Statutes ("**HRS**") §§ 706-640, 706-663.

² HRS §§ 706-640, 706-660.

³ ~~HRS §§ 706-640, 706-660.~~

⁴ ~~HRS § 40-11021.3.~~

⁵ ~~MRS § 11-11102.~~ *The cost to house a prisoner in Hawaii may surprise you*, KHON 2 (June 28, 2016), available at <http://khon2.com/2016/06/28/the-cost-to-house-a-prisoner-in-hawaii-may>

Chair Nishimoto and Members of the Committee

March 1, 2017

Page 2 of 2

5 year on the mainland and **\$255,500.00** = \$140 x 365 days x 5 years in Hawai‘i⁵—but also the permanent social costs of branding an individual a “felon,” thus, making it less likely that he or she will be able to obtain stable employment, have a home, maintain a family, and most importantly, rehabilitate post-incarceration.⁶

We understand and share the concerns of people reoffending while released on bail. However, any serious offense committed during that period is most likely already a class C felony. Consequently, Section 1 of H.B. 464, H.D. 1 will likely increase the incarcerated population without deterring any serious offenses.

For these reasons, the ACLU of Hawai‘i cannot support, and would strongly oppose, H.B. 464 in its current version. If H.B. 464, H.D. 1, however, was amended to eliminate Section 1, then the ACLU of Hawai‘i would be a strong supporter of the bill as it would be an important step in addressing overcrowding and overincarceration in Hawai‘i, just as many other states have been doing with positive results on the mainland.

Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero
Legal Director
ACLU of Hawai‘i

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 50 years.

⁵ Marisa Yamane, *The cost to house a prisoner in Hawaii may surprise you*, KHON 2 (June 28, 2016), available at <http://khon2.com/2016/06/28/the-cost-to-house-a-prisoner-in-hawaii-may-surprise-you/>.

⁶ See, e.g., The Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility* (2010), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

American Civil Liberties Union of Hawai‘i
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