

**LATE**



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Cathy Ross**  
Deputy Director  
Administration

**Jodie F. Maesaka-Hirata**  
Deputy Director  
Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 1996  
RELATING TO PRETRIAL RELEASE

by

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Public Safety  
Representative Gregg Takayama, Chair  
Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018; 10:00 a.m.  
State Capitol, Conference Room 312

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

The Department of Public Safety (PSD) appreciates the intent of Senate Bill (HB) 1996, which would require the courts to order any person charged with a criminal offense to be released on personal recognizance pending trial, unless the person is a flight risk, unlikely to appear for trial, or a danger to others. Under the bill, the Judiciary would also be required to establish and maintain a Pretrial Services Program to conduct pretrial risk assessments. In addition, HB 1996 seeks to repeal State laws relating to bail.

PSD respectfully declines to comment on the measure and suggests, instead, that these matters be considered following receipt of the report of the HCR 134 Task Force in January 2019.

Thank you for the opportunity to testify.



*The Judiciary, State of Hawai‘i*

**Testimony to the House Committee on Public Safety**

Representative Gregg Takayama, Chair

Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018 10:00 AM

State Capitol, Conference Room 229

By

The Honorable Rom A. Trader

Chair

Criminal Pretrial Task Force

**WRITTEN TESTIMONY ONLY**

---

**Bill No. and Title:** House Bill No. 1996, Relating to the Pretrial Release.

**Purpose:** Requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Requires the Judiciary to establish statewide court appearance reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

**Judiciary's Position:**

The Judiciary takes no position on House Bill No. 1996 and respectfully suggests that the Committee defer consideration of criminal pretrial procedures until receiving the report of the Criminal Pretrial Task Force (HCR 134 Task Force) no later than twenty days prior to the 2019 Regular Session of the Legislature.

The HCR 134 Task Force was convened in August 2017 pursuant to 2017 House Concurrent Resolution Number 134, House Draft 1, Requesting the Judiciary to Convene a Task Force to Examine and Make Recommendations Regarding Criminal Pretrial Practices and Procedures to Maximize Public Safety, Maximize Court Appearances, and Maximize Pretrial Release of the Accused and Presumed Innocent (HCR 134). (Attachment A) The Judiciary supported HCR 134, noting that “[p]articularly in recent years, a growing number of states and localities have reconsidered criminal pretrial release practices and have undergone reforms to increase—indeed, maximize—public safety, court appearances, and pretrial release.”



Chief Justice Mark E. Recktenwald appointed the current Criminal Pretrial Task Force (HCR134 Task Force), comprised of 31 members representing County and State agencies involved in criminal pretrial procedures. A list of Task Force members and affiliations is also attached.

As directed in HCR 134, the HCR 134 Task Force is scheduled to submit its report of findings and recommendations, including any proposed legislation, to the Legislative Reference Bureau no later than August 1, 2018, with the report to be finalized for submission to the Legislature prior to the 2019 Regular Session.

Chaired by First Circuit Judge Rom A. Trader, the Task Force has begun study and deliberations to address issues named in HCR 134: (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and (2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals.

Following presentations on national and state pretrial procedures and a public comment session, Judge Trader appointed six subcommittees, with a mix of stakeholders on each subcommittee. Subcommittees are currently conducting further study in their respective subject areas:

1. Arrest/Booking Subcommittee
2. Jail Screening and Intake Assessment Subcommittee
3. Prosecutorial Decision-Making & Discretion Subcommittee
4. Initial Appearance / Defense Counsel Subcommittee
5. Pretrial Services - Risk Assessment / Supervision Subcommittee (Pretrial Services Operations)
6. Judicial Release & Detention Decision-Making Subcommittee

The Judiciary and the HCR 134 Task Force will reserve comments on proposed changes to current pretrial procedures until after the Task Force Report is submitted in December 2018.

In the event this bill moves forward, the Judiciary respectfully requests a delayed effective date to allow the Judiciary additional time to make modifications to the Judiciary's Information Management System (JIMS) to satisfy the basic requirements of this bill which are currently not available, and to determine the funding for vendor services necessary for these changes.

Thank you for the opportunity to testify on this measure.



**HCR134 Task Force Members:**

Judge Rom A. Trader, Circuit Court, First Circuit, Chair  
Judge Shirley Kawamura, Circuit Court, First Circuit, Recorder  
William C. Bagasol, Supervising Deputy, Office of the Public Defender  
Myles S. Breiner, Hawai'i Association of Criminal Defense Lawyers - Honolulu  
Michael Champion, M.D., State Department of Health  
Craig A. De Costa, Hawai'i Association of Criminal Defense Lawyers - Kaua'i  
Chief Tivoli S. Faaumu, Maui County Police Department  
Chief Paul K. Ferreira, Hawai'i County Police Department  
Janice Futa, Office of the Prosecuting Attorney, City & County of Honolulu  
Judge Colette Y. Garibaldi, Circuit Court, Admin. Judge, Criminal Division, First Circuit  
Wendy Hudson, Hawai'i Association of Criminal Defense Lawyers - Maui  
John D. Kim, Maui County Prosecuting Attorney  
Justin Kollar, Prosecuting Attorney, County of Kaua'i  
Milton Kotsubo, Public Member  
Judge Rhonda I. L. Loo, Circuit Court, Second Circuit  
Kamaile Maldonado, Office of Hawaiian Affairs  
Brook Mamizuka, Intake Administrator, Adult Client Services Branch, First Circuit  
Deputy Chief John McCarthy, Honolulu Police Department  
Judge Greg K. Nakamura, Circuit Court / Chief Judge, Third Circuit  
Senator Clarence K. Nishihara, State Senate, Public Safety Committee Chair  
Representative Scott Y. Nishimoto, House of Representatives, Judiciary Comm. Chair  
Shelley D. Nobriga, Intake Service Center, PSD  
Lester Oshiro, Chief Court Administrator, Third Circuit  
Chief Darryl D. Perry, Kaua'i County Police Dept.  
Michelle M.L. Puu, Deputy Attorney General, Dept. of the Attorney General  
Deputy Chief Victor Ramos, Maui County Police Department  
Mitchell D. Roth, Prosecuting Attorney, County of Hawai'i  
Judge Michael K. Soong, District Court, Fifth Circuit  
Kari Yamashiro, Deputy Chief Court Administrator, Fifth Circuit  
Marsha Yamada, Deputy Chief Court Administrator, Second Circuit  
Michael S. Zola, Hawai'i Association of Criminal Defense Lawyers - Hawai'i Island

---

---

# HOUSE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING CRIMINAL PRETRIAL PRACTICES AND PROCEDURES TO MAXIMIZE PUBLIC SAFETY, MAXIMIZE COURT APPEARANCES, AND MAXIMIZE PRETRIAL RELEASE OF THE ACCUSED AND PRESUMED INNOCENT.

1           WHEREAS, the United States Supreme Court declared in *United*  
2 *States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our  
3 society, liberty is the norm, and detention prior to or without  
4 trial is the carefully limited exception"; and  
5

6           WHEREAS, Article I, section 12, of the Hawaii State  
7 Constitution provides, "Excessive bail shall not be required,  
8 nor excessive fines imposed", and further provides, "The court  
9 may dispense with bail if reasonably satisfied that the  
10 defendant or witness will appear when directed, except for a  
11 defendant charged with an offense punishable by life  
12 imprisonment"; and  
13

14           WHEREAS, section 804-9, Hawaii Revised Statutes, provides  
15 that "[t]he amount of bail rests in the discretion of the  
16 justice or judge or the officers named in section 804-5; but  
17 should be so determined as not to suffer the wealthy to escape  
18 by the payment of a pecuniary penalty, nor to render the  
19 privilege useless to the poor. In all cases, the officer  
20 letting to bail should consider the punishment to be inflicted  
21 on conviction, and the pecuniary circumstances of the party  
22 accused"; and  
23

24           WHEREAS, House Concurrent Resolution No. 85 (2016)  
25 requested that the Chief Justice establish a task force to study  
26 effective incarceration policies; and  
27

28           WHEREAS, the Chief Justice has established the task force,  
29 which issued an interim report in December 2016, in which it



1 proclaimed, "Hawaii must chart a new course and transition from  
2 a punitive to a rehabilitative correctional model"; and  
3

4 WHEREAS, the task force has referenced a Vera Institute of  
5 Justice conclusion that "just a few days in jail can increase  
6 the likelihood of a sentence of incarceration and the harshness  
7 of that sentence, reduce economic viability, promote future  
8 criminal behavior, and worsen the health of those who enter -  
9 making jail a gateway to deeper and more lasting involvement in  
10 the criminal justice system at considerable costs to the people  
11 involved and to society at large"; and  
12

13 WHEREAS, the American Bar Association Criminal Justice  
14 Section Standards for Criminal Justice: Pretrial Release  
15 sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the  
16 judicial officer should assign the least restrictive  
17 condition(s) of release that will reasonably ensure a  
18 defendant's attendance at court proceedings and protect the  
19 community, victims, witnesses or any other person", and  
20 financial conditions "should not be employed to respond to  
21 concerns for public safety", nor should financial conditions  
22 result "in the pretrial detention of the defendant solely due to  
23 an inability to pay"; and  
24

25 WHEREAS, the American Council of Chief Defenders Policy  
26 Statement on Fair and Effective Pretrial Justice Practices  
27 (June 4, 2011) explains standards that "require public defenders  
28 to present judicial officers with the facts and legal criteria  
29 to support release, and where release is not obtained, to pursue  
30 modification of the conditions of release"; and  
31

32 WHEREAS, the National District Attorneys Association's  
33 National Prosecution Standards, Third Edition, with Revised  
34 Commentary, provides that "[a] prosecutor should not seek a bail  
35 amount or other release conditions that are greater than  
36 necessary to ensure the safety of others and the community and  
37 to ensure the appearance of the defendant at trial" and "[t]hese  
38 provisions recognize a respect for the presumption of innocence  
39 and therefore state a clear preference for release of defendants  
40 pending trial"; and  
41

42 WHEREAS, research suggests that pretrial services should  
43 include adequate and timely pretrial assessments of the accused  
44 that are focused on assessing risk of not appearing and risk to



1 public safety, and that the criminal justice system include  
2 viable options of appropriate supervision for different types  
3 and levels of risks; and  
4

5 WHEREAS, in recent years, several other states have  
6 undertaken significant reforms to their criminal pretrial  
7 practices and procedures, including Alaska, Arizona, Colorado,  
8 Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah;  
9 and  
10

11 WHEREAS, the Hawaii State Bar Association, through its  
12 Judicial Administration Committee, conducted a Criminal Law  
13 Forum in September 2016, during which it thoroughly discussed  
14 criminal pretrial issues among a diverse group of judges,  
15 prosecutors, and criminal defense attorneys, and featured  
16 speakers from the Honolulu Police Department, Intake Service  
17 Center of the Department of Public Safety, National Institute of  
18 Corrections, United States Pretrial Services Office of the  
19 District of Hawaii, and Arizona Administrative Office of the  
20 Courts; and  
21

22 WHEREAS, the Judicial Administration Committee recommended  
23 establishment of a criminal pretrial task force to examine and  
24 make recommendations regarding criminal pretrial practices and  
25 procedures; and  
26

27 WHEREAS, an examination of potential revisions to criminal  
28 pretrial practices, procedures, and laws would improve public  
29 safety while protecting state and federal constitutional  
30 principles regarding the presumption of innocence, liberty, and  
31 right to non-excessive bail, and lower costs throughout the  
32 criminal justice system; and  
33

34 WHEREAS, the task force will make recommendations regarding  
35 the future of a jail facility on Oahu and best practices for  
36 pretrial release, and any such recommendations should be  
37 considered by or coordinated with the Criminal Pretrial Task  
38 Force; now, therefore,  
39

40 BE IT RESOLVED by the House of Representatives of the  
41 Twenty-ninth Legislature of the State of Hawaii, Regular Session  
42 of 2017, the Senate concurring, that the Judiciary is requested  
43 to convene a Criminal Pretrial Task Force to:  
44



- 1 (1) Examine and, as needed, recommend legislation and  
2 revisions to criminal pretrial practices and  
3 procedures to increase public safety while maximizing  
4 pretrial release of those who do not pose a danger or  
5 a flight risk; and  
6
- 7 (2) Identify and define best practices metrics to measure  
8 the relative effectiveness of the criminal pretrial  
9 system, and establish ongoing procedures to take such  
10 measurements at appropriate time intervals; and  
11

12 BE IT FURTHER RESOLVED that the task force be comprised of  
13 members that represent the various perspectives of public  
14 officials with significant roles in the criminal pretrial system  
15 and include:  
16

- 17 (1) The Chief Justice or the Chief Justice's designee, who  
18 shall serve as the chairperson of the task force;  
19
- 20 (2) A judicial officer representative of each Circuit  
21 Court;  
22
- 23 (3) A member of the House of Representatives, appointed by  
24 the Speaker of the House of Representatives;  
25
- 26 (4) A member of the Senate, appointed by the President of  
27 the Senate;  
28
- 29 (5) A court administrator representative of each Circuit  
30 Court;  
31
- 32 (6) A representative of the Department of the Attorney  
33 General;  
34
- 35 (7) A representative from one of the various Intake  
36 Services Center of the Department of Public Safety;  
37
- 38 (8) A representative of the Prosecuting Attorney's Office  
39 of each county;  
40
- 41 (9) A representative of the Office of the Public Defender  
42 for the State of Hawaii;  
43





- 1 (10) Four representatives appointed by the Hawaii
- 2 Association of Criminal Defense Lawyers, including one
- 3 representative from each county;
- 4
- 5 (11) A representative of each county police department;
- 6
- 7 (12) A representative of the Department of Health;
- 8
- 9 (13) The Chairperson of the Board of Trustees of the Office
- 10 of Hawaiian Affairs, or the Chairperson's designee;
- 11 and
- 12
- 13 (14) A member of the public who has knowledge and expertise
- 14 with the criminal pretrial system appointed by the
- 15 Director of Public Safety; and
- 16

17 BE IT FURTHER RESOLVED that no member be made subject to  
 18 chapter 84, Hawaii Revised Statutes, solely because of that  
 19 member's participation as a member of the task force; and  
 20

21 BE IT FURTHER RESOLVED that the Judiciary and the  
 22 Department of Public Safety are requested to provide  
 23 administrative support to the task force; and  
 24

25 BE IT FURTHER RESOLVED that the task force, with the  
 26 assistance of the Legislative Reference Bureau, is requested to  
 27 submit a report of its findings and recommendations, including  
 28 any proposed legislation, to the Legislature no later than  
 29 twenty days prior to the convening of the Regular Session of  
 30 2019; and  
 31

32 BE IT FURTHER RESOLVED that, upon request of the task  
 33 force, the Legislative Reference Bureau is requested to assist  
 34 in the preparation of the report; provided that the task force  
 35 submits a draft, including any other information and materials  
 36 deemed necessary by the Bureau, to the Bureau no later than  
 37 August 1, 2018, for the preparation of the report; and  
 38

39 BE IT FURTHER RESOLVED that certified copies of this  
 40 Concurrent Resolution be transmitted to the Chief Justice of the  
 41 Hawaii Supreme Court, Attorney General, Public Defender of the  
 42 State of Hawaii, Director of Health, Director of Public Safety,  
 43 Chairperson of the Board of Trustees of the Office of Hawaiian  
 44 Affairs, Chief of Police of each county police department,



1 Prosecuting Attorney of each county, and the Hawaii Association  
2 of Criminal Defense Lawyers.

3  
4  
5  
6



**HB-1996**

Submitted on: 1/30/2018 7:37:39 AM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Maui Police Department	Oppose	No

Comments:

**HB-1996**

Submitted on: 1/31/2018 9:53:18 AM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Oppose	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES HB 1996, Relating to Pretrial Release. The Department believes that this measure is premature because the task force formed pursuant to HCR 134 is still working on its report, which is due twenty days prior to the 2019 regular session. The findings and recommendations of the task force should be considered prior to taking any action on the issue of pretrial release. Accordingly, the Department requests that this measure be HELD.

Thank you very much for the opportunity to provide this testimony.

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

CHASID M. SAPOLU  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE GREGG TAKAYAMA, CHAIR**  
**HOUSE COMMITTEE ON PUBLIC SAFETY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2018**  
**State of Hawai`i**

February 1, 2018

**RE: H.B. 1996; RELATING TO PRETRIAL RELEASE.**

Chair Takayama, Vice-Chair Gates, 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 of H.B. 1996.

The purpose of this bill is to reduce the community correctional centers population by releasing defendants awaiting trial for felony, misdemeanor and petty misdemeanor offenses without bail by implementing risk assessment tools to determine dangerousness and likelihood of returning to court.

It appears the intent of H.B. 1996 is to address the complex issue of prison overcrowding, by attempting to find a new and innovative approach. However, the proposals in H.B. 1996 essentially creates a new section in the Hawaii Revised Statutes which merely replicates what is already present and currently being applied in criminal cases. Currently individual defendants are interviewed and assessed on a number of factors which determine whether an individual should be released (supervised/unsupervised) or whether bail should be set. Inserting “unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required,” only recodifies factors that the courts currently weigh in determining an individual’s release. In addition, many if not all of the conditions that a court is allowed to impose when releasing an individual under H.B. 1996, is currently allowed under other sections of the H.R.S.

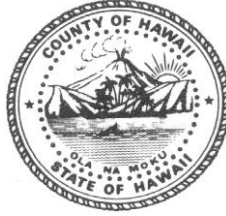
The Department firmly believes that with the passage of House Concurrent Resolution 134 during the 2017 Legislative Session, the proposed amendments established in H.B. 1996 are premature. H.C.R. 134 tasked the Judiciary to convene a task force to “examine and, as needed,

recommend legislation and revisions to criminal pretrial practices and procedures.” The task force was comprised of numerous stakeholders including but not limited to a member from the House and Senate, Department of the Attorney General, Department of the Judiciary, Prosecuting Attorney’s from each county, Public Defender’s Office, representatives from the Association of the Criminal Defense Lawyers, Department of Health and the Honolulu Police Department. It was further resolved that this task force was to submit a report of its findings and recommendations, including any proposed legislation no later than twenty days prior to the convening of the Regular Session of 2019. To date, this task force has met once a month since August of 2017, and anticipates to do so until August of 2018, at which time a report of their findings will be submitted. Due to H.C.R. 134, our Department believes that implementation of H.B. 1996 is premature and that it be necessary to await the report completed by the task force.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 1996. Thank you for the opportunity to testify on this matter.

**MITCHELL D. ROTH**  
PROSECUTING ATTORNEY

**DALE A. ROSS**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8908  
(808) 934-3403  
(808) 934-3503

WEST HAWAII UNIT  
81-980 HALEKI'I ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

## **OFFICE OF THE PROSECUTING ATTORNEY**

### TESTIMONY IN OPPOSITION OF HOUSE BILL 1996

#### RELATING TO PRETRIAL RELEASE

#### COMMITTEE ON PUBLIC SAFETY

Rep. Gregg Takayama, Chair  
Rep. Cedric Asuega Gates, Vice Chair

Thursday January 25, 2018, 10:00 A.M.  
State Capitol, Conference Room 312

Honorable Chair Takayama, Vice-Chair Gates and Members of the Committee on Public Safety. The Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in Opposition of House Bill No. 1996.

The purpose of H.B. 2221 is to reduce the amount of people incarcerated prior to trial by repealing and replacing State laws relating to bail.

The 2017 Legislature passed House Concurrent Resolution 134 which tasked the Judiciary to convene a task force to "examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures." The task force was comprised of numerous stakeholders. It was further resolved that this task force was to submit a report of its findings and recommendations, including any proposed legislation no later than twenty days prior to the convening of the Regular Session of 2019. To date, this task force has met once a month since August of 2017, and anticipates to do so until August of 2018, at which time a report of their findings will be submitted. Implementation of H.B. 1996 is premature as the Task Force has not completed its report.

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 as well as protects the community from further harm of the defendant. This Bill removes any incentive or obligation for a defendant to return to court. This bill further fails to take into account the risk and danger to the community.

When compared with the rest of the nation, Hawaii has one of the lowest, if not the lowest, pretrial populations per capita in the country. This Bill addresses a symptom of the problem, but fails to address the problem itself, which is a lack of judicial resources and defendant continuances which together clog the judicial system and delay trials.

For the above stated reasons, the Office of the Prosecuting Attorney, County of Hawai‘i Opposes the passage of House Bill No. 1996. Thank you for the opportunity to testify on this matter.





*Dedicated to safe, responsible, humane and effective drug policies since 1993*

TO: House Committee on Public Safety  
FROM: Carl Bergquist, Executive Director  
HEARING DATE: 1 February 2018, 10AM  
RE: HB1996, Relating to Pretrial Release, **SUPPORT**

Dear Chair Takayama, Vice Chair Gates, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to reform Hawai'i's bail system. As we work together to reduce our prison population by reforming our laws, e.g. drug paraphernalia reform as enacted in 2017 and investing in pre-arrest diversion programs like LEAD (Law Enforcement Assisted Diversion) and efforts like the Community Outreach Court, it is crucial that we make fundamental reforms to the bail system. With our cash bail system, posting bail is out of the reach for many who are in no way, shape or form threats to public safety. In fact, keeping such offenders detained awaiting trial will cost society not just due to the daily \$160 bed expense, but also due to the impact on families when a job is lost and housing or a vehicle is lost. This reform is also essential due to its obvious impact on plans to build a new prison here on Oahu.

We are supportive of the amendments proposed by the ACLU of Hawai'i, and commend their timely report, released on 31 January, on the need to reform our bail practices. Further, we would welcome if the bill's language was amended to severely reduce court mandated drug testing as a condition for bail. [A March 2017 paper by law professors Megan Stevenson and Sandra Mayson](#) highlights that not a single randomly controlled study has shown that drug testing leads to a greater propensity to appear in court for a scheduled hearing. Accordingly, we humbly suggest that this bill also amend HRS §804-7.1 to only allow drug testing in exceptional circumstances.

**Thank you for the opportunity to testify.**

**HB-1996**

Submitted on: 1/29/2018 5:42:31 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louis Erteschik	Hawaii Disability Rights Center	Support	No

Comments:

This is a significant proposal that could go a long way towards reforming our penal system in Hawaii. While the issue extends beyond those individuals with mental illness our focus is on that and unfortunately they do comprise a fairly high percentage of the pretrial inmates. Many of these individuals are arrested for relatively minor offenses and are held as pretrial detainees simply because they cannot post bond. While they are incarcerated their mental health can deteriorate. In reality they pose little risk of flight which is what the purpose of bail was intended to be. It makes no sense and serves no purpose to house these individuals for months on end while they are awaiting trial. If they are ultimately convicted and sentenced then so be it. However, in the meantime it is a waste of resources to the state to keep them there and it is an infringement on their liberty to be held simply because they are too poor to have the resources needed for the bail. Our facility at OCCC is particularly overcrowded and it would be a smart move for the state to seriously consider if it makes any financial sense to clog up the prison with individuals who do not pose a risk of not appearing for Court or any danger to the community.

Michael J. Kitchens  
Creator & Administrator  
Stolen Stuff Hawaii  
91-1013 Kaiheenalua Street  
Ewa Beach, HI 96706  
(808) 782-7432  
mikek@stolenstuffhawaii.com



January 29, 2018

Dear Mr. Chairman & Respected Committee Members,

My name is Michael Kitchens, Creator and Administrator of Stolen Stuff Hawaii (SSH). SSH is Hawaii's largest anti-crime Facebook group with over 104,000 plus vetted members and growing. The majority of our members reside on Oahu, meaning we have just under under 10% of the population in our group. Our reach and influence are substantial, with members located throughout the State of Hawaii in all counties and districts. We have thousands of victims in our group who have had their peace of mind and sense of security stolen by repeat offenders.

We strongly oppose HB1996.

It is worded too broadly and does not specifically prevent the release of repeat, habitual property crime offenders. Hawaii has some of the worst property crime in the nation and the majority of property crime is considered non-violent in nature. Non-violent crimes are those crimes that do not involve the use of any force or injury to another person. The seriousness of a non-violent crime is usually measured in terms of economic damage or loss to the victim. Most non-violent crimes involve some sort of property crime such as larceny or theft.

However, just because these offenders are non-violent does not mean that they are not a danger to our community. Property crimes committed by repeat offenders are the #1 offense in our group and cause incredible trauma to those who have been victimized. Allowing them release because they are not a flight risk or because they are not considered a "danger" is a slap in the face to our members.

In a recent poll by our fully vetted, Hawaii-based members, the vote was 391 for keeping bail as is vs 43 for pre-trial risk assessment and growing. As you can see, this is a pretty clear majority.

( <https://www.facebook.com/groups/stolenstuffhawaii/permalink/2027497710846231/> ).

We want harder, tougher laws against criminals. We want less crime in our communities. We strongly oppose this bill as well as the other similar versions being pushed in the legislature of which there are several. We advise our legislators to let other states such as New Jersey provide complete statistical

evidence on the pros and cons of on bail reformation before attempting to introduce this to our state and wreak unknown results.

Mahalo,

A handwritten signature in black ink, appearing to read 'Michael J. Kitchens', with a stylized flourish at the end.

Michael J. Kitchens  
Creator/Administrator  
Stolen Stuff Hawaii

<https://www.facebook.com/groups/stolenstuffhawaii/>

Michael J. Kitchens

**HB-1996**

Submitted on: 1/29/2018 6:24:18 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kam		Oppose	No

Comments:

Against this bill.

**HB-1996**

Submitted on: 1/29/2018 7:39:27 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brendon Heal		Oppose	No

Comments:

Legislators,

"non violent" until they become violent? Has everyone already forgot about Telma Boinville who was brutally murdered by "non violent" burglars and drug addicts? Doesn't people that get arrested get a hearing and charges, if there is actual evidence of a crime being committed, before their bail is set? That's the reason people are released "pending further investigation", there is not enough evidence to support charges! So NO, there is no constitutional RIGHT being violated by requiring someone bail to be released before trial!

Paying bail is collateral for incentive to appear in court. If they are then found not guilty then it may be returned. Judges have a job. They can set bail high, low, what ever.... Do we really need ANOTHER bureaucracy to hold a judges hand and tell him that a suspect is or is not a risk to society? Do we need one more drain on our pocketbooks, through taxation, to coddle the thieving dregs of society?

OPPOSE this bill and any bill that puts CRIMINALS ahead of citizens!

Thank you  
Brendon Heal  
VOTER  
Ewa Beach, Hawaii

**HB-1996**

Submitted on: 1/29/2018 7:59:15 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Darrell Tanaka	individual	Oppose	No

Comments:

You supposed to protect the innocent NOT help the guilty.

**HB-1996**

Submitted on: 1/29/2018 11:12:23 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Aubrey Aea		Oppose	No

Comments:

There is no statistical evidence that this has been successful in other states. We need to be tougher on criminals and this is not the solution.



**HB-1996**

Submitted on: 1/30/2018 11:59:38 AM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jason Pierce		Oppose	No

Comments:

The recent increase in crime on Oahu should direct the legislature to set more firm guidelines, not more lenient ones. If it is someone's first offense, then it is reasonable to release them on their own recognizance. If the suspect is a multiple offender, he/she should not be released into the public until their trial. We are continuing to see too many crimes, in the news and posted to social media, committed by suspects who are awaiting trial for a prior offense.

**HB-1996**

Submitted on: 1/30/2018 3:13:04 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Cates		Oppose	No

Comments:

The most committed crime in Hawaii is property crime; it affects everyone. As a victim of an attempted burglary in the 1st degree back in 2011, I can honestly say that I am still affected by that crime.

In the middle of the day I found a man trying to climb into my window. Over six years later, I am still afraid to take a shower when home alone. If I am awoken by a noise in the middle of the night, I am struck with immediate panic and anxiety and cannot go back to sleep. Whenever I leave the house for more than an hour, I hide all of our valuable electronics (iPads, laptops, cameras). I hid all of my jewelry immediately following the attempted break in (except my wedding ring) and it's such a hassle to get to, I just don't wear them anymore. My husband no longer will purchase jewelry for me as a result, but I can't blame him.

Just because these criminals did not commit a "violent crime", their victims still have to deal with the trauma of their actions. Do not further victimize the public by passing this bill. If a person is arrested and charged, let them go through the due process and post bail.

Thank you,

Lisa Cates

**HB-1996**

Submitted on: 1/30/2018 10:03:54 PM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Deborah Cadiente		Oppose	No

Comments:

**HB-1996**

Submitted on: 1/31/2018 10:30:24 AM

Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Takamatsu		Oppose	No

Comments:

I DO NOT AGREE with Bill HB 1996 regarding pretrial release.

Allowing criminals and suspected criminals back out on the streets to likely commit more crimes is not an answer. If this bill is in response to over crowding in our jails, build more jails. If it's about drug rehabilitation, work it into our prison system.

This bill is as bad of an idea as increasing misdemeanor theft to \$750 of whatever it was changed to.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 1996, RELATING TO PRETRIAL RELEASE.

**LATE**

**BEFORE THE:**

HOUSE COMMITTEE ON PUBLIC SAFETY

**DATE:** Thursday, February 1, 2018      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 312

**TESTIFIER(S):** Russell A. Suzuki, First Deputy Attorney General, or  
Landon M.M. Murata, Deputy Attorney General

---

Chair Takayama and Members of the Committee:

The Department of the Attorney General (“Department”) opposes this bill. The bill appears to be an attempt to repeal the portions of our current bail statutes that exist to fulfill the dual purpose of assuring the appearance of persons charged with criminal offenses and to assure the safety of our community. The Department’s opposition to this bill centers on the following legal and policy issues.

From a legal standpoint, there does not appear to be any identifiable problem with the current bail statutes. The problem could more accurately be described to be with (1) the timeliness, availability, and reliability of information available to the courts in making decisions on bail, and (2) the bail amounts being set. The bill does not appear to actually address these issues, creates inconsistencies in the law that could cause confusion, and hampers the court’s ability to assure the appearance of persons and the safety of our community.

From a policy standpoint, this bill reflects a radical shift in the current law regarding bail. Even under our current bail statutes, people routinely fail to appear for court. Worse, the commission of new crimes by a criminal defendant while released on bail is not unheard of. Just this past year, House Concurrent Resolution No. 134 requested that the Judiciary convene a Criminal Pretrial Task Force to “[e]xamine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedure to increase public safety while maximizing pretrial release” and to “identify

and define best practices metrics to measure the relative effectiveness of the criminal pretrial system”. The draft report of the task force is not due to the Legislative Reference Bureau until August 1, 2018, and the report to the Legislature is not due until twenty days prior to the convening of the Regular Session of 2019. The Department suggests that such a radical change to the current law regarding bail should not be entertained without the assistance of the report of the task force convened pursuant to a request from the Legislature.

Thank you for the opportunity to testify on this bill.

# COMMUNITY ALLIANCE ON PRISONS

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

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



## COMMITTEE ON PUBLIC SAFETY

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Thursday, February 1, 2018

10:00 am

Room 312



## SUPPORT INTENT - HB 1996 - PRE-TRIAL RELEASE

Aloha Chair Takayama, Vice Chair Gates 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 approximately 5,500 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 1,600 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.

HB 1996 requires courts to order any person charged with a criminal offense to be released on personal recognizance pending trial, unless the person is a flight risk, unlikely to appear for trial, or a danger to others. Requires the Judiciary to establish and maintain a Pretrial Services Program to conduct pretrial risk assessments. Repeals state laws relating to bail.

Community Alliance on Prisons supports the intention of this bill; however, we prefer HB 2221, including the amendments suggested by ACLU, that is more comprehensive.

Mahalo for this opportunity to testify.

**LATE**

**HB-1996**

Submitted on: 1/31/2018 10:47:01 PM  
Testimony for PBS on 2/1/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melinda Buck		Oppose	No

Comments:



**HB-1996**

Submitted on: 2/1/2018 12:04:45 AM

Testimony for PBS on 2/1/2018 10:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tyler Jones		Support	No

Comments:

The current system unfairly impacts low income residents and this bill will reduce this disparity.



# PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

**LATE**

## BOARD OF DIRECTORS

Chairperson of the Board/President  
BETH CHAPMAN  
Honolulu, HI

Executive Vice President  
JEFF KIRKPATRICK, MCBA  
Jackson, MI

Senior Vice President  
MARC OUDIN, MCBA  
White Hall, AR

Vice President  
DAVID STUCKMAN, MCBA  
Manhattan, KS

Secretary  
MAGGIE KREINS, MCBA  
Long Beach, CA

Treasurer  
JONNA DUVALL-WILLIAMS, MCBA  
Weiser, ID

Immediate Past President  
SCOTT G. HALL, MCBA  
Evans, GA

Past President  
LINDA BRASWELL, MCBA  
Stuart, FL

At-Large Directors:  
RONNIE LONG, CBA  
Fort Worth, TX

ALEXIS van de VEN, CBA  
Conroe, TX

DENNIS SEW  
Baltimore, MD

RAINY ROBINSON  
Antioch, CA

Council of Presidents Liaison  
TOPO PADILLA  
Sacramento, CA

Division Directors:  
Pacific  
MARCO LIMANDRI, MCBA  
San Diego, CA

Midwest  
DUDLEY GOOLSBY, CBA  
Oklahoma City, OK

Greater Northwest  
RULON EVANS  
Pocatello, ID

Old West  
DAVIE WESTMORELAND  
Bryan, TX

Deep South  
Vacant

South Central  
GUY RUGGIERO, JR.  
Plaquemine, LA

Old South  
CHARLES WHITE, SR.  
Chattanooga, TN

Northeast  
SCOTT CHURCHILL, MCBA  
Hackensack, NJ

Mid-America  
MARY SMITH  
Toledo, OH

Tropics  
MARK A. HEFFERNAN, CBA  
Miami, FL

Director Emeritus  
GERALD MADRID  
Albuquerque, NM

Hawaii Criminal Pre-trial Taskforce Public Meeting  
October 13, 2017

To whom it may concern:

My name is Beth Chapman. I Chair the Board of Directors and I am the President of the Professional Bail Agents of the United States (PBUS). I also have the good pleasure of serving as the acting president of the Hawaii Bail Agents Association. My husband Duane, "Dog" Chapman and I, were the stars of our first show, "Dog the Bounty Hunter," which ran for eight seasons on A&E. We also had a show "Dog and Beth: On the Hunt," on CMT for four seasons. PBUS is a national association which represents bail agents' interests before the business community, citizens and government entities. I have been in the bail bond business for nearly 30 years and have been operating in the state of Hawaii for 17 years while my husband has been in the business for over 40 years and nearly 30 of those in Hawaii. We chose to raise our family here and conduct our business here because we love Hawaii and its people.

I appreciate the opportunity to bring the combined experience of thousands of bail bond agents to the table in this conversation as the state of Hawaii considers reform in this area. We, as an industry, have worked in hand with the judicial system in the United States since the inception of our country. Cash or guaranteed surety bail is the most cost effective, efficient, and performance effective tool to ensure the appearance of the defendant to court and good behavior while awaiting trial. It is also the only system which is user funded and does not require the taxpayer to foot the bill for mistakes and ill choices of those who break the law. With that being said, I would like to highlight a few policy considerations and practices which I and the bail bond industry feel are of the utmost importance to the balance of public safety and the rights of the accused.

### **Cost and Performance of Non-Monetary Release**

States which have implemented bail reform after following similar taskforce meetings like what Hawaii is currently engaging have enacted policies which have been a detriment to the safety needs of the public and have shifted the cost burden to the taxpayers.

Proponents of a "risk assessment" and a system which requires the "least restrictive means of release" continue to point to the system in Washington D.C as the pinnacle of pre-trial release programs. They laud it as a successful system which should be mimicked. The numbers, however, simply do not justify the hype. Washington D.C. has a little over 700,000 citizens and the cost of running their "free" pre-trial system is a whopping \$65 million dollars a year. However, the numbers get even worse when you consider the number of defendants processed by D.C. They, much like HPD, process between 16,000 and 20,000 defendants which puts the cost, per defendant, between 3,250 and 4,062. That is the cost to detain, process, or release and supervise just one defendant. Remember, right now that cost is being borne completely by the offender and bail industry not by the taxpayer. But when you remove cash or surety bail the total cost shifts to the taxpayer.

The initial projections pitched to the New Jersey legislature put the cost of the new system at around 20 million; however, current projections have now approached 300 million. We in Hawaii know all too well the pain of following false projections as we are currently suffering with the light rail boondoggle. We must take precautions from every other state that has dealt with bail reform and know that the cost projections have always missed the mark. We cannot invite another boondoggle onto the shoulders of the good people of Hawaii.

Even if we were to put the cost aside and just look at the results in what matters the most, namely the safety of the citizens, Washington D.C. fails tremendously. The crime rate in D.C. is at the top 3% in the nation. Only 3% of other cities in the nation are more dangerous than Washington D.C. In D.C., 1 in 79 people will become the victim of a violent crime and 1 in 21 will become the victim of a property crime. Again, proponents point to what they consider the success of Washington D.C. because they don't have very many people in jail awaiting trial. However, with those terrible crime statistics maybe there should be more criminals in jail.

This trend is not isolated only to D.C., New Jersey just implemented a policy which requires "least restrictive release" a "risk assessment" and one which removed judicial discretion completely and the results have been disastrous. Crime rates have skyrocketed and more people are being victimized as a result. It has even prompted members of law enforcement to proclaim publicly that "we can't protect you anymore".

Detective Joe Indano of South Plainfield, New Jersey voiced his frustration and stated, "Nobody's afraid to commit crimes anymore. They're not afraid of being arrested, because they know at the end of the day, they're going to be released. Its catch and release. You're chasing around the same people over and over again. They're being released and going back and offending and now you have more people as victims."

However, the frustration doesn't just stop at law enforcement. Lawmakers are discovering that they were sold a bill of goods and even those who advocated for the reform are now speaking up against other states following New Jersey's example. New Jersey Assemblyman Bob Andrzejczak (D) even went so far as to send a letter, which I have attached, to California Speaker of the House Rendon urging him to reconsider passing similar reforms in California. He said in that letter that since the law went into effect in January it has been an "absolute disaster" and that "This law is victimizing law abiding citizens everyday".

In New Mexico, the Supreme Court decided to implement similar bail reforms without the legislature and it has caused havoc in that state. The move has prompted a coalition of citizens, bail industry members, and lawmakers to file a lawsuit against the state's Supreme Court. It has also prompted New Mexico Senator Bill Sharer to call for the resignation of Chief Justice Daniels.

This argument about bail reform has not only been fought in the legislative chambers across the country but also in the court room. Already the 5th circuit, 9th circuit, and 11th circuit have taken challenges by bail reformers against the current system and currently the 11<sup>th</sup> has ruled against the presumption of free bail. Arguments have been heard in the 9<sup>th</sup> and 5<sup>th</sup>. It is important to note that the 5<sup>th</sup> circuit justices' arguments in the O'Donnell v. Harris County case seem to suggest that the scope of the relief by the lower court (non-monetary release of all misdemeanor defendants) went too far and that removal of judicial discretion is a dangerous slippery slope.

### **Presumption of Innocence Pre-Trial**

The conversation revolving around bail has become centered on the rights of the offender and preferring the offender over the law abiding citizen. Proponents would have you believe that there are countless individuals "languishing" in jail because they cannot afford bail. However, bearing extraordinary circumstances; a vast majority of people in jail are there because they broke the law. They have also broken the trust of society and justice must be served. The constitution guarantees that the accused is innocent until proven guilty. The criminal justice system guarantees that society will have its opportunity to bring the charges against a defendant and the defendant will have his day in court. It is the responsibility of the state to balance the rights of the accused with the necessity of societal justice. This does not imply an

implicit trust in the offender and that his or her presumption of innocence extends to pre-trial release, in fact it should be regarded oppositely and has been held in many courts that way.

As the Alliance of California Judges stated in their May 9, 2017 opposition letter to SB10:

“The bills inject the concept of the presumption of innocence into a context in which it simply doesn’t belong. The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it’s a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence ‘has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.’ (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)”

Bail bonding adds a layer of personal accountability in the form of monetary interest by the accused, their friends and family, or a bondsman willing to put up a portion of his business so the offender may be released. In short, if someone has a personal financial stake in the accused, they will do everything to ensure they stay out of trouble and show up for court. And, in the event they miss court those with financial interest will do anything to help find them so as to avoid losing that financial interest. It is a system which has worked effectively for over 200 years in this country and one with a high success rate most topping 90% return rates. Most pre-trial programs see a return rate of a dismal 50%-75%. In Hawaii, when the legislature allowed emergency release we saw failure to appear rates of upwards of 50%. That compares with 3%-7% in most bail bond companies.

### **Rights of the Victim Frequently Disregarded**

Some of the most egregious results of bail reform policies across the country have been the victimization of law abiding citizens and the preference of the criminal over the victim in many cases. Often, the needs of the offender and attention to their situation have taken the precedence to that of the victim. It has been said in places like D.C. and New Jersey that the offender is released from jail even before their victim is released from the hospital. Other victims who suffer property crimes at the hands of offenders who commit multiple crimes are victimized more frequently under non-monetary release policies.

Catherine Keller, a victim of serial home invasion criminal Dawud Ward in New Jersey expressed her frustration and said, “I was totally disgusted that he just kept on being released and two days later he is doing to someone else’s house and he is doing the same thing. The system is broken.”

Victim’s rights would take a back seat in the initial bond setting hearing as well. Most of these policies require a hearing within 24-48 hours in an evidentiary setting to determine if non-monetary release should be exempted in favor of detention or monetary release. This is done because the laws require the “least restrictive release” and remove judicial discretion in favor of what becomes a “probable cause hearing” to require something more restrictive. The laws require the state to prove that the offender is a threat which would result in them calling testimony from witnesses in the initial bond setting hearing. This is a fine point that is always missed in the initial discussions of bail reform but one which re-victimizes the truly innocent. Could you imagine the trauma of suffering at the hands of a criminal then being required to re-live that trauma again within 24-48 hours just to prove that your assailant truly is a threat?

That is the reality for victims when you remove judicial discretion.

### **Risk Assessment verses Judicial Discretion**

What has occurred recently is those who see the criminal as the victim of circumstance, rather than society as the victim of crime, now want society to foot the bill for the mistakes of the criminal. They want society to blindly trust that everyone arrested can be trusted to be released from jail for free and with no accountability. Unfortunately, we know that

rarely do you catch someone the first time they commit a crime. So, even though we may be looking at a “first time” offender in the eyes of the legal system, it is most likely that we will never know of the other crimes they have committed but were never caught. It is unwise and dangerous to release someone charged with a crime, without any accountability, and simply trust in a hope and a prayer that they won’t reoffend while they are out.

Of course, we cannot possibly know who will reoffend or who will ultimately fail to appear, so the wisest move is to treat every offender with the least amount of trust and work our way up from there. However, the proponents of bail reform laud the “risk assessment” as the only tool to truly evaluate the risk of an offender. Generally these assessments are comprised of 7-13 questions combined with statistical information to try to ascertain the risk level of an individual. But, no matter how scientific they try to make it sound, at the end of the day it remains a guess. The safety of the public and the assurance of justice ride on an educated guess from an antiquated computer program. The mistrust of the “risk assessment” tool led Nevada Governor Sandoval to veto their bail reform bill stating that “there is no evidence that risk assessments work”. Even in New Jersey, the Attorney General who was one of the main proponents of their reform admitted that the risk assessment tool they are using from the Arnold Foundation was flawed.

The risk assessment tools are a great tool to have at the disposal of the judges when setting bail but should never be the determining factor. I think it should be fair to point out that the Arnold Foundation, Governor Chris Christie, and Attorney General Chris Porrino are all being sued in New Jersey for the flawed implementation of the risk assessment tool which led to the death of Christian Rogers. This is both a deprivation of constitutional rights and a products liability case. Christian’s alleged killer was released under the bail reform policy and three days later gunned down Christian while he was walking home. This was without provocation, in cold blood, and in the middle of the day. A look at the rap sheet of the alleged shooter, Jules Black, will show that this man was a risk. He was arrested on gun related charges and, in the least, should have been out only on secured bond with some kind of supervision.

Personal responsibility has taken a backseat in these discussions and it is being replaced with guilt on society that we are keeping the down trodden suppressed by jailing criminals and holding them accountable to face their consequences. There is no doubt that there are some special circumstances where an individual has suffered inappropriately under the current system. But, those situations should be looked at individually and fine tuning of the law should be implemented to fix those problems. To take a few examples and superimpose massive, dangerous reform to an effective system and have a “broad brush” approach will only further remove personal responsibility of the offender and transfer the costs and danger of the criminal to law abiding citizens. Protecting the welfare of law abiding citizens should be good enough reason for anyone to tread very lightly in instituting these massive and dangerous reforms.

The private bail industry has a long and historic partnership in the criminal justice system. The purpose of bail is to ensure the appearance of the defendant in Court. Private bail has done this for generations in the United States with an astounding record of reliability and accountability at no cost to the taxpayer. Bail agents not only have a financial interest in making sure a defendant appears in Court, but they also have a fiduciary commitment to the Courts, taxpayers, and victims of crime. The Hawaii Bail Agents Association and the PBUS respectfully requests that you take the time to review the ramifications of these types of policies and include industry experts which have tremendous experience in the discussion. We ask that common sense rules and parameters be put in place that will protect public safety and use taxpayer dollars in the most efficient and effective manner. Please take a moment to watch a brief video regarding pretrial release (<https://youtu.be/9-tCa3GKrQ8>).



# PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

## **BOARD OF DIRECTORS**

Chairperson of the Board/President  
BETH CHAPMAN  
Honolulu, HI

Executive Vice President  
JEFF KIRKPATRICK, MCBA  
Jackson, MI

Senior Vice President  
MARC OUDIN, MCBA  
White Hall, AR

Vice President  
DAVID STUCKMAN, MCBA  
Manhattan, KS

Secretary  
MAGGIE KREINS, MCBA  
Long Beach, CA

Treasurer  
JONNA DUVALL-WILLIAMS, MCBA  
Weiser, ID

Immediate Past President  
SCOTT G. HALL, MCBA  
Evans, GA

Past President  
LINDA BRASWELL, MCBA  
Stuart, FL

At-Large Directors:  
RONNIE LONG, CBA  
Fort Worth, TX

ALEXIS van de VEN, CBA  
Conroe, TX

DENNIS SEW  
Baltimore, MD

RAINY ROBINSON  
Antioch, CA

Council of Presidents Liaison  
TOPO PADILLA  
Sacramento, CA

Division Directors:  
Pacific  
MARCO LiMANDRI, MCBA  
San Diego, CA

Midwest  
DUDLEY GOOLSBY, CBA  
Oklahoma City, OK

Greater Northwest  
RULON EVANS  
Pocatello, ID

Old West  
DAVIE WESTMORELAND  
Bryan, TX

Deep South  
Vacant

South Central  
GUY RUGGIERO, JR.  
Plaquemine, LA

Old South  
CHARLES WHITE, SR.  
Chattanooga, TN

Northeast  
SCOTT CHURCHILL, MCBA  
Hackettstown, NJ

Mid-America  
MARY SMITH  
Toledo, OH

Tropics  
MARK A. HEFFERNAN, CBA  
Miami, FL

Director Emeritus  
GERALD MADRID  
Albuquerque, NM

## **Non-Monetary Release Recommendations-**

Although we support the commercial bail industry and feel monetary bail is the best option for the criminal justice system, we understand the need for certain occasions when non-monetary or "own recognizance" bonds are necessary or preferred. At no time do we as an industry feel that judicial discretion be removed from the equation totally.

The commercial bail industry stands by the below core principles for own recognizance (OR) and non-monetary release:

- Eligible- Non-monetary release as a first option for violation of traffic laws, and look at what traffic laws can be completely de-criminalized
- Eligible- Non-monetary release as a first consideration for first time offenders with no criminal history
- Eligible- Non-monetary release as a first consideration on individuals with no failures to appear (FTA)
- Not Eligible- Non-monetary option for an individual currently out on a bond for a felony or misdemeanor
- Not Eligible- Non-monetary option for someone convicted of a felony in the past 3 years or misdemeanor in the past 1 year
- Not Eligible- Non-monetary release option for someone with multiple cases or in multiple counties
- Not Eligible- Any release on crimes where there is a victim should be guaranteed and supervised
- Not Eligible- Any defendant who has previously failed to appear on an OR bond on a criminal charge shall only be released with secured bail and would not be eligible for another OR bond for at least one year
- Not Eligible- Any defendant currently released on a secured bond for a felony offense would not be eligible for non-monetary release
- Not Eligible- Any defendant currently on a non-monetary bond would not be eligible for a second non-monetary bond in any county
- Not Eligible- Any defendant who has been charged with a sexual assault on a child/minor causing great bodily harm would not be eligible for non-monetary release
- Not Eligible- Any defendant who has been convicted of a charge of escape in the last five years would not be eligible for non-monetary release
- Most importantly, a policy should be created that stops unlimited non-monetary release for any defendant



JEFF VAN DREW  
SENATOR  
FIRST LEGISLATIVE DISTRICT  
SenVanDrew@njleg.org

BOB ANDRZEJCZAK  
ASSEMBLYMAN  
FIRST LEGISLATIVE DISTRICT  
AsmAndrzejczak@njleg.org

BRUCE LAND  
ASSEMBLYMAN  
FIRST LEGISLATIVE DISTRICT  
AsmLand@njleg.org

July 3, 2017

Dear Speaker Rendon,

I am a democratic member of the New Jersey Assembly representing Legislative District 1. Prior to joining the Assembly, I served in the Iraq War as a sergeant in the Army's 25th Infantry Division until my discharge following an injury which led to the amputation of my left leg from a grenade explosion in 2009. As a result, I was awarded the Purple Heart and Bronze Star; my recovery was featured on a 2009 episode of The Oprah Winfrey Show.

As you may know, New Jersey passed and has implemented a bail reform policy similar to California's SB10 which you are considering. I supported the legislation when presented to our Assembly and advocated for its passage. The law went into effect this past January and it has been an absolute disaster. The public safety needs of citizens in New Jersey has suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed.

We were told that there would be no danger to citizens because the dangerous criminals would not be released and on "low level" criminals would be eligible. The reality is that dangerous and career criminals are released daily within hours of arrest. We should never have considered free bail to those who commit crimes where a citizen has been victimized. We may only catch a criminal once out of a multitude of crimes in which they commit. They are simply not afraid of committing crimes against citizens and as a result our crime rate has increased at least 13% since January. This law is victimizing law abiding citizens every day.

We were also misled as to the cost of implementation and continuation of this policy. It has become apparent to us now that the cost of incarcerating those held awaiting trial were greatly exaggerated. Additionally, we have transferred the cost of "free" bail to the taxpayer rather than the offender. The bail system supported many functions of the court and the cost of re-arresting multiple offenders and bail jumpers was borne by the offenders themselves rather than the taxpayers. Now we are making taxpayers pay to release criminals back into their neighborhoods and with no accountability. The state does not have the resources to properly monitor these people out on bail so we don't. This is a powder keg and our citizens are suffering because of it.

211 SOUTH MAIN STREET  
SCHOOLHOUSE OFFICE PARK, SUITE 104  
CAPE MAY COURT HOUSE, NJ 08210  
PHONE: (609) 465-0700 • FAX: (609) 465-4578

1117 EAST LANDIS AVENUE, UNIT C  
VINELAND, NJ 08360  
PHONE: (856) 696-7109

219 N. HIGH STREET, SUITE B  
MILLVILLE, NJ 08332  
PHONE: (856) 765-0891 • FAX: (856) 765-0897

Not only are our citizens suffering but now even the accused are being denied their constitutional right to pre-trial release as a result of the new laws. The eighth amendment to the Constitution of the United States guarantees an accused the right to "reasonable bail". However, in New Jersey, many are being denied that right. This is not just happening to dangerous criminals it is happening to low level offenders as well. The risk assessment system is simply not working. In January, a convicted child predator was arrested for attempting to lure a 12 year old girl to his house for "sexual things". The risk assessment determined he was not a threat and was released. The police chief of Little Egg Harbor was so distressed by this that he appealed the release all the way to our supreme court and was denied. The man was released back into the same neighborhood where the "would be" victim resides. The only recourse for law enforcement was to post on Facebook a warning to the community.

I am not "in the bag" of any industry or special interest. I fully thought this was the right thing to do because of the arguments we heard. I am writing to you because I have experienced this first hand and it has been a disaster. I am trying to rectify a problem in New Jersey that we caused and hopefully encourage you not to make the same mistake. Please listen to the experts on this issue and look at the examples before you because the safety and financial interests of your citizens are at stake. Thank you for your time.

Sincerely,

  
Bob Andrzejczak  
Assemblyman, First Legislative District





**OFFICERS**

**President**

Stephen M. Wagstaffe  
*San Mateo County*

**First Vice President**

Todd D. Riebe  
*Amador County*

**Second Vice President**

Birgit Fladager  
*Stanislaus County*

**Secretary-Treasurer**

Nancy O'Malley  
*Alameda County*

**Sergeant-At-Arms**

Vern Pierson  
*El Dorado County*

**Immediate Past President**

Patrick J. McGrath  
*Yuba County*

**DIRECTORS**

Mark Amador  
*San Diego County*

J. Kirk Andrus  
*Siskiyou County*

Ryan Couzens  
*Yolo County*

Cindy De Silva  
*San Joaquin County*

C. David Eyster  
*Mendocino County*

Candice Hooper  
*San Benito County*

Janice L. Maurizi  
*Ventura County*

Deborah Owen  
*Imperial County*

Jeannine Pacioni  
*Monterey County*

Anne Marie Schubert  
*Sacramento County*

Ryan Wagner  
*Contra Costa County*

**CEO**

Mark Zahner

April 11, 2017

The Honorable Rob Bonta  
California State Assembly  
State Capitol  
Sacramento, CA 95814

**RE: AB 42 – Oppose**

Dear Assemblyman Bonta:

On behalf of the California District Attorneys Association (CDA A), I regret to inform you that we are opposed to your measure, AB 42. This bill would dismantle California's longstanding bail system, replacing it with a costly and cumbersome alternative that we believe will have a negative impact on public safety. While we agree that California's bail system should be reviewed and opportunities for thoughtful improvement identified, this bill simply goes too far, too fast.

As you know, Chief Justice Tani Cantil-Sakauye has put together a Pretrial Detention Reform Work Group to study current pretrial detention practices and provide recommendations for potential reforms. This work group is expected to report back to the Chief Justice with recommendations by December 2017. In light of that timeline, we believe that any legislative efforts to repeal and replace the current bail system are premature.

California's current pretrial release procedures help to ensure that dangerous defendants are not released to commit new crimes and harm victims and witnesses before trial. Under these procedures, the court already has wide discretion to release a defendant on his or her own recognizance, or to reduce bail for defendants that do not pose such risks. Whatever the deficiencies in the current system, it hardly seems prudent to take it apart and start from scratch.

AB 42 focuses on the costs of incarceration and hardships to the defendant caused by pretrial detention, but wholesale pretrial release has many other costs. When a defendant fails to appear, there is no bail agent with motivation to go find the defendant. The police have no additional resources to find and arrest defendants who fail to appear – and even those who are apprehended after failing to appear are only be subject to a maximum five-day flash incarceration, following a civil contempt hearing.

There are also tremendous logistical problems with the proposed pretrial release scheme. Under the bill, when Friday is a court holiday, a Wednesday arrestee must be charged by Thursday. So, when someone is arrested on Wednesday at



11:00 p.m., the police must complete reports, present them to the district attorney on Thursday, and expect the district attorney to make a careful charging decision in time for an afternoon court arraignment. This compressed timeline will undoubtedly result in the release of dangerous individuals.

Even when given a full two days before arraignment, AB 42 makes it extremely onerous to achieve pretrial detention for dangerous defendants. The district attorney must file a written motion at arraignment, containing myriad required allegations, and be expected to prove those allegations in a contested hearing – all of this within 48 hours of the arrest. The existing bail schedule system allows judges to exercise discretion to raise or lower bail for violent felons, in a sensible period of time.

Changing the pretrial release system to address actual injustices is a laudable goal. However, these changes should be careful and measured, particularly for offenses greater than misdemeanors and low-level felonies.

I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Hoffman".

Sean Hoffman  
Director of Legislation



# Alliance of California Judges

May 9, 2017

## Directors

Hon. Steve White  
*President*

Hon. David R. Lampe  
*Executive Director*

Hon. Andrew Banks

Hon. Julie Conger (Ret.)

Hon. Gregory Dohi

Hon. Mark R. Forcum

Hon. Maryanne Gilliard

Hon. Daniel B. Goldstein

Hon. W. Kent Hamlin

Hon. Thomas E. Hollenhorst

Hon. Elizabeth A. Lippitt

Hon. Susan Lopez-Giss

Hon. Kevin McCormick

Hon. John S. Somers

Hon. W. Michael Hayes

Hon. John Adams  
*Education Coordinator*

The Honorable Rob Bonta  
Member of the State Assembly  
State Capitol, Room 2148  
Sacramento, CA 95814

Re: Assembly Bill 42

Dear Assemblymember Bonta:

As President of the Alliance of California Judges, a group of more than 500 judges and retired judges from across the state, I write to express our strong opposition to Assembly Bill 42 and Senate Bill 10, bills that would radically alter the current bail system.

Our member judges make thousands of rulings on bail issues every day. We recognize that not everyone has the ability to post bail pending trial. We address that concern by adjusting bail amounts and releasing defendants on their own recognizance or on pretrial release under appropriate circumstances. We know that our current bail system needs further reform. But the proposals contained in these bills are simply too drastic, and the effects on public safety and court congestion could be catastrophic.

We note at the outset that these bills run counter to the letter and the spirit of the California Constitution as amended by Proposition 8, the Victim's Bill of Rights, which passed with 83 percent of the popular vote in 1982. Prop 8, which the Legislature voted, with only one dissenting vote, to put on the ballot, added the following language to Article I, § 12:

“In fixing the amount of bail, the court shall take into **consideration the seriousness of the offense charged, the previous criminal record of the defendant**, and the probability of his or her appearing at the trial or hearing of the case.”  
[Emphasis added.]

If that constitutional mandate weren't clear enough, the voters passed Proposition 9, “Marsy's Law,” in 2008. Prop 9 added the following language regarding bail to Article I, § 28 of the Constitution:

“In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous

criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. **Public safety and the safety of the victim shall be the primary considerations.**

“A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.” [Emphasis added.]

The proposed bills strip judges of the authority to set bail in the majority of cases, and they substitute a different set of priorities for judges to follow in those cases for which they could still set bail. This new vision for bail cannot be reconciled with the Victim's Bill of Rights and Marsy's Law in our state constitution.

We highlight just a few of the other serious concerns we have with these two bills:

- **The bills would heighten the risk to public safety.** Those arrested for selling drugs, committing identity theft, vandalizing homes and businesses, stealing huge sums of money, or burglarizing dozens of businesses would all presumptively be granted pretrial release—without having to appear before a judge, post bail or submit to any conditions upon release. These bills also inexplicably exclude residential burglary from the list of crimes for which arrestees are not to be considered for release without judicial authorization.
- **These proposals would create more congestion in our busiest courts.** Under the proposed legislation, judges in most cases could set bail or impose pretrial release conditions such as electronic monitoring only after a hearing. We can expect that prosecutors will be requesting lots of these hearings. Our arraignment courts—already the busiest courts in the entire judicial system—would become completely clogged with bail hearings.
- **The bills completely upend the way in which we handle arrest warrants, to the detriment of the court system and the arrestees themselves.** By eliminating the judge's ability to set a bail amount when issuing a warrant, the proposed legislation virtually ensures that wanted suspects will not be brought to justice in a timely manner, if at all. Moreover, those arrested on warrants could not be released until a judge makes an individualized ruling that considers the arrestee's ability to pay. Arrestees who might otherwise simply pay their bail and be released from custody will instead languish until their cases can be heard.

- **The bills place an undue—and wholly unrealistic—burden on the prosecution.** The bills would require in some cases that the prosecuting agency be prepared for a contested hearing with live witness testimony in less than 24 hours, at risk of a dangerous felon being set free. The bills also create a presumption of release pending trial that law enforcement will seldom be able to rebut within the timelines contemplated by the bill, even when the court is faced with a violent criminal facing serious felony charges.
- **The bills inject the concept of the presumption of innocence into a context in which it simply doesn't belong.** The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)

AB 42 and SB 10 are well-intended attempts to address the fact that the bail system affects persons of differing income levels differently. But nearly every county now has a pretrial services division in place to screen defendants and recommend their release on appropriate conditions, without bail, when doing so does not pose a serious danger to the public or a significant risk of non-appearance. A bill mandating a pretrial release program in every county, and perhaps providing some limited funding for that purpose, would be a sensible response to the problem. These twin bills go way too far, and their effect would be a near shutdown of the court system and a serious risk to public safety. We urge that these proposals be reconsidered and substantially amended.

Sincerely,



Hon. Steve White  
President

cc: ACJ Board of Directors



July 17, 2017

The Honorable Robert M. Hertzberg  
California State Senate  
State Capitol  
Sacramento, CA 95814

**RE: Senate Bill 10 (Oppose)**

Dear Senator Hertzberg,

On behalf of the KlaasKids Foundation staff, volunteers and crime victims throughout California, I strongly oppose Senate Bill 10. Beyond its obvious threat to public safety and its fiscal ambiguity, it is a clear violation of the Victim's Bill of Rights, and Marsy's Law. In the final analysis it kneecaps California's community of victims.

In 1982, California voters overwhelmingly approved of Proposition 8, otherwise known as the Victim's Bill of Rights. The nation's first ever Victim's Bill of Rights clearly states that, "In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial of hearing of the case." However, SB 10, as written, only contains information about the current offense and, with exceptions, will allow, "Recommendations on conditions of release for the person immediately upon booking."

Proposition 9 (Marsy's Law) provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. SB 10 fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Furthermore, the speed at which defendants are rushed back onto the streets makes it impossible to facilitate the rights afforded victims under Marsy's Law.

SB 10 will make it very difficult for crime victims to come forward knowing that their assailant will be back on the streets within hours of being arrested. Without a monetary incentive to appear at court dates, many victims will never receive justice.

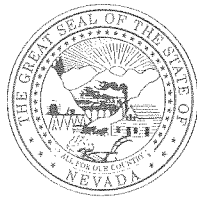
The KlaasKids Foundation vehemently opposes SB 10. We acknowledge that California's bail system is in need of repair, but do not believe that Senate Bill 10 is the answer. It is ill conceived, and completely disregards public safety and the needs of crime victims. SB 10 follows the current trend in criminal justice legislation by focusing on the needs of defendants and criminals at the expense of crime victims.

Sincerely,

Marc Klaas  
President, KlaasKids Foundation

P.O. Box 925  
Sausalito, CA 94966  
415.331.6867  
info@klaaskids.org

ONE HUNDRED ONE NORTH CARSON STREET  
CARSON CITY, NEVADA 89701  
OFFICE: (775) 684-5670  
FAX No.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100  
LAS VEGAS, NEVADA 89101  
OFFICE: (702) 486-2500  
FAX No.: (702) 486-2505

## Office of the Governor

May 26, 2017

The Honorable Jason Frierson  
Speaker of the Nevada State Assembly  
The Nevada Legislature  
401 South Carson Street  
Carson City, NV 89701

### **RE: Assembly Bill 136 of the 79<sup>th</sup> Legislative Session**

Dear Speaker Frierson:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 136 ("AB 136"), which is entitled:

AN ACT relating to criminal procedure; revising provisions governing factors to be considered by the court in deciding whether to release a person without bail; prohibiting a court from relying on a bail schedule in setting the amount of bail after a personal appearance by a defendant; and providing other matters properly related thereto.

AB136, while commendable in some respects, would incorporate a new and unproven method for determining whether a criminal defendant should be released from custody without posting bail. No conclusive evidence has been presented showing that the risk assessment methods proposed by AB136 are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail. Decisions made by judges during the bail phase of a criminal prosecution are of the utmost importance. It is not clear that the provisions of AB136 will enhance the ability of Nevada's judges to make these determinations in a manner that balances the interests of justice and public safety.

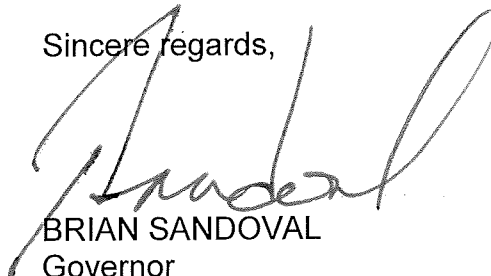
///

///

///

For these reasons I veto AB136 and return it without my signature or approval.

Sincere regards,



BRIAN SANDOVAL  
Governor

*Enclosure*

*cc: The Honorable Mark Hutchison, President of the Senate (without enclosure)*  
*The Honorable Aaron Ford, Senate Majority Leader (without enclosure)*  
*The Honorable Barbara Cegavske, Nevada Secretary of State (without enclosure)*  
*Claire J. Clift, Secretary of the Senate (without enclosure)*  
*Susan Furlong, Chief Clerk of the Assembly (without enclosure)*  
*Brenda Erdoes, Esq., Legislative Counsel (without enclosure)*





CRIME VICTIMS UNITED  
OF CALIFORNIA

May 23, 2017

The Honorable Ricardo Lara  
Chair, Senate Appropriations Committee  
State Capitol, Room 5050  
Sacramento, CA 95814

**RE: SB 10 (Hertzberg) – Oppose**

Dear Chairman Lara:

On behalf of Crime Victims United of California (CVUC), I must respectfully oppose SB 10 (Hertzberg) related to bail and pretrial release.

CVUC will be the first to tell you that the current bail and pretrial system in California are not perfect. As a matter of fact, CVUC has serious concerns with the current system and its failures to adequately provide for victims' rights provided under Proposition 9. However, CVUC nonetheless strongly supports the use of monetary bail as a means of accountability, as a backstop to ensure offenders' appearance at hearings and as a deterrent to further victimization. CVUC is open to changes to the current bail and pretrial release system and is willing to work with stakeholders to improve the system and address system concerns that have been highlighted in recent years. Notwithstanding the concerns and deficiencies with the current system as they relate to victims, as an overarching perspective CVUC is highly concerned about the increasing interest in relying almost exclusively on pretrial release in our criminal justice system. Of the utmost importance as part of any reform is it must ensure victim and overall public safety are the primary considerations and the defendant's appearance at court proceedings. We are concerned that the SB 10 and other proposals under consideration fail to sufficiently ensure these critical priorities are addressed. To argue that the new proposed framework is better for victims than the current system is and victims should therefore be less concerned fails to consider that both the current and proposed systems are flawed when it comes to victims – it shouldn't be a matter of leveraging one over another. They both need to be revised. Victims are made such based on another's actions against them – not of their own will. This is lost in the current debate in favor of considerations for the offenders' who victimized them in the first place.

First and foremost, SB 10 fails to explicitly provide for the rights afforded victims under Proposition 9, Marsy's Law. More specifically, Proposition 9 provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. Despite voters' approval of these rights under Proposition 9 in 2008, SB 10 fails to account for these constitutional rights. And although we appreciate that under SB 10 a person charged with a serious or violent felony or domestic violence must go before a judge before being released, the bill fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Further, as discussed in greater detail below, the 48 (or less)

timeframe under which to notify and allow a victim to be heard is wholly insufficient to meaningfully account for these rights.

With regard to the risk assessment tool contemplated under the bill, CVUC is highly concerned it will not sufficiently assess the risk to the victim or public safety posed by an offender for a number of reasons. First, there is currently no tool that we are aware of that incorporates as factors things such as serious injuries inflicted, multiple victims, a victim's impact statement, an offender's use of a weapon, or an offender's prior criminal history. Further, the current framework laid out in SB 10 is inconsistent under Penal Code Section 1275(a)(1) and 1318.3(b)(6) where under 1318.3(b)(6) states that undue weight should not be given to factors such as the offender's criminal history. This is unacceptable as an offender's criminal history is a critical consideration in determining his risk to the victim and overall public safety. Further, in hindering the ability to consider an offender's prior history the bill in turn hinders the ability to consider the prior criminal impact on the victim. The bill should not diminish the importance of this factor, and the associated victim impacts, from being considered and any tool utilized must prioritize consideration of an offender's criminal history and associated victimization to ensure an accurate assessment of the risk to the victim and public are undertaken.

Also problematic, the short amount of time associated with the risk assessment being conducted will inevitably negate the ability to conduct a meaningful assessment to ensure victim and public safety. Additionally, the short time frame will lead to violation of the victim's rights under Proposition 9 as there will not be sufficient time to include the victim in the proceedings, ensure their perspectives and concerns are entered into the record, and more. As an example, for an offender who is arrested on a Wednesday evening where Friday is a court holiday the offender would be brought to court on Thursday leaving less than 24 hours to ensure the victim is notified, much less able to participate in such a short timeframe. Other statutes relating to victim notification where victims have the opportunity and right to be notified and/or heard, particularly in situations of offender release from custody, are 15 or more days (as an example, Penal Code 646.92). Ultimately, to the extent that the assessment is not complete or available during such a short time frame, the bill provides that the offender shall be released – entirely contrary to the suggestion that the bill takes into account the risk to the victim and public safety. The absence of a robust assessment whatsoever will inevitably lead to serious harm for many victims and the overall public going forward. This approach in no way ensures victim and public safety is protected and is a seriously flawed loophole.

Relative to “non-violent” offenses, SB 10 provides that an offender shall be released without any hearing or appearance before a judge. It should be noted that the term “non-violent” is a misnomer as it includes offenses that are serious and potentially violent including crimes such as stalking; violation of a protective or restraining order; criminal threats; solicitation of a serious crime; conspiracy to commit a violent crime; and more. While a violation of a protective or restraining order may not be a violent offense, it could certainly be a precursor to one that would not be considered under this construct. It would essentially allow these offenders who push the limits of the framework to bypass the fact that the bill purportedly attempts to protect domestic violence victims through a hearing or appearance before a judge, but for actual injury being inflicted the victim would be violated and continue to fear for her safety without any assurance that such violations would not be more sufficiently considered in such pretrial release actions for the protection of the victim, which is supposed to be the primary consideration.

Relative to the factors a judge must consider when determining the seriousness of the offense, the factors do not include the vulnerability of the victim; whether multiple victims were impacted; prior offenses involving a victim or multiple victims; prior DUIs; and more. Ultimately, a judge would be required to make a pre-trial release decision within 48 hours, impacting victims' rights as previously noted under Proposition 9.

On the issue of fiscal impacts, SB 10 would result in significant costs that are not provided for within the measure. Given the short time frames to conduct risk assessments, review the associated reports and hold hearings/appearances, the framework under SB 10 will require significant staff increases to conduct the risk assessments and review the reports 24 hours a day. Additionally, the bill does not contain any funding or incentive to ensure offenders appear or for intervention when they do not.

According to the 2015 Board of State & Community Corrections (BSCC) Jail Profile Survey, the Average Daily Population (ADP) for all county jails in California is 75,965 with capacity of all facilities being capped at 75,987 (2012 PPIC Report). The Report also highlights that there is an average of 279,102 felony warrants in the system and an average of 1,431,846 misdemeanor warrants in the system – total warrants being at approximately 1,710,948.

Based on these numbers as reported by the BSCC and with a cost per FTA as compared with the Washington, DC Pretrial Program, the costs associated with the elimination of the money bail system and implementation of the SB 10 framework in every county in the state would be over \$3 billion. Recall, the Washington, DC Pretrial System costs \$65 million for a population of 660,000. Clearly California is a different animal on a number of fronts as compared with DC. And yet these numbers do not even take into account the roughly 300,000 offenders who are currently out on bail at any given time. How will California seek to manage that additional caseload and ensure victim and public safety is protected? Also of note, these costs do not take into account the likelihood based on current experience that many offenders will reoffend resulting in additional criminal justice costs – not to mention additional victim and public safety impacts.

CVUC appreciates your consideration of these concerns associated with the current version of SB 10. If you have any questions regarding CVUC's opposition to this bill, please contact CVUC's Legislative Advocate, Dawn Koepke with McHugh, Koepke & Associates, at (916) 930-1993. Thank you!

Sincerely,



Harriet Salarno  
Chair

Cc: The Honorable Bob Hertzberg, Author  
Members, Senate Appropriations Committee  
Sean Naidu, Consultant, Senate Appropriations Committee  
Eric Csizmar, Consultant, Senate Republican Office of Policy



## JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

June 30, 2017

Hon. Reginald B. Jones-Sawyer, Sr., Chair  
Assembly Public Safety Committee  
State Capitol, Room 2117  
Sacramento, California 95814

Subject: Senate Bill 10 (Hertzberg), as amended March 27, 2017 – Letter of Concern  
Hearing: Assembly Public Safety Committee – July 11, 2017

Dear Assembly Member Jones-Sawyer:

The Judicial Council has a number of significant concerns about SB 10, as amended March 27, 2017. SB 10 would enact major bail/pretrial release reform. While there are some areas of conceptual agreement the Judicial Council continues to have substantial concerns about many elements of the bill including the impact on judicial discretion and independence; the creation of unrealistic or unspecified timelines; the imposition of unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information in making decisions, and the creation of an overly burdensome and complicated system. While expressing these concerns about SB 10, the Judicial Council acknowledges that SB 10 is a work in progress. We have been in communication with the author's office and the sponsors and we understand that the author is considering amendments.

### *Areas of Conceptual Agreement*

While the Judicial Council has a substantial number of very significant concerns about SB 10 in its current form, in concept, the council agrees with the following:

- Providing for pretrial release, with or without conditions as appropriate, for all eligible defendants, and providing for preventive detention for defendants who pose a high risk to public safety or of fleeing the jurisdiction.
- Exploring the implications of moving from a pretrial release and detention system that is implemented primarily through the setting of money bail to a system that focuses on evidence-based risk assessment that considers the risk to public safety and victims with the risk of fleeing the jurisdiction and failure to appear, and is implemented through setting conditions of release, and preventive detention for cases in which no combination of conditions of release will be sufficient to address the risk.
- Providing pretrial services in a manner that: 1) closely coordinates with the courts; 2) delivers risk assessment information, criminal history, and other data relevant to judges' determinations of conditions of release for defendants; 3) includes monitoring and supervision of defendants released pretrial, where appropriate; and 4) is funded at a level to adequately and properly address the costs of such services.
- Use of a validated risk assessment instrument that does not give undue weight to factors that correlate with race, ethnicity, and class to obtain a risk level or score.
- Respect for the constitutional principle of judicial discretion and responsibility for pretrial release and detention decisions, and with aiding judges in their decision-making responsibility by providing risk assessment and other relevant information gathered by pretrial services.
- Improving upon the current system of pretrial detention/release to enable judges to make appropriate decisions as quickly as possible when there is adequate information on which to base such a decision, and so long as there are new and sufficient resources for the system.

### *Areas of Concern*

#### *Judicial discretion and independence*

The Judicial Council is concerned that SB 10 would infringe on judicial discretion and independence for the following reasons:

- *Balance of system interests*: The council is concerned that SB 10 does not establish a reasonable or realistic balance between the interest in releasing all defendants who can be safely released pretrial, and a concern for public safety (including safety of victims) and the administration of justice (fleeing jurisdiction/failure to appear). Judges have

constitutional and statutory responsibility for implementing the law in ways that ensure appropriate consideration for protecting the rights of the accused, protecting the public and victim(s), and providing for the fair and efficient administration of justice. In that regard, the council is concerned that SB 10 would require the pre-arraignment release by the pretrial services agency of any person charged with a misdemeanor (unless the defendant is already on pretrial release), without providing an opportunity for a judge to determine whether the defendant (who may be charged with a serious misdemeanor, including domestic violence) is a risk to public safety or the safety of the victim(s), or is likely to flee. SB 10 also does not account for those defendants who fail to appear and are cited and released rather than booked.

- Matters appropriate for Rules of Court: The bill has a number of detailed requirements for judicial decision-making that are more appropriately addressed in Rules of Court rather than statutes, so they can be more easily revised and updated. For example, the council believes that it is more appropriate for Rules of Court to address certain factors courts must consider in making their determination, such as what the court must consider in making a release decision, what constitutes "substantial hardship" in determining ability to pay, and factors for determining whether the defendant's release would result in great bodily harm to others.
- Information provided to the court: The bill appears to significantly limit information provided to the judge at pre-arraignment as a basis for the release determination. As currently drafted the bill would only require information about the current offense, the law enforcement list of charges, and a risk assessment result. The bill, however, does not allow other important information to be provided to the judge such as criminal history, probable cause documentation or other background related to the risk assessment.
- Balance between judicial authority and pretrial services authority: Substantial burdens are imposed on judges to justify any departure from recommendations of the pretrial services agency, including requiring courts, if the release decision is inconsistent with the recommendations of the pretrial services agency, to include a statement of reasons. The bill also requires the court to annually report the rate of judicial concurrence with recommended conditions of release without requiring the provision of additional data regarding the decisions made, the conditions actually imposed initially and through the course of the case, etc. Reporting solely the rate of concurrence implies that judges are discouraged from exercising any discretion that departs from the pretrial services recommendations.
- Judicial determination of risk: SB 10 would allow the court to impose preventive detention only for those defendants who are charged with a violent or serious crime. The

council is concerned that this makes the bill ineffective and unfair because the determination is charge-based rather than risk-based and appears to not allow the judge to take criminal history or other factors into account. Further, the council believes that courts should have the option of imposing preventive detention for those defendants who, whatever their current charge, score in the highest risk levels and for whom no condition or combination of conditions can provide for safe pretrial release.

- *Release on bail:* The bill provides for release on bail in a manner that places judges in the untenable position of being required to release on bail defendants who are at high risk of failure to appear (FTA) or of danger to public safety. This structure undermines the legislation's goal of judicious use of preventive detention to protect public safety while releasing defendants who are appropriate for pretrial release. For example, the proposed bill would prohibit release on bail *except* when no condition or combination of conditions can assure safe pretrial release. It requires the court to set monetary bail at the least restrictive level necessary and to consider ability to pay without substantial hardship. This arrangement affords "high risk" defendants the opportunity to be released on bail *despite* their risk level, unless they have been charged with a violent or serious offense. Further, the bill appears to limit the court's ability to consider the appropriateness of preventive detention in cases where the defendant has a history of violent offenses but has a current offense for which preventive detention is not statutorily permitted.
- *Violations of release:* The proposed approach for addressing violations of pretrial release is unrealistic and impinges on judicial discretion because the sole option for addressing violations of pretrial release is through contempt of court proceedings, which is not an adequate solution. Contempt is a complex and extended process for courts to impose and implicates Penal Code section 1382 rights. Penal Code section 1382 requires the court, unless good cause is shown to the contrary, to order an action dismissed in specified cases.

### Timelines/Resources

The Judicial Council is concerned that the bill would impose unrealistic (and unspecified) timelines on courts. The bill would require informed decision-making on timelines that are unrealistic for courts and criminal justice partners. For example, the bill would: (a) require pretrial services agencies to gather and courts to process a significant amount of information regarding a defendant on very tight timelines; (b) require judges to issue findings of fact and a statement of the reasons for imposing each condition that are specific to the person in each case where conditions are imposed; and (c) require up to five pre-arraignment hearings on very tight timelines. Currently, many of the timelines in SB 10 are yet undefined, to be filled in through later amendments. The council is also concerned that the limitations on hearings are unclear, so it seems they could be as extensive (and time consuming) as a preliminary hearing with

presentation of witnesses, cross-examination, and submission of other evidence. Because the proposed system is so complex, it is unclear whether there is a need for these multiple hearings in order to accomplish the legislation's stated purposes.

**Pretrial Services agencies: unrealistic responsibilities and expectations**

The Judicial Council is concerned that the bill would impose unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information when making decisions, as follows:

- *Courts' interest in effective pretrial services agencies:* The proposed system requires pretrial services agencies to undertake a variety of tasks that are integral to efficient and effective decision-making by courts. Courts have a vested interest in the effectiveness of agencies with such significant responsibilities that are intertwined with those of the court. In many counties, such agencies either do not currently exist or are relatively small. For a pretrial release and detention system to function, courts must have confidence that pretrial services agencies—whether a separate agency or a unit of an existing agency—are right-sized and well-run so that courts can rely on the agencies' assessments, recommendations, and ability to monitor and supervise defendants granted pretrial release.
- *Risk assessment instrument:* Portions of the bill that define the use of a risk assessment tool by pretrial services raise questions regarding validity, reliability and access. More specifically, the bill would mandate certain criteria for the tool and prohibit other criteria. This approach would undermine the fundamental requirement that the factors in an evidence-based tool, and the algorithm used to weight the factors, have been validated to be predictive of risk for a particular population. Further, the council is concerned that *only* the PSA-Court instrument developed by the Laura & John Arnold Foundation currently appears to meet the requirements of SB 10.

**Burdensome and complicated system**

Finally, the Judicial Council is concerned that SB 10 would create a non-linear and highly complex system. More specifically, the council is concerned that the operational impact on courts would be profound and, without adequate funding, unachievable. The council is also concerned that SB 10 would attempt to graft at least four different release and detention elements onto the current statutory structure for the bail system: risk-based release; unsecured bonds; ability-to-pay determinations; and preventive detention. Further, in many counties, a significant portion of the pretrial population is ineligible for release due to probation or parole holds, immigration (ICE) holds, holds for multiple failures to appear, or other legal circumstances that prevent their release. The council believes that it would be inefficient to use resources to assess defendants, process paperwork, hold hearings, etc. for defendants who will not be eligible for



Hon. Reginald B. Jones-Sawyer, Sr.

June 30, 2017

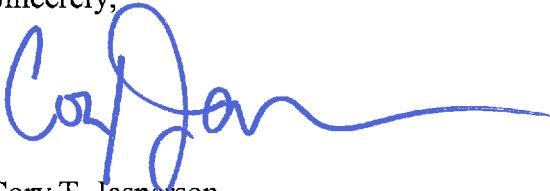
Page 6

release due to circumstances that arise from legal issues unrelated to the current charge. Finally, the council believes that any significant revision to the current pretrial detention and release system should be phased-in with at least a two year "sunrise" so that courts and justice system partners are able to put the necessary structures, processes and training into place, and help to ensure that the revised system will be functional and a genuine improvement.

In closing, the Judicial Council has several substantial concerns about SB 10 in its current form and looks forward to working with the author's office and your committee to address these concerns.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,



Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/SR/yc-s

cc: Members, Assembly Public Safety Committee  
Hon. Bob Hertzberg, Member of the Senate  
Hon. Travis Allen, Member of the Senate  
Hon. Joel Anderson, Member of the Senate  
Hon. Toni G. Atkins, Member of the Senate  
Hon. Jim Beall, Member of the Senate  
Hon. Steven Bradford, Member of the Senate  
Hon. Ricardo Lara, Member of the Senate  
Hon. Holly J. Mitchell, Member of the Senate  
Hon. William W. Monning, Member of the Senate  
Hon. Bob Wieckowski, Member of the Senate  
Hon. Scott D. Wiener, Member of the Senate  
Hon. Rob Bonta, Principal coauthor, Member of the Assembly  
Ms. Mica Doctoroff, Legislative Advocate, American Civil Liberties Union of California  
Ms. Sandy Uribe, Counsel, Assembly Public Safety Committee  
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy  
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

**LATE**

THE SENATE  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2018

Testimony to the Committee on Public Safety

Rep. Gregg Takayama, Chair

Rep. Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018

10:00 AM

Conference Room 312

State Capitol

Testimony Opposing HB1996 Relating to Pretrial Release

My name is James Waldron Lindblad, and I am here to participate in the legislative process and to offer my opposition to SB1996. I want fewer people in jail and believe no person should be held in jail simply for lack of funds. I have worked in both government pretrial release and as a private bail agent since 1973. I recommend the HB1996 be held for the following reasons.

I think the HCR134 Task Force is presently studying the key concepts of this bill and will report to the legislature. Until such time as the HCR134 report is received by the legislature we have in the meantime a high functioning pretrial release process in Hawaii that is among the best in the nation.

The introduction to HB1996 erroneously states 41% of the jail population OCCC system, are held on pretrial matters. This may or may not be true because the words pretrial do not mean bailable. According to the HCR85 Draft Report, there are 476 probationers classified

as pretrial who cannot bail out and there are 234 Hope detainees whose bail is set at cash only that may be termed pretrial but that are notailable and should not be counted in the 41%. The HCR85 Task Force members corrected their draft report to better reflect accuracy of the statistics or numbers of persons at OCCC that were actually not able to or who were unwilling to pay bail and I expect the HCR134 Task Force will do the same and will compile accurate statistics to better assist our legislators.

In order to propose meaningful bail reform, we must first honestly and correctly diagnose the makeup of the current prison population. We must also discuss public safety issues and costs.

HB2221 attempts to legislate judicial decision making and could make decision making more difficult for judges and would not improve public safety or reduce prison population. In fact, I think that judges who are directed or left with or only 2 choices, to release or detain will many times choose detention, to be cautious, thus increasing the number of persons in jail and not reducing the pretrial jail numbers. We know this to be true already because of places like Washington DC., Oregon, New Jersey, Chicago and Kentucky where legislators were told release or detain models will improve fairness, improve public safety and would reduce prison populations the opposite has occurred and positive results have not proven true anywhere in the US today. Jails in all of the places where the ACLU release or detain models are adopted have the same crowding or worse and unintended consequences of higher high crime rates. The cost of these release or detain pretrial programs are between \$3200 and \$4000 per release as documented in Washington DC., and there are also the number of failure to appear bench warrants to factor into these costs. In Hawaii HPD arrests about 20,000 people annually which is the same number of arrests as Washington DC., and Washington DC spends about \$65M annually for their pretrial program.

We all want fewer persons in prison and we all want to improve fairness and provide equal justice. That is why I am here participating in the legislative process. I have made several attempts to meet with ACLU staff regarding pretrial matters to share my forty plus years of front line experience in both pretrial release and in bail bond release. Seeing first hand the decisions our judges are faced would benefit all persons interested in improving our prisons.

I believe HR134 Task Force Members will investigate the pretrial process in Hawaii and report back that we have a high functioning pretrial process that already includes provisions

for release or detain, own recognizance release and bail by cash or sufficient surety and our Hawaii Intake Service Center tools are also high functioning and among the best in the nation as Hawaii has been a leader in pretrial release practices since at least 1980.

Until such time as the legislature has full information and a full HCR 134 report, I recommending holding this bill and any other bills directing judges how to judge or directing courts on how to do their jobs regarding pretrial release. We have a high functioning court and a high functioning pretrial release process but we need a new jail and and we need better training for persons working in and around corrections but we do not need to tell judges how to judge pretrial matters. Judges already know how to do this.

Further summary.

1) We know the 41% is as stated in Section 1 of is not an accurate statistic. This is because there are, 234 HOPE and 476 persons included in the words "pretrial" who are notailable and who cannot bail out that are counted in these pretrial numbers presented in Section 1. Mr. Merce corrected these numbers in his HCR85 report to the legislature. 2) We know 40/40 drunk drivers bailed out on \$500 each over January 22, 2018, weekend and none were sent to OCCC., versus in New York, the Times article referenced in Section 1., states only 15% of the New York defendants could bail out when bail was \$500 or less. See how Hawaii differs already. 3) In Hawaii, the judges go to HPD on the weekend already and let people out on most misdemeanors and even bench warrants for failure to appear. 4) We have at our Hawaii Intake Service Center a pretrial bail report tool/questionnaire that is among the best ever created. 5) If the state wants to send a text message on court dates they should do so for everyone. 5) Hawaii has a high functioning pretrial release process that is among the best in the nation.

I favor texting all defendants court date info even though at my office we do that already. Two reminders are better.

We can also agree most misdemeanor arrests can be let out on citation release but with limits such as suggested in testimony from Beth Chapman where certain crimes are excluded and if a person misses too many court dates they become eligible for release without surety or bail.

Please hold HB1996.

Sincerely,

James Waldron Lindblad

808-780-8887.

James.Lindblad@gmail.com

REV 1- Oppose HB1996

**\*\*Mark Twain** (among others), who attributed it to the British Prime Minister Benjamin Disraeli: "There are three kinds of lies: lies, damned lies, and **statistics.**"