



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 1436, H.D. 1, RELATING TO PRETRIAL RELEASE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 14, 2019 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but has concerns.

The purpose of this bill is to reform Hawaii's criminal justice system by:

- (1) Requiring 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;
- (2) Requiring the judiciary to establish a statewide court appearance reminder system for criminal cases; and
- (3) Establishing requirements for any pretrial risk assessment tool used by the judiciary.

Section 4 (page 8, lines 5 to 16) prohibits drug testing as a condition of release unless the charged offense falls within certain drug offenses. A determination of the appropriate conditions for release should be left to the court upon consideration of the input from the Intake Service Center and the parties. The court should not be restricted from imposing a condition of release that it deems appropriate given the circumstances presented.

Section 3 (pages 4 to 5, lines 11 to 18) requires release of any person

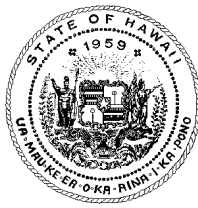
charged with a criminal offense unless the court determines that unconditional release will not reasonably assure appearance of the person charged.

However, changes in this process already have been implemented in response to the work of the Criminal Pretrial Task Force pursuant to House Concurrent Resolution No. 134, House Draft 1 (2017). Therefore, until the effectiveness of these process changes are evaluated, we believe this statutory fix is premature and could possibly be detrimental.

We suggest that the recommendations of the Task Force be allowed to be implemented, and the criminal justice system be afforded ample time to evaluate the impact of these changes to the law before presumptions favoring automatic release are imposed.

Based on the above concerns, we respectfully request that this bill be amended by deleting the wording in section 3 (pages 4 to 5, lines 11 to 18) and section 4 (page 8, lines 5 to 16). Thank you for the opportunity to comment.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 1436, HOUSE DRAFT 1
RELATING TO PRETRIAL RELEASE.

by

Nolan P. Espinda, Director
Department of Public Safety

LATE

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 14, 2019; 2:05 p.m.
State Capitol, Conference Room 325

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

The Department of Public Safety (PSD) supports House Bill (HB) 1436, House Draft (HD) 1, which incorporates key recommendations of the House Concurrent Resolution No. 134 (2017), Criminal Pretrial Task Force.

As amended, HB 1436, HD 1 deletes requirements for a pretrial risk assessment tool used by the Judiciary, which conflicted with the "risk assessment" required of PSD's Intake Service Centers in Section 353-10, Hawaii Revised Statutes (HRS). The Department had previously validated the use of the Ohio Risk Assessment System's Pretrial Assessment Tool (ORAS-PAT) for Hawaii's offender population in 2014, and has initiated a new validation study of the ORAS-PAT for Hawaii's offender population, precluding the need to implement another risk assessment mechanism.

Thank you for the opportunity to present this testimony.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, February 14, 2019, 2:05 PM
State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

By
Shirley M. Kawamura
Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit
Reporter, HCR134 Criminal Pretrial Task Force

Bill No. and Title: House Bill No. 1436, House Draft 1 Relating to 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 a statewide court reminder system.
(HB1436, HD1)

Judiciary’s Position:

The Judiciary respectfully opposes this bill.

A. Release on Personal Recognizance or Unsecured Bond

The Judiciary notes several concerns with the aspects of this measure that relate to unsecured bonds.

1. The Proposed Bill Mandates the Release of Potentially Dangerous Defendants

The proposed bill requires the release of a defendant on recognizance or unsecured bond unless the release “will not reasonably assure the appearance of the person when required.” In effect, H.B. 1436, House Draft 1 would summarily release all pretrial detainees, regardless of the



nature of the offense, only upon the finding that the defendant will appear at future court hearings. The language proposed does not take into account the danger the defendant may pose to the victim or the community at large. It does not take into account a defendant's risk of recidivism. The goals of pretrial release are to maximize (1) release, (2) court appearance and (3) community safety. Only two of three goals are protected here. This provision hinders judicial discretion and endangers the safety of our community.

2. The Proposed Bill is Inconsistent with H.B. 1289/S.B. 1421, H.B. 175, and the Recommendations of the Criminal Pretrial Practices Task Force

Pursuant to House Concurrent Resolution No. 134, H. D. 1 Regular Session of 2017, Chief Justice Mark E. Recktenwald established the Criminal Pretrial Procedures Task Force to examine and recommend legislation to reform Hawai'i's criminal pretrial system. The Task Force embarked on its yearlong journey in August 2017. It began with an in-depth study of the history of bail and American bail reform. The Task Force members researched the legal framework underlying current practices, which are firmly rooted in our most basic constitutional principles of presumption of innocence, due process, equal protection, the right to counsel, the right to confrontation, and the notion that liberty is the norm and detention is the very limited exception. Members invited national experts, delved into the latest research and evidence-based principles, and took steps to learn from other jurisdictions where pretrial reforms are well underway. In addition, members reviewed previous studies conducted in the State of Hawai'i, engaged with community experts, heard the views of local stakeholders, and visited cellblocks, jails, Intake Service Center offices and arraignment courts in an effort to investigate and present an unbridled view of othe criminal pretrial process.

The Task Force submitted its final report to the legislature in December 2018. The twenty-five recommendations set forth in the report seek to improve Hawai'i's current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants' release and court appearance, and keeping the community safe. An omnibus bill package was also introduced this legislative session to implement the Task Force's recommendations. If passed, the omnibus bill will alleviate the concerns underlying this bill.

3. Unsecured Bonds Are Not Necessary.

Unsecured bonds are not necessary. Many references have been made to the federal pretrial system, which utilizes unsecured bonds. However, it should be noted that the vast majority of defendants released on unsecured bonds in the federal system are also supervised by federal pretrial services. Thus, federal defendants face a possible financial obligation in addition to pretrial monitoring. In state court, defendants eligible for supervised release are already released without any financial obligation. Non-financial release alternatives are already utilized. Defendants can be released on their own recognizance, on supervised release to the Department



of Public Safety's Intake Service Center, on supervised release to a sponsor (often a family member or friend with a stable residence), or on supervised release to a treatment program. There is no need to saddle indigent defendants with an additional obligation of unsecured bonds.

4. The Proposed Bill Lacks Specification and Appropriation for Implementation of Unsecured Bonds.

The proposed bill authorizes a defendant's release on unsecured bond, but does not set forth any procedures with respect to implementation. An agency must be designated and funded to draft, implement and monitor the status of any unsecured bond. In the event that the defendant released on unsecured bond does not appear in court, there is no specified procedure or appropriation for the enforcement and collection of the bond.

B. Statewide Court Reminder System

Next, House Bill 1436, House Draft1 requires the Judiciary to establish a statewide court reminder system. The Judiciary appreciates the intent of this provision, however, administrative efforts are currently underway that do not require legislation. For example, the Judiciary recently launched a pilot electronic reminder system for criminal cases on the neighbor islands, and extended it to First Circuit District Court on February 1, 2019. This system allows defendants to receive text reminders before their next scheduled court date.

In sum, the Judiciary appreciates the intent of this measure to the extent that some of the provisions are consistent with the recommendations of the Task Force, but must oppose it for the reasons set forth above.

Thank you for the opportunity to testify on this measure.



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the House Committee on Judiciary

February 13, 2019

H.B.1436, HD1: RELATING TO PRETRIAL RELEASE

Chair Chris Lee, Vice Chair Joy A. San Buenaventura and Committee Members

The Office of the Public Defender supports H.B. 1436, HD 1

A major purpose of bail is to assure a defendant's in court. However, all too often individuals remain in custody unable to post bail, causing a myriad of problems. The studies have shown an over reliance on money bail. The ability to post bond has very little to do with either assuring the defendant's appearance in court or the issue of dangerousness. Yet many individuals are unable to gain release simply because of economic circumstance under the current money bail system. This system unfairly impacts the poor which results in needless incarceration and eventual increased costs to Hawai'i taxpayers.

H.B. 1436 establishes a rebuttable presumption of release and levels the playing field. This proposal is similar systems to those implemented in other parts of the country that have eliminated money bail. The Bill will likely result in more people being released from custody. While this proposed legislation may more ambitious and effective in preventing unnecessary incarceration, it is not in line with the recommendations of the Pretrial Task Force. Furthermore, we understand there may be concerns which will need to be addressed and debated.

The Office strongly supports **unsecured bond**. Too often, individuals are not able to post cash bail or go through a bond company that will require cash and collateral for the posting of bail. Unsecured bond offers some relief and gives the Court another option or tool of assuring a defendant's appearance in court while allowing release of individual that should not otherwise be incarcerated. Furthermore, unsecured bond has proven successful in other jurisdictions, such as in the Federal Criminal Justice system.

Thank you for the opportunity to comment on H.B. 1436, H.D. 1.

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



DWIGHT K. NADAMOTO
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i**

February 14, 2019

RE: H.B. 1436, H.D. 1; RELATING TO PRETRIAL RELEASE.

Chair Lee, Vice-Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1436, H.D. 1.

The purpose of H.B. 1436, H.D. 1, is to eliminate the pretrial bail system, and release all pretrial detainees on personal recognizance or unsecured bond, unless the court determines that the defendant will not appear for hearings when required (page 4, lines 14-16; page 5, lines 4-5; page 5, lines 9-10). Any considerations regarding dangerousness, obstruction of justice, witness tampering, and ongoing illegal activity would be deleted. The bill would also limit substance abuse testing to defendants charged with drug use, possession or distribution offenses (page 8).

Rather than making such drastic and sweeping statutory changes at this time, the Department urges the Committee to consider the recommendations of the H.C.R. 134 Task Force, as stated at their information briefing of January 22, 2019. Given the numerous policy and procedural changes currently being implemented by various agencies—as a direct result of their participation in the Task Force—the Task Force recommended that sufficient time be allotted to collect and analyze relevant data, then assess any additional changes that are needed, statutory or otherwise.

As currently written, H.B. 1436, H.D. 1, would summarily release all pretrial detainees—even the most dangerous individuals being held for murder, rape, human trafficking and so forth—if the court is convinced that the individual will reappear for their hearings. While the Department understands the Legislature's desire to lower the number of pretrial detainees, we urge the Committee to maintain the current safeguards that are used to assess a pretrial detainee, beyond whether they will appear for court hearings. In particular, the Department believes it is extremely important for the court to consider any potential dangerousness, obstruction of justice,

witness tampering and illegal activity, when determining if and how to release an individual back into the community, pending trial. To release anyone without considering these important factors would be an unwarranted and unsafe risk, not only for victims and witnesses, but potentially for the general public as well.

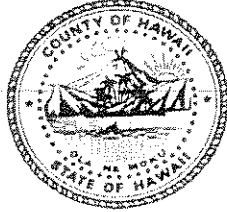
Regarding substance abuse testing as a condition of release, we note that individuals with substance abuse problems do not always limit their criminal offenses to drug possession, use or distribution. Drug use and/or addiction can be a contributing factor in many different types of offenses, and as such, we strongly urge the Committee not to limit the court's options to utilize substance abuse testing when applicable.

Before taking a "throw the baby out with the bathwater"-approach to pretrial bail reform, the Department strongly urges the Committee to allow time for appropriate data collection and analysis, as recommended by the H.C.R. 134 Task Force at the informational briefing on January 22, 2019. While the Department remains committed to participating in a reevaluation of the current bail system, we agree that relevant and up-to-date data analysis would provide additional insight, particularly in light of the numerous changes made by various agencies as a result of the Task Force.

For all the reasons above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 1436, H.D. 1. 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 TO HB 1436, HD1

A BILL FOR AN ACT RELATING TO PRETRIAL RELEASE

COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair
Rep. Joy San Buenaventura, Vice Chair

Thursday, February 14, 2019, 2:05 p.m.
State Capitol, House Conference Room 325

Honorable Chair Lee, Honorable Vice Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in OPPOSITION to House Bill 1436, HD 1.

The purpose of HB 1436, HD 1, is to reduce the amount of people incarcerated prior to trial by requiring courts to order persons charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond.

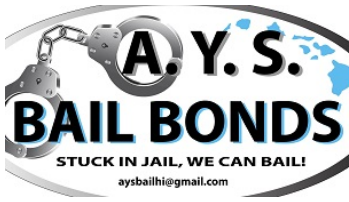
When compared to the rest of the nation, Hawai'i has one of the lowest, if not the lowest, pretrial populations per capita in the country. Bail is set in most if not all cases to ensure that the defendant returns for all court proceedings related to their case after being released. By removing the requirement of bail or a surety in all criminal cases, HB 1436, HD 1, proposes a system which removes any incentive or obligation for a defendant to return to court as well as fails to take into account the risk and danger to the community.

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. Mitch Roth, Hawai'i County Prosecutor sat on this Task Force.

In December 2018, the Task Force submitted a report of its findings and recommendations, including comprehensive recommendations regarding pretrial release.

The recommendations in HB1436, HD 1, go beyond the HCR 134 Task Force recommendations regarding pretrial detention or release. This Bill would allow any defendant to essentially walk free and does not adequately take the safety and security of the community into consideration.

For the above stated reasons, the Office of the Prosecuting Attorney, County of Hawai'i, opposes the passage of House Bill 1436, HD 1. Thank you for the opportunity to testify on this matter.



A. Y. S. Bail Bonds LLC
91-1121 KEAUNUI DR. Suite 108
EWA BEACH, HAWAII 96706
(808) 427-3430

February 6, 2019

HOUSE OF REPRESENTATIVES – State of Hawaii (The Thirtieth Legislature)

Committee on Judiciary

Chairperson: Chris Lee

Vice-Chairperson: Joy A. San Buenaventura

Thursday February 14th, 2019 @ 2:05pm

Conference Room: 325

RE: Opposition to HB-1436 H.D. 1 – Relating to PRETRIAL RELEASE

Greetings Chairperson Lee and Committee Members;

Aloha, my name is Lance Ling and I am the Vice-President of A. Y. S. Bail Bonds LLC, which is a small, woman owned, and minority owned business in the State of Hawaii. Our company offers Surety Bail Bonds to defendants across the island of Oahu. We strongly oppose the current wording of the proposed HB1436 H.D. 1. We do not believe everyone is truly informed of the real numbers and issues concerning accused defendants and the PRETRIAL RELEASE. Anyone can give statistics that will sway their way, to “draw a picture” to make their theory the best solution.

REASONS TO OUR OPPOSITION of the Bill – **RELATING TO PRETRIAL RELEASE:**

1. Revising HRS 804-3 **Pretrial Release; bailable offenses.** Allowing a court to order release of any person charged with a criminal offense, unless it is determined the person charged with an offense will not appear.
 - a. There is substantial evidence within the court system, that persons often re-commit a crime and/or arrested again for new charges on new offenses.
2. This Bill does not necessarily solve the problems, that the Legislature is trying to fix here. To reduce the number of Pretrial detainees that are being held in the prisons across the State of Hawaii. In fact, this Bill will put a larger burden on the Judiciary System, which is very understaffed and backlogged as it is.



A. Y. S. Bail Bonds LLC
91-1121 KEAUNUI DR. Suite 108
EWA BEACH, HAWAII 96706
(808) 427-3430

3. A major issue is finding the most effective and efficient ways to pay for electronic monitoring of defendants. Court staffers also dedicate significant resources to address issues related to noncompliance with electronic monitoring, such as when defendants go missing or enter prohibited zones.

Committee Members, your time and work is better spent looking into working with the Judiciary Branch in filling vacancies, and reducing the current back-log of cases. Working with the Judiciary, Department of Public Safety, and the County Police Departments, to streamline the arrest and pre-trial process to speed-up the current process of getting a person charged with a crime a court date less than 3 weeks out from time of arrest. The Task Force should look into why the Pretrial process takes so long and why the court staff cannot keep up with their workload.

Coming from being in the system myself, of being charged with a crime, going through all the hearings and finally being sentenced, and now working within a business that helps persons charged with criminal offenses ranging from DUIs, Contempt of Court, Abuse, etc., I can see that the system is SLOW MOVING, and really could use some help with staffing and a better process.

Please Committee members, look further into the issues before passing this Bill HB-1436 H.D. 1. Thank you for your time, and work.

Respectfully,

A handwritten signature in black ink, appearing to read 'Lance T. M. Ling'.

Lance T. M. Ling
Vice-President
A.Y.S. Bail Bonds LLC



HB 1436, HD 1, RELATING TO PRETRIAL RELEASE

FEBRUARY 14, 2019 · HOUSE JUDICIARY
COMMITTEE · CHAIR REP. CHRIS LEE

POSITION: Support.

RATIONALE: IMUAlliance supports HB 1436, HD 1, relating to pretrial release, which 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; and establishes requirements for any pretrial risk assessment tool used by the Judiciary.

IMUAlliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention services to 135 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims in total. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name. Yet, sadly, **many of the victims with whom we work are misidentified as so-called "voluntary prostitutes" and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.**

Hawai'i has approximately 5,500 inmates, over, 1,500 of whom are incarcerated overseas, away from their families and homeland. According to a report by the American Civil Liberties Union released last year, pre-trial detainees in Honolulu wait an average of 71 days for trial because they cannot afford bail. Additionally, researchers found that circuit courts in Hawai'i set money bail as a condition of release in 88 percent of cases, though only 44 percent of those people managed to post the amount of bail set by the court. Moreover, the study found the average bail amount for a Class C felony on O'ahu is set at \$20,000. Even with help from a bail bonding agency, posting bond, in such cases, would require an out-of-pocket expense of roughly \$2,000. Finally, while officials claim that bail amounts are supposed to be based on a consideration of multiple factors—including flight risk, ability to pay, and danger to the community—researchers learned that in 91 percent of cases in Hawai'i, money bail mirrored the amount set by police in arrest warrants, an amount based solely on the crime charged. These injustices led the ACLU to declare that our state's pretrial detention system was and remains unconstitutional.

Furthermore, as the visitor industry reaps record profits and supports expansion of the local prison-industrial complex, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, continue to suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and, importantly for this measure, **harsher drug-related punishments than other ethnic groups**. Therefore, passage this measure is a step toward reforming and preventing more people from becoming victims of our unjust and racially coded prison system.

HB-1436-HD-1

Submitted on: 2/12/2019 3:14:58 PM

Testimony for JUD on 2/14/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 1436.

We need to revamp our judicial system and this bill is good start.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy SanBuenaventura, Vice Chair

Wednesday, February 13, 2019

2:05 pm

Room 325

SUPPORT HB 1436 HD1 - UNSECURED BOND & COURT NOTIFICATION SYSTEM

Aloha Chair Lee, Vice Chair SanBuenaventura 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 families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 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 more than 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.

SB 1436 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. HD1 eliminated the court risk assessment and defected the date.

Community Alliance on Prisons supports releasing people who present no flight risk or danger to the community on unsecured bonds. An unsecured bond is a commitment/contract signed by the defendant who agrees to appear before the court. If s/he fails to do so, s/he promises to pay later the agreed bail bond amount before the court.

We support the court notification system that has increased court appearances in several jurisdictions. We believe the Judiciary is already working on implementing a notification system.

Let's remember that these individuals are innocent until proven guilty.

Community Alliance on Prisons supports this legislation and urges its passage.

Mahalo for this opportunity to testify.



Hawai'i

Committees: House Committee on Judiciary
Hearing Date/Time: Thursday, February 14, 2019, 2:05 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 1436, H.D. 1, Relating to Pretrial Release

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee on Judiciary,

The American Civil Liberties Union of Hawai'i writes in **support of** H.B. 1436, H.D. 1, which addresses fundamental, constitutional flaws with the current bail system in Hawai'i by 1) creating a presumption of release on an individual's recognizance or on the execution of an unsecured bond; 2) requiring the implementation of a court appearance reminder system; 3) prohibiting the use of bail schedules and the ordering of substance abuse treatment or testing for those who have not been charged with a drug-related crime. While we support this measure, we respectfully request that the Committee amend the bill by restoring language from its original version establishing minimum standards for any adoption or use of pretrial risk assessment tools.

Pretrial incarceration is one of the major drivers of overcrowding in Hawai'i's jails.

Currently, around 1,000 men and women in Hawai'i – around half of the individuals in Hawai'i's jails – have not been convicted of the crime they're accused of committing and are merely awaiting trial, most often because they cannot afford the amount of bail set in their case.¹

To better understand why so many people, who are innocent in the eyes of the law, are being jailed pretrial in Hawai'i's jails, the ACLU of Hawai'i recently conducted an in-depth study of the state's bail setting practices. Our study reviewed all cases filed in Hawai'i's circuit courts in 2017. While we have published a preliminary report examining cases between January and June of 2017, this testimony reflects our most recent findings, which includes a full year's worth of cases. We also note that many of the findings in The Criminal Pretrial Task Force, convened by the Hawai'i State Judiciary pursuant to by H.C.R. 134 (2017) (the "Pretrial Task Force") also support many of the suggested changes in this bill.

Courts' reliance on money bail results in people who otherwise pose no risk of flight or threat to public safety staying in jail because they are simply too poor to get out. Our research revealed that circuit courts heavily rely on the use of money bail to secure court appearances, setting cash bail as a condition of release in 90 percent of cases. The Pretrial Task Force² similarly found that Hawai'i's system "relies upon money bail largely to the exclusion of

¹ State of Hawai'i Dep't of Pub. Safety, End of Month Population Report (Jan. 31, 2019).

² While we appreciate the findings of the HCR 134 Criminal Pretrial Task Force, and acknowledge that the Task Force's recommendations have been incorporated into multiple bills

other financially-neutral alternatives” and that this is problematic because “the setting of money bail alone . . . does not correlate with a defendant’s risks of non-appearance, danger, or recidivism.”³ Put simply, money bail is not necessary to ensure public safety or an individual’s appearance in court.

Moreover, the courts assigned bail at amounts without regard to an individual’s financial circumstances but rather solely based on the crime charged. Indeed, the median bail amount on Oahu for a single class C felony was \$11,000. This is despite the lack of any serious inquiry into someone’s ability to pay or specific risks of flight or danger to the community. Given these large amounts, it was not a surprise when we learned that only 46 percent of arrestees were able to post bail. By enacting a statutory presumption of release on recognizance or unsecured bond, while also placing the burden on the State to show the court with clear and convincing evidence why more conditions, non-financial or financial, are necessary, H.B. 1436, H.D. 1 ensures that courts will be required to further honor an individual’s due process rights by treating liberty as the norm, and detention as the exception as required by the U.S. and Hawai‘i constitutions.⁴ Additionally, by requiring courts to document in writing the reasons for additional conditions of release, we will be ensuring that courts are not treating bail hearings as perfunctory routines, but rather as a carefully considered and individualized process.

Courts fail to individualize the bail setting process as required by the U.S. Constitution and Hawai‘i Revised Statutes. Courts routinely fix bail based on the charge-based amounts as set by the guidelines adopted by the circuit courts, or by setting blanket and inappropriate conditions of release. The Supreme Court of Hawai‘i has found the use of bail schedules to be an abuse of judicial discretion and beyond the scope of legislative authority.⁵ Nevertheless, courts rely

introduced in the 2019 regular legislative session (including H.B. 1289), we find that H.B. 1436 adopts several of these recommendations, such as the implementation of the court reminder system and more individualized considerations of release.

³ Hawai‘i Criminal Pretrial Reform, Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai‘i, pp 66-67 (December 2018).

⁴ *US v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”). *See also Huihui v. Shimoda*, 62 Haw. 527, 532 (holding that not allowing individualized inquiries violates the due process clause of the Fourteenth Amendment of the U.S. Constitution and Art. 1 § 12 of the Hawai‘i Constitution).

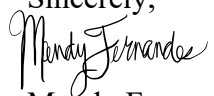
⁵ *Pelekai v. White*, 75 Haw. 357, 367 (1993) (“In striking down the sentencing guidelines [in *State v. Nunes*, 72 Haw. 521, 824 (1992)], we held that where the legislature vested the trial courts with discretion to impose a sentence, rigidly adhering to sentencing guidelines promulgated without legislative authority was an abuse of discretion. . . . Like the trial judge in *Nunes*, the trial judge in the instant case had the discretion to reset bail. . . . By rigidly following the Bail Schedule, the trial judge substituted the Bail Schedule for the discretion vested in her [in HRS § 804-5], and in doing so, abused her discretion.”)

heavily on them. By placing a statutory ban on bail schedules, H.B. 1436 H.D. 1, would preserve judicial discretion in the bail setting process while also honoring the language of Section 804-9, which requires considering one's ability to pay and not rendering the right to bail "useless to the poor."⁶

Standards for the use of pretrial risk assessment tools should be reinserted into the bill. In an attempt to individualize this process, as originally introduced, H.B. 1436 would establish minimum standards for the adoption of pretrial risk assessment tools. ACLU of Hawai'i generally cautions against absolute reliance on risk assessment tools, which are often imperfect measurements of risk, and even the most well-crafted tools can raise serious due process and equal protection concerns if not properly or consistently implemented. If, however, a tool is to be used, the ACLU of Hawai'i believes that the standards established in H.B. 1436 (as introduced) for risk assessment tools can aid in lessening the problematic effects these tools can have on the bail setting process.

For these reasons, the ACLU of Hawai'i supports H.B. 1436, H.D. 1, with amendments to add language to restore the pretrial risk assessment tool standards included in the bill's original draft. Hawai'i's pretrial system is ripe for reform. With the passage of H.B. 1436, H.D. 1, the state of Hawai'i can begin to address overcrowding in its jails while also making it a more individualized system that is in line with constitutional and fairness principles.

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

⁶ Haw. Rev. Stat. § 804-9 ("The amount of bail . . . should be so determined as not to suffer the wealthy to escape by the payment of a pecuniary penalty, nor to render the privilege useless to the poor. In all cases, the officer letting to bail should consider the punishment to be inflicted on conviction, and the pecuniary circumstances of the party accused.").

HB-1436-HD-1

Submitted on: 2/13/2019 11:09:41 AM

Testimony for JUD on 2/14/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

HB-1436-HD-1

Submitted on: 2/12/2019 3:18:48 PM

Testimony for JUD on 2/14/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

Comments:

We believe that the various bail measures pending this session are significant proposals 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.



TO: Chair Chris Lee
Vice Chair Joy San Buenaventura
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Comments in Relation to HB 1436

Aloha. This is a very important Bill for victims of domestic violence. The community and agents of law enforcement, and criminal justice system often underestimate the risk and the danger faced by victims of domestic violence. This testimony is to underscore the importance of the system's commitment to effective assessment and reliable implementation of efforts to keep perpetrators of domestic violence away from those they have most access to and the singular intention of harming again.

We cannot overstate the imperative for law enforcement and the criminal justice system to understand that well intentioned efforts to reduce unfair practices and the overrepresentation of low income people in our corrections systems potentially impacts the community's important work addressing domestic violence. Release on one's own recognizance can directly place a victim in harm's way. The terror and life-threatening pursuit by abusers of their partners is real. Often times detaining the abuser allows the victim time to safety plan and find needed resources.

This testimony is provided to your Committee to respectfully consider the broadest approach to supporting victim's needs for effective system response to their complex and potentially fatal abuse.

Thank you for this opportunity to offer this perspective.



LATE

BEFORE THE HOUSE JUDICIARY COMMITTEE
February 13, 2019

House Bill No. 1025 HD1
Relating to Public Lands and Lease Extension

Aloha Chair Lee, Vice Chair San Buenventura and Members of the Committee,

KPAC submits the following written testimony in opposition to House Bill 1025 HD1 following up on oral testimony submitted at the public on February 13, 2019 at 2:01 pm room 325 at the Capitol. This bill would provide the Board of Land and Natural Resources the power to extend leases of public lands for commercial, industrial, resort, or government use.

The majority of the lands held in the public lands trust are “ceded lands” or Hawaiian Kingdom crown and government lands. Professor Williamson Chang stated in a lecture given on October 1, 2014 entitled “Hawaii’s ‘Ceded Lands’ and the Ongoing Quest for Justice in Hawai‘i” that the Joint Resolution was incapable of acquiring these Hawaiian Kingdom public lands. Despite this analysis, the former Crown and government lands of the Kingdom of Hawai‘i were illegally transferred to the US and as a condition of Statehood was transferred to the State of Hawai‘i to be held as a public trust for 5 purposes including the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920. The Admissions Act further states that any other object besides the 5 purposes shall constitute a breach of trust for which suit may be brought by the United States.

For these reasons Ka Lāhui Hawai‘i Political Action Committee (KPAC) has concerns over the use of these lands outside of the 5 purposes set out in the Hawai‘i State constitution and actions that could be interpreted as land grabbing especially when the claims of the Kanaka Maoli people to 1.8 millions acres of these lands have yet to be settled. Allowing an appointed Board to make extensions of leases of “public lands” (with little or no public input or notice) for commercial, industrial, resort and even government use up to 99 years would set up lessees as pseudo landowners that may eventually lead down the slippery slope of lease to fee conversions.

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC

LATE

HB-1436-HD-1

Submitted on: 2/14/2019 12:58:58 PM

Testimony for JUD on 2/14/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Drug Policy Forum of Hawaii	Support	No

Comments:

HB-1436-HD-1

Submitted on: 2/12/2019 10:55:45 PM

Testimony for JUD on 2/14/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

This dose Not work and has been proven not to work over and over again Stop somking and think of a better solution.