



LATE

The Judiciary, State of Hawai‘i

**Testimony to the House Committee on Public Safety, Veterans,
and Military Affairs**

Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019 10:00 AM
State Capitol, Conference Room 430

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, 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. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

Judiciary’s Position:

The Judiciary appreciates the intent of this proposed bill, but respectfully suggests that the Committee defer consideration of this bill.

Release on Personal Recognizance or Unsecured Bond

First, House Bill No. 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. However, the House Concurrent Resolution No. 134 Criminal Pretrial Procedures Task Force proposed significant legislation regarding pretrial release, which may alleviate some of the concerns underlying this bill.



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.

The Judiciary notes several concerns with the aspects of this measure that relate to unsecured bonds. First, the bill requires release of a defendant on recognizance or unsecured bond unless the release “will not reasonably assure the appearance of the person when required.” There is no emphasis on considerations of dangerousness or the risk of recidivism. Second, the instant 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 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 regarding the enforcement and collection of the bond. Finally, there may be little need for unsecured bonds because non-financial release alternatives are currently available. In state court, defendants eligible for supervised release are released without any financial obligation. Defendants can be released on their own recognizance, or on supervised release to the Department of Public Safety’s Intake Service Center, to a sponsor (often a family member or friend with a stable residence), or to a treatment program.

Statewide Court Reminder System

Next, House Bill 1436 requires the Judiciary to establish a statewide court reminder system. The Judiciary appreciates the intent of this provision, however, administrative efforts



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House Committee Public Safety, Veterans, and Military Affairs
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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 expects to extend it to First Circuit district court soon. This system allows defendants to receive text reminders before their next scheduled court date.

Requirements for the Pretrial Risk Assessment Tool

Finally, House Bill 1436 establishes requirements for any pretrial risk assessment tool used by the Judiciary. 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.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

LATE

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KEITH M. KANESHIRO
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DWIGHT K. NADAMOTO
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**THE HONORABLE GREGG TAKAYAMA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
VETERANS, AND MILITARY AFFAIRS**
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i

February 6, 2019

RE: H.B. 1436; RELATING TO PRETRIAL RELEASE.

Chair Takayama, Vice-Chair Gates and members of the House Committee on Public Safety, Veterans, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1436.

The purpose of H.B. 1436 is to eliminate the pretrial bail system, and release all pretrial detainees on personal recognizance or unsecured bond, unless the court makes a determination that the defendant will not reappear for hearings when required. Any considerations regarding dangerousness, obstruction of justice, witness tampering, and ongoing illegal activity would be deleted. The bill also creates a court appearance reminder system, and makes reference to risk assessment tools used by the Judiciary.

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.

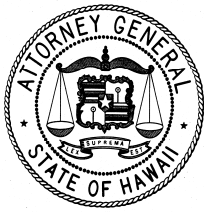
As currently written, H.B. 1436 would summarily release all pretrial detainees—even the most dangerous individuals being held for murder, sexual assault, human trafficking and so forth—if the court is convinced that the individual will reappear for their hearings. While the Department understands the 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.

With regards to Sections 3 of this bill, the Department notes that “objective, research-based, validated assessment tool[s]” are already utilized for pretrial risk assessments, pursuant to Section 353-10, Hawaii Revised Statutes.

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. Thank you for the opportunity to testify on this matter.



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

LATE

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

DATE: Wednesday, February 6, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 430

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

Chair Takayama 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 person 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 9, line 18 to page 10, line 8) 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.

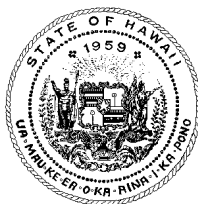
Section 3 (page 6, line 5 to page 7, line 11) requires release of any person charged with a criminal offense unless the court determines that unconditional release will not reasonably assure appearance of the person charged. However, changes in this process already have been implemented in response to 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 is evaluated, we believe this statutory fix is premature and could possibly be detrimental.

This presumptive approach will have a devastating and irreversible impact on community safety and the effective administration of justice. Laws designed to reduce the incarcerated population must be undertaken with reasonable caution. Again, the recommendations of the Task Force are being implemented and should be evaluated before any changes to the law are made. The criminal justice system should 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 (page 6, line 5 to page 7, line 11) and section 4 (page 9, line 18 to page 10, line 8). Thank you for the opportunity to comment.

DAVID Y. IGE
GOVERNOR

LATE



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
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Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON HOUSE BILL 1436
RELATING TO PRETRIAL RELEASE.**

by
Nolan P. Espinda, Director
Department of Public Safety

House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019; 10:00 a.m.
State Capitol, Conference Room 430

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

The Department of Public Safety (PSD) supports House Bill (HB) 1436, which incorporates key recommendations of the House Concurrent Resolution No. 134 (2017), Criminal Pretrial Task Force. PSD offers the following comments to ensure that the objectives are implemented by providing sufficient resources.

PSD advises that the measure's reference to a "risk assessment" conflicts with Section 353-10, Hawaii Revised Statutes (HRS), which requires that the risk assessment be conducted by PSD's Intake Service Centers. 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. PSD has initiated a new validation study of the ORAS-PAT for Hawaii's offender population, therefore the measure's recommended change may be premature.

Thank you for the opportunity to present this testimony.



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 Public Safety, Veterans and Military Affairs February 4, 2019

H.B.1436: RELATING TO PRETRIAL RELEASE

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

The Office of the Public Defender supports H.B. 1436

The 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 that money bail has very little to do with either assuring the defendant's appearance in court or addressing the issue of dangerousness. Yet many individuals are unable to gain release simply because of finances or economic circumstance under the current money bail system. The current money bail system unfairly impacts the poor which results in needless incarceration and eventual increased costs to the taxpayer.

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.

HB-1436

Submitted on: 2/2/2019 6:31:13 PM

Testimony for PVM on 2/6/2019 10:00:00 AM

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.



Hawai'i

LATE

Committees: House Committee on Public Safety, Veterans, & Military Affairs
Hearing Date/Time: Wednesday, February 6, 2019, 10:00 a.m.
Place: Conference Room 430
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 1436, Relating to Pretrial Release

Dear Chair Takayama, Vice Chair Gates, and members of the Committee,

The American Civil Liberties Union of Hawai'i writes in **support of** H.B. 1436, 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; and 4) establishing minimum standards for any adoption and 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 introduced in the 2019 regular legislative session (including H.B. 1289), we find that H.B. 1436

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 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.

The ACLU of Hawai‘i acknowledges that the Office of Hawaiian Affairs included in its legislative package S.B. 192 and H.B. 175, which would allow defendants to petition the court for unsecured bail, if posting money bail would result in significant financial hardship and incarceration would jeopardize continued employment, housing, enrollment in school, medical treatment, or the care of a dependent. Taking steps like this to ensure that the financial situation of the pretrial detainee is being considered certainly constitutes progress, and we believe that H.B. 1436 addresses these types of existing inequities in Hawai‘i’s bail system, especially because it establishes release as a presumption and not merely an option.

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

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).

Chair Takayama and Members of the Committee on Public Safety, Veterans & Governmental Affairs

February 6, 2019

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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 heavily on them. By placing a statutory ban on bail schedules, H.B. 1436 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

In an attempt to individualize this process, H.B. 1436 also establishes minimum standards for the adoption of pretrial risk assessment tools. ACLU of Hawai‘i generally cautions against 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 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. Hawai‘i’s pretrial system is ripe for reform. With the passage of H.B. 1436, 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. This can be done without compromising public safety, just as many other states have been doing with positive results on the mainland.⁷

Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes
Policy Director
ACLU of Hawai‘i

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.”)

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.”).

⁷ See Pretrial Justice Inst., *Where Pretrial Improvements are Happening* (October 2017).

Chair Takayama and Members of the Committee on Public Safety, Veterans & Governmental Affairs

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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.



HB 1436, RELATING TO PRETRIAL RELEASE

FEBRUARY 6, 2019 · HOUSE PUBLIC SAFETY,
VETERANS, AND MILITARY AFFAIRS COMMITTEE ·
CHAIR REP. GREGG TAKAYAMA

POSITION: Support.

RATIONALE: IMUAlliance supports HB 1436, 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.

LATE



O`ahu County Committee on Legislative Priorities

COMMITTEE ON PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS

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

DATE: Wednesday, February 6, 2019

TIME: 10:00 a.m.

PLACE: Conference Room 430, State Capitol

HB 1436 RELATING TO PRETRIAL RELEASE

To the Honorable Gregg Takayama, Chair; the Honorable Cedric Asuega Gates, Vice Chair; and Members of the Committee on Public Safety, Veterans & Military Affairs:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of HB 1436 relating to the Pretrial Release.**

HB 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. It requires the Judiciary to establish statewide court appearance reminder system. It establishes requirements for any pretrial risk assessment tool used by the Judiciary.

DPH supports reforms to our criminal justice system, including but not limited to bail reform, that encourage the reintegration of formally incarcerated individuals into greater society and reduces their rate of recidivism. *Democratic Party of Hawai`i Platform (2018), p. 9, ln. 1-2.*

For the foregoing reasons, i.e., to support reforms to our criminal justice system, including but not limited to, bail reform, OCCLP supports HB 1436 and urges its passage out of the Committee on Public Safety, Veterans & Military Affairs.

Mahalo nui loa
Me ka `oia`i`o

/s/ *Melodie Aduja*

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of
Hawai`i

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COMMITTEE ON PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair

Rep. Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019

10 am

Room 430

SUPPORT HB 1436 – UNSECURED BOND & COURT NOTIFICATION SYSTEM

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 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. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

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.

ROBERT K. MERCE

February 5, 2019

TO: House Committee on House Committee on Public Safety, Veterans, & Military Affairs

RE: HB 1436

HEARING DATE: February 6, 2019

TIME: 10:00 AM

ROOM: 430

POSITION: **SUPPORT**

Chair Takayama, Vice Chair Gates, and members of the committee:

I am a retired attorney and recently served as vice chair of the HCR 85 Task Force on prison reform. I am not an expert on bail or bail reform, but HB 1436 seems to adopt a reasonable approach pretrial release, beginning with a presumption of release on own recognizance or execution of an unsecured bond. The burden of overcoming the initial presumption is placed on the prosecution, which is where it should be, and if the prosecution meets its burden, the judge has a series of options available to him or her beginning with release with conditions, followed by a surety bond, and as a last resort, a denial of bail.

HB 1436 is a sound bail reform measure that would significantly reduce the jail population and go a long way toward making our criminal justice system more just by ensuring that people are not languish in jail simply because they are too poor to afford bail.

Thank you for the opportunity to comment on this bill.

HB-1436

Submitted on: 2/4/2019 10:37:04 AM

Testimony for PVM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Susan Graham	Individual	Support	No

Comments:

HB-1436

Submitted on: 2/5/2019 7:24:07 AM

Testimony for PVM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments:

I **stongly support HB1436**, especially its requirement to set up a statewide court appearance reminder system. Such a system, implemented in New York City years ago proved successfully in eliminating cash bail as a condition of release, while maintaining the same percentage of those who appeared as scheduled as did cash bail previously.

Such a system allows for the remainder of the provisions of the bill to be carried out, ending the use of cash bail and releasing pre-trial persons in almost all situations.

I also like the section on risk assessment that would ensure individualized, non-discriminatory use of a risk assessment tool.

Please pass HB1436

HB-1436

Submitted on: 2/5/2019 9:22:35 AM

Testimony for PVM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

support!

HB-1436

Submitted on: 2/5/2019 9:23:09 AM

Testimony for PVM on 2/6/2019 10:00:00 AM

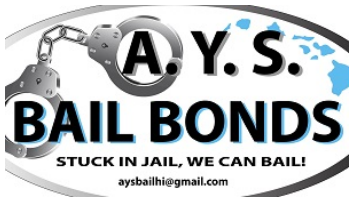
Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

People are supposed to be considered innocent until proven guilty and should be released prior to trial so they can go about their lives (maintain a job, keep their housing, take care of their family, etc.)

Other states have implemented a court reminder system successfully. Hawaii should too. It's not that difficult and will be cheaper than detaining people unnecessarily. Hawaii's taxpayers should not be burdened with unnecessary pretrial incarceration of low risk people.

Pretrial risk assessment tools determine whether or not a person is a danger to the community and may reoffend, but they are not completely fair and can be skewed to discriminate against certain groups. To make these risk assessment tools more accurate and effective, there should be requirements that mitigate any biases.



LATE

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February 6, 2019

HOUSE OF REPRESENTATIVES – State of Hawaii (The Thirtieth Legislature)
Committee on Public Safety, Veterans, & Military Affairs
Chairperson: Gregg Takayama
Vice-Chairperson: Cedric A. Gates
Wednesday February 6, 2019 @ 10:00am
Conference Room: 430

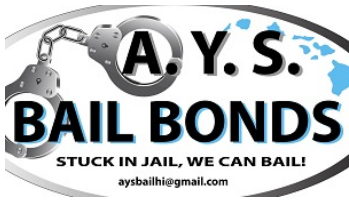
RE: Opposition to HB-1436 – Relating to PRETRIAL RELEASE

Greetings Chairperson Takayama 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. 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.

Here are some of the issues other States across the nation are having with their so-called BAIL REFORM/PRETRIAL RELEASE:

1. It has led to the quick release of some who weren't deemed a threat but were soon re-arrested on new charges.
2. The Judiciary Branch is spending more on the program than it was collecting in fees, that this is “simply not sustainable.”. The programs “requires a stable and dedicated funding stream at an appropriate level” through the state's general fund, rather than from court fee revenue.



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3. Another challenge involves the inability of staff to offer necessary services to certain defendants released on pretrial monitoring. Defendants sometimes need support for mental health, housing or substance abuse issues. The state needs to develop access to community-based treatment and housing assistance programs.
4. 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.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



L A T E
L A T E

DWIGHT K. NADAMOTO
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE GREGG TAKAYAMA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
VETERANS, AND MILITARY AFFAIRS**

**Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i**

February 6, 2019

RE: H.B. 1436; RELATING TO PRETRIAL RELEASE.

Chair Takayama, Vice-Chair Gates and members of the House Committee on Public Safety, Veterans, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1436.

The purpose of H.B. 1436 is to eliminate the pretrial bail system, and release all pretrial detainees on personal recognizance or unsecured bond, unless the court makes a determination that the defendant will not reappear for hearings when required. Any considerations regarding dangerousness, obstruction of justice, witness tampering, and ongoing illegal activity would be deleted. The bill also creates a court appearance reminder system, and makes reference to risk assessment tools used by the Judiciary.

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 would summarily release all pretrial detainees—even the most dangerous individuals being held for murder, sexual assault, 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.

With regards to Sections 3 of this bill, the Department notes that “objective, research-based, validated assessment tool[s]” are already utilized for pretrial risk assessments, pursuant to Section 353-10, Hawaii Revised Statutes.

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. Thank you for the opportunity to testify on this matter.