



The Judiciary, State of Hawai'i

Testimony to the Thirtieth State Legislature, 2020 Session

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Clarence K. Nishihara, Chair

Senator Glenn Wakai, Vice-Chair

Friday, January 31, 2020 at 1:15 p.m.

State Capitol, Conference Room 414

WRITTEN TESTIMONY ONLY

By

Melanie May

Deputy Chief Judge, District Court of the First Circuit

Bill No. and Title: Senate Bill 2591, Relating to Monetary Bail

Purpose: Prohibits courts from requiring a monetary bail as a condition for release when a person is charged with a petty misdemeanor, a traffic violation, or an equivalent offense under county ordinance, except under certain circumstances.

Judiciary's Position:

The Judiciary appreciates the spirit and intent of this proposed bill, however respectfully notes that the current form of the bill contains ambiguities and may lead to unanticipated consequences, rendering implementation a concern.

First, the current bill does not specify which offenses are covered, and which offenses are not. The bill references "traffic offense," "equivalent offense under county ordinances," and "traffic offense that resulted in death or bodily injury" but does not define those terms. Currently, traffic citations and arrests fall into several categories: (1) parking infractions, (2) traffic infractions, (3) traffic violations, (4) petty misdemeanors, and (5) misdemeanors. Certain charges, such as driving without a license, driving without insurance, and driving with a suspended or revoked license, can be classified as violations, petty misdemeanors, or misdemeanors depending on whether the person charged with the alleged offense was previously

convicted of the same offense within a specified time period. Notably, the bill does not specify whether “traffic offenses” include operating under the influence of an intoxicant under Haw. Rev. Stat. § 291E-61 (*i.e.*, DUI charges) and/or operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant under Haw. Rev. Stat. § 291E-62.

Second, the Judiciary notes that bail for petty misdemeanors is initially set by the police department and/or sheriff’s department, not the court. *See* Haw. Rev. Stat. § 804-5 (“in cases, except under section 712-1207, where the punishment for the offense charged may not exceed two years’ imprisonment with or without fine, the sheriff, the sheriff’s deputy, the chief of police or any person named by the chief of police, or the sheriff of Kalawao, regardless of the circuit within which the alleged offense was committed, may admit the person to bail”). Bail for traffic offenses classified as petty misdemeanors and misdemeanors is also set by the police and/or sheriff. If bail is set, and a person posts bail, the person is released from custody and is ordered to appear for arraignment and plea.

If a person does not post bail, the court will review the bail set by the police or sheriff. In many cases, persons who do not post bail are released from custody without having to post monetary bail. If a person is not released from custody, he or she is transported by the police or sheriff within one business day of the arrest for his or her first court appearance.

At the person’s initial court appearance, a defendant is formally arraigned, enters a plea, and, has an opportunity to request release from custody and/or a reduction of bail; requests for release and/or bail reduction are addressed by the court that same day. Currently, the law requires the court to make an individualized assessment of the seriousness of the alleged offense, the possible punishment upon conviction, the potential danger the person poses to public safety, and the defendant’s pecuniary circumstances. *See* Haw. Rev. Stat. § 804-9; *State v. Henley*, 136 Hawai‘i 471, 480 (2015); *Stack v. Boyle*, 342 U.S. 1 (1951). The court also considers the defendant’s record of attending court proceedings. *See Huihui v. Shimoda*, 64 Haw. 527, 543 n.12 (1982). The draft bill requires the court to release the person from custody at the initial court appearance without any individualized assessment of these factors. While release without monetary bail may be appropriate in many instances -- for example, in a case involving non-violent offenses such as remaining in a public park after the park has closed or in a case involving a driver whose license recently expired -- release without monetary bail might not be appropriate in others.

Under the current form of the proposed bill, a person charged with a petty misdemeanor involving violence or disruptive behavior would automatically be released without bail, without consideration of the seriousness of the alleged offense, the possible punishment upon conviction, and the potential danger to the public. By way of example, the court would have no choice but to release a defendant charged with harassment, open lewdness, and/or disorderly conduct without monetary bail, even if the defendant had an extensive history of non-appearance for court proceedings and a lengthy criminal history.

Senate Bill No. 2591
Senate Committee on Judiciary
Thursday, January 30, 2020

Likewise, absent clarification of the term “traffic offense,” “equivalent offense under county ordinances,” and “traffic offense that resulted in death or bodily injury,” a defendant charged with driving under the influence of an intoxicant, reckless driving, excessive speeding, and driving with a revoked or suspended license might also be automatically be released without bail.

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 Senate Committee on Public Safety,
Intergovernmental and Military Affairs**
Prepared by William C. Bagasol, Supervising Deputy Public Defender

January 29, 2020

S.B. No. 1421: RELATING TO MONETARY BAIL

Chair Clarence K. Nishihara, Vice Chair Glenn Wakai and Members of the Committee:

The Office of the Public Defender supports passage of S.B. 2591.

Pursuant to House Concurrent Resolution No. 134, H.D. 1 Regular Session of 2017, (HCR 134"), the Criminal Pretrial Task Force forwarded its recommendations to the legislature in December of 2018. After a lengthy and thorough process that included a review of the laws, pre-trial systems, national trends, testimony and relevant information, one of the recommendations of the Task Force was to eliminate use of money bail low level, non-violent misdemeanor offenders with exceptions. *See Recommendation No. 20 of the Recommendations of the Criminal Justice Task Force to the Thirtieth Legislature of the State of Hawai'i, December 2018.* This recommendation clearly supported in this 247-page report and is clearly a step in the right direction.

An over reliance on money bail and the laws governing money bail are "inconsistent with many of the fundamental principles underlying our criminal justice system, such as the presumption of innocence, due process, equal protection, right to counsel, right to confrontation and that liberty is the norm and detention is the very limited exception." Recommendations of the Criminal Justice Task Force to the Thirtieth Legislature of the State of Hawai'i, December 2018, pp. 90-91.

Indeed, money bail should not be an issue or an impediment for release, particularly for these types of non-violent and relatively minor offenses. The imposition of bail often results in punishment of the accused even before there is a determination of guilt. This is exactly the situation that the United States Supreme Court warned against in Bell v. Wolfish, 441 U.S. 520 (1979)

The poor are in a significant disadvantage. Unable to post bail, they cannot seek their release as easily as those with financial resources, even though they are not truly dangerous to the community. This proposal attempts to level the playing field.

Many jurisdictions have moved away from money bail for some of these reasons. Indeed, they continue to find success without compromising the safety of the community. Like these other jurisdictions, under the proposal, the courts may still impose conditions or implement procedures for release that do not rely on money. Similarly, if adopted, this proposal would also play a part in reducing over-crowded prisons, avoiding the negative consequences that comes with housing people, and providing cost savings for our already burdened taxpayers.

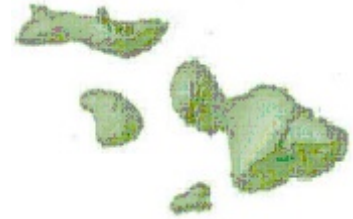
For the reasons set forth above, the Office of the Public Defender respectfully urges the Committee to pass SB 2591. Thank you for the opportunity to comment.

MICHAEL P. VICTORINO
Mayor

DON S. GUZMAN
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

ANDREW H. MARTIN
Second Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7688 • FAX (808) 270-8001

January 29, 2020

TESTIMONY ON
SB 2591 - RELATING TO MONETARY BAIL

Before the Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing Date: January 31, 2020, 1:15 p.m.

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
and Members of the Senate Committee on
Public Safety, Intergovernmental, and Military Affairs

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

Thank you for the opportunity to submit this written testimony regarding SB 2591. The Department of the Prosecuting Attorney, County of Maui, **OPPOSES** this bill. While the stated purpose of the bill to reduce jail overcrowding and eliminate lengthy pretrial detention of defendants accused of petty and non-violent offenses is understandable, SB 2591 has significant flaws.

First, under existing law, defendants are entitled to bail "... as a matter of right and under the least restrictive conditions required to ensure the defendant's appearance and to protect the public." HRS § 804-4. SB 2591 would strip the judiciary of the ability to determine that monetary bail should be part of the least restrictive conditions required to ensure a defendant's appearance and protect the public. For some defendants, monetary bail will undoubtedly be the best option to serve these purposes, but SB 2591 would prevent the courts from making that decision, and instead possibly force the courts to impose other, more restrictive, conditions of release. See, HRS § 804-7.1.

For example, without the option to impose monetary bail, the courts may determine that supervised release is required for certain defendants. In addition to being a more restrictive condition of release on the defendants, this could result in a large influx of defendants on supervised release, burdening the Department of Public Safety's intake service centers (which are responsible for overseeing defendants on supervised release under HRS § 353-10).

The decision whether monetary bail will be the "least restrictive condition" is best made

on a case by case basis by the courts, in consideration of the nature of the crime alleged and the characteristics of each individual defendant, not in a blanket policy as under SB 2591. When determining bail, the courts should have multiple tools to ensure the public is protected; SB 2591, however, limits the options available.

Second, traffic offenses and petty misdemeanors can pose serious risks of harm to the public. In particular, SB 2591 would prevent monetary bail from being imposed on defendants accused of Operating a Vehicle Under the Influence of an Intoxicant ("OUI") under HRS § 291E-61. Given the harm caused by drunk driving, not allowing the courts the discretion to impose monetary bail upon OUI defendants under appropriate circumstances would be a mistake. Doing so could well be seen as minimizing the seriousness of OUI. Similarly, under SB 2591, no monetary bail could be imposed for defendants accused of Reckless Driving under HRS § 291-2 or Excessive Speeding under HRS § 291C-105. Offenses such as these pose serious threats to the public and the courts should have the option to determine that imposing monetary bail in such cases is appropriate.

A related problem with SB 2591 is that it prohibits bail for "traffic offenses" except those resulting in death or bodily injury, without clearly defining what qualifies as a "traffic offense." There are some extremely serious and dangerous offenses that can be considered "traffic offenses" not resulting in death or bodily injury, such as Habitually Operating a Vehicle Under the Influence of an Intoxicant, a class C felony under HRS § 291E-61.5, and Resisting an Order to Stop a Motor Vehicle in the First Degree, a class C felony under HRS § 710-1026.9. Barring monetary bail for defendants accused of these crimes does not appear to be the intent of SB 2591, but as the bill is written, that may be the result.

In addition, many petty misdemeanors can directly result in harm to a member of the public, such as Indecent Exposure under HRS § 707-734, Harassment under HRS § 711-1106, Disorderly Conduct under HRS § 711-1101, Theft in the Fourth Degree under HRS § 708-833, Failure to Return Leased or Rented Personal Property under HRS § 708-837.5, Criminal Property Damage in the Fourth Degree under HRS § 708-823, and Criminal Trespass in the Second Degree under HRS § 708-814. In cases involving these and many other offenses, SB 2591 would prevent the court from making monetary bail part of the conditions it imposes to protect the victim (and the public as a whole), even if it determines that monetary bail would be the most effective approach under the circumstances. It would be a serious mistake to take this tool away from the courts.

Finally, in the experience of County of Maui Department of the Prosecuting Attorney, it is not clear that significant numbers of defendants accused of traffic offenses and/or petty misdemeanors remain in custody pending trial due to an inability to post monetary bail. There should be information to clearly demonstrate this is in fact occurring before the Legislature considers moving forward with SB 2591 or any similar measure.

In summary, SB 2591 strips the courts of the discretion to impose monetary bail in certain cases, even if a court determines that monetary bail would be the least restrictive condition necessary to protect the public and ensure the defendant's appearance. This would be unwise, particularly with respect to the specific offenses discussed above. Therefore, the Department of the Prosecuting Attorney, County of Maui, opposes SB 2591.

Thank you for your consideration of this testimony.



TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
JANUARY 31, 2020
Re: SB 2591 Relating to Monetary Bail

Good afternoon Chairperson Nishihara members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

While we understand the intent, RMH is strongly opposed to SB 2591 Relating to Monetary Bail. This measure prohibits courts from requiring a monetary bail as a condition for release when a person is charged with a petty misdemeanor, a traffic violation, or an equivalent offense under county ordinance, except under certain circumstances.

We are very concerned as this bill essentially gives those who have been arrested for a non-violent petty misdemeanor crime like shoplifting, harassment, disorderly conduct to name a few to be released without much consequence or an assurance they will in fact show up for court. **It's a big win for the offenders especially career criminals and an even bigger loss for anyone in the community who is a victim of a crime including our co-workers, family, friends and neighbors.**

Retailers have major concerns on this measure.

- **Many thieves know the exact value of what they are stealing and makes sure that what they are taking is valued right under the minimum threshold.** Retailers have been facing an upward increase in theft - from designer clothing to handbags to sunglasses to electronics to spam to cosmetics to liquor to tobacco to name a few.
- **Because there is NO monetary bail set and NO reporting or supervision of any type, the offenders that are caught and released will be back in our stores stealing once again within hours.** This bill highlights that there is no real consequence to those offenders of non-violent crimes including career criminals.
- **For organized retail criminals, they consider stealing from our stores their daily job.** The thieves are part of organized retail crime and come into the stores daily with a list of items, like your grocery list, of things that they are going to steal.
- **It is a losing battle for many retailers** where the police may or may not catch and arrest the thieves. When HPD does arrests them and lets them go after being processed, the thieves are right back into the stores stealing again. Then it is the prosecutors who may or may not prosecute them regardless of the number of priors they have. IF they don't prosecute, the thieves are right back in the stores stealing. If we are lucky to get a prosecution, the judges often let the thieves off easy with a slap on the wrist as it is a non-violent crime and within hours the thieves are back in the stores stealing again. **Bills like this give criminals the green light to do nonviolent illegal activities as there are no real consequences for their actions only a slap on the wrist.**
- **Although these crimes are not violent, they are still crimes and the victims are not just the retailers but the community as well.** There is only so much a retailer can absorb before we must raise the prices of items to cover the loss. And there is a limit on how much we can raise our prices to remain competitive and in business. **When we raise our prices the cost of living in Hawaii also increases. The alternative we have is to let go hard-working law-abiding employees or close our doors for good.**

We urge you to hold this measure. Mahalo again for this opportunity to testify.



Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada
Nelson Ho • Summer Starr

Wednesday, January 29, 2020

Relating to Monetary Bail
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB2591 Relating to Monetary Bail**, which prohibits courts from requiring a monetary bail as a condition of release when a person is charged with petty misdemeanor, a traffic violation or an equivalent offense under county ordinance.

The purpose of bail is to ensure that a defendant appears at pretrial/trial hearings, it is not meant to be a punishment. This makes sense in theory but in reality bail helps perpetuate systemic injustice since those without access to funds, no matter the crime end up behind bars while those who potentially have far worse crimes but have access to funds are able to go home. Creating an inequality of justice and further penalizing a low-income person. Someone should not end up behind bars because they are unable to post bail for minor traffic offenses, petty misdemeanor or the equivalent.

For all these reasons, we urge you to move this bill forward.

Mahalo for the opportunity,
Gary Hooser
Executive Director
Pono Hawai'i Initiative



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Joe Carter, Coca-Cola Bottling of Hawaii, *Chair*
Charlie Gustafson, Tamura Super Market, *Vice Chair*
Eddie Asato, The Pint Size Corp., *Secretary/Treas.*
Lauren Zirbel, HFIA, *Executive Director*
John Schlif, Rainbow Sales and Marketing, *Advisor*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:

Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: January 31, 2020
TIME: 1:15pm
PLACE: Conference Room 414

RE: SB2591 Relating to Monetary Bail

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

Theft is a major problem in our state. Just a few months ago Civil Beat reported, **“Honolulu’s got a property crime problem. It’s on the rise but the number of cases being resolved by the police continues to drop.** Property crimes are difficult to investigate as they often lack physical evidence and concrete leads, says Honolulu Police Deputy Chief John McCarthy.”¹

The article goes on to say,

“The problem shows in the data, too. **Honolulu has less violent crime than the national rate, but much more property crime**, according to new FBI data released last week. The estimated national rate of violent crime was 368.9 offenses per 100,000 people, while the Honolulu rate was 249.6. The national rate for property crime was 2,199.5, while Honolulu’s rate was 2,941.5.”

This measure would make it so that those accused of petty theft no longer pay bail. Bail is an important tool that our law enforcement agencies use to ensure that defendants appear in

¹ <https://www.civilbeat.org/2019/10/honolulus-property-crime-problem-tourists-make-great-victims/>

court when they're supposed to. Removing this tool disincentivizes people showing up for court and being held accountable for their actions. We believe that this measure could make the problem of unsolved property crimes in our state even worse.

If the Committee is determined to pass this measure, we request that language about petty misdemeanors be removed and it be limited to prohibiting bail for minor traffic offenses.

We thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Friday, January 31, 2020

1:15 PM – Room 414

STRONG SUPPORT FOR SB 2591 – MONEY BAIL

Aloha Chair Nishihara, Vice Chair Wakai 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** including the ten people who have died in the last 5 months, as well as the approximately 5,200 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 1,200 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 2591 prohibits courts from requiring a monetary bail as a condition for release when a person is charged with a petty misdemeanor, a traffic violation, or an equivalent offense under county ordinance, except under certain circumstances.

Community Alliance on Prisons is in strong support of this measure. Research and data show that jails are the gateway to mass incarceration. Even a few days in jail can have lifelong impacts. Currently, 80% of the people in OCCC are pretrial detainees and probation violators.

The January 6, 2020 population report from the department of public safety shows 5,208 as the total population under the "care and custody" of the state; 45% of these folks are pretrial detainees *innocent until proven guilty* (1,117/21%) and parole or probation violators (1,237/24%).

The current rate that the department is using is \$198 a day. The pretrial detainee and parole/probation populations total 2,354 persons - 45% of the total statewide population. Here is how much these policies cost taxpayers:

$2,354 \times \$198/\text{day} = \$466,092/\text{day}; \$3,262,644/\text{week};$
 $\$13,050,576/\text{month}; \$156,606,912/\text{year}.$

If the Pretrial Population (1,117 persons) was released with promissory notes to show up in court (Act 277 - Unsecured Bonds):

Hawai`i could save \$221,166 a day; \$1,548,162 a week;
\$6,192,648 a month; and \$74,311,776 a year!

The cost of incarcerating the Parole and Probation Violator Populations

$1,237 \text{ persons} \times \$198/\text{day} = \$244,926/\text{day}; \$1,714,482/\text{week};$
 $\$6,857,928/\text{month}; \$82,295,136/\text{year}$

If we reduced the parole and probation violator population by 50% (618 persons)

Hawai`i could save \$122,364/day; \$856,548/week;
\$3,426,192/month; \$41,114,304/year!

Imagine the services we could provide to the most impacted communities if Hawai`i made its sentencing laws proportional to the offense, if Hawai`i stopped criminalizing struggling folks, and if Hawai`i instead lifted up our communities with the help they need. Hawai`i could really make an impact on some of our most intractable challenges.

Community Alliance on Prisons urges the committee to pass this bill that will reduce the population of our jails. This is desperately needed.

Mahalo for this opportunity to testify.

SB-2591

Submitted on: 1/30/2020 10:35:21 AM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

Bills such as this will help to reduce the population of misdemeanors in jail and cut the cost paying for their care, which, in turn, would cut our tax burden.

ROBERT K. MERCER
2467 Aha Aina Place
Honolulu, Hawai'i 96821

phone: (808) 398-9594 (cell)
email: mercer001@hawaii.rr.com

January 20, 2020

TO: Senate Committee on Public Safety, Intergovernmental, and Military Affairs
RE: SB2591
HEARING: January 31, 2020
TIME: 1:15
ROOM: 414
POSITON: **STRONGLY SUPPORT**

Chair Nishihara, Vice Chair Wakai, and members of the committee:

I strongly support SB2591 which prohibit courts from requiring monetary bail as a condition for release when a person is charged with a petty misdemeanor, a traffic violation, or an equivalent offense under county ordinance.

This bill is a positive step in the right direction which is to eliminate all cash bail and the costly and deleterious effects it has on our society. SB2591 will also save money because it costs on average \$198 a day to house a pretrial detainees in a jail in Hawaii.

Thank you for allowing me to testify on this important bill.

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

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

LYNN B.K. COSTALES
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



LATE

**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS
Thirtieth State Legislature
Regular Session of 2020
State of Hawai`i**

January 31, 2020

RE: S.B. 2591; RELATING TO MONETARY BAIL.

Chair Nishihara, Vice Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition of S.B. 2591.

The purpose of S.B. 2591 is to remove monetary bail as a condition of release for individuals charged with petty misdemeanors and specific types of traffic offenses, so long as the offense did not result in death or bodily injury.

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 monetary bail as a condition of release in petty misdemeanor and traffic offenses, S.B. 2591 proposes a system, which removes an incentive or obligation for a defendant to return to court. 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.

The Department would also note that although S.B. 2591 intends to release individuals with the lowest level offenses, the broad language used in this bill could allow for the release of individuals charged with but not limited to, Habitually Operating a Vehicle Under the Influence

of an Intoxicant (OVUII) (§291E-61.5, H.R.S.), OVUII (§291E-61, H.R.S.), Theft in the Fourth Degree (§708-833, H.R.S.), Harassment (§711-1106, H.R.S.), Criminal Trespass in the Second Degree (§708-814, H.R.S.), and Criminal Property Damage in the Fourth Degree (§708-823, H.R.S.). In addition, when the evidence dictates, domestic violence cases which are reclassified as harassment between family members would also be grouped into the offenses released without a monetary bail.

For these reasons, the Department of the Prosecuting Attorney opposes the passage of S.B. 2591. Thank you for this opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:
S.B. NO. 2591, RELATING TO MONETARY BAIL.

LATE

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Friday, January 31, 2020 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 414

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

Chair Nishihara and Members of the Committee:

The Attorney General respectfully opposes this bill on policy grounds as the Chief Law Enforcement Officer of the State of Hawai'i.

This bill seeks to prohibit the use of monetary bail for all traffic and petty misdemeanor offenses, so long as the offense did not result in death or bodily injury.

In effect, this bill would explicitly prohibit monetary bail for various criminal offenses including, but not limited to: Reckless Driving, Excessive Speeding, Theft in the Fourth Degree, Criminal Property Damage in the Fourth Degree, Harassment, Operating a Vehicle While Under the Influence of an Intoxicant, Criminal Trespass, Fleeing the Scene of an Accident, and Indecent Exposure. Under certain circumstances, monetary bail may be wholly appropriate. Accordingly, courts should retain the discretion to determine the appropriate conditions of release, including monetary bail.

We respectfully ask the Committee to hold this bill.



POLICE DEPARTMENT COUNTY OF MAUI



MICHAEL P. VICTORINO
MAYOR

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

January 31, 2020

LATE

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

RE: Senate Bill No. 2591 – Relating To Monetary Bail

Dear Chair Nishihara and Members of the Committee:

The Maui Police Department strongly OPPOSES the passage of S.B. No. 2591.

As stated, proposed passage of this bill will amend Section 2, Chapter 804, Hawaii Revised Statutes, by adding a new section to read, “The court shall be prohibited from requiring monetary bail as a condition for release when a person is charged with a petty misdemeanor, a traffic violation, or an equivalent offense under county ordinance, except under certain circumstances.”

The language, “traffic offense” or traffic violation” is interpreted as an offense which includes Operating a Vehicle Under the Influence of an Intoxicant (OVUII), 291E-61 HRS.

There is a concern with prohibiting to require monetary bail as a condition for release for an individual charged with an OVUII offense. Eliminating monetary bail for an OVUII offense would enable an offender to be released without accountability as a result of drinking and driving.

This proposed bill will also prevent an arresting law enforcement officer from charging an inebriated offender from once again operating a vehicle following the release from custody.

Statistics within our County revealed that in 2018, we had a combined total of 27 fatal and near-fatal motor vehicle crashes. Of the 27 crashes, 16 involved drivers under the influence of alcohol and/or drugs which equals nearly 60 percent of all crashes involving impaired drivers.

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
January 31, 2020
Page 2

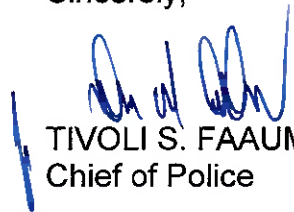
In 2019, we had a combined total of 26 fatal and near-fatal motor vehicle crashes. Of those 26 crashes, 15 involved alcohol and/or drugs or nearly 58 percent of all crashes resulted in drivers under the influence.

Just the mere thought of risking another potential fatality as a result of a driver who has just been arrested for OVUII and may still be under the influence upon release is a risk which we, who are sworn to protect and serve our community, should not be taking.

The Maui Police Department asks that you OPPOSE the passage of S.B. No. 2591.

Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU
Chief of Police

LATE

SB-2591

Submitted on: 1/30/2020 3:22:12 PM
Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

Please remember that Operating Under the Influence of an Intoxicant (Alcohol and/or Drugs) is a Petty Misdemeanor.

LATE

SB-2591

Submitted on: 1/30/2020 5:24:52 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Betty L. Bodlak	Individual	Support	No

Comments:

This is a reasonable and intelligent approach to a solution for our extremely over-crowded jails..

B. Bodlak, Waialua

LATE

SB-2591

Submitted on: 1/30/2020 7:00:43 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Support	No

Comments:

LATE

SB-2591

Submitted on: 1/30/2020 8:15:29 PM
Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Please support SB2591.

Mahalo,

Caroline Kunitake

LATE

SB-2591

Submitted on: 1/30/2020 10:04:21 PM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathy Shimata	Individual	Support	No

Comments:

Imprisonment disrupts lives. Risk not wealth should govern pretrial release decisions.

SB-2591

Submitted on: 1/31/2020 6:58:40 AM

Testimony for PSM on 1/31/2020 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

LATE

SB-2591

Submitted on: 1/31/2020 7:31:15 AM

Testimony for PSM on 1/31/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michele Nhipali	Individual	Support	No

Comments:

Dear Senators,

Requiring monetary bail for petty misdemeanors is a strain on financial resources for individuals and unnecessary. Please pass SB 2591.

Mahalo,

Michele Nhipali

54-074 A Kam Hwy.

Hauula, HI 96717