

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Finance**

February 24, 2022

H.B. No. 1567, H.D. 1: RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Luke, Vice Chair Yamashita, and Members of the Committee:

The Office of the Public Defender (“OPD”) strongly supports H.B. 1567, H.D. 1 which eliminates the use of money bail for traffic offenses, violations, nonviolent petty misdemeanor offense, and non-violent misdemeanor offenses, requiring release on own recognizance on the aforementioned offenses at arraignment & plea. Rather than creating a “rebuttable presumption for release”, H.B. 1567, H.D. 1 inserts the language “**shall** be ordered by the court to be released...” and requires release for those individuals that fall squarely into the criteria set forth. For these reasons, we applaud and **support H.B. No. 1567, H.D. 1** as a promising first step toward righting injustice and the OPD offers recommendations to strengthen it.

Hawai‘i should abolish money bail as a condition of release. It is a poor tool for achieving pretrial justice. The money bail system incarcerates poor people because they are poor, not because they have been convicted of a crime and not because they are a danger to others. Meanwhile, that same system allows dangerous but wealthy people to post their bond and be released.

The United States Supreme Court affirmed over thirty years ago that “[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”¹ In practice just the opposite is true. A 2018 report by the American Civil Liberties Union Hawai‘i (“ACLU Hawai‘i”) found that, overall, judges in the State of Hawai‘i require bail as a condition of release in 88 percent of cases, with judges on Kaua‘i imposing bail in 98.5 percent of cases, and on O‘ahu in 93 percent of cases.²

¹ Salerno v. United States, 481 U.S. 739, 755 (1987).

² ACLU Hawai‘i, “As Much Justice As You Can Afford” (2018) at 23, <https://www.acluhi.org/sites/default/files/2018/01/aclu-of-hawaii-bail-report.pdf>

The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail. But the Hawai‘i Criminal Pretrial Reform 134 Task Force Report chaired by judge (now U.S. magistrate) Rom A. Trader stated, “There is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody.”³ Thus, money bail is a poor method of assessing and managing a defendant’s risks.

Hawai‘i’s practice of making the payment of a money bond a condition for pretrial release discriminates based on wealth, exacerbates racial disparities, results in over-incarceration, and imposes unnecessary costs on individuals and society at large.⁴ On February 1, 2021, 883 people were incarcerated throughout the State even though they have not been convicted of a crime. Feeding and caring for an incarcerated person costs \$198 a day in Hawai‘i.⁵ Pre-COVID19 the State was spending approximately \$209,000 a day (\$76 million annually) of taxpayer dollars to incarcerate more than 1,000 people statewide simply because they were too poor to afford bail.⁶ Data collected over the years tell us that 80 percent of these individuals are charged with relatively low-level offenses and many are homeless or living with mental illness or substance use disorders.⁷

These costs come with trade-offs in other state spending priorities like education and healthcare. Between 1987 and 2007, corrections budgets rose by 127 percent while higher education funding increased by only 21 percent forcing the cost of attending

³ Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai‘i “HCR 134” (December 2018), https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf.

⁴ Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai‘i Legislature 2019 Regular Session, “Creating Better Outcomes, Safer Communities” (December 2018), https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform_Final-Report_12.28.18.pdf.

⁵ State of Hawai‘i Department of Public Safety Annual Report FY 2019 at 16, <https://dps.hawaii.gov/wp-content/uploads/2019/11/PSD-ANNUAL-REPORT-2019.pdf>.

⁶ HCR 85 Report at 64.

⁷ HCR 85 Report at 65.

higher education to increase each year. The cost of attending the University of Hawai‘i at Mānoa for the 2019-2020 school year, including tuition, room, board, books, supplies, and personal expenses, was \$30,000.⁸ With the daily savings from bail reform we could pay all expenses for a full year of education for 7 students at U.H. Mānoa, and with the savings from a year of bail reform we could pay all expenses for more than 2,500 students.

Beyond the wasteful money, pretrial incarceration leads to devastating collateral consequences that can impact individuals for lifetime and families for generations. People who can't make bail stand to lose their job and with that the money that pays the rent and utilities and puts food on the table for their family. They may lose their house, their car, their health insurance, and after maxing out on their credit cards the family may end up deep in debt or even homeless. Holding people in jail who do not pose a significant safety risk of danger also exacerbates overcrowding, creates unsafe conditions, places a huge financial burden on taxpayers, and compromises public safety.⁹

Our current bail practice in Hawai‘i is not punishing the most guilty, but rather the people who cannot afford to pay for their release. As an attorney assigned to represent indigent clients, many of whom are in jail because they cannot afford to make bail; I have seen firsthand that some innocent people plead guilty just to get out jail, and people are more likely to be acquitted if they pay bail, in part because they are less likely to take plea deals just to get out of jail.

For these reasons, the OPD supports limiting pretrial detention and eliminating the use of monetary bail for low level, non-violent offenses, is a step in the right direction. However, the OPD believes that certain portions of the bill are too restrictive and other portions lack clarity and specificity. These shortcomings may prevent consideration of certain individuals who could otherwise be safely released into the community. The OPD offers a few suggestions to strengthen and clarify this measure for consideration.

⁸ University of Hawai‘i at Mānoa, 2019-2020 Cost of Attendance, Accessed December 31, 2019, <https://www.collegesimply.com/colleges/hawaii/university-of-hawaii-at-manoa/price/>.

⁹ National Institute of Corrections, “The Hidden Costs of Pretrial Detention” (2018) at 4, https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf (Finding the longer low-risk defendants are detained, the more likely they are to commit another low-level offense).

1. Require multiple convictions for Criminal Contempt of Court in violation of HRS Section 710-1077 in order to find a “history of non-appearance.”

The current wording in proposed section (b)(2)(A) is vague and ambiguous and gives rise to legitimate questions: Is a single non-appearance defined as a conviction for Criminal Contempt of Court? If so, how many convictions will constitute a “history”? If a non-appearance does not require an actual conviction, how will a court determine whether a court appearance was missed purposefully and without a valid excuse?

The OPD recommends this section be amended to require an actual conviction under HRS Section 710-1077. It is wholly unacceptable that a court could make a finding of a “history of non-appearance” based on mere arrests for Criminal Contempt of Court and without an accompanying conviction. And while “history” suggests a pattern or “a past characterized by a particular thing”¹⁰, it would logically follow that the court could not find a “history” without first identifying at least two prior convictions for Criminal Contempt of Court during a specified period of twenty-four months.

2. Require “significant” to qualify risk of danger to any other person or to the community.

The current wording in proposed section (b)(2)(F) is similarly vague and ambiguous. As written, this section would prevent release on own recognizance for defendants that present “a risk of danger to any other person or to the community.” This section fails to define the quality of risk that would be necessary to detain an individual. Even someone of “minimal” risk, as opposed to “substantial” or “serious” risk of danger to another would not be eligible for release under the current proposal. Civil commitment hospitalization criteria under HRS. section 334-60.2 requires a court finding that a person be *imminently* dangerous to others before a person can be committed. Hence, many of our mentally ill would be at risk of being jailed in a punitive setting under the proposed statutory language, even if they do not fit the criteria for hospital level civil commitment. This is clearly not the intention of anyone. OPD recommends this section be amended as follows: “The Defendant presents a *significant* risk of danger to any other person or to the community.”

¹⁰ *Oxford English Dictionary*, 2nd ed. (Oxford: Oxford University Press, 2004), s.v. “History.”

3. Strike “risk of recidivism” in subsection (F).

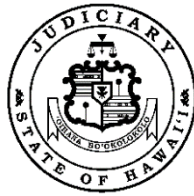
The current wording in proposed section (b)(2)(F) adds “a risk of recidivism” as an additional factor in denying an individual release on own recognizance. Typically, assessments of the risk of recidivism include a close examination of prior criminal history, lifestyle instability, and negative peer associations. Here, “risk of recidivism” is vague and undefined, and the court will be challenged to make a finding that would ordinarily require a social study of the individual in order to properly assess the risk of recidivism.

4. Strike (b)(1)(I) Negligent homicide in the third degree from the enumerated list of offenses disqualifying an individual from release on own recognizance.

This measure lists in (b)(1)(I) Negligent homicide as one of several offenses that disqualify an individual from release. While negligent homicide in the third degree (HRS §707-704) involves the loss of life, the standard of conduct, as the title of the charge suggests, is negligence. Generally speaking, violent offenses involving injury, substantial and serious, and the loss of life are the result of conduct with criminal intent, namely “intentionally” (when it is the actor’s conscious object to cause such a result) or “knowingly” (when the actor is aware that it is practically certain that his/her conduct will cause such a result). In the case of negligent homicide, while the result, the loss of life, is tragic and extreme, the conduct is merely negligent (when he/she should be aware of a substantial and unjustifiable risk that his/her conduct will cause such a result.) The conduct lacks the criminal intent present in most crimes of violence.

Mass incarceration is a result of many systems failing to support basic community needs people need to thrive. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few. This Act is a step in the right direction to eliminate money bail.

We thank you for the opportunity to comment on H.B. No. 1567. H.D. 1.



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, Regular Session of 2022

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice-Chair

February 24, 2022 at 11:00 A.M.
Via Videoconference

WRITTEN TESTIMONY ONLY

by
Shirley M. Kawamura
Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit

Bill No. and Title: House Bill No. 1567, H.D. 1 Relating to Criminal Pretrial Reform

Purpose: Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions. Requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference. Effective 1/1/2222. (HD1)

Judiciary's Position:

The Judiciary supports the intent of the proposed legislation and offers only the following comments for the Committee's information and consideration. As the Committee is aware, the vast majority of the pretrial bail reforms passed by the Legislature and codified under Act 179 went into effect just prior to the global pandemic in 2020. Any pretrial bail reform should be tailored to the presumption of innocence, ensuring the appearance of the defendant, minimizing the risk of danger to the community, and ensuring the equal treatment of individuals regardless of race, wealth, or social class. The proposed legislation accomplishes these goals.

Thank you for the opportunity to testify on this measure.



**STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION**

February 24, 2022

TO: Honorable Representative Sylvia Luke, Chair
House Finance Committee

FROM: Mark Patterson, Chair, Hawaii Correctional System Oversight Commission.

SUBJECT: HB 1567 RELATING TO CRIMINAL PRETRIAL REFORM

POSITION: The Hawaii Correctional System Oversight Commission (HCSOC) Strongly supports HB 1567

PURPOSE: Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for nonviolent traffic offenses, violations, non-violent petty misdemeanor, non-violent misdemeanor, and felony c offenses, with certain exceptions. Requires PSD to take steps to provide video conferencing to a defendant who chooses to participate in a bail report via teleconference.

The Hawai'i Correctional System Oversight Commission (HCSOC) urges the legislature to revisit pretrial reform efforts, as presented in HB1567 to help realize the important goals of the HCR134 Task Force on Pretrial Reform to reduce unnecessary costly incarceration of non-violent defendants who are awaiting trial.

A similar bill was proposed by the HCSOC, in its 2020 report to the Legislature. Its intent is to incorporate two additional recommendations of the HCR 134 Task Force on Pretrial Reform that were not implemented in Act 179 (2019). HB 1567 represents a prudent and balanced approach, with a narrower focus than the bill originally suggested. This measure will help Hawai'i realize a more complete pretrial reform vision of the HCR134 Task Force and help reduce costly and unnecessary jail overcrowding of defendants not convicted. Ensuring the safety of those in state custody, the general public, as well as envisioning potential change for the future depends on responsible population reduction and fair and reasonable bail reform.

Therefore, the Hawai'i Correctional System Oversight Commission strongly supports HB1567. Mahalo Nui Loa for the opportunity to testify on this measure.

Sincerely,

Mark K. Patterson, Chair
Correctional System Oversight Commission

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
1177 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 1567, HOUSE DRAFT 1
RELATING TO CRIMINAL PRETRIAL REFORM.

by
Max N. Otani, Director
Department of Public Safety

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

Thursday, February 24, 2022; 11:00 a.m.
Via Videoconference

Chair Luke, Vice Chair Yamashita, and Members of the Committee:

House Bill (HB) 1567, House Draft (HD) 1 seeks to address overcrowding of pretrial defendants within the Department of Public Safety's (PSD) facilities by eliminating the use of monetary bail and requiring defendants to be released on their own recognizance for traffic offenses, violations, nonviolent petty misdemeanor offenses, or nonviolent misdemeanor offenses; and allow defendants the option to participate in a bail interview via videoconference.

PSD acknowledges that release on own recognizance is a viable option for defendants assessed to be at low risk for helping to achieve the objectives of HB 1567, HD 1 and offers the following comments regarding this measure. The Department's Intake Service Centers (ISC) work diligently to provide timely bail reports (within three days, as required by Act 179, SLH 2019) to the courts so that hearings may be conducted promptly. Pretrial bail reports utilize an objective, research-based, validated assessment tool that provides an assessment of the risks of recidivism and non-appearance.

ISC staff prefer to conduct bail evaluation interviews for pretrial detainees in person. This means that most interviews are conducted prior to defendants entering PSD facilities, i.e., at police department lockups or in Sheriffs' custody at courthouses. However, not all incoming detainees choose to participate, or circumstances, such as, an unknown COVID-19 vaccination status, may make in-person interviews unfeasible.

While the Department agrees with the objectives of HB 1567, HD 1 to help address overcrowding of PSD facilities, it is concerned with the measure's requirement to allow defendants to participate in a bail report interview via videoconferencing (VC). PSD suggests that consideration must be given to: 1) where the VCs will be located (County police departments, courthouses, or other; 2) whether the identified facility will allow videoconferencing to take place at its location; 3) whether the identified facility has an available secure space to accommodate the installation of the VC equipment; 4) secure access to the Internet; and 5) if all other conditions can be met, the costs of the equipment, its installation, security, and maintenance. It may be more reasonable to conduct in-person interviews at PSD facilities for the minority of pretrial detainees who initially refuse participation, provided that the ISCs can continue to complete the assessments within the three days required by Act 179.

PSD notes that Act 179 also requires a 90-day review of pretrial detainees to reassess whether new circumstances warrant reconsideration for release. Periodic reviews provide detainees a second opportunity to provide information, which then is transmitted to the courts for consideration of pretrial release or supervision.

Thank you for the opportunity to present testimony on HB 1567 HD 1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY

THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirty-first State Legislature
Regular Session of 2022
State of Hawai'i

February 24, 2022

RE: H.B. 1567, H.D. 1; RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Luke, Vice-Chair Yamashita, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **opposition** to H.B. 1567, H.D. 1.

The purpose of H.B. 1567, H.D. 1, is to re-examine Hawaii's pretrial procedures, following the passage of Act 179 (2019), and reconsider certain portions of H.B. 1552 (2019) that were removed in leading up to the passage of that bill as Act 179 (2019). While the Department appreciates the intent to improve upon current procedures—and supports the eventual elimination of the cash bail system, once a robust and well-funded process is developed to allow alternatives, such as release on recognizance, signature bonds, and adequate supervision by the Department of Public Safety's Intake Services Center Division—we agree with the various committees that reviewed and received testimony during the 2019 Legislative Session, who removed all of the problematic provisions contained in this bill, leading up to the passage of Act 179 (2019).

Although the Department appreciates that the prior committee removed non-violent class C felony offenses from Section 2 of H.B. 1567 (pg. 1-2, ln. 16-17, 1-4), we still oppose that section, and caution the Committee that the broad range of eligible offenses stated (i.e. traffic offenses, violations, and non-violent misdemeanor or petty misdemeanor offenses)—even with the static list of excluded offenses on page 2, line 13, through page 3, line 4—fails to account for the plethora of concerning charges that could be classified as non-violent misdemeanor or petty misdemeanor offenses. As written, these are just a few example of charges for which a defendant could be automatically released on recognizance: Violation of an Injunction Against Harassment (§604-10.5, H.R.S.); Harassment by Stalking (§711-1106.1, H.R.S); Promoting Pornography for Minors (§712-1215, H.R.S.); and Solicitation of a Minor for Prostitution (§712-

1209.1, H.R.S.). Although the prosecution and defense may not always agree with a judge's ruling as it pertains to bail, the Department does believe that a judge more appropriately evaluates all the factors permitted by statute, to make a case-by-case decision.

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 currently in place to assess the risks associated with summarily releasing a pretrial detainee. In particular, the Department believes it is extremely important that courts be allowed to consider any potential dangerousness, obstruction of justice, witness tampering and other illegal activity, when determining if and how to release an individual back into the community

As a final note, it appears that subsection (C) on page 3, line 11-12, is meant to exclude individuals from release without bail on a new offense, while pending disposition on a previous case for which they were released, yet this fails to account for the time between the date of offense and the date the individual is arraigned on the original case. This gap can range from a few days to a few weeks for petty misdemeanor and misdemeanor offenses. The Department suggests including "pending arraignment" to page 3, line 11, to close this gap:

*"(C) the defendant was pending **arraignment**, trial or sentencing at the time of arrest."*

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **opposes** the passage of H.B. 1567, H.D. 1. Thank you for the opportunity to testify on this matter.



HB1567 HD1 BAIL REFORM

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Kyle T. Yamashita, Vice Chair

Thursday, Feb 24 2022: 11:00 : Videoconference

Hawaii Substance Abuse Coalition Comments HB1567 HD1:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

HSAC comments about Bail Reform by suggesting that bail reform may be more tenable with the following suggestions.

Since many people arrested that don't have enough resources for bail suffer from mental illness, substance use disorders or both:

1. Provide behavioral health screenings for mental health and substance use disorders as a condition of reduced or no bail.
2. For those who are screened as having a mental health or substance use disorder offer a diversion to treatment option, provided they complete treatment, for a condition of reduced or removal of any charges.

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

HB-1567-HD-1

Submitted on: 2/22/2022 5:34:11 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

Comments:

We assumed that the various bail measures that passed a few years ago would go a long way towards reforming our penal system in Hawaii. To the extent that there are further reforms needed, the legislature should give serious consideration to that. 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.

HB-1567-HD-1

Submitted on: 2/22/2022 7:19:04 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Deanna Espinas	Faith Action for Community Equity	Comments	No

Comments:

Recommend that Legislature revert back to the original bill that removes the amendments. HB 1567 must include the select Class C felonies as well include the provision that if the defendant is unable to post bail in the amount of \$99 or less, the director of public safety may, in the director's discretion, release the defendant.

Thank you for this opportunity to submit written testimony

TESTIMONY IN SUPPORT OF HB 1567, HD 1

TO: Chair Luke, Vice-Chair Yamashita, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 24, 2022 (11:00 AM)

Hawai'i Health & Harm Reduction Center (HHRC) **supports** HB 1567, HD 1, which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses.

Unfortunately, the limits on circumstances where the proposed HRS Section 804 can apply will not address the underlying problem: cycling those from Native Hawaiian, Pasifika, and other under resourced communities in and out of jail, including those on probation.

Reincarceration of persons under correctional supervision for traffic offenses, violations, petty and nonviolent misdemeanors, and nonviolent class C felonies (including drug possession for personal use), undermines the intent of this bill—assuming that the intent of this bill is to reduce the number of persons in jail at any given point in time.

Hawai'i currently maintains the [longest average term of probation in the nation at 59 months](#). Absent more far-reaching statutory reforms that reduce the time spent on probation or reduce the baseline penalty for possession of drugs for personal use, the impact of this proposed statute will be more cosmetic than substantive.

The Department of Public Safety relayed a critical data point to the [HCR 85 Prison Reform Task Force, which published its final report in January 2019](#): ***only 26% of the combined jail and prison population is incarcerated for class A or B felony, while the remaining 74% are***

incarcerated for a class C felony or lower (misdemeanor, petty misdemeanor, technical offense, or violation).

HHHRC strongly believes that those who use substances should not be subject to criminal sanctions absent actual harm to others, including those who use substances because of underlying mental health conditions. Criminalizing drug users significantly perpetuates lasting social, medical, and legal stigma. Hawai'i should instead increase its capacity to provide low-threshold, evidence-based care, and medical treatment upon request and apart from the framework of the criminal legal system.

HHHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawaii and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions. Many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.

COMMUNITY ALLIANCE ON PRISONS

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

Phone/E-Mail: [\(808\) 927-1214](tel:8089271214) / kat.caphi@gmail.com



COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Kyle Yamashita, Vice Chair

Thursday, February 24, 2022

11:00 AM

HB 1567 HD1 – STRONG SUPPORT FOR PRETRIAL REFORM

Aloha Chair Luke, Vice Chair Yamashita 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 more than 4,052 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety or the corporate vendor on any given day. We are always mindful that 1,111 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 1567 is about desperately needed bail reform. “Across the nation, people are arrested and detained pretrial solely because they lack the money to pay bail. Although many state constitutions grant individuals a right to be released on bail¹ except in the most serious cases, “courts use unaffordable bail conditions to detain people deemed too dangerous or flight prone to release.” Recently, in *In re Humphrey*, the Supreme Court of California held that detaining a person pretrial solely because they cannot afford bail violates due process and equal protection. The *Humphrey* court explained that in the bail context, **the state’s compelling interest is not to punish but rather “to ensure the defendant appears at court proceedings and to protect the victim, as well as the public, from further harm.”**”

The HD1 amended the bill by deleting two very important clauses: 1) regarding releasing defendants arrested, charged, and held for nonviolent Class C felony offenses and 2) deleting the language authorizing the Director of Public Safety to release a defendant if the defendant is unable to post bail in the amount of \$99 or less.

Writing for the court *In re Humphrey*, Justice Cuéllar held that **“conditioning freedom solely on whether an arrestee can afford bail is unconstitutional.”** In the bail context, an individual’s due process liberty interest in freedom from detention and equal protection right not to be detained solely because of indigency converge.

¹ *In re Humphrey*, [Recent Case](https://harvardlawreview.org/2022/01/in-re-humphrey/) : 482 P.3d 1008 (Cal. 2021), JAN 10, 2022, 135 Harv. L. Rev. 912.
<https://harvardlawreview.org/2022/01/in-re-humphrey/>

The comprehensive Illinois bill establishes a data collection system that would allow the state to make evidence-based decisions about what should happen and what modifications may need to be made down the road. This law not only abolishes the cash bond system, but also aims to end mass incarceration.

Hawai`i passed a law in 2019 for Unsecured Bail - in essence the defendant signs a promissory note that they will show up in court. It has rarely, if ever, been used in Hawai`i while the state continues to use our jails as de facto mental health centers and warehouses for some of the most vulnerable people in our communities.

Community Alliance on Prisons wishes that Hawai`i would learn from California, Illinois, and other jurisdictions that have reformed their pretrial systems. There must be a presumption of release until proven otherwise. Carving out exceptions, as this bill does (when it already carves out violent offenses), takes discretion away from the court. The Judiciary is a co-equal branch of government along with the Executive and Legislative branches; this is the system of checks and balances built into western government.

The February 14, 2022 population numbers from the Department of Public Safety reveal that 24% of the population - 978 persons - are pretrial detainees. We have asked service providers who work with marginalized populations about their clients' experience when arrested.

Community Alliance on Prisons was appalled to learn that Hawai`i incarcerates people who could not afford to pay \$10 - \$50 to make bail. The community is then tapped to pay \$219 a day to incarcerate some of the most vulnerable people in our communities. Criminalizing poverty has been shown to be one of the drivers of mass incarceration.

Incarcerating the indigent should not be a hallmark of Hawai`i's legal system.

Is the state trying to justify building a \$1 billion jail to disappear our social challenges that are the consequences of ineffective and harmful social policies passed by the legislature?

In summary, Community Alliance on Prisons respectfully asks that the committee restore the 2 provisions regarding Class C nonviolent felonies and authorizing the Director of Public Safety to release a defendant who is unable to post bail in the amount of \$99 or less.

With the two provisions restored, although not perfect, this bill is a step in the right direction.

Mahalo for this opportunity to testify.

Holding people presumed to be innocent in jail pre-trial simply because they cannot afford to pay their bail extracts huge human and financial costs.

HB-1567-HD-1

Submitted on: 2/23/2022 8:40:54 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Amy Wake	Trinity United Methodist Church	Support	No

Comments:

1. Kānaka Maoli are overrepresented at every level of the criminal legal system including pre-trial detention due to the detrimental impact of colonization. Unsurprisingly, Hawaii’s incarceration crisis has had a particularly severe impact on people of color, especially Native Hawaiians and Pacific Islanders. In 2018, this group made up 23 percent of adults in the state, but a reported 47 percent of people incarcerated under Hawai’i’s jurisdiction. Further, incarceration is on the rise among Hawaiian women. Between 1990 and 2017, the number of women incarcerated in the state grew by 265 percent. Source: <https://50stateblueprint.aclu.org/states/hawaii/>
2. It costs approximately \$200 a day to house people in pretrial detention and the average stay is 29 days. These are people who haven't had a day in court or been convicted of a crime. Their presumption of innocence has been denied because they are unable to afford cash bail.
3. To accommodate the high incarceration rates under our criminal legal system and the projected number of beds needed, the proposed new OCC is projected to cost \$1 billion. We know from our experience with the rail project, it will cost even more. Many times, people unable to afford bail and languishing in jail will take a plea deal which then may lead to further incarceration.
4. Talking points from Bob Merce's report: Getting It Right: Better Ideas for a New Jail; the section, Creating Off-Ramps to Reduce the Jail Population is particularly relevant to cash bail.
 1. A key decision point in the criminal justice system occurs when a person who has been arrested appears before a judge who determines whether the person should be released pending trial, or remain in custody until their case has been resolved. The pretrial release/detention decision is critically important to the defendant because studies have shown that “[j]ust a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter—making jail a gateway to deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large.”⁴⁹
 2. For the disproportionately high number of people who enter jails from minority communities or who suffer from mental illness, addiction, and homelessness “time spent in jail exacerbates already difficult conditions and puts many on a cycle of incarceration from which it is extremely difficult to break free.”⁵⁰

Defendants who cannot make bail are at risk of losing their jobs, and with it the income that supports their children, pays their rent and utilities and puts food on the table. In the long run they can also lose their house or apartment, health insurance and custody of their children. After maxing out their credit cards, a family may end up deep in debt or even homeless.

3. In our society liberty is supposed to be the norm and detention prior to trial the exception, but in practice, just the opposite is true. A 2018 study by the ACLU-Hawaii found that overall judges in Hawaii required bail as a condition of release in 88% of cases, and in the majority of those cases it was set at a level the defendant could not afford.⁵¹
4. Almost half the people in OCCC are there because they cannot afford bail. In the six month period from April 1 to September 30 , 2021 pretrial detainees at OCCC cost the State, on average, \$113,000 a day. If we include the pretrial detainees in neighbor island jails the cost goes up to \$200,000 a day.
5. The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail, but a report from the 2018 Criminal Pretrial Task Force chaired by Hawaii circuit judge (now U.S. magistrate) Rom A Trader found that “[t]here is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. Thus, money bail is a poor method of assessing and managing a defendant’s risks.”⁵²
6. It is time to quit tinkering with our money bail system in the hope that it will somehow become fair, equitable and just. It won’t. If we want a truly just pretrial system, we have to end money bail.
7. We should eliminate money bail completely, but at the very least we should eliminate it for select non-violent class C felonies, misdemeanors, petty misdemeanors, and violations.



**Testimony of Faith Action for Community Equity
Comments on HB1567HD1, Relating to Criminal Pretrial Reform
To the House of Representatives Committee on Finance
February 24, 2022 11:00am via video conference**

Aloha Chair Sylvia Luke, Vice Chair Kyle T. Yamashita, and Members of the House of Representatives Committee on Finance,

We at Faith Action for Community Equity believe in the inherent worth and dignity of all. Our members work together to address the root causes of systemic justice challenges facing our communities. The following are our comments on HB1567HD1. We are in support of comprehensive bail reform and would like to support the bill as it was originally introduced.

Eliminating the use of monetary bail and requiring defendants to be released on their own recognizance would address the substantial and continued overcrowding of facilities used to house pretrial defendants who are innocent until proven guilty. The monetary bail system criminalizes people based on their socioeconomic status and does not uphold a “presumption of innocence” as determined by past case precedents (Taylor v. Kentucky). Unsurprisingly, Kānaka Maoli are overrepresented at every level of the criminal legal system including pre-trial detention due to the detrimental impact of colonization.

Instead of spending millions of dollars on pre-trial detention we would like to see this invested in our communities: alternatives to policing, mental health and substance abuse services, education, and housing. We believe this necessitates a shift from punitive practices to community based solutions.

We thank you all for working hard to eliminate cash bail. “Continue to remember those in prison as if you were together with them in prison, and those who are mistreated as if you yourselves were suffering.” — Hebrews 13:3

If you have any questions, please contact the co-chairs of Faith Action’s Transformative Justice Task Force: Lee Curran at dflcurran@gmail.com or (808) 394-8792, and Kylie Akiona at kylieakiona2@gmail.com or (808) 347-8672.

Mahalo for this opportunity to testify.

Lee Curran, Makaha

Kylie Akiona, Mililani



Committee on Finance
Chair Luke, Vice Chair Yamashita

Thursday, 2/24/2022, 11 am Videoconference
HB1567 HD1 — RELATING TO CRIMINAL PRETRIAL REFORM

TESTIMONY

Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair Luke, Vice Chair Yamashita, and Committee Members:

The League of Women Voters of Hawaii supports HB1567 HD1 which would eliminate the use of cash bail and require defendants to be released on their own recognizance for certain charges under specified conditions, and would allow defendants the option to participate in a bail report interview via videoconference.

The League of Women Voters believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime.

HB1567 HD1 provides an alternative to jailing defendants who cannot afford monetary bail, for certain non-violent offenses and considering the judicial/criminal history of the defendant.

The U.S. Civil Rights Commission, after a lengthy and widely representative process, reported in January of 2022 a 433 percent increase in the number of individuals that have been detained pre-trial between 1970 and 2015. Of those held prior to trial, there were stark disparities with regards to race (nationally, Black and Latinx individuals (and in Hawaii, Native Hawaiians) have higher rates of pretrial detention and have financial conditions of release imposed much more often than other demographic groups; and gender (i.e., males are less likely to be granted non-financial release and consistently have higher bails set than women); additionally, disparities exists between individuals of

differing socioeconomic status; more than 60 percent of inmates are detained prior to trial due to an inability to afford posting bail. Moreover, pretrial detention results in greater likelihood of being convicted, loss of housing, detrimental effects on employment status and family cohesion, and increased recidivism

A Bureau of Justice Assistance sponsored study found that monetary bonds (a type of cash bail) were associated with increased use of pretrial jail beds and not associated with increased court appearance rates. (Michael Jones, "Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option," Pretrial Justice Institute, 2013.)

As to allowing defendants to appear by videoconference for pretrial interview, in the time of Covid this is a no-brainer. As almost all of us have found, using virtual technology simplifies access to a wide range of meetings and eliminates inconvenient and expensive travel.

HB1567 HD1 is in the interest of defendants, the Hawaii judicial system, and society in general.

Thank you for the opportunity to submit testimony.



House Committee on Finance

Thursday, February 24th, 2022, 11a.m.

Hawai'i Alliance for Progressive Action Supports: HB1567 HD1

Aloha Chair Luke, Vice Chair Yamashita and Members of the Committee,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony in support of HB1567 HD1. HAPA is a state-wide organization that engages approximately 10,000 local residents annually.

HAPA strongly supports HB1567 HD1, which would eliminate the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions. Requires PSD to take steps to provide video conferencing to a defendant who chooses to participate in a bail report interview via videoconference.

HAPA supports this measure and believes that it will help address inequality in our justice system. We believe that measures such as this benefit Native Hawaiians directly.

Native Hawaiians are overrepresented at every level of the criminal legal system including pre-trial detention due in part simply because of systematic oppression. Unsurprisingly, Hawaii's incarceration crisis has had a particularly severe impact on people of color, especially Native Hawaiians and Pacific Islanders. In 2018, this group made up 23 percent of adults in the state, but a reported 47 percent of people incarcerated under Hawai'i's jurisdiction. Further, incarceration is on the rise among Hawaiian women. Between 1990 and 2017, the number of women incarcerated in the state grew by 265 percent.¹

Our jails should not serve as a holding pen for those who end up in our carceral system due to the crippling cost of living, lack of affordable housing, criminalization of poverty and/or lack of mental health services. HAPA believes that measures such as this will begin to address issues of equity in our carceral systems, while also reducing government spending.

¹ <https://50stateblueprint.aclu.org/states/hawaii/>

It costs approximately \$200 a day to house people in pretrial detention and the average stay is 29 days. Many are people who haven't had a day in court or been convicted of a crime, but are simply unable to afford bail.

Many times, people unable to afford bail and languishing in jail will take a plea deal which then may lead to further incarceration in the long run. Pretrial detention disadvantages a defendant's ability to prepare for trial and increases the likelihood that a defendant will plead at earlier stages of criminal proceedings, regardless of the merits of the defendant's case, to gain release from custody.²

To accommodate the high incarceration rates under our criminal legal system and the projected number of beds needed, the proposed new OCC is projected to cost \$1 billion.

A key decision point in the criminal justice system occurs when a person who has been arrested appears before a judge who determines whether the person should be released pending trial, or remain in custody until their case has been resolved. The pretrial release/detention decision is critically important to the defendant because studies have shown that “just a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter—making jail a gateway to deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large.”³

For the disproportionately high number of people who enter jails from communities of color or who suffer from mental illness, addiction, and homelessness “time spent in jail exacerbates already difficult conditions and puts many on a cycle of incarceration from which it is extremely difficult to break free.” Defendants who cannot make bail are at risk of losing their jobs, and with it the income that supports their children, pays their rent and utilities and puts food on the table. In the long run they can also lose their house or apartment, health insurance and custody of their children. After maxing out their credit cards, a family may end up deep in debt or even homeless.⁴

In our society liberty is supposed to be the norm and detention prior to trial is supposed to be the exception, but in practice, just the opposite is true. A 2018 study by the ACLU-Hawaii found that overall judges in Hawaii required bail as a condition of release in

²HCR 134 Task Force on Pretrial Reform Final Report https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf

³ HCR 85 Task Force. Getting It Right: Better Ideas for a New Jail; the section, Creating Off-Ramps to Reduce the Jail Population is particularly relevant to cash bail

⁴ HCR 85 Task Force. Getting It Right: Better Ideas for a New Jail; the section, Creating Off-Ramps to Reduce the Jail Population is particularly relevant to cash bail

88% of cases, and in the majority of those cases it was set at a level the defendant could not afford.⁵

Almost half the people in OCCC are there because they cannot afford bail. In the six month period from April 1 to September 30, 2021 pretrial detainees at OCCC cost the State, on average, \$113,000 a day. If we include the pretrial detainees in neighbor island jails the cost goes up to \$200,000 a day.⁶

The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail, but a report from the 2018 Criminal Pretrial Task Force chaired by Hawaii circuit judge (now U.S. magistrate) Rom A Trader found that “there is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. Thus, money bail is a poor method of assessing and managing a defendant’s risks.”⁷

HAPA supports HB1567 HD1 and measures such as this that will provide better equality within our justice system.

Please PASS HB1567 HD1.

Mahalo for your consideration,



Anne Frederick
Executive Director

⁵ HCR 85 Task Force. Getting It Right: Better Ideas for a New Jail; the section, Creating Off-Ramps to Reduce the Jail Population is particularly relevant to cash bail

⁶ HCR 85 Task Force. Getting It Right: Better Ideas for a New Jail; the section, Creating Off-Ramps to Reduce the Jail Population is particularly relevant to cash bail

⁷ HCR 85 Task Force. Getting It Right: Better Ideas for a New Jail; the section, Creating Off-Ramps to Reduce the Jail Population is particularly relevant to cash bail

Hawaii
Holding Power Accountable

Statement Before The
HOUSE COMMITTEE ON FINANCE
Thursday, February 24, 2022
11:00 AM
Via Video Conference and Conference Room 308

in consideration of
HB 1567, HD1
RELATING TO CRIMINAL PRETRIAL REFORM.

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the House Judiciary & Hawaiian Affairs Committee

Common Cause Hawaii provides comments on HB 1567, HD1, which (1) eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions and (2) requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy - one that is equitable and works for everyone.

Cash bail – monetary bail – is rarely used in other nations besides the United States. Cash bail is to ensure that an individual charged with a crime will return to court for hearings or trial. If a person is unable to afford the bail amount set by the court, there are private bail bond companies that will “agree to be responsible for the defendant’s bail obligation in exchange for a nonrefundable fee, called a bond premium, that is generally 10 to 15 percent of the bail amount.” See <https://www.brennancenter.org/our-work/research-reports/how-cash-bail-works> (retrieved Jan. 31, 2022). However, the individual charged must have the requisite collateral to secure the services of the private bail bond companies.

If a person cannot afford bail or the bond premium, including collateral charged by private bail bond companies, she or he is then detained in jail. “Pretrial detention has dramatically [negative effects](#) on the outcome of a defendant’s case: those who are held pretrial are four times more likely to be sentenced to prison than defendants released prior to trial.” Id. Research clearly shows that cash bail discriminates against racial minorities and the poor. Id.

Illinois, New York, and New Jersey and the City of Philadelphia have all implemented some form of cash bail reform. Id.

Common Cause Hawaii advocates for the ending of unfair policies that do not result in any public gain, unfairly target BIPOC communities, and undermine the promise of a democracy that works for

everyone. For these reasons, we are comments on HB 1567, HD1. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii





Hawai'i

Committees: House Committee on Finance
Hearing Date/Time: Thursday, February 24, 2022, at 11:00 A.M.
Place: Via videoconference
Re: *Testimony of the ACLU of Hawai'i with Comments regarding H.B. 1567 HD1 Relating to Criminal Pretrial Reform and proposed amendments*

Dear Chair Luke, Vice Chair Yamashita and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") offers **comments regarding HB1567 HD1** which would eliminate the use of monetary bail and requires defendants to be released on their recognizance for certain nonviolent offenses, subject to multiple exceptions.

The ACLU of Hawai'i envisions a criminal pretrial system consistent with equal protection and due process rights enshrined in our federal and state Constitutions - where people are considered innocent until proven guilty.¹ We strive to dramatically reduce the number of people in pretrial detention, eliminate wealth-based detention and combat bias and systemic racism, that disparately impacts Native Hawaiians, Pacific Islanders and African Americans (Blacks) in Hawai'i.²

Hawai'i Lawmakers Have an Opportunity to Advance Fundamental Fairness in our Criminal Legal System and Eliminate Overcrowding in our Jails

Our current system lets the size of a person's wallet determine whether a person – who has been accused, but not convicted of a crime – can return home or stay locked up in jail while awaiting their day in court. This current pretrial system punishes those who are not wealthy even before they have a chance to defend themselves in court. Yet, lawmakers have a unique opportunity to effectuate changes to our criminal pretrial system that aligns with our shared value of fundamental fairness.

In addition to the unfairness of wealth-based detention, pretrial incarceration is one of the major drivers of incarceration and overcrowding in Hawai'i jails.

¹ The presumption of innocence until guilt is proven is a fundamental concept within our criminal legal system. This is in tension with the reality that only the U.S. and Philippines have a cash bail system that is dominated by commercial bail companies and where people who pose serious risks to public safety can be released if they have access to money.

² *A New Vision for Pretrial Justice in the United States*, ACLU Smart Justice, March 2019. See also, Ainsley Dowling, *As Much Justice as You Can Afford: Hawaii's Accused Face an Unequal bail System*, American Civil Liberties Union of Hawai'i (January 2018).

- As of January 24, 2022, roughly **1003 out of 1736 people or 57% of all people imprisoned in Hawai'i jails have not been convicted of any crime** and are merely awaiting trial, most often because they cannot afford the amount of bail in their case.
- Approximately 59% or 582 people incarcerated at Oahu Community Correctional Center (“OCCC”)³ are presumed innocent, yet are detained pending trial.
- At Maui Community Correctional Center (“MCCC”), 157 out of 322 people, or 49% of the population are pretrial status. COVID is spreading rapidly. As of January 27, 2022, the Department of Public Safety (“DPS”) reported 183 active cases for incarcerated persons and four staff. The operational bed capacity is 301 and the design capacity is 209 people which means that public health strategies, including but not limited to social distancing to limit the spread of COVID is impossible.
- Hawai'i Community Correctional Center (“HCCC”) has 192 out of 304 people or 63% of the incarcerated population deprived of their liberty while awaiting a trial date. The operational capacity at HCCC is 226 and the design capacity is 206 people.
- On Kaua'i, 56 people or approximately 44% of the population have not been convicted of any crime and are awaiting trial.

Criminal Pretrial System Reforms will Save Taxpayer Dollars

Hawai'i tax payers bear the costs of incarceration. This is true even where presumptively innocent people who are not a flight risk nor a danger to others are held in jail because they cannot not make bail.

Hawai'i currently **spends \$219 a day or nearly \$80,000 annually to incarcerate an adult in our jails and prisons.** Reducing the pretrial population between 30-50% through comprehensive criminal pretrial reforms will save costs to the taxpayers, without compromising community safety.

Pretrial Detention Should be the Exception, Not the Norm

Bail, in any form, should never be used as a punitive tool and any conditions set for release should only be as restrictive as is absolutely necessary to ensure that the accused shows up at court. In *United States v. Salerno*, 481 U.S. 739, 755 (1987), the United States Supreme Court advised that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” Yet, over the years, Hawai'i has ignored that dictate.

The ACLU Recommends Amendments to Balance the Individual's Interest in Liberty and the State's Interest in Protecting Public Safety

While we support the general intent behind this legislation, we have concerns that the broad exceptions are not carefully limited and reinforces an unbalanced system in which detention prior to trial is the norm.

³ State of Hawai'i Department of Public Safety, Weekly Population Report (January 24, 2022).

We respectfully request the Committee to amend this bill to reflect the following recommended changes:

- (1) The standard for denying bail: Bail may be denied to any person charged with a criminal offense where the charge is for a serious crime⁴, and (1) there is a serious risk that the person will abscond; (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or injure or intimidate a prospective witness or juror with the purpose of obstructing or attempting to obstruct justice; (3) There is a serious risk that the person poses a significant danger to a specific person or reasonably identifiable persons or persons based on an articulable risk to a specific person, and (4) The risks cannot be mitigated by any set of release conditions. The burden of proof shall be upon the state to establish, by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the appearance of the person when required or the safety of any other person or persons.
- (2) Throughout, see, e.g. Page 2, lines 9-10: References to nonappearance in court and “protect[ing] the public” should be amended. **As a matter of policy, the appropriate risks should be that of: (1) absconding, or intentional, willful flight; or (2) specific threat of significant harm to an identifiable person or persons.**
- (3) Page 2, lines 1-2: This provision should be amended to include all petty misdemeanor offenders, misdemeanor offenses and class C felony offenses as eligible for release on recognizance unless a person presents a flight risk or specific threat of significant harm to a specific person.
- (4) Page 2-3, Delete page 2 lines 13-21 and page 3 lines 1-18. The broad exemptions contravene the purported purposes of this bill to reduce the pretrial population at overcrowded conditions. At minimum, delete page 2, lines 20-21 (Operating a vehicle under the influence of an intoxicant) and page 3, line 3 (Unauthorized entry into a dwelling).
- (5) Page 3, lines 6-7. **This provision should be amended to clarify that the person has a history or pattern of absconding or intentional, willful flight, rather than non-appearance.** Some people do not appear in court because of child care, transportation, employment, or other issues, rather than a willful intent to flee the jurisdiction.
- (6) Page 3, lines 8-10: This provision excludes any person with a history of a violent misdemeanor or violent felony offenses with the past eight years. While this may seem reasonable on first pass, a person’s actions 8 years ago does not automatically determine a person’s present day flight risk or serious risk of danger to a specific person in the community. This provision should be narrowed further

⁴ Serious crime means murder or attempted murder in the first degree, murder or attempted murder in the second degree, or a class A or B felony, except forgery in the first degree and failing to render aid under section 291C-12.

if the standard articulated in the ACLU's recommendation #1 is not adopted.

- (7) Page 3, lines 11-12: This provision could be used to justify detaining all houseless people who are arrested and are pending trial or sentencing at the time of arrest. For example, if a houseless person were to go back on the street and sleep on the sidewalk or in the park, this could be denied release due to this provision. This should be narrowed further.
- (8) Page 3, lines 13-14. **Between 20-25% of jail and prison admissions in Hawai'i are the result of persons having their probation or parole supervision revoked due to technical violations of community supervision rules. Given the intent of lawmakers to reduce overcrowding, people should not be detained merely because they are accused or found to have violated community supervision conditions that did not result in new convictions.** Therefore, delete section (D) ~~The defendant was on probation, parole or conditional release at the time of arrest.~~
- (9) Page 3, lines 19-21. Section F should be amended to read: "The defendant presents a significant danger to a specific person or persons based on an articulable risk to a specific person or persons." Delete (F) ~~The defendant presents a risk of danger to any other person or to the community, or a risk to recidivism~~" as both terms are too broad and vague.
- (10) Page 4, lines 2- 4. The proposed statute does not provide specific guidance to take "into consideration the defendant's financial ability to afford bail." This provision should be amended to include "**In the setting of bail, the following shall apply:**
- i. **The Court shall exclude from consideration any income derived from public benefits; including supplemental security income, social security disability insurance, and temporary assistance for needy families, and any income below the federal poverty level:**
 - ii. **If the person has no income other than public benefits or is a member of a household income below the federal poverty level, the court shall presume that the person is unable to pay any bail amount; and**
 - iii. **If the person's household income, exclusive of any income derived from public benefits, is above the federal poverty level, the court shall consider what the individual could reasonably pay within forty hours of arrest.**
- (11) **Given that pretrial detention results in the deprivation of liberty, the Court should be required to enter on the record its findings with respect to the detention decision when bail is denied.**

In closing, our current system of wealth-based detention in Hawai'i devastates families and undermines public safety. We urge the State Legislature to enact comprehensive criminal

legal pretrial reforms to promote fundamental fairness, reduce the incarcerated pretrial population, eliminate racial and socio-economic disparities, and save taxpayer dollars.

Thank you for the opportunity to testify.

Sincerely,

Carrie Ann Shirota

Carrie Ann Shirota

Policy Director

ACLU of Hawai'i

cshirota@acluhawaii.org

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 over 50 years.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org



TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 24, 2022

Re: HB 1567 HD1 RELATING TO CRIMINAL PRETRIAL REFORM

Good morning Chairperson Luke members of the House Committee on Finance. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

While we understand the intent, RMH is **STRONGLY OPPOSED** to HB 1567 HD1 Relating To Criminal Pretrial Reform This measure eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions. Requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

We are very concerned as this bill essentially gives those who have been arrested for a non-violent crimes like shoplifting, home invasions, drug dealing, 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 shop lifting, break ins of their home, car or business.**

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.



HB 1567, HD 1, RELATING TO CRIMINAL PRETRIAL REFORM

FEBRUARY 24, 2022 · HOUSE FINANCE COMMITTEE
· CHAIR REP. SYLVIA LUKE

POSITION: Support.

RATIONALE: Imua Alliance **supports** HB 1567, HD 1, relating to criminal pretrial reform, which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions; and requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

Imua Alliance 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 over 160 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, 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-1567-HD-1

Submitted on: 2/22/2022 3:55:25 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Eric Schrager	Individual	Support	No

Comments:

Dear Chair Luke and members of the committee,

I am submitting written testimony in support of HB1567 HD1. Cash bail is fundamentally unfair to people of lower socioeconomic status.

Kanaka Maoli are overrepresented at every level of the criminal legal system including pre-trial detention due to the detrimental impact of colonization. Unsurprisingly, Hawaii's incarceration crisis has had a particularly severe impact on people of color, especially Native Hawaiians and Pacific Islanders. In 2018, this group made up 23 percent of adults in the state, but a reported 47 percent of people incarcerated under Hawai'i's jurisdiction. Further, incarceration is on the rise among Hawaiian women. Between 1990 and 2017, the number of women incarcerated in the state grew by 265 percent. Source: <https://50stateblueprint.aclu.org/states/hawaii/>

It costs approximately \$200 a day to house people in pretrial detention and the average stay is 29 days. These are people who haven't had a day in court or been convicted of a crime. Their presumption of innocence has been denied because they are unable to afford cash bail.

To accommodate the high incarceration rates under our criminal legal system and the projected number of beds needed, the proposed new OCC is projected to cost \$1 billion. We know from our experience with the rail project, it will cost even more. Many times, people unable to afford bail and languishing in jail will take a plea deal which then may lead to further incarceration.

We must eliminate cash bail.

Very Respectfully,

Eric Schrager

HB-1567-HD-1

Submitted on: 2/22/2022 4:22:34 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christy MacPherson	Individual	Support	No

Comments:

Aloha Chair Luke, Vice Chair Yamashita, and members of the House Committee on Finance,

I am in strong support of HB1567 HD1. There are so many reasons to eliminate cash bail. In the name of racial and gender equity as well as economic justice, I hope you will pass this piece of legislation that is long overdue.

Mahalo.

HB-1567-HD-1

Submitted on: 2/22/2022 4:53:57 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carla Allison	Individual	Support	Yes

Comments:

My name is Carla Allison and I strongly support HB1567 HD1 relating to criminal pretrial reform, specifically eliminating the use of monetary bail for low level offenses.

I have 2 primary concerns about Hawaii’s use of monetary bail.

One is: We are using the current bail system at a huge expense to our state budget, spending over \$200,000 a day housing pretrial detainees...that’s over \$72 million a year. Just imagine the services: community health centers, mental health & substance abuse programs, at-risk youth care, that we could provide with even a portion of that \$72 million.

And Two: We are using monetary bail at a significant expense to the well being of our citizens, with almost half the people in OCCC living there because they cannot afford bail.

A person living in jail is at risk of losing their job. They become unable to meet financial obligations, can’t care for their families, their health deteriorates, and as their financial situation worsens they become more vulnerable to committing crimes. Studies show that putting people in jail, even for a few days, increases the likelihood of lasting involvement in our carceral system.

Stopping the use of the monetary bail for low-level and non-violent offenses will allow those accused to resume their lives while awaiting trial.

Our Federal Government and many states have already made the change. They’ve reduced their jail populations and without a rise in crime. And people are showing up for trial.

Let’s stop criminalizing our under resourced siblings...jailing folks who are not yet guilty of a crime because they cannot afford bail

Let’s stop spending millions to house them.

With a potentially billion dollar new jail in the planning phase, let’s do everything we can to reduce our jail population.

Please support House Bill1567 HD1.

Thank you for your consideration.

HB-1567-HD-1

Submitted on: 2/22/2022 9:01:52 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Matthew Geyer	Individual	Support	Yes

Comments:

Mahalo for hearing and supporting HB1567 HD1. I stand in support of this measure for many reasons, but since this is the finance committee, let me just focus on the financial benefits of this measure.

1. This measure may eliminate the need for Oahu to build a new jail.
2. This measure will significantly reduce the prison population, saving taxpayer funds.
3. Pretrial detention causes job losses, and many other associated economic impacts which has an effect on the overall economy and state tax collections.

Based on these financial considerations as well as the many social justice concerns of the current cash bail system, please continue to support HB1567 HD1

HB-1567-HD-1

Submitted on: 2/22/2022 10:59:51 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Esther Geil	Individual	Support	Yes

Comments:

I would like to support HB1567 HD1 but recommend that the amendments placed on it be removed. The cash bail system seems to me to be both unfair and unwise. If a detainee is actually likely to commit a dangerous crime, I believe they need to be detained and not given the option of using money to remain at large. However, it makes no sense to me to house pre-trial detainees who do not pose that serious danger to the population just because they are not wealthy enough to put up money to buy their freedom. Moreover studies indicated that there is in fact no meaningful benefit from it. The cost to taxpayers of maintaining this system is an unnecessary and significant burden in the cost of jails and the personnel to run them, while the harm to those in prison under it is damaging to them and their families. Everything I have studied on the subject indicates that it would be to the benefit of our state to eliminate the cash bail system, and I hope the legislature proceeds to do so.

HB-1567-HD-1

Submitted on: 2/23/2022 12:35:37 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kristen Young	Individual	Support	No

Comments:

Aloha Chair Luke, Vice Chair Yamashita, and members of the Finance Committee:

Thank you for hearing HB1567 relating to criminal pretrial reform. I strongly support transformation of the cash bail system in Hawai‘i. HB1567 could be a step toward that as it eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses. I support HB1567 and respectfully ask that you consider reverting back to the original bill.

Hawai‘i, the “Aloha State,” has some of the highest incarceration rates in the world (Source: [Prison Policy](#)). Almost half of the people in OCCC, the State’s largest jail, are there simply because they cannot afford bail, not because they’re a danger to society. These are people who haven’t had a day in court or been convicted of a crime. Their presumption of innocence has been denied because they are unable to afford cash bail. You can imagine how deeply traumatizing this would be for those detained individuals and for their loved ones who essentially lose a family member. The State spends thousands of dollars a day to fund this tearing apart of communities.

There is a common misconception that bail keeps the ‘rest of us’ safe, but according to a report from the 2018 Criminal Pretrial Task Force chaired by then Hawaii circuit judge Rom Trader, “[t]here is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. Thus, money bail is a poor method of assessing and managing a defendant’s risks.”

We can see colonization in full effect here with Kānaka Maoli overrepresented at every level of the criminal legal system and Native Hawaiians and Pacific Islanders disproportionately incarcerated (they make up 47% of the State’s incarcerated population). “Public safety” must include them, too. The less money we spend to keep people locked up, the more money we can invest in our communities for true public safety.

The federal government and many jurisdictions have eliminated money bail. Hawai‘i must move in that direction to have any chance at creating a just pretrial system.

Mahalo for your consideration,
Kristen Young
House District 25

HB-1567-HD-1

Submitted on: 2/23/2022 8:17:38 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Alice Caddow	Individual	Support	No

Comments:

Please revert back to the original bill that removes the amendments in the current draft. The clauses that include select Class C felonies and provision that if the defendant is unable to post bail in the amount of \$99 or less, the director of public safety may, in the director's discretion releas the defendant are important to include in this bill. Defendants that are poor and committed crimes that don't put society at risk, should not be incarcerated while they await a hearing just because they don't have the money to post bail. This will benefit them, their families and the state. Thank you, Alice J. Caddow

HB-1567-HD-1

Submitted on: 2/23/2022 8:39:17 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
donn viviani	Individual	Support	No

Comments:

I'm writing in support of HB1567 I'm Donn Viviani. My wife and I live in Kailua and have family in the Punchbowl and Aina Haina areas. The purpose of bail is to prevent flight and to assure appearance at trial. The purpose is not to punish suspects (who under the law must be presumed innocent) or to create two classes of citizens under the law. The two classes are those who can afford bail and those who cannot. The punishment of those who cannot can be way out of proportion to the offense they are suspected of: loss of income, loss of a job, or may result in their children or kupuna not being cared for. Protection of hawaiian citizens is accomplished through pretrial incarceration of those who may be violent, not suspects of low level offences. Only the US and the Phillipines have money/commerical bail requirements. All other countries apparently see no need for this unfair, discriminatory and archaic requirement. Let's treat every person equally and not let the size of someone's wallet determine how the law treats them.

HB-1567-HD-1

Submitted on: 2/23/2022 8:41:05 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
nicole rhton	Individual	Support	Yes

Comments:

Aloha Chair Luke and Members of the Committee:

It is time to eliminate cash bail. This is not unprecedented and the benefits both in dollars and human dignity is backed by data. Overcrowded jails and prisons is a serious problem in Hawaii-- that you can actually address by eliminating cash bail.

It costs approximately \$200 a day to house people in pretrial detention and the average stay is 29 days. These are people who haven't had a day in court or been convicted of a crime. Their presumption of innocence has been denied because they are unable to afford cash bail.

Almost half the people in OCCC are there because they cannot afford bail. In the six month period from April 1 to September 30, 2021 pretrial detainees at OCCC cost the State, on average, \$113,000 a day. If we include the pretrial detainees in neighbor island jails the cost goes up to \$200,000 a day.

The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail, but a report from the 2018 Criminal Pretrial Task Force chaired by Hawaii circuit judge (now U.S. magistrate) Rom A Trader found that “[t]here is **virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. Thus, money bail is a poor method of assessing and managing a defendant’s risks.**”

So if there is no correlation between cash bail and reduced crime, then all we are doing is locking people up because they do not have money. That should be a crime.

If we actually really cared about people and preventing crime then we would resource people with what they need. Imagine what even half of the daily cost could provide in mental health, addiction, or other social services that actually support people in their humanity and survival needs which in turn would prevent crime. There is data for that, too!

Please do something different with your power. Help get people out of cages at cost benefit to the public.

Thank you for voting yes on HB1567.

-Nicole Rhoton

HB-1567-HD-1

Submitted on: 2/23/2022 8:45:55 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Wendy Gibson-Viviani	Individual	Support	No

Comments:

Dear Chair Luke, Vice-Chair Yamashita and Members of the Committee,

I am Wendy Gibson-Viviani, a healthcare professional (RN) who has lived and worked in Hawaii for 29 years. I support HB1567 which would help reform our broken cash-bail system. I believe Robert Merce said it best, in a Civil Beat article:

"Our bail system keeps poor people who are accused of low-level, non-violent crimes in jail because they are poor, while allowing wealthy people who are accused of major violent crimes to go free because they can bail themselves out. **The current system is expensive, ineffective, unjust and we must end it.**"

I agree. I blame our cash bail system for overcrowding in our jails/prisons and hope that a reform in the system will lead to better outcomes for society in general, not just the detainees.

Robert Merce **Source:** <https://www.civilbeat.org/2021/02/restore-justice-end-the-bail-system/>

Thank you for your attention to this important matter.

Wendy Gibson-Viviani RN/BSN

Kailua (Oahu resident for 29 years)

HB-1567-HD-1

Submitted on: 2/23/2022 9:07:58 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carolyn Eaton	Individual	Support	Yes

Comments:

Aloha, Chair Luke, Vice Chair Yamashita and members of the Committee. My name is Carolyn Eaton, and I support this bill. It has been watered down, but even in the current amended form, it speaks to the belief that "liberty be the norm in our society, and detention before trial the exception. In Hawaii today, the opposite is true." Here I echo the stunning report by Robert Merce, "Getting it Right: Better Ideas for a New Jail," which I urge each one of you to read. I support the independence of the judiciary in the face-to-face encounters judges have with persons charged with an offense. The Legislature need not, ought not, impose on judges in these interactions. Judicial independence is the appropriate guarantee to public safety and to avoiding terrible, unnecessary costs to individuals and the finances of the State. Mahalo for giving me the opportunity to share my strong beliefs.

HB-1567-HD-1

Submitted on: 2/23/2022 9:13:00 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lee Curran	Individual	Comments	Yes

Comments:

Aloha Chair Sylvia Luke, Vice Chair Kyle T. Yamashita and Committee Members,

My name is Lee Curran and I am testifying as an individual who is a co-facilitator of the Transformative Justice Task Force which is part of Faith Action for Community Equity, (FACE). I am testifying with comments on HB1567HD1. I am unequivocally in support of comprehensive bail reform and would like to comment and request that you restore the bill to its original intent prior to the amendments.

We need to put a FACE on the people of Hawai'i who are burdened and often traumatized by the unjust and inequitable cash bail system. These folks are separated from their families, livelihoods, and community supports all under the false guise of safety.

We can't assign a monetary value to safety but we can recognize that we are on a hamster wheel of bad outcomes in our current criminal legal system and the money we are spending for pretrial detention and often for additional incarceration because people take plea deals, is not keeping us safer.

It costs approximately \$200 a day to house people in pretrial detention and the average stay is 29 days. These are people who haven't had a day in court or been convicted of a crime. Their presumption of innocence has been denied because they are unable to afford cash bail.

To elaborate, according to Bob Merce's report, Getting It Right: Better Ideas for a New Jail: Almost half the people in OCCC are there because they cannot afford bail. In the six month period from April 1 to September 30, 2021 pretrial detainees at OCCC cost the State, on average, \$113,000 a day. If we include the pretrial detainees in neighbor island jails the cost goes up to \$200,000 a day.

One last thought about the sobering financial aspects, to accommodate the high incarceration rates under our criminal legal system and the projected number of beds needed, the proposed new OCCC is projected to cost \$1 billion. We know from our experience with the rail project, it will most likely cost even more. The prison industrial complex has a huge profit motive, there is a lot of money to be made when building a new prison.

Much has been in the news recently about corruption in the accepting of bribes both at the State and City and County of Honolulu levels. I believe that our confidence and trust in government is

low, at best. Building a \$1 billion dollar carceral facility is never a good idea and especially now with public trust so low. Unlike what a member in the JHA committee voiced, I believe that criminal legal reform that includes cash bail has a lot to do with building a new OCCC. This is an opportunity to jump off that hamster wheel of bad outcomes, and embrace a new vision for our criminal legal system where we don't have to plan for substantial expansion and bed capacity because the hard truth is, build it and we will fill it.

Our collective humanity and well being is priceless. Instead of the laser focus on punishment to create a false sense of safety, we can create true safety. True safety looks like well resourced communities, families and individuals who are cared for by trauma-informed people who can facilitate the process of healing and health and stem the cycle of intergenerational trauma which the cash bail system perpetuates. This can be done by diverting monies currently used to house people in pre-trial detention and spend it in the aforementioned way.

I am grateful for this opportunity to testify with comments for HB1567HD1 and ask that you restore the bill to its original intent and that this message of change, grounded in care, compassion and community, sits on your hearts and impacts your decision-making as you create laws that recognize the humanity and inherent dignity and worth of the people of Hawai'i now and in future generations.

Lee Curran,

Makaha, HI

HB-1567-HD-1

Submitted on: 2/23/2022 10:06:18 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Elizabeth Nelson	Individual	Support	No

Comments:

Thank you so much for having this hearing. I totally support the idea that cash bail is not a viable or pono idea for low level offenses like traffic violations, parking tickets, etc and some Class 3 felonies. When people are put in jail because they cannot afford the bail, most times it negatively affects their jobs, housing, families. And none of these things are good for the community.

Violent offenders should definitely be in jail, as we have recently seen from the newspaper. This system needs to be much more equitable for our lower income community members.

Please consider passing this important bill. Thank you.

Elizabeth Nelson

Kaneohe

HB-1567-HD-1

Submitted on: 2/23/2022 10:45:32 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rev. Jeannie D. Thompson	Individual	Support	No

Comments:

Please support this bill.

Please STOP holding poor people in jail when they can not pay cash bail. It just makes their lives and the lives of their families worse and is bad for the whole community.

Robert K. Merce
2467Aha Aina Place
Honolulu, HI 96821

TESTIMONY IN SUPPORT OF HOUSE BILL 1567, H.D. 1
Relating to Criminal Pretrial Reform

COMMITTEE ON FINANCE
Chair, Sylvia Luke
Vice-Chair, Kyle T. Yamashita

Video Conference Hearing
Thursday, February 24, 2022
Time: 11:00 a.m.

Chair Luke, Vice-Chair Yamashita, and Members of the Committee,

My name is Robert Merce. I am a retired lawyer and previously served as vice-chair of the HCR 85 Task Force on Prison Reform. In 2018 I was appointed to the Reentry Commission by House Speaker Scott Saiki and served on the Commission until its responsibilities were transferred to the Hawaii Correctional System Oversight Commission pursuant to Act 179 SLH 2019.

I strongly support HB 1567, H.D. 1, but I also strongly recommend that Hawaii move toward eliminating money bail altogether.

Studies have shown that “[j]ust a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter—making jail a gateway to deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large.”¹

For the disproportionately high number of people who enter jails from minority communities or who suffer from mental illness, addiction, and homelessness “time spent in jail exacerbates already difficult conditions and puts many on a cycle of incarceration from which it is extremely difficult to break free.”² Defendants who cannot make bail are at risk of losing their jobs, and with it the income that supports their children, pays their rent and utilities and puts food on the table. In the long run they can also lose their house or apartment, health insurance and custody of

¹ Ram Subramanian, Ruth Delaney, Stephen Roberts, Nancy Fishman, Peggy McGarry, “Incarceration’s Front Door: The Misuse of Jails in America,” Vera Institute of Justice, 2015. Retrieved from <http://www.safetyandjusticechallenge.org/wpcontent/uploads/2015/01/incarcerations-front-door-report.pdf>.

² Subramanian, et. al., *Incarceration’s Front Door*, 5.

their children. After maxing out their credit cards, a family may end up deep in debt or even homeless.

In our society liberty is supposed to be the norm and detention prior to trial the exception, but in practice, just the opposite is true. A 2018 study by the ACLU-Hawaii found that overall judges in Hawaii required bail as a condition of release in 88% of cases, and in the majority of those cases it was set at a level the defendant could not afford.³

Almost half the people in OCCC are there because they cannot afford bail. In the six month period from April 1 to September 30 , 2021, pretrial detainees at OCCC cost the State, on average, \$113,000 a day. If we include the pretrial detainees in neighbor island jails the cost goes up to \$200,000 a day.

The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail, but a report from the 2018 Criminal Pretrial Task Force chaired by Hawaii circuit judge (now U.S. magistrate) Rom A Trader found that “[t]here is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. *Thus, money bail is a poor method of assessing and managing a defendant’s risks.*”⁴

To create a truly just pretrial system, we must end money bail. That is not a radical idea. The federal government did it, and many jurisdictions have moved in that direction:

- The District of Columbia releases 94% of the people who are arrested without bail. Of those released, 91% make their scheduled court dates and 98% are not arrested for a violent crime while awaiting trial.
- Since 2017 New Jersey has rarely imposed money bail as a requirement of release. Last year the Chief Justice of the New Jersey Supreme Court reported that bail reform in the state was working “admirably and well,” court appearance rates exceeded 90%, and the percentage of defendants on pretrial release who are charged with indictable criminal activity remained “consistently low.”⁵
- In February, 2021, Illinois completely eliminated money bail as part of a sweeping criminal justice reform bill that includes changes to every part of the justice system, from

³ ACLU-Hawaii. *As Much Justice As You Can Afford*, Honolulu, Hawaii: January 2018. 23.

⁴ Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawaii, December, 2018, page 68.

⁵ Glen A. Grant, *Annual Report to the Governor and the Legislature, Criminal Justice Reform, Jan.1-Dec.31, 2020*. December 31, 2020. Retrieved from <https://www.njcourts.gov/courts/assets/criminal/2020cjrannual.pdf?c=TVP>

police accountability to sentencing.⁶ The no bail law will not go into effect until 2023 to allow time for challenges to the bill and to train judges on how the new law should be applied.

It is time to quit tinkering with our money bail system in the hope that it will somehow become fair, equitable and just. It won't. If we want a truly just pretrial system, we have to end money bail.

We should eliminate money bail completely, but at the very least we should eliminate it for select non-violent class C felonies, misdemeanors, petty misdemeanors, and violations.

Judges should also be encouraged to release pretrial defendants on unsecured bail pursuant to HRS § 804-9.5 (2019). To our knowledge very few defendants have ever been released under this statute even though it has been the law for more than two years.

Thank you for allowing me to testify on this matter.

⁶ Emanuella Evans and Rita Ocegueda. *Illinois criminal justice reform ends cash bail, changes felony murder rule*. Justice Watch, February 24, 2021.

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Kyle T. Yamashita, Vice Chair

Thursday, February 24, 2022 at 1100 HST

RE: Testimony for HB1567 HD1 Relating to Criminal Pretrial Reform

Aloha Chair Sylvia Luke, Vice Chair Kyle T. Yamashita, and the members of the Committee on Finance:

Mahalo for hearing HB1567 HD1. I am writing in support of HB1567 in its original form to include people who've been arrested for nonviolent class C felonies.

I support bail reform and believe that cash bail should be eliminated. Please reconsider HD1 and restore HB1567 to its original form.

Mahalo for considering my testimony,

Soon Kim

Faith Action Member

HB-1567-HD-1

Submitted on: 2/23/2022 11:05:22 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Calvin Foo Pham	Individual	Comments	No

Comments:

I prefer the original draft with the clause, "If the defendant is unable to post bail in the amount of \$99 or less, the director of public safety may, in the director's discretion, release the defendant."

I think it is important to reflect on the goal of this bill to reform our practices that disproportionately affect poor people. We should operate on innocence until proven guilty and allow for people to be released while they await their court date, especially if their alleged crime is nonviolent. I like the dollar amount in the original draft because it's a clear dollar amount.

We shouldn't keep people locked up, away from their jobs, families, etc. as doing so may create disruptions in their lives that are too difficult to overcome. We run the risk of putting our poor citizens into an unrecoverable downward spiral within our legal system to the point that we exacerbate problems affecting their lives and our community at-large.

I support cash bail reform and prefer the original draft.

Mahalo.

HB-1567-HD-1

Submitted on: 2/23/2022 11:16:31 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lisa Cates	Individual	Oppose	No

Comments:

Aloha Chair Luke, Vice-Chair Yamashita, and committee members,

I am testifying in opposition of HB1567 and pre-trial reform.

Property crimes such as theft, burglary, operating a stolen vehicle, and shoplifting are considered non-violent, low-level crimes yet these crimes are the most committed and least prosecuted. Any theft less than \$750 is a misdemeanor and habitual property crime offenders know this.

Under this bill, many defendants will be automatically released on their own recognizance and will not be required to post bail. The bail code is to ensure future court appearances; if no bail is posted, the defendant has lost nothing when they don't appear.

The 2019 Recidivism update to the 2002 Hawaii Baseline Study shows that nearly 54% of criminals in Hawaii are repeat offenders. This bill will only benefit low-level career criminals, fail to protect the public, and motivate those who know how to manipulate the system. Property crimes are a personal violation that can take months and sometimes years for victims to recover.

I am personally asking that the two representatives from my district who sit on this committee vote against this bill.

Mahalo,

Lisa Cates, Kailua

HB-1567-HD-1

Submitted on: 2/23/2022 11:38:27 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rachel Tjoeng	Individual	Support	No

Comments:

Aloha. My name is Rachel Tjoeng. Twenty years ago, I did my nursing clinicals on the prison unit at The Ohio State University Hospital. This experience transformed how I perceived prisoners, guards, and the prison system as a place for justice and rehabilitation. I found that overwhelmingly I was far more afraid of the prison systems and the guards than I was of the prisoners, men who, in my experience, had been swept up into this system for mostly minor offenses related to drugs because they were mostly poor and men of color. Over the course of the last twenty years, I have worked, volunteered, and cared for family members in a variety of institutional settings.

The current situation of jails in the state of Hawaii is unsustainable. According to the Department of Public Safety End of the Month Population Report issued on January 31, 2022, 33% of people in Hawai`i jails are currently awaiting trial. Another 32% of people in Hawai`i jails have violated parole or probation in some way. Trying to house this number of people in an institution during a global pandemic is unsafe and unjust– especially when the Omicron variant was spreading rapidly throughout the public during January. Hospitals, as institutions that also handle huge influxes of people, would not adequately function if up to 65% of their inpatient population included people waiting for doctor’s appointments and who had some type of blood work abnormality. I support removing cash bail because it is unfair for people who are already impoverished, especially in the state of Hawai`i where food and housing costs are high. Further, cash bail simply is not a sustainable solution when it costs \$219 per day to house people accused, but not yet convicted, of crimes. No other institution in Hawai`i would tolerate these exorbitant costs. It is time to eliminate cash bail and reallocate the savings of \$219 per day per individual into strengthening communities and keeping the state of Hawai`i safe during a global pandemic.

Mahalo,

Rachel Tjoeng

TESTIMONY IN SUPPORT OF HB 1567
THE HONORABLE SYLVIA LUKE CHAIR

I once represented a young Kanaka Maoli woman who had been incarcerated at OCCC. Her crime. Being found overnight at a public restroom with her baby. She pleaded no contest to the petty misdemeanor charge, not necessarily because she was guilty but contesting the charge would have meant her remaining in jail while awaiting trial. I am also aware of a person recently charged with murder who went free because he was financially able to meet his \$1,000,00 bail. As a criminal defense attorney for 40 plus years such stories are legion and not the exception in our present cash bail system.

A report from the 2018 Criminal Pretrial Task Force found that “[t]here is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody.” There is a correlation, however. Financial means is a get out of jail card regardless of future crime or violent behavior. Being poor and Kanaka Maoli is a guarantee of incarceration regardless of the charge.

Violence is a risk at OCCC for those who cannot meet bail. Just today, February 23, a pretrial client reported two brawls which injured both ACOs and prisoners. OCCC is overcrowded and with too few ACOs. Overcrowding has resulted in heightened tension, aggression and violence. A less publicized benefit of HB 1567 would be to reduce overcrowding and some of the associated problems.

The last suggestion is to build a research and report component in the bill and fund the judiciary to do such a report. Metrics and statistics are always necessary when reforms are proposed.

Clayton Kimoto JD

HB-1567-HD-1

Submitted on: 2/23/2022 7:25:18 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Diana Bethel	Individual	Support	No

Comments:

I am writing in strong support of HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions. It requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

HB 1567 HD1 will help reduce the overcrowding in our carceral institutions. There is no point in incarcerating people whose nonviolent offenses present no danger to the public and who cannot afford to post bail. If they are detained because they cannot post bail, they could be in prison for weeks or months until their hearing or trial.

According to a January 17, 2022, report on Hawaii's inmate population numbers, we have 990 pretrial detainees. At a cost of \$219 per day, per individual, we are paying \$216,810 for 990 people per day, \$1,517,670 per week, and \$72,848,160 per year. This is an unacceptable waste of taxpayer money that could be used more effectively to address the many other problems the State is facing.

Also, I do not believe that the concern about the risk of flight and failure to appear for court hearings is a valid objection. The risk of flight on a small island seems absurd and, as seen in other jurisdictions, sending reminders is a common sense strategy that avoids all the collateral consequences of detaining an individual who cannot afford the bail amount. It seems criminal to penalize individuals because they are poor. Please restore the provision that would allow the Director of Public Safety to release a defendant if the defendant is unable to post bail in the amount of \$99 or less.

Please pass HB 1567 HD1.

HB-1567-HD-1

Submitted on: 2/23/2022 7:30:17 PM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara J. Service	Individual	Support	No

Comments:

Aloha Chair Luke, Vice Chair Yamashita and committee membI am a resident of Senate District 8 and House District 19 and I am stronly a strong

HB-1567-HD-1

Submitted on: 2/24/2022 12:17:04 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Peter Koulogeorge	Individual	Support	Yes

Comments:

Dear Chair Luke and Vice Chair Yamashita ,

I am writing in support of HB 1567, but only on the condition that it be passed with the amendments proposed by the ACLU Hawaii. We need a strong bill to reform the cash bail system and I believe the solutions brought forward by the ACLU would move us in the right direction, whereas this bill - as it currently stands - doesn't do enough to support our communities.

Money bail is one of the most corrupt and broken parts of the justice system. It lets the size of a person's wallet determine whether a person – who has been accused, but not convicted of a crime – can return home or stay locked up in jail while awaiting their day in court.

The reality of being forced to pay money upfront in exchange for freedom causes scores of people—even those who are ultimately released—to be in jail solely due to their inability to afford bail, or to plead guilty simply to get out of jail.

This unfair and unjust system punishes those who are not wealthy even before they have had a chance to defend themselves in court and disproportionately impacts Native Hawaiians and other people of color. One of the most transparently corrupt elements of the justice system is the money bail system, which punishes people not for what they've done but because of what they don't have.

Thank you for considering my testimony,

Peter Koulogeorge

HB-1567-HD-1

Submitted on: 2/24/2022 12:28:16 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ansley Calandra	Individual	Support	No

Comments:

Aloha Chair Luke, Vice Chair Yamashita, and other members of the committee:

I'm testifying in support of HB1567, under the condition that the bill be altered in alignment with the amendments suggested by the ACLU of Hawai'i. Currently, when a rich person and a poor person are accused of the exact same crime, the rich can buy their freedom, while the poor are left to languish in jail – sometimes for years. This system is utterly corrupt, and it is long past time that we do away with the barbaric practice of caging legally innocent people for simply lacking funds. We should not merely tinker with the cash bail system as it exists, but rather, we must be bold enough to go further and do what is truly just – i.e., eliminate cash bail. Please pass this bill with the amendments requested by the ACLU of Hawai'i.

Thank you for your consideration.

Ansley Calandra

HB-1567-HD-1

Submitted on: 2/24/2022 5:47:30 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Robert Perkinson	Individual	Support	No

Comments:

Aloha. I am writing in support of HB1567 on bail reform. I believe the measure as currently written is too modest, but it still represents a start.

In the history of modern democracy, we moved away from debtors' prisons generations ago, and yet we continue to detain pre-trial defendants in Hawai'i for no other reason than poverty. To let some defendants walk free because they have access to credit or savings and to keep others locked up because they have no access to resources makes no sense. Our cash bail system is discriminatory, arbitrary, capricious, and it undermines public safety and confidence in criminal justice institutions. Replacing cash bail with risk assessments, as other jurisdictions have demonstrated, will better protect the rights of defendants while also better serving the public.

Thank you for your consideration. --Robert Perkinson (Honolulu)

HB-1567-HD-1

Submitted on: 2/24/2022 8:04:47 AM

Testimony for FIN on 2/24/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mara Davis	Individual	Support	No

Comments:

this is necessary to pass do your jobs stop letting people stay in jail during covid when not necessary they're dying.