



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1567, HD1, RELATING TO CRIMINAL PRETRIAL REFORM.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 31, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Lauren M. Nakamura,
Deputy Attorney General, at (808) 586-1160)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

This bill would (1) eliminate the use of monetary bail and require defendants to be released on their own recognizance for traffic offenses, violations, nonviolent petty misdemeanor offenses, and nonviolent misdemeanor offenses; and (2) allow defendants the option to participate in a bail report interview via videoconference.

The Department opposes this bill because there has not been sufficient time since the Legislature made changes to the State's criminal pretrial system in 2019 to fully assess the effect of the changes. At this point in time, there is no determination about what metric properly measures the success or failure of the prior changes. Additionally, the Department is concerned that the bill may not adequately address a number of important interests, including the need to secure the appearance of defendants and to protect the public.

In 2017, pursuant to a request from the House of Representatives contained in House Concurrent Resolution No. 134, House Draft 1 (2017), the Hawaii State Judiciary convened a criminal pretrial task force to:

- (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and

- (2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals[.]

H.C.R. 134, 29th Leg., Reg. Sess. (2017).

On December 14, 2018, the criminal pretrial task force submitted its report to the Legislature, and based on its findings and recommendations, the Legislature passed House Bill No. 1552, which was enacted as Act 179, Session Laws of Hawaii 2019 (Act 179), to: (1) support best practices for an effective correctional system; and (2) implement certain recommendations of the task force. See Conf. Comm. Rep. No. 149, Reg. Sess. 2019. A substantial number of the criminal pretrial task force's recommended changes to the bail statutes were made in Act 179. In addition, Act 179 established the Criminal Justice Research Institute, which is responsible for, among other things, establishing and maintaining a centralized statewide criminal pretrial justice data reporting and collection system, and developing and tracking indicators that accurately reflect the effectiveness of the State's criminal pretrial system.

This bill approaches the State's criminal pretrial system from the perspective that "there is a need to address the substantial and continued overcrowding of facilities used to house pretrial defendants." (Page 1, lines 1-3). However, the State already has a robust and flexible criminal pretrial system that the Legislature only recently changed in 2019, when the Legislature passed House Bill No. 1552, which was enacted as Act 179. Given the brief amount of time since those changes were made and the extraordinary challenges to the criminal pretrial system brought on by the COVID-19 pandemic, the effects of Act 179's changes are unknown. Accordingly, the Department recommends this bill be deferred and that the Criminal Justice Research Institute established by Act 179 be given sufficient time to evaluate the effectiveness of the State's recently amended criminal pretrial system.

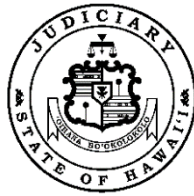
The new section being added to chapter 804, Hawaii Revised Statutes (HRS), by section 2 (page 1, line 13, through page 4, line 19) of the bill, requires that defendants charged with traffic offenses, violations, non-violent petty misdemeanor offenses, or

non-violent misdemeanor offenses be released on their own recognizance. On page 2, line 11, through page 3, line 21, the bill sets forth a number of exceptions that would allow the court to set bail pursuant to section 804-9, HRS. The mandate to release certain defendants is inconsistent with the court's discretion to determine the amount of bail pursuant to section 804-9, HRS, and to set conditions of bail or release pursuant to section 804-7.1, HRS, both of which are designed to assist the court in ensuring the appearance of the defendant and the protection of the public.

While the identified exceptions in the bill may appear to allow for some judicial discretion, the list of exceptions to the mandatory release on page 2, line 11, through page 3, line 21, does not provide for every scenario where release on recognizance may not be appropriate. This bill would require an automatic release of numerous defendants charged with offenses considered by this bill to be "nonviolent" and do not fall under any of the proposed exceptions, but nevertheless may pose a danger to the public. Existing offenses in the HRS, such as Violation of an Injunction Against Harassment (§604-10.5, HRS); Harassment (§711-1106, HRS); Hindering Prosecution in the Second Degree (§710-1030, HRS); Rendering a False Alarm (§710-1014, HRS); Impersonating a Law Enforcement Officer in the Second Degree (§710-1016.7, HRS), could be characterized as "nonviolent" and defendants charged with such offenses would be released under the bill. Currently, the court would have the discretion on a case-by-case basis to determine what amount of bail, if any, would be appropriate, hear argument regarding the circumstances that led to the arrest of the defendant, and weigh factors not considered by the wording of this bill (e.g., obstruction of justice, witness tampering, or other illegal activity).

Accordingly, the Department recommends deferring the bill and allowing the courts to retain the discretion and flexibility to set bail and conditions of bail or release to ensure both the continued appearance of defendants and the protection of the public.

Thank you for the opportunity to testify.



The Judiciary, State of Hawai'i

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

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair

Thursday, March 31, 2022 at 9:30 A.M.
Conference Room 016 & Videoconference

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

WRITTEN TESTIMONY ONLY

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

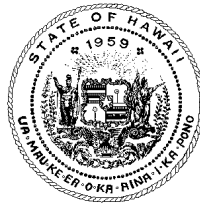
Purpose: Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions. Requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.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

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. _____

WRITTEN TESTIMONY ONLY

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

by
Max N. Otani, Director
Department of Public Safety

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 31, 2022; 9:30 a.m.
Via Videoconference

Chair Rhoads, Vice Chair Keohokalole, 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 allowing 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
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STEVEN S. ALM
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THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY



THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-first State Legislature
Regular Session of 2022
State of Hawai'i

March 31, 2022

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

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

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 can be developed to allow suitable alternatives (such as signature bonds and adequate supervision by the Department of Public Safety's Intake Services Center Division). That said, H.B. 1567, H.D. 1, does not present such a system, but attempts to reconsider certain portions of H.B. 1552 (2019) that were previously removed, leading up to the passage of that bill as Act 179 (2019). We agree with the various committees from the 2019 Legislative Session, who removed the problematic portions of H.B. 1552 (2019), which are now contained in H.B. 1567, H.D. 1.

Although the Department appreciates that Section 2 of H.B. 1567, H.D. 1 (pg. 1-2, ln. 16-17, 1-4), no longer includes class C felony offenses, 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), fails to account for the plethora of concerning charges that could be classified as non-violent misdemeanor or petty misdemeanor offenses. Even with the static list of excluded offenses (see pg. 2-3, ln. 13-21, 1-4), these are just a few example of charges for which a defendant could be automatically released, if H.B. 1567, H.D. 1, were to become law:

- 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 judges' rulings pertaining to bail, the Department does believe that a judge more appropriately evaluates all of 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 safeguards that are currently in place, and re-assess the inevitable risks associated with releasing pretrial detainees based on such sweeping generalities. 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—on a case-by-case basis—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 if a new offense is committed while pending disposition on a previous case (for which they were released). This fails to account for the time between the date of offense and the date the individual is arraigned on the original case, which can range from a few days to a few weeks for petty misdemeanor and misdemeanor offenses. Should the committee ultimately pass H.B. 1567, H.D. 1, it may want to add the word "arraignment" to page 3, line 11, to close this gap:

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

That being said, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 1567, H.D. 1, and respectfully asks the Committee to defer this bill. Thank you for the opportunity to testify on this matter.

Hawaii
*Holding Power Accountable*Statement Before The
SENATE COMMITTEE ON JUDICIARYThursday, March 31, 2022
9:30 AM

Via Video Conference and Conference Room 016

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

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports 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 support 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

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing 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. The Hawaii Correctional System Oversight Commission (HCSOC) strongly supports HB 1567 HD1 with comment to restore Class C Felonies as provided in the original HB1567.

The Hawaii Correctional System Oversight Commission was created by this legislative body by Act 179, SLH 2019. One of its statutory responsibilities is to establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.

As you are all aware our jails are overcrowded. The jail population consists of pretrial and postconviction inmates. Pretrial detainees make up a large number of the population. HB1567 HD1 would reduce this overcrowding by requiring defendants accused of certain low-level, non-violent offenses to be released on their own recognizance. This bill also ensures that bail for certain offenses, the rich and poor are treated equally. Presently, if the accused is financially unable to post cash bail he/she is incarcerated while the accused who is financially able to post the cash bail is released. Besides being very costly, incarceration also impacts other social issues such as employment, housing, education and family. Threat to public safety is not increased because the bill pertains to low-level, non-violent offenses with certain exceptions.

Therefore, the Hawaii Correctional System Oversight Commission strongly supports HB1567 HD1 and respectfully request that the bill be revised to restore certain non-violent Class C Felonies as provided in the original HB1567. Mahalo nui loa for the opportunity to provide testimony on this measure.

Respectfully,
Ronald Ibarra, Commissioner
Hawaii Correctional System Oversight Commission

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Thursday, March 31, 2022

9:30 AM

HB 1567 ~~HD1~~ - STRONG SUPPORT FOR REAL BAIL REFORM

Aloha Chairs Rhoads, Vice Chair Keohokalole & 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 3,993 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety or the corporate vendor as of March 21, 2022¹. We are always mindful that 1,110 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 bail ²except 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.

The March 21, 2022 Department of Public Safety's Population Report shows that 23% of the total incarcerated population - 918 persons - are pretrial detainees. **At OCCC, the pretrial population is 56% - 539 persons - of the imprisoned population there - 954. The pretrial**

¹ Department of Public Safety Weekly Population Report.

<https://dps.hawaii.gov/wp-content/uploads/2022/03/Pop-Reports-Weekly-2022-03-21.pdf>

² *In re Humphrey, Recent Case* : 482 P.3d 1008 (Cal. 2021), JAN 10, 2022, 135 Harv. L. Rev. 912.

<https://harvardlawreview.org/2022/01/in-re-humphrey/>

detainee population in the three other jails are: HCCC - 61% - 166 persons, KCCC - 46% - 53 persons, and MCCC - 48% - 144 persons.

DPS commissioned a report from consultant Curtis Pulitzer and they found that if pretrial reform (bail) passed the legislature, the state could save 200 beds. This report has been ignored in the state's determination to build a humongous OCCC to warehouse the indigent.

The California Supreme Court case, *In re Humphrey*, 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.

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 March 21, 2022 population numbers from the Department of Public Safety reveal that 23% of the total incarcerated population - 3,993 persons - are pretrial detainees. We have asked service providers who work with marginalized populations about their clients' experience when arrested and we were 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.

Despite law enforcement's claims about releasing dangerous people and the need to keep people behind bars, the data does not support that. New York passed a bail reform law that was overturned by the legislature and law enforcement. This is a cautionary tale in a short article from The Crime Report³ that refutes those claims:

Despite warnings from critics that bail reforms would lead to dangerous people being released to commit more crimes, the percentage of people diverted from jail while awaiting trial who get re-arrested for new offenses remained virtually unchanged after New York's reforms took effect, with

³ **Bail Reform Not Responsible for Crime Hike: NYC Official**, By **TCR Staff** | March 23, 2022.
<https://thecrimereport.org/2022/03/28/house-vote-on-legalizing-marijuana-expected-this-week/>

the rate in most months holding at around 4 percent, according to the city’s “fiscal watchdog,” Comptroller Brad Lander, [reports the Associated Press](#).

Both before and after the reforms, less than 1 percent of those released were re-arrested for violent felonies, contradicting a number of headline-grabbing violent crimes in New York City that have given momentum to bail reform critics. In 2021, an average of about 45,400 people were on pretrial release in New York City in any given month. Of those, an average of just under 1,900 were re-arrested. In 2019, an average of around 53,300 were on pretrial release in any given month. Of those, an average of less than 2,300 were re-arrested, or about 4.3 percent. Since the reforms, fewer people are getting held on bail pending trial. In 2019, judges in New York City set bail in 24,657 cases. In 2021, judges set bail in 14,545 cases.

This fearmongering from prosecutors and the Attorney General damage the credibility of Hawai'i's criminal legal system and promote distrust. Community Alliance on Prisons has been testifying for years in support of an independent Judiciary and we find the position of the AG and the Honolulu Prosecutor disingenuous at best.

What is really going on? 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? Please be honest with the community.

THERE ARE OTHER ALTERNATIVES TO INCARCERATION FOR PEOPLE WHO CAN'T MAKE BAIL:

Here are some better alternatives from the Pretrial Justice Institute⁴:

Decriminalizing activities related to health and basic needs

Many arrests are linked to mental and behavioral health issues or being unhoused. Changing criminal codes or declining prosecution for these charges can reduce the consequences of legal system involvement.

Implementing alternatives to 911

Community members often call 911 as a last resort when dealing with a crisis, resulting in difficult or potentially violent interactions with police. Alternatives to 911 can better meet the needs of people facing crisis while freeing up law enforcement to address more serious crime.

Using citation and summonses to avoid custodial arrest.

Even a few nights in jail can have a detrimental impact—people can lose their jobs or housing, and are more likely to commit a future crime. Avoiding custodial arrest altogether, especially for those people who are likely to be released at first appearance, allows people to remain in the community and reduces jail populations.

Significantly restricting the use of detention

State statutes and constitutions often limit who can be detained, and under what circumstances. If people were only detained if they met strict legal criteria, and after an adversarial hearing, then

⁴ Beyond Bail Reform: The ‘Safety’ Approach to Pretrial Justice, By Meghan Guevara and Tenille Patterson | February 17, 2022 <https://thecrimereport.org/2022/02/17/beyond-bail-reform-the-safety-approach-to-pretrial-justice/>

jails populations would plummet, while courts would still have a mechanism for identifying people who may pose a specific threat if released.

Limiting conditions of release

If courts avoid long lists of pretrial conditions, and instead only impose conditions that are individualized to a particular case, like orders of protection, then there is an opportunity to respond to specific concerns and meet the needs of victims without extensive over-supervision.

Developing robust community supports

Breaking the cycle of criminal legal system involvement often requires public health and social service interventions, not jail time. Investing in community services that are available without formal court conditions can meet individual needs and build healthier communities—and there are many great examples where this is already happening.

On their own, these strategies are logical and pragmatic; taken together, they can be the first steps in creating comprehensive system change.

A pretrial process driven by equity, values, safety and community would look very different than what we have today. It also would not be a one-size fits all approach; communities with unique challenges will develop unique solutions.

For those of you who are mired down in local debates between money- and risk-based systems, we hope you will consider having conversations about your own Option C.

PJI's new report, *What If? 10 Questions for Sparking Local Pretrial Change*, <https://static1.squarespace.com/static/6018b6a3956c02769138dd6f/t/618e84ba0d01f25f634f93e7/1636730043994/What+IF+11.11.21.pdf> can support you in that discussion.

Community Alliance on Prisons respectfully asks the committee to make amendments to this bill to make pretrial reform meaningful and we appreciate this opportunity to share our thoughts and research!



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
MARCH 31, 2022**

Re: HB 1567 HD1 RELATING TO CRIMINAL PRETRIAL REFORM

Good morning, Chairperson Rhoads members of the Senate Committee on Judiciary. 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 **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 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.

We are very concerned as this bill essentially gives those who have been arrested for a non-violent crime and be released without much consequence or an assurance that 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 shoplifting, break ins of their home, car, or business. These shoplifters know exactly how to steal merchandise from our stores right under \$750 ensure that it is not a felony.**

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. Local businesses have lost hundreds of thousands not to mention million of dollars to shoplifting.
- **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.



3610 Waiialae Ave • Honolulu, HI 96816



(808) 592-4200



tyamaki@rmhawaii.org

LATE



Senate Committee on Judiciary

Hawai'i Alliance for Progressive Action Supports: HB1567 HD1

Thursday, March 31st, 2022 9:30am, Conference Room 016

Aloha Chair Rhoads, Vice Chair Keohokalole 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 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

AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS		MAILING ADDRESS	
John Bickel, President	Melodie Aduja	Jan Lubin	Bill South	P.O. Box 23404
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Dave Nagajji, Treasurer	Juliet Begley	Jenny Nomura		Hawaii 96823
Doug Pyle, Secretary	Stephanie Fitzpatrick	Stephen O'Harrow		

March 29, 2022

TO: Chair Rhoads and Members of the Judiciary Committee

RE: HB 1567 HD1 RELATING TO CRIMINAL PRETRIAL REFORM

Support for a Hearing on March 31

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

Americans for Democratic Action Hawaii supports this bill as it would eliminate the use of monetary bail and require defendants to be released on their own recognizance for certain nonviolent offenses, subject to exceptions.

Almost 60% of the people in Hawaii's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

Thank you for your consideration.

Sincerely,

John Bickel, President

HB-1567-HD-1

Submitted on: 3/30/2022 2:02:45 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Evelyn Aczon Hao	Testifying for Faith Action for Community Equity	Support	Written Testimony Only

Comments:

Dear Committee,

I support HB 1567 because it addresses the injustice of the current bail system which punishes the poor. If an accused person can afford to pay the bail, that person is free to continue working and keeping up with family responsibilities until the court date. If a person is too poor to pay the bail, he/she misses work and family responsibilities are unmet until the court date. In addition to being taken from job and family, that person is sent to jail. The incarceration of untried persons accused of non-violent crimes costs taxpayers hundreds of thousands of dollars a year.

I urge you to pass this bill. It will correct one part of our broken criminal justice system which punishes poor families and their children; and which siphons tax monies away from life-affirming services such as public education and state health services.

Thank you, Evelyn Hao



**Testimony of Faith Action for Community Equity
Support of HB1567HD1, Relating to Criminal Pretrial Reform
To the Senate Committee on Judiciary
March 31, 2022 9:30am via video conference**

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

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 injustices in our communities. We **SUPPORT** HB1567 HD1 with the following comments.

We request that the bill be amended to include Class C non-violent felonies as listed in the original draft, language is restored 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.

In addition, since 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, 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. **We request that you delete the provision in section D that precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest. If we want to approach criminal legal reform in a way that is truly holistic and transformative, reduces overcrowding and works towards creating true safety, that section should be deleted.**

The last revision we request is that given that pretrial detention results in the deprivation of liberty, the Court should be required to enter on the record its written findings with respect to the detention decision when bail is denied.

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 as a lasting 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 dfcurran@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



Hawai'i

Committees: Senate Judiciary
Hearing Date/Time: Thursday, March 31, 2022, at 9:30 A.M.
Place: Conference Room 016 & Via videoconference
Re: *Testimony of the ACLU of Hawai'i: Comments on H.B. 1567 HD1 Relating to Criminal Pretrial Reform and proposed amendments*

Dear Chair Rhoads, Vice Chair Keohokalole 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. We also recommend proposed amendments outlined in detail below.

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

While we support the intent behind this measure, we believe that this bill takes an incremental approach, rather than a systems change approach to reduce our overcrowded jails. Similarly, this bill does not go far enough to address the fundamental unfairness of detaining people because they are unable to afford cash bail even when they do NOT pose a risk of intentionally fleeing Hawai'i and/or are at serious risk of harming a specific person.

We encourage lawmakers to look closely at the criminal legal data in Hawai'i and meaningful bail reforms in other jurisdictions, and add the requested amendments to effectuate a fair and just criminal pretrial system.

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

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.

- 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.
157 out of 322 people, or 49% of the population are pretrial status
- 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 people or 49% of the population are locked up while awaiting trial.**
- 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

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

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.

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**

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.

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 eight (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 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 legal, 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 written 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 submit testimony on this measure.

Sincerely,

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i
cshirota@acluhawaii.org

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

Additional Resources Highlighting the Dangers and Harms of our Current Cash Bail System and Pretrial Detention in Hawaii's Jails

Attempted murder and sex assault suspect, 31, free after posting \$500K bail

<https://www.staradvertiser.com/2020/11/24/breaking-news/attempted-murder-and-sexual-assault-suspect-31-released-from-custody-after-posting-500k-bail/>

State To Pay \$40,000 In Alleged Gang Attack At Oahu Jail: Staff at the state's largest jail left some doors unlocked and ajar, which allowed five alleged gang members to attack a prisoner on another floor. (The male who was stabbed at OCCC was pretrial status)

<https://www.civilbeat.org/2022/03/state-to-pay-40000-in-alleged-gang-attack-at-oahu-jail/>

Hawaii Monitor: Why Are So Many Inmates Committing Suicide?: Hawaii ranks third highest among western states for rate of prison suicides.

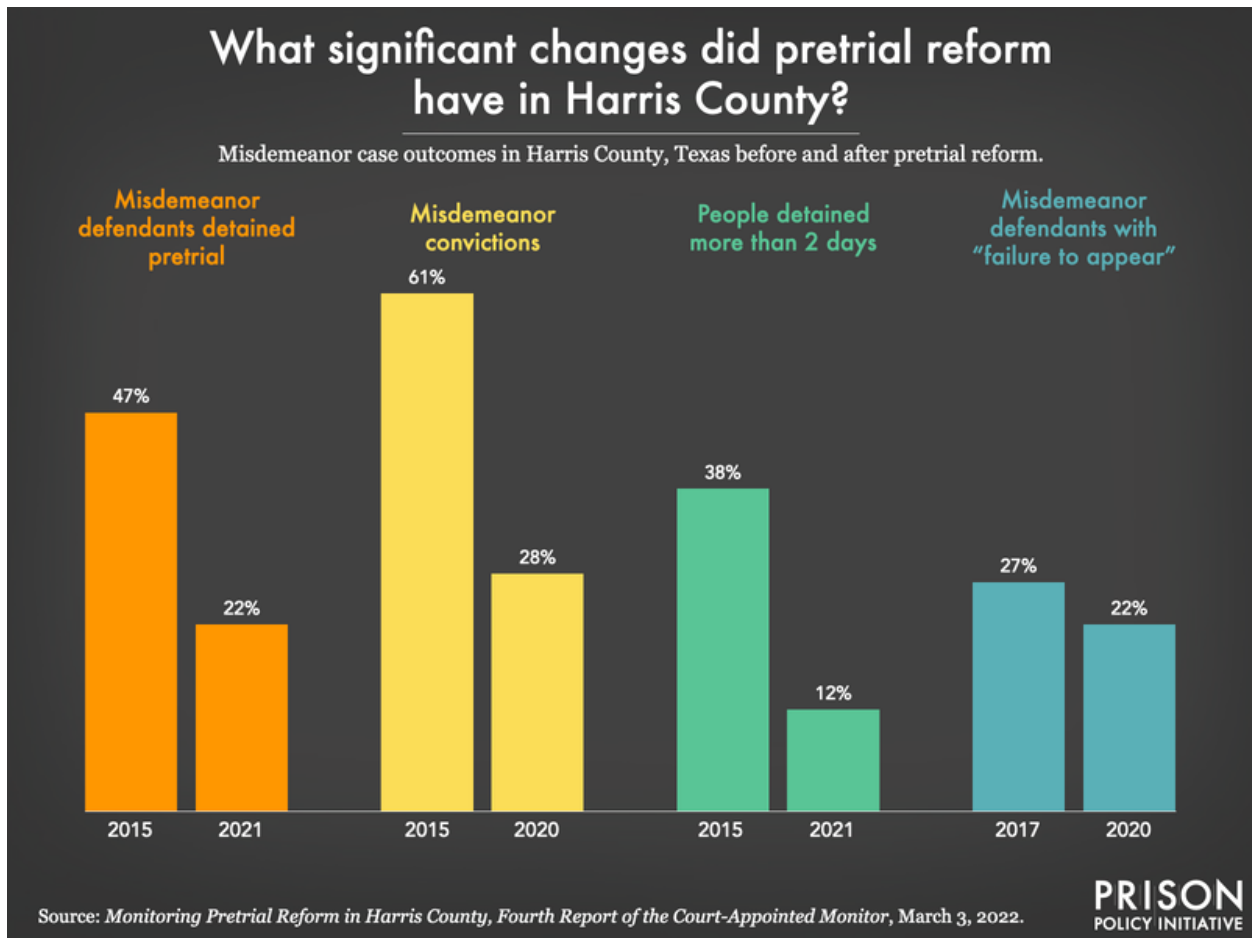
- Suicides are more likely in jail than in prison, perhaps because this is more often an individual's first experience with the criminal justice system. "It is a traumatic experience for many and for some an experience they cannot cope with," the report found.
- Most suicides occur soon after being incarcerated, ranging from the first few hours to the first few weeks of confinement.

<https://www.civilbeat.org/2013/05/19128-hawaii-monitor-why-are-so-many-inmates-committing-suicide/>

What does successful bail reform look like? To start, look to Harris County, Texas.

New data is out that supports bail reform efforts to end reliance on cash bail, minimize the number of people charged with misdemeanors and detained pretrial, and improve misdemeanor bail hearings. The recently published findings come from researchers charged with monitoring misdemeanor pretrial reform as it is implemented in Harris County (Houston), Texas.

<https://www.prisonpolicy.org/blog/>



HB-1567-HD-1

Submitted on: 3/29/2022 8:17:22 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Amy Wake	Testifying for Trinity United Methodist Church	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify,

Rev. Amy C. Wake

Trinity United Methodist Church

1716 Komo Mai Drive

Pearl City, HI 96782

HB-1567-HD-1

Submitted on: 3/29/2022 8:35:39 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Beppie Shapiro	Testifying for League of Women Voters Hawaii	Support	Written Testimony Only

Comments:

Chair Rhodes, Vice Chair Keohokalole , Committee Members

The Hawaii League of Women Voters strongly supports HB 1567. We need to reduce the number of people held in our jails, and why not start with those presumed innocent but incarcerated simply because they are economically disadvantaged? Passing HB1567 will allow many people to keep their jobs, their residences, and relationships with family.



LATE

STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

March 30, 2022

ONLINE/FAX: 808-586-6131; 587-7220

The Honorable Karl Rhoads
Chair
The Honorable Jarrett Keohokalole
Vice-Chair
Senate Committee on Judiciary
Hawaii State Capitol, Rooms 204, 205
415 South Beretania Street
Honolulu, HI 96813

Re: **HB1567 HD1-Relating to Criminal Pretrial Reform**

Dear Chair Rhoads, Vice-Chair Keohokalole, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers (“SHOPO”) and write to you on behalf of our Union in **strong opposition** to HB1567 HD1. This bill seeks to release criminals arrested for breaking the law without requiring bail.

We are on the front lines battling crime 24 hours a day, seven (7) days a week, 365 days a year. We know who the habitual criminals and repeat offenders are who are arrested repeatedly just for us to see them set free without any consequences. The bill states that there is a need to address the overcrowding in our prisons and that one way to do so is through bail reform.

We respectfully suggest that another more effective way to address our overcrowded prisons is to build a new prison with greater capacity which has been in the works for years but suddenly seems to be going nowhere. Millions of dollars have been spent on studies and planning for the construction of a new prison, but funding is suddenly in jeopardy. Rather than build a new prison, the solution being offered is to let repeat offenders go free in our community without bail where they will be allowed to continue terrorizing our citizens. It is not coincidental that we often hear reported in the media that a person with an extensive rap sheet has been arrested yet again without being locked up. Our citizens wonder out loud, “how was that person allowed to be out?” Eliminating bail will only exacerbate this continuing problem.

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Kauai Chapter Office
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Mailing Add: P. O. Box 1708
Lihue, Hawaii 96766-5708
Tel: (808) 246-8911

Maui Chapter Office
1887 Wili Pa Loop, Suite 2
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Tel: (808) 242-6129
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The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice-Chair
Senate Committee on Judiciary
Re: HB1567 HD1-Relating to Criminal Pretrial Reform
March 30, 2022
Page 2

A recent and very tragic case illustrates what can happen and will happen when someone is arrested for committing a crime and is simply set free. As reported in the media, a suspect was arrested for assaulting a police officer. No sooner after he was arrested, he was allowed to go free by the prosecutors. He was subsequently arrested for second-degree murder outside the Kapolei police station where he was released after allegedly violently attacking an innocent woman with a tree trunk who died.

We fully understand and appreciate the social issues involved with bail reform. However, we have laws for a reason which is to protect our community from harm. We are police officers entrusted to enforce those laws. Many times the same criminal offenders have numerous misdemeanor offenses on their records together with more violent offenses. So although they may be arrested today for a non-violent misdemeanor offense, they may have a long rap sheet of committing other violent and more heinous crimes on their records. Eliminating the use of monetary bail and releasing criminals on their own recognizance as proposed by this bill will only compound the existing dangers our community already faces by having repeat offenders freely walking in our neighborhoods.

If the legislature is going to address the underlying social and economic issues related to bail reform, freeing arrested criminals is not the answer nor the way to address such issues. We thank you for allowing us to be heard and to share our concerns on this bill and hope your committee will unanimously reject this bill.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

LATE



HB 1567, HD 1, RELATING TO CRIMINAL PRETRIAL REFORM

MARCH 31, 2022 · SENATE JUDICIARY COMMITTEE
· CHAIR SEN. KARL RHOADS

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.

Imua Alliance · (808) 679-7454 · www.imuaalliance.org · imuaalliance@gmail.com

LATE



HB1567 HD1 BAIL REFORM

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Thursday, Mar 31 2022: 9:30 : 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.

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 12:19:01 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Cullen Frowick	Testifying for Bail Reform Project	Support	Written Testimony Only

Comments:

Dear Honorable Senate Judiciary Committee,

My name is Cullen Frowick and I am a student of UH Manoa. I am writing to urge you to support HB1567. As a student of Sociology and Psychology I have had to study the effects of separation of families and the impacts of long term detention/imprisonment on the mental health of individuals and society. I believe that it is in the best interest for not only the individuals who are directly affected but also Hawaii as a whole that HB1567 be passed. Studies have shown time after time that in order to reduce recidivism rates societies have to treat individuals as human beings who deserve respect and compassion instead of hardened criminals for crimes that they had potentially not even committed. According to the Justice Reinvestment report on Hawaii the average length of stay in Jail awaiting trial in 2014 was 71 days, compared to other counties which had averaged 15 days. This length of time can have irreparable damage to family structures, whether it is financial or emotional support which could prevent future generations from following a path of crime. Passing HB1567 can also allow the funds that are required to house pretrial defendants to be invested back into the community in crime reducing techniques further reducing the state's spending. To circle back to the bill it states that "The legislature finds that there is a need to address the substantial and continued overcrowding of facilities used to house pretrial defendants". The passing of HB1567 can only result in a reduction of overcrowding of the facilities used to house pretrial defendants that cannot afford bail. I also urge you to include class C felonies on the recommendation of the ACLU, the addition of class C felonies will further help reduce the state's spending and reduce the number of people in the facilities as mentioned is the desired outcome as shown in the bill itself.

Thank you for your time and the opportunity to testify.

Sincerely,

Cullen Frowick

HB-1567-HD-1

Submitted on: 3/29/2022 9:59:22 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Robert Perkinson	Individual	Support	Written Testimony Only

Comments:

Aloha, Senators.

I'm writing to urge you to pass HB1567 with amendments to make it more robust.

I'm a historian at UH and a specialist in the history and transformation of criminal justice institutions. Many proposals to make our criminal justice system more fair and effective involve trade offs, risks, and evidence that can be difficult to sort through. This is not the case with bail reform.

Cash bail is built on a simple idea—that you should be able to buy yourself out of jail, with the amount pegged loosely to the seriousness of the offense and only very weakly to a defendant's ability to pay. In practice, cash bail is woefully dysfunctional. It undermines public safety, wastes taxpayer money, exacerbates economic and racial inequality, and wrecks the lives of indigent innocents.

A system of pre-trial detention based on cash bail is fundamentally unfair: It allows those with access to resources to buy their freedom, and it condemns the poor to jail, where in just a few days defendants can lose their jobs, their kids, then their housing. Pre-trial detention can tear lives asunder without a full assessment of dangerousness and before any determination of guilt.

For these reasons, debtor imprisonment was outlawed decades ago, and almost every country in the world has abolished cash bail and private bail bond companies. And yet we've continued to rely on this broken, outdated system for far too long. You have before you a chance to begin to rectify a fundamental wrong.

HB1567 only flaw is excessive modesty. There are too many crimes excluded. In truth, releasing a rapist or murderer with a large bank account makes even less sense than allowing a shoplifter to buy freedom. I support including at least class C felonies in the bill, therefore, as well as other amendments to accentuate the bill's impact.

Most important, I urge you to pass this bill in some form, so we can at least start moving in the right direction.

Because the pace of reform within the judiciary and offices of prosecuting attorneys has been too slow, the legislature is called to lead here. I believe you will be proud of exercising this leadership, proud of the work you've done to advance justice and sound governance in Hawai'i.

Mahalo.

HB-1567-HD-1

Submitted on: 3/28/2022 6:11:06 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Patricia Mcmanaman	Individual	Support	Written Testimony Only

Comments:

I stand in support of this measure.

Pat McManaman

HB-1567-HD-1

Submitted on: 3/29/2022 8:55:34 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Robin Hart	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

ALSO: PLEASE amend it to include Class C non-violent felonies as listed in the original draft.

AND: I am asking that the bill be amended so that language is restored 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.

FINALLY: I request that Section D, that precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest, be deleted. These are technical violations.

Mahalo for this opportunity to testify,

Robin Hart

1031 Nuuanu Ave #1706

Honolulu 808-694-0408

144fortress@gmail.com

March 29, 2022

Rev. Thomas J. FitzGerald
Senior Minister, First Unitarian Church of Honolulu
minister@unitariansofhi.org

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

The bail system in Hawai'i is rife with inequity. As the Committee is painfully aware, Native Hawaiians are significantly overrepresented in the state's criminal adjudication system. This means that Native Hawaiians are disproportionately affected by pre-trial detention procedures like cash bail. Native Hawaiians are not the only groups affected by this process, however.

The scope and the breadth of disparities in ability to make bail lays bare the unconstitutionality of cash bail because it cuts across all portions of our community that happen to be poor or indigent. And we are not the first state to consider this. California's Supreme Court recently took up this question. Judge Cuéllar, writing for the California Supreme Court, in *In re Humphrey*, held that "[C]onditioning freedom solely on whether an arrestee can afford bail is unconstitutional." 482 P.3d. 1008, 1012 (Cal. 2021). I have included a recent Harvard Law Review article on the case for background.

The poor people in this state—and there are many—are punished by a system that causes those in it to lose significant community connections and support simply because they cannot afford to pay for their freedom. Jurisdictions around the country have shown that simple text or email reminders about court dates are as effective as cash bail for assuring that those accused of crimes show up to their hearings and appointments. Providing childcare; help getting children up and ready for school; contributing to household income in a state with a staggering cost of living; providing emotional support...these are just a few of the things taken from families and from communities when someone is too poor to pay for their freedom.

The amount of punishment this system inflicts *before* any adjudication of any accused crime is in contravention of the rights enshrined in the Fifth and Fourteenth amendments (sec. 1).

For these reasons, I plead humbly with the Committee to consider amending this measure to include Class C non-violent felonies as listed in the original draft. ACLU Hawai'i notes that the majority of women have Class C felonies for drug and property offenses. Under the current bail bill, many women will still be detained, creating great

pain in the lives of their children and families, who are wholly and entirely blameless in any eyes.

I also request that the bill be amended so that language is restored 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.

I also request the removal of Section D, which precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest.

Mahalo for this opportunity to testify.

Respectfully submitted, with aloha,

Rev. Thomas J. FitzGerald
Senior Minister, First Unitarian Church of Honolulu

RECENT CASES

CRIMINAL LAW — MONEY BAIL — CALIFORNIA SUPREME COURT HOLDS DETENTION SOLELY BECAUSE OF INABILITY TO PAY BAIL UNCONSTITUTIONAL. — *In re Humphrey*, 482 P.3d 1008 (Cal. 2021).

Across the nation, people are arrested and detained pretrial solely because they lack the money to pay bail.¹ Although many state constitutions grant individuals a right to be released on bail except in the most serious cases, “courts use unaffordable bail conditions to detain people deemed too dangerous or flight prone to release.”² Recently, in *In re Humphrey*,³ the Supreme Court of California held that detaining a person pretrial solely because they cannot afford bail violates due process and equal protection.⁴ Consequently, California courts must consider ability to pay when setting bail, and courts cannot set unaffordable bail that would result in pretrial detention unless there is clear and convincing evidence that no other condition would reasonably protect the government’s interests in public or victim safety or court appearance.⁵ *Humphrey* provided a significant substantive protection for indigent persons who might otherwise be jailed because of their poverty. However, the decision left unresolved core questions about the role of public safety in California’s bail scheme — a result that may limit the holding’s practical impact on reducing the hardships posed by bail and pretrial detention in the State of California.

On May 23, 2017, sixty-three-year-old Kenneth Humphrey followed seventy-nine-year-old Elmer J. into his apartment in the senior home in which they both lived, threatened him, threw his phone to the ground, demanded money, and stole \$7 and a bottle of cologne.⁶ Humphrey was arrested for first-degree residential robbery and burglary against, injury of, and misdemeanor theft from an elder adult.⁷ At his arraignment,

¹ Nationally, more than two-thirds of jail inmates (approximately half a million on any given day) are detained awaiting trial. See Megan Stevenson & Sandra G. Mayson, *Pretrial Detention and Bail*, in 3 REFORMING CRIMINAL JUSTICE 21, 21 (Erik Luna ed., 2017); see also WENDY SAWYER & PETER WAGNER, PRISON POLY INITIATIVE, MASS INCARCERATION: THE WHOLE PIE 2020 (2020), <https://www.prisonpolicy.org/reports/pie2020.html> [<https://perma.cc/U7X3-RDMG>]. In 2009, ninety percent of persons with felony charges detained pretrial would have been released if they could have afforded to post their bail. Stevenson & Mayson, *supra*, at 22–23.

² Sandra G. Mayson, *Detention by Any Other Name*, 69 DUKE L.J. 1643, 1663 (2020).

³ 482 P.3d 1008 (Cal. 2021).

⁴ *Id.* at 1012; see *id.* at 1016–19.

⁵ *Id.* at 1013.

⁶ *Id.*; see *In re Humphrey*, 228 Cal. Rptr. 3d 513, 518 (Ct. App. 2018).

⁷ *Humphrey*, 482 P.3d at 1013.

Humphrey requested release on his own recognizance,⁸ but at the prosecutor's request,⁹ the trial court set a \$600,000 money bail — without considering Humphrey's inability to pay that sum.¹⁰ Humphrey filed a motion for a formal bail hearing to review the order.¹¹ At the hearing, the prosecutor argued that robbery is “a serious and violent felony,” so the court would need to find “unusual circumstances” to deviate from the prescribed bail amount.¹² The prosecutor maintained that the high money bail was appropriate because Humphrey's substance abuse was “a great public safety risk” and the fact that Humphrey faced a lengthy sentence under California's three-strikes law made him a “flight risk.”¹³ The trial court found there were “public safety and flight risk concerns” and denied release on Humphrey's own recognizance or supervised release, but reduced bail to \$350,000 on the condition that he participate in a substance abuse treatment program.¹⁴ Humphrey appealed, filing a habeas corpus petition that argued that conditioning release on an amount of money bail that one cannot pay is “the functional equivalent of a pretrial detention order.”¹⁵

The California Court of Appeal reversed and remanded the case for bail proceedings that would take into account Humphrey's ability to pay.¹⁶ It noted that article I, section 12 of the California Constitution “establishes a person's right to obtain release on bail from pretrial custody” except in certain cases of capital crimes, violent or sexual felonies, and serious threats of violence.¹⁷ Moreover, it held that:

⁸ *Id.* Humphrey cited his age, community ties, unemployment, limited finances, history of complying with court orders, and the minimal value of the items stolen in the theft. *Id.*

⁹ The prosecutor recommended following California's bail schedule. *Id.* For a critique of standardized bail schedules, see Lindsey Carlson, *Bail Schedules: A Violation of Judicial Discretion?*, CRIM. JUST., Spring 2011, at 12.

¹⁰ *Humphrey*, 482 P.3d at 1014, 1016.

¹¹ *Id.* at 1014. Humphrey also attached a 2013 study of racial discrimination in the San Francisco pretrial system, details about his acceptance into a substance abuse treatment program, and information about his education and community involvement. *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* Humphrey's public defender objected that Humphrey could not afford to pay \$350,000 so would end up detained pretrial and unable to attend such a program. *In re Humphrey*, 228 Cal. Rptr. 3d 513, 522 (Ct. App. 2018). Yet the court did not comment on this result. *Id.*

¹⁵ *Humphrey*, 482 P.3d at 1014.

¹⁶ *Humphrey*, 228 Cal. Rptr. 3d at 545.

¹⁷ *Id.* at 523 (quoting *In re York*, 892 P.3d 804, 807 (Cal. 1995)); see *id.* at 523 n.9 (“A person shall be released on bail by sufficient sureties, except for: (a) Capital crimes when the facts are evident or the presumption great; (b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or (c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.” (quoting CAL. CONST. art. I, § 12)).

[T]he due process and equal protection clauses of the Fourteenth Amendment require the court to make two additional inquiries and findings before ordering release conditioned on the posting of money bail — whether the defendant has the financial ability to pay the amount of bail ordered and, if not, whether less restrictive conditions of bail are adequate to serve the government’s interests¹⁸

Imposing unaffordable bail that resulted in Humphrey’s detention unjustifiably circumvented those inquiries and was thus unconstitutional.¹⁹ On remand, the trial court imposed nonfinancial conditions and released Humphrey.²⁰ Neither party appealed, but the Supreme Court of California granted review on its own motion in order to address “the constitutionality of money bail” in California and “the proper role of public and victim safety in making bail determinations.”²¹

The California Supreme Court affirmed.²² Writing for the court, Justice Cuéllar held that “conditioning freedom solely on whether an arrestee can afford bail is unconstitutional.”²³ 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.²⁴ This case presented a novel application of the Fourteenth Amendment, so the court reasoned by analogizing to two United States Supreme Court cases from other contexts: *Bearden v. Georgia*²⁵ and *United States v. Salerno*.²⁶ In *Bearden*, the Supreme Court held that Georgia had violated the Fourteenth Amendment when it revoked Danny Bearden’s probation based on his failure to pay restitution and court fines, because it did so without first finding either that Bearden had the ability to pay and was refusing to do so or that no alternative measures would meet the State’s penological interests.²⁷ If Georgia’s interests could be met without imprisonment, it would violate substantive due process and equal protection to jail Bearden solely because his poverty left him unable to pay, despite his bona fide efforts.²⁸

¹⁸ *Id.* at 525. These inquiries require individualized findings. *Id.* at 538.

¹⁹ *See id.* at 529.

²⁰ *Humphrey*, 482 P.3d at 1015. The conditions included electronic monitoring, a stay-away order, and a substance abuse treatment program. *Id.*

²¹ *Id.*; *see Humphrey (Kenneth) on H.C.*, 417 P.3d 769, 769 (Cal. 2018).

²² *Humphrey*, 482 P.3d at 1022.

²³ *Id.* at 1012.

²⁴ *See id.* at 1018.

²⁵ 461 U.S. 660 (1983).

²⁶ 481 U.S. 739 (1987).

²⁷ *See Humphrey*, 482 P.3d at 1017 (citing *Bearden*, 461 U.S. at 672); Olivia C. Jerjian, *The Debtors’ Prison Scheme: Yet Another Bar in the Birdcage of Mass Incarceration of Communities of Color*, 41 N.Y.U. REV. L. & SOC. CHANGE 235, 244 (2017).

²⁸ *See Bearden*, 461 U.S. at 672–73.

The *Humphrey* court explained that in the bail context, the state's compelling interest is not to punish²⁹ but rather "to ensure the defendant appears at court proceedings and to protect the victim, as well as the public, from further harm."³⁰ Nonetheless, *Bearden*'s reasoning similarly applied: "[I]f a court does not consider an arrestee's ability to pay, it cannot know whether requiring money bail in a particular amount is likely to operate as the functional equivalent of a pretrial detention order."³¹ And detention "solely because" of one's inability to pay is an unconstitutional infringement on an individual's due process and equal protection rights against wealth-based detention.³²

To complement this hybrid due process and equal protection rationale,³³ the court also invoked *United States v. Salerno*, in which the U.S. Supreme Court upheld the federal Bail Reform Act of 1984.³⁴ In *Salerno*, the Court established that pretrial "liberty is the norm, and detention . . . the carefully limited exception."³⁵ The Bail Reform Act met this standard by authorizing detention in the name of public safety only "for a specific category of extremely serious offenses."³⁶ Thus, the *Humphrey* court emphasized, individuals retain a fundamental due process right to pretrial liberty that is not contingent on financial position³⁷ and can be overridden only in narrowly tailored cases.³⁸

Following these conclusions, the court provided a "sketch [of] the general framework" for imposing money bail in California.³⁹ California

²⁹ Bail is imposed pretrial, prior to any finding of guilt. See Stevenson & Mayson, *supra* note 1, at 24.

³⁰ *Humphrey*, 482 P.3d at 1018. Originally, bail meant taking responsibility for a person appearing in court and paying only if they did not show, but modern money bail systems typically require an upfront deposit. See LÉON DIGARD & ELIZABETH SWAVOLA, VERA INST. OF JUST, JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION 3 (2019), <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf> [<https://perma.cc/VAA5-ZCLC>].

³¹ *Humphrey*, 482 P.3d at 1018.

³² *Id.* at 1017 (quoting *Bearden*, 461 U.S. at 661); see *id.* at 1018.

³³ See *id.* at 1019 n.5. The Supreme Court has generally refrained from applying heightened scrutiny to cases of wealth discrimination, but it has appeared to apply such scrutiny in "hybrid cases" like *Bearden* where there are both equal protection and substantive due process interests at play. See *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996); see also Kellen Funk, *The Present Crisis in American Bail*, 128 YALE L.J.F. 1098, 1113–20 (2019) (noting how the *Bearden* line of cases applied strict scrutiny without using that language and how many courts are rightfully doing the same when extending such principles to pretrial contexts); Brandon L. Garrett, *Wealth, Equal Protection, and Due Process*, 61 WM. & MARY L. REV. 397, 402, 425 (2019).

³⁴ Pub. L. No. 98-473, tit. II, ch. I, §§ 202–210, 98 Stat. 1976, 1976–87 (codified as amended in scattered sections of 18 U.S.C.); see *United States v. Salerno*, 481 U.S. 739, 741 (1987).

³⁵ *Salerno*, 481 U.S. at 755.

³⁶ *Humphrey*, 482 P.3d at 1021 (quoting *Salerno*, 481 U.S. at 750).

³⁷ See *id.* at 1018.

³⁸ See *id.* at 1019 (describing detention on public or victim safety grounds as constitutionally permissible "within certain parameters" (citing *Salerno*, 481 U.S. at 750–51; *United States v. Fidler*, 419 F.3d 1026, 1028 (9th Cir. 2005))).

³⁹ *Id.*

courts may still impose money bail, but only if (a) the court has considered whether nonfinancial conditions may reasonably protect public and victim safety and assure court appearance, and (b) the court considers the individual's ability to pay when setting the bail amount.⁴⁰ Courts may set bail at a level that will result in the person's detention only if there is clear and convincing evidence that no other conditions of release could reasonably protect the state's interests in public and victim safety or court appearance.⁴¹ In *Humphrey's* case, "the trial court . . . failed to consider Humphrey's ability to afford \$350,000 bail (and, if he could not, whether less restrictive alternatives could have protected public and victim safety or assured his appearance in court)."⁴² So, the court affirmed the appellate court's decision to grant Humphrey a new bail hearing.⁴³ All the other justices concurred with no separate opinions.⁴⁴

In *Humphrey*, the California Supreme Court established an important protection for indigent persons in California by extending the reasoning of *Bearden* and *Salerno* to the pretrial money bail context. However, the briefing, oral argument, and lower appellate opinion also discussed two important questions about the appropriate relationship between money bail and public safety: first, whether money bail in California rationally provides any incentive not to commit a crime pretrial, and second, whether California's state constitution provides a right to bail that limits courts' ability to detain persons pretrial on public safety grounds. The *Humphrey* opinion skirted these issues and in doing so limited its full potential to reduce the hardships posed by bail and pretrial detention in California.⁴⁵

Before addressing the limitations of the decision, it is important to note the huge strides the California Supreme Court made in preventing persons from being jailed pretrial simply because of their poverty.⁴⁶

⁴⁰ *Id.* at 1020.

⁴¹ *Id.*

⁴² *Id.* at 1013.

⁴³ *Id.*

⁴⁴ *See id.* at 1022.

⁴⁵ In 2015, there were 40,543 individuals detained pretrial in California. VERA INST. OF JUST., INCARCERATION TRENDS IN CALIFORNIA 1 (2019), <https://www.vera.org/downloads/pdffdownloads/state-incarceration-trends-california.pdf> [<https://perma.cc/8N4Z-P4YV>].

⁴⁶ California joins a small but growing number of jurisdictions affording such protections. *See Humphrey*, 482 P.3d at 1018; *ODonnell v. Harris County*, 892 F.3d 147, 161 (5th Cir. 2018) (holding unconstitutional "detainment solely due to a person's indigency because the financial conditions for release are based on predetermined amounts beyond a person's ability to pay and without any 'meaningful consideration of other possible alternatives'" (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978))); *Brangan v. Commonwealth*, 80 N.E.3d 949, 957 (Mass. 2017) ("[W]e are persuaded that a judge must consider a criminal defendant's financial resources in setting bail."). Most jurisdictions do not afford such protections. *See Mayson, supra* note 2, at 1663 (arguing in favor of extending the due process protections for outright denials of bail to unaffordable bail, but noting that few courts have done so).

This protection is quite valuable in light of the well-documented, detrimental impact of pretrial detention,⁴⁷ the race and class inequities of the bail system,⁴⁸ and the pressures innocents face to plead guilty when they cannot afford bail.⁴⁹ The state does have compelling interests in setting pretrial conditions “to ensure the defendant appears at court proceedings and to protect the victim, as well as the public, from further harm.”⁵⁰ But in California’s pre-*Humphrey* system, many indigents languished in California’s jails even though they posed no safety or flight risk, whereas others who may have posed such risks were released because they could pay their money bond.⁵¹ *Humphrey* rejected that approach by holding that a court must first consider whether *nonfinancial* release conditions may reasonably satisfy the state’s interests.⁵² If they cannot, then the court *must consider ability to pay*, so that a court does not issue bail amounts that are functionally detention orders for less-resourced individuals but which permit release for those with the ability to pay.⁵³

Humphrey takes away a court’s ability to set unaffordable bail as a way to functionally implement a detention order when it could not meet the requirements of an *explicit* detention order. *Humphrey* extends the same substantive and procedural standards required for pretrial detention under article I, section 12 of the California state constitution — a showing of “clear and convincing evidence” of a threat of serious harm or flight risk⁵⁴ and “clear and convincing evidence that no

⁴⁷ The U.S. Supreme Court has long recognized that “time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532 (1972). Recent empirical work corroborates this impact. See, e.g., Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 711 (2017) (“[D]etained defendants are 25% more likely than similarly situated releasees to plead guilty, are 43% more likely to be sentenced to jail, and receive jail sentences that are more than twice as long on average.”).

⁴⁸ See generally, e.g., BERNADETTE RABUY & DANIEL KOPF, PRISON POL’Y INITIATIVE, DETAINING THE POOR (2016), <https://www.prisonpolicy.org/reports/DetainingThePoor.pdf> [<https://perma.cc/2SKJ-4XQN>]; THE BAIL PROJECT, AFTER CASH BAIL: A FRAMEWORK FOR REIMAGINING PRETRIAL JUSTICE (2020), https://bailproject.org/wp-content/uploads/2020/02/the_bail_project_policy_framework_2020.pdf [<https://perma.cc/9Y7F-6KZS>].

⁴⁹ See Heaton et al., *supra* note 47, at 715–17; Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J.L. ECON. & ORG. 511, 512–13 (2018).

⁵⁰ *Humphrey*, 482 P.3d at 1018.

⁵¹ See *id.* at 1016. Pointing out this incongruity is not meant to suggest that a court’s determination that a person poses a safety or flight risk should necessarily justify detention. For critiques of risk-based systems, including algorithmic risk assessment tools, see, for example, Brandon Buskey, *Wrestling with Risk: The Questions Beyond Money Bail*, 98 N.C. L. REV. 379 (2020); and Note, *Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing*, 131 HARV. L. REV. 1125, 1132–34 (2018).

⁵² *Id.* at 1020. For a discussion of critiques of nonfinancial conditions, see Jenny E. Carroll, *Beyond Bail*, 73 FLA. L. REV. 143, 172–76 (2021).

⁵³ See *Humphrey*, 482 P.3d at 1018.

⁵⁴ *Id.* at 1019.

other conditions of release could reasonably protect those interests”⁵⁵ — and the Fourteenth Amendment to orders of unaffordable bail that *cause* individuals to be detained pretrial. It is an “open secret” that courts in right-to-bail states often use unaffordable bail to evade the state’s constitutional restrictions on pretrial detention.⁵⁶ *Humphrey*’s holding has the potential to bring an end to that practice and revitalize the right to release in a significant number of cases involving no threat of serious violence or in which nonfinancial conditions would suffice.

There are, however, two aspects left open by the *Humphrey* opinion that may limit the transformative potential of its holding. First, *Humphrey*’s sketch of California’s bail framework suggests that where no nonfinancial condition can protect the government’s interests, a court may conclude that money bail is “reasonably necessary” to assure public and victim safety or court appearance.⁵⁷ It may then set *affordable* bail based on an individual’s ability to pay, charged offense, and criminal record.⁵⁸ The typical rationale for money bail is that it incentivizes persons released pretrial to return to court to retrieve the money they posted as bail.⁵⁹ But, as even the District Attorney acknowledged in *Humphrey*, money bail in California cannot possibly serve as an incentive for noncriminal behavior because, under California law, the person can retrieve their bail money even if they commit a new offense while released.⁶⁰ Other jurisdictions have rejected that money bail can ever be a reasonable way to secure public safety,⁶¹ yet the California Supreme Court chose not to reckon with this in *Humphrey*. Instead, it left in place a legal fiction with real consequences for those who are forced to pay bail under its

⁵⁵ *Id.* at 1020. In determining what *reasonably* protects the state’s interests, the court recognizes that absolute certainty is unattainable and courts should focus on the risks “that are reasonably likely to occur.” *Id.* at 1021.

⁵⁶ Mayson, *supra* note 2, at 1663; see Jordan Gross, *Devil Take the Hindmost: Reform Considerations for States with a Constitutional Right to Bail*, 52 AKRON L. REV. 1043, 1093 (2018) (“Traditional bail needs money-bail to preserve the option of setting unpayable bail to protect public safety.”).

⁵⁷ *Humphrey*, 482 P.3d at 1020.

⁵⁸ *Id.*

⁵⁹ Empirical work challenges this assumption, finding that money bail has negligible impact, especially for low-risk offenders. See Insha Rahman, *Undoing the Bail Myth: Pretrial Reforms to End Mass Incarceration*, 46 FORDHAM URB. L.J. 845, 859–62 (2019); see also O’Donnell v. Harris County, 251 F. Supp. 3d 1052, 1132 (S.D. Tex. 2017), *aff’d in part, rev’d in part*, 892 F.3d 147 (5th Cir. 2018).

⁶⁰ See Opening Brief on the Merits at 23, *Humphrey*, 482 P.3d 1008 (No. S247278) (“Monetary bail, though, bears no rational relationship to protecting public and victim safety in California because the bail amount cannot be forfeited once a defendant commits a new offense.” (citing, *inter alia*, CAL. PENAL CODE § 1305(a)(l) (West 2021))).

⁶¹ See, e.g., O’Donnell, 251 F. Supp. 3d at 1119–20 (detailing extensive trial record showing secured money bail does not meaningfully assure appearance or public safety); Brangan v. Commonwealth, 80 N.E.3d 949, 963 (Mass. 2017) (“[A] judge may not consider a defendant’s alleged dangerousness in setting the amount of bail . . .”). Much academic literature supports the same conclusion. See, e.g., Rahman, *supra* note 59, at 862–66; Stevenson & Mayson, *supra* note 1, at 29.

rationale.⁶² It will be up to petitioners to argue that within *Humphrey*'s framework, there is no rational basis for a court to conclude that money bail is reasonably necessary to assure public or victim safety.

Second, the court left open the possibility that the right to bail provided by article I, section 12 of California's state constitution was abrogated by article I, section 28(f)(3).⁶³ Section 28 introduces broader victim and public safety considerations into the bail determination.⁶⁴ The State argued that the court should interpret section 28 to mean that defendants who otherwise have a right to bail under section 12 — because they neither are charged with capital crimes nor present clear and convincing evidence of a substantial likelihood of inflicting great bodily harm on release⁶⁵ — can nevertheless be detained as long as a court finds they “present a risk to victim or public safety by a preponderance of the evidence.”⁶⁶ This construction would both lower the evidentiary standard and expand section 12's narrow exemptions to encompass *any* public or victim safety risk. Yet the Court of Appeal chose not to address this argument,⁶⁷ and the Supreme Court skirted it as well.⁶⁸ A future embrace of such a view of section 28 would abrogate the currently very limited standard for permissible pretrial detention. As such, it would significantly undercut the protection against pretrial detention provided by *Humphrey* by making it easier for courts to justify pretrial detention explicitly without needing to rely on unaffordable bail.

⁶² “Affordable” bail may still impose hardship. See RABUY & KOPF, *supra* note 48, at 3 (“The median bail bond amount in this country represents eight months of income for the typical detained defendant.”); see also THE BAIL PROJECT, *supra* note 48, at 8 (noting that 40% of Americans report being unable to cover a \$400 unexpected expense and bail amounts are regularly higher). Additionally, the risks falling under “public safety” span a huge range of nonviolent behaviors, such as *Humphrey*'s substance abuse, which the prosecutor in this case argued was a public safety risk. See *Humphrey*, 482 P.3d at 1014.

⁶³ See CAL. CONST. art. I, § 28(f)(3) (“A person *may* be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.” (emphasis added)).

⁶⁴ See *id.* For competing interpretations of sections 12 and 28, compare Opening Brief on the Merits, *supra* note 60, at 26–48, with Respondent's Brief on the Merits at 30–53, *Humphrey*, 482 P.3d 1008 (No. S247278).

⁶⁵ See CAL. CONST. art. I, § 12.

⁶⁶ *In re Humphrey*, 228 Cal. Rptr. 3d 513, 543 (Ct. App. 2018). This logic fits within a worrisome trend of governments responding to efforts to end money bail by expanding the categories of permissible pretrial detention. See Alexa Van Brunt & Locke E. Bowman, *Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What's Next*, 108 J. CRIM. L. & CRIMINOLOGY 701, 753–61 (2018) (“Judges may simply replace the money bond system with one in which release (and detention) decisions are predicated on empirically-based risk-assessment models, and the level of pretrial detention is affected only marginally, if at all.” *Id.* at 753.).

⁶⁷ *Humphrey*, 228 Cal. Rptr. 3d at 544.

⁶⁸ Although the Supreme Court had requested briefing on the question, *Humphrey* (Kenneth) on H.C., 417 P.3d 769, 769 (Cal. 2018), it “[le]ft for another day the question of how [the] two constitutional provisions . . . can or should be reconciled,” *Humphrey*, 482 P.3d at 1021 n.7.

HB-1567-HD-1

Submitted on: 3/29/2022 9:54:42 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Deanna Espinas	Individual	Support	Written Testimony Only

Comments:

Please amend the bill to include Class C non-violent felonies as listed in the original draft of the bill.

Thank you.

HB-1567-HD-1

Submitted on: 3/29/2022 10:07:00 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carolyn Eaton	Individual	Support	Written Testimony Only

Comments:

Aloha, Chair Nishimoto, Vice Chair DeCoite and members of the Committee,

My name is Carolyn Eaton and I support your restoring the original parameters of this bill and approving it. Please include non-violent Class C felony arrests in this measure. The State might place itself in the ranks of reform-minded actors like the State of New Jersey were this measure to include the additional non-violent group and come to the Floor. Please demonstrate the will to follow evidence based on research. Our people, you and I, deserve such reform today.

Mahalo for allowing me to participate in bringing Hawai'i into the forefront of true justice seekers.

Testimony of Jacquie Esser to the Committee on Judiciary

H.B. No. 1567, HD1: RELATING TO CRIMINAL PRETRIAL REFORM

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

I write in support of HB 1567, HD1 because it is a good first step toward righting injustice.

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.

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.¹ On March 21, 2022, 774 people were incarcerated throughout the State even though they have not been convicted of a crime.² Feeding and caring for an incarcerated person costs \$198 a day in Hawai'i.³ Just today, the State spent approximately \$153,252 (\$56 million annually) of taxpayer dollars to incarcerate those 774 people statewide simply because they were too poor to afford bail.⁴ Data collected over the years tell us that 80

¹ 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://www.courts.state.hi.us/wp-content/uploads/2018/12/HCR-85_task_force_final_report.pdf.

² Department of Public Safety Weekly Population Report, Mar. 21, 2022, <https://dps.hawaii.gov/wp-content/uploads/2022/03/Pop-Reports-Weekly-2022-03-21.pdf>. On March 21, 2022, there were 684 pretrial men and 90 pretrial women.

³ 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>.

⁴ Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i "HCR 134" at 64 (December 2018), <https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp->

percent of these individuals are charged with relatively low-level offenses and many are homeless or living with mental illness or substance use disorders.⁵ These costs come with trade-offs in other state spending priorities like education, housing, and healthcare – all known reducers of crime.

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, I support limiting pretrial detention and eliminating money bail and believe that this bill, which eliminates the use of monetary bail, with certain exceptions, is a step in the right direction.

I agree with the suggestions offered by the OPD and the ACLU which will help strengthen and clarify the Bill for consideration.

Mahalo for the opportunity to testify.

[content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf](#)

⁵ HCR 85 Report at 65.

HB-1567-HD-1

Submitted on: 3/29/2022 10:48:51 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marian Heidel	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

I request that the bill be amended to include Class C non-violent felonies as listed in the original draft. Carrie Ann Shirota, the policy director at ACLU Hawai'i, shared that the majority of women have Class C felonies for drug and property offenses. Under the current bail bill, many women will still be detained -unless that amendment is made.

I also request that the bill be amended so that language is restored 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.

Finally, I ask that Section D, that precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest, be deleted.

Thank you for listening,

Marian Heidel

808-261-4585

mheidel808@icloud.com

DANETTE KONG
Kula, Maui, HI 96790
danettekong@gmail.com

March 29, 2022

IN SUPPORT OF HB1567 WITH AMENDMENTS

Aloha, honorable members of the Legislature –

I reiterate my support for this bill, asking you to amend it as follows:

- Please include Class C non-violent felonies as listed in the original draft. The majority of women have Class C felonies for drug and property offenses. Under the current bail bill, many women will still be detained, unless that amendment is made.
- Please restore language authorizing the Director of Public Safety to release a defendant if that defendant is unable to post bail in the amount of \$99 or less.
- Please delete Section D, which precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest. These are technical violations.

I believe in justice and making restitution for wrong choices that affect others, and our society as a whole. I also believe in allowing people the opportunity to move forward with their lives, and becoming positive, fully contributing members to our communities – without the rest of us putting obstacles in their path for achieving these goals.

For those who are struggling financially from paycheck to paycheck, or even, from meal to meal, the requirement to provide cash bail can become an overwhelming setback. It has been heart wrenching to recognize that what many of us believe to be a *manini* amount in cash can make a huge difference in whether or not a person of financial instability will lose her job, whether he will forfeit his ability to pay rent, whether they will be deprived of their ability to keep their children fed and cared for, and/or whether they will become mired in desperation, unable to maintain dignity or hope. Even more problematic is the fact that this bail is required when, in many cases, the individual who has been charged is (sometimes weeks later) found “not guilty.” Yet, precious time and energy in their lives have been spent imprisoned, while their families, their reputations, and their very futures have suffered damage. What are we imposing upon the very future of our people?

The longer we keep cash bail as part of our judicial system, the deeper we are driving those who are poor and struggling into a spiral of defeat. And, for as long as we continue to employ the use of cash bail, we are misusing funds which could be applied to services which can bring healing, housing, and education to those who need it. Let’s change this system. **Please vote in favor of HB1567, with the amendments I am requesting.**

Mahalo for your thoughtful consideration of this bill –
(The Rev.) Danette Kong, retired health care and hospice chaplain
United Church of Christ

HB-1567-HD-1

Submitted on: 3/29/2022 12:33:51 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Maurice Goulding	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person’s life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify,

Maurice Goulding

HB-1567-HD-1

Submitted on: 3/29/2022 12:54:06 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Christy MacPherson	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and members of the Senate Committee on Judiciary,

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 for your consideration.

HB-1567-HD-1

Submitted on: 3/29/2022 1:25:39 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marya Grambs	Individual	Support	Written Testimony Only

Comments:

This bill is long overdue. As Sylvia Luke said, people should not be put in jail before they've even been found guilty, just because they're poor. It's unconscionable. (never mind expensive)

Please pass this bill.

Thank you.

HB-1567-HD-1

Submitted on: 3/29/2022 1:42:25 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Godbey Carson	Individual	Support	Written Testimony Only

Comments:

Please support this bill. It helps correct a serious inequity in the way our monetary bail system works, and creates undue burden for our most vulnerable members of our community. Those who can't afford bail lose their jobs, sometimes their families, and their freedom, all because they don't have cash to pay bail. But they have not been found guilty of any crime yet, to justify these deprivations. It just creates a downward spiral that increases their risk of recedivism.

Thank you for consideration of this measure.

HB-1567-HD-1

Submitted on: 3/29/2022 1:52:41 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark K. Wilson III	Individual	Support	Written Testimony Only

Comments:

I strongly support the bill but request that it be amended to include Class C non-violent felonies as in the original draft. I also hope that it can be amended to restore authorizing the Director of Public Safety to release a defendant who is unable to post bail in the amount of \$99 or less.

Thank you,

Mark Wilson

HB1567

Hawaii's pre-trial system is flawed by the domino effects of its unjust bail system. Not only is it aiding the overcrowding of prisons, but it is reinforcing ideas of spending taxpayer dollars, for example, on the construction of an unnecessary new jail space instead of policing forces or effective bail reform programs. The current pre-trial system has proven not only to be costly, but it also effects the micro, meso and macro levels of society in Hawaii as well. One way that the HB1567 reform works is by acknowledging that the solution to these concerns is in the laws that govern those in power to set bail.

According to the ACLU more than “half of the people sitting in Hawaii's jails have not been convicted of the crime for which they have been charged” (7 ACLU). Also to note, “Compared to jails nationwide, Hawai'i jails have extraordinarily long lengths of stay for pre-trial” (14 ACLU). Not only are pre-trial persons being detained for lack of bail money, but they are slipping through the cracks of the system while waiting for a court date and that just adds to the overcrowding in the prison systems as well as establishes familiarity to this routine system for repeat offenders against their rights. Admittedly I am confident that because of the consistency of this pattern for those jailed during pre-trial, the argument for their rights and liberties has made the community concerningly aware.

A topic that is even more concerning than unaffordable bail demands is the risk assessment tool being used to enforce the decisions made by those in power. “Pretrial risk assessment tools often ascribe higher degrees of risk to individuals with criminal histories as well as to those with mental health concerns, residential instability, and challenges regarding substance abuse—even if their life circumstances have dramatically changed” (24 ACLU). This tool that the state of Hawaii uses is called an ORAS-PAT. This tool demonstrates biases against

its intended purpose of objectivity and the carelessness in doing so can result in unintentionally negative outcomes.

A personal experience I had encountered and witnessed while working with dual diagnosis was the criminalization of mental illness. In the state of Hawaii “it’s rare for courts to order psychiatric treatment without a patient’s consent” (CB). This ruling is dangerous for those who are high risk and require appropriate treatment and care but instead can flush through the prison system which lacks adequate care and concern for those who are mentally ill. What’s dangerous about the risk assessment is that it’s a double-edged sword, meaning that you can easily and mistakenly set bail too low for those who pose a threat to society and too high for those that do not. In this instance I am suggesting that there are a number of assailants who are misrepresented in the jail population who don’t fit the criteria to be analyzed by this assessment tool. The result of this in the work I used to be a part of was the word “victim” or “assailant” next to their Bolded names in news articles and or being televised on the news. According to a civil beats article, “The reason we all should care is that these folks will eventually come out, so it’s a public safety matter if they are not receiving adequate care,” Caballero said. “If they do not come out better than they went in, then of course they’re going to reoffend. At that point, it’s not only their responsibility, but also the state’s responsibility for not doing a better job of rehabilitating them.” I imagine that the lawsuits that come from dismissing health concerns or not effectively assessing a person who is capable, or incapable of understanding reality is another issue and concern to think about when engaging in the pretrial assessments. “Jurisdiction must effectively train judges and bail magistrates to use the instruments properly and consistently, and then hold them accountable for doing so” (24 H.U.DASH).

This tool is structured against those who do not stand a chance to prove themselves because the system works against them no matter the progress that is made. “Moreover, without adequate training on risk assessment tools and how they work, judges can easily misuse the tool, either being highly deferential or misunderstanding the recommendation completely” (24 ACLU). I stated before that the risk assessment tool is like a double-edged sword, and I was personally negatively affected by it in my upbringing by a cash bail system. My biological father was a dangerous man. He was an alcoholic, drug addicted abuser and known gang member, but because he was functional, he proved to be an upstanding man of the community. He always worked good jobs and came from a good family. Every time he was arrested for assault regardless of TRO’s he was bailed out. The more he kept getting bailed out the more dangerous he got and the more crimes he kept committing, until the law caught up with him. That only made him desperate to flee the US which sadly he was able to pull off, but not without reeking havoc on my loved ones, his community, and the system. The risk assessment clearly could not determine that this upstanding community man was capable of attempted murder and kidnapping his children which was a failed attempt to take them with him to his home country of New Zealand, a home that was also documented in his records as place of birth. I use this example because the preventative measure of such a dangerous criminal released into society could have been prevented with a more thorough risk assessment. Not only does this example show the dangers of biases but proves that the opposition seen in marginalized groups of people, especially in the state of Hawaii are probably being treated just as poorly as my father was treated “fairly”.

The other end of that sword has been to the many nonviolent crimes committed accompanied by bail amounts that are impossible to pay. More than half of the people are jailed

because they do not have money and the percentage of these people with non-violent crimes should not have to wait in jail. They work in Hawaii communities, they have families, they have bills to pay and a home to tend too in the state of Hawaii. It seems foolish to wait in jail and it seems less likely that they would pose as threats to leaving an island in the middle of the ocean. If saying it isn't reassuring than maybe the stats of places who got rid of their bail system or reformed their bail systems can help. Washington D.C. hasn't had bail since 1992 and "Eighty-eight percent of those who are released make every court appearance" (54 E.B.). There are also many states that have been adjusting to bail reform ideas. Maryland in 2015 had a 33% decrease in county jail population after implementing pretrial screening and supervision program (8 H.U.DASH). If a specific state needs to prove to be effective and equitable in bail reform than according to the H.U.DASH, "New Jersey's bail reform is one of the most comprehensive pieces of bail reform legislation that has been implemented to date in the U.S., and the state's bail reform process serves as a strong model for other jurisdiction" (18 H.U.DASH).

Even further than states implementing cash bail reform, is the fact that "The United States and the Philippines are the only nations in the world that allow for-profit bond companies to operate" (45 E.B). Other countries have made it illegal to engage in bail bonds for the corruption that takes place internally with the people in power who set bail or are accessible to persuade when setting bail. There is much reform that has taken place in the U.S. A and one major issue with proceeding forward with effectiveness and consistency of "bail reforms is the local political climate" (8 H.U.DASH). Politics not only effect elections of prosecutors who may or may not support bail reform but the people involved are able to heavily influence outcomes and many have claimed that higher crime rates are the result of bail reforms when in fact there hasn't been adequate research conducted to speak on the effectiveness of such reforms in regards

to how long reforms have been in place or even if there is a correlation of crime rates to reform. The excuse of politics can be avoided if the right reform programs are implemented, and research is available. For a better, safer Hawaii I support HB1567 for many reasons but especially because readjusting the system to bail reform is the most productive option in securing more funds for Hawaii, less expenses of the taxpayer dollar, less lawsuits for neglecting work duties, less crowding, less focus on marginalized groups and more focus on those who pose a threat to society for the best intentions of keeping Hawaii safe and keeping the Aloha of the island flowing.

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[\(harvard.edu\)](#)

Dear Chair, Vice Chair, and the Members of the Committee:

Mahalo for the opportunity to provide testimony in **STRONG SUPPORT** of **HB 1567**,
RELATING TO CRIMINAL PRETRIAL REFORM.

My name is Haley Helton, and I am an undergraduate student at the University of Hawai'i at Mānoa.

This bill eliminates the usage of monetary bail for mostly low level, non-violent offenses. It also addresses the serious issue of overcrowding of facilities to house pretrial defendants. As it stands right now, Hawai'i's bail system perpetuates the idea that justice is bought and you can only get as much justice as you can afford. This is a huge threat to our criminal justice system because it prevents justice from being served. It tells our community that it does not matter if you commit a crime, you can get out of it (at least temporarily) because you are wealthy. On the other hand, even if you are innocent of a crime but are wrongly accused, if you are poor you are immediately disadvantaged and forced to sit in a jail cell because you cannot afford to pay your way out. This is a cruel and extremely unfair bail system. It often targets poor people of color who are already disenfranchised in many other areas of their lives. This bill would be a step in the right direction to try to make Hawai'i's bail system more just and equal for all.

I want to emphasize two points that I find to be the most meaningful: the first is a criticism of our bail system on a national level, and the second is a direct criticism of Hawai'i's bail system specifically.

While there are a plethora of reasons to support this important bill, there is one single statement that I believe speaks for itself and in a concise manner encompasses the absolute necessity of fixing the American bail system. There are only two nations in the entire world that allow for-profit bond companies to operate: America and the Philippines. In many other countries, agreeing to pay a defendant's bond in exchange for money is a serious crime, equivalent even to witness tampering or bribing a juror. The entire world, apart from the Philippines, has abolished our bail system. That is because it is wholly unfair, corrupt, classist, and racist. It needs to be reformed now.

I read one statistic submitted by the ACLU of Hawai'i over a year ago that has consistently remained in my exact memory: "69 percent of the arrestees who changed their pleas from innocent to guilty or no contest did so while held in jail, primarily because they could not afford bail." Furthermore, the ACLU also addresses in the same task report how the unfair pretrial system disproportionately impacts Native Hawaiians and Pacific Islanders. There are many justifications as to why Hawai'i's bail system needs to be reformed, but that shocking statistic alone should be reason enough to look toward the positive reforms that HB 1567 proposes. It is a

huge issue that such a large percentage of arrestees are pleading guilty merely because they do not have money, not because they actually committed the offense. It is even more of an issue that Native Hawaiians are being disproportionately represented in this statistic.

Our criminal justice system is supposed to protect the innocent, but as it stands now, it is doing the exact opposite. This bill can be one of the many ways we can try to ensure that our bail system is actually fair for all people, both in Hawai'i and nationwide.

However, please adhere to the ACLU's recommendations and include class C felonies to also be included in the bill. This is very important.

Please, I strongly urge you to support HB 1567.

Mahalo for this opportunity to testify.

HB-1567-HD-1

Submitted on: 3/29/2022 2:07:40 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carla Allison	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary,

Thank you for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

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

One: We are using the current bail system at a huge expense to our state budget, spending over \$200,000 a day housing pretrial detainees... 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 \$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.

As you know, 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.

So 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.

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

Please support HB1567 HD1 and restore it to its original wording.

My thanks to each of you for your consideration and your service to the people of Hawaii.

Carla Allison

Honolulu

HB-1567-HD-1

Submitted on: 3/29/2022 2:25:24 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lee Curran	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Judiciary Committee,

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 in **SUPPORT with comments of 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, specifically, **amend the bill to include Class C non-violent felonies as stated in the original draft, restore 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, delete the provision in section D that precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest and require the Court to enter on the record its written findings with respect to the detention decision when bail is denied.**

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. This system impacts folks who are separated from their families, livelihoods, and community supports all under the false guise of safety. Cash bail doesn't just impact people accused of a crime, it impacts ALL of us.

Data shows that imposing monetary bail amounts can result in detaining defendants who cannot afford to post a commercial bail yet pose little danger to the public. Conversely, data also suggest that money bail can allow for the release of high-risk defendants who have the financial means to secure release yet should be detained without bail. From the U.S. Commission on Civil Rights Briefing Report's Executive Summary of The Civil Rights Implications of Cash Bail, January 2022 <https://www.usccr.gov/files/2022-01/USCCR-Bail-Reform-Report-01-20-22.pdf>

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. That is a whopping \$73 million a year!

Unlike what a member in a previous House committee hearing voiced, I believe that criminal legal reform that includes cash bail has a lot to do with building a new OCCC that has a projected cost of around \$1 billion. 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.

As I wrote in the beginning, cash bail impacts **ALL** of us. Even though only some people are faced with paying cash bail, we all need this reform. We can show compassion and empathy and engage in proactive and healing pathways for safety that impact **BOTH** people who commit crimes and their victims. **If the money spent on massively over-utilized pretrial incarceration was shifted, we could begin to actually prevent future crimes and protect potential victims. This can only be done effectively by comprehensive bail reform and not in a piecemeal, conservative fashion. We are currently radical about over incarceration; let's embrace a transformative vision of our criminal legal system that some may deem radical but is actually life affirming.**

I am grateful for this opportunity to testify in support of HB1567HD1 with comments and ask that you restore the bill to its original intent with the amendments stated above. It is my sincere hope 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: 3/29/2022 2:47:33 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Esther Geil	Individual	Support	Written Testimony Only

Comments:

I support the elimination of bail for all non-violent offenses. I consider it unfair to jail a person because of their financial ability and to disrupt their lives and future more than those who are simply more well off. I also find it harmful to the taxpayers and the citizens as a whole to crowd our jails with pretrial petty non-violent offenders. Using our tax dollars for such is harmful and unwise.

I support passing this bill and would hope that it would be amended so as to eliminate the bail requirement for all non-violent offenses.

Thank you.

HB-1567-HD-1

Submitted on: 3/29/2022 3:36:22 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
donn viviani	Individual	Support	Written Testimony Only

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. thank you

HB-1567-HD-1

Submitted on: 3/29/2022 4:13:46 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Luciano	Individual	Support	Written Testimony Only

Comments:

I am supporting HB1567 HD1, but also requesting that the bill be amended to include Class C non-violent felonies as listed in the original draft. Respectfully request that the bill be amended so that language is restored 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. Also request deletion of Section D. Thank you very much.

Luciano Minerbi

HB-1567-HD-1

Submitted on: 3/29/2022 3:53:01 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Emily Fong	Individual	Support	Written Testimony Only

Comments:

Dear Senator Rhoads, Senator Keohokalole, and members of the Committee,

My name is Emily Fong and I am testifying in strong support of HB 1567.

At the moment, individuals who do not have the funds to afford bail remain in jail after their arrest despite their presumed innocence under the eyes of the law. Not only does this highlight the unfairness of a system that punishes the poor, it also disproportionately affects Native Hawaiians and other people of color. Native Hawaiians are more likely than white people to remain in jail even in cases where they are charged with the same offense as a result of their inability to pay their bail. HB 1567 would thus aid in addressing an aspect of the system that unfairly affects people of color.

HB 1567 would not just serve in the interest of individuals who are arrested and are awaiting trial. It would also help reduce the population in Hawaii's correctional facilities as around half of the people in Hawaii's jails have not been convicted of a crime. This reduction would benefit Hawaii's taxpayers considering Hawaii spends nearly \$80,000 annually to incarcerate an adult in our jails and prisons. Thus, reforms to Hawaii's pretrial system would reduce costs for taxpayers without risking the community's safety. The reduction of the population in Hawaii's correctional facilities would also aid the community by keeping families together. Individuals awaiting trial who pose no safety risk would be allowed to remain with their families. Additionally, individuals who have been incarcerated would face less of a risk of being sent to a mainland facility in places like Arizona as a result of the overcrowding in Hawaii's facilities. Furthermore, the funds currently allocated to keeping people incarcerated could in turn be used to help the community through services such as education, mental health care, resources for Native Hawaiians, and more. I firmly believe that the funding of these services will help reduce overall crime and thus also aid in the population reduction of Hawaii's correctional facilities over time.

My grandmother worked for many years as the assistant director of the Corrections Division giving her the chance to work directly with prisoners. Throughout the entirety of her career she aimed to help prisoners so that upon their release, they would find success. I believe that the help she aimed to provide can start from the moment a person is arrested through comprehensive pretrial reform. Individuals who pose no flight risk or safety risk to the community who await their trial in jail can ultimately face the loss of their jobs, homes, children, and more. These losses can have a significant effect on an individual's ability to be successful in their community and HB 1567 can help prevent them.

As a Native Hawaiian, I have seen family members struggle with poverty. I have also heard the stories of family members who have been imprisoned and eventually sent to an Arizona facility. The struggles my family has faced could have been greatly reduced had they received the help they needed. I know that many other Native Hawaiian families could also greatly benefit from the elimination of the cash bail system and the implementation of community resources. As a state and as a community, we should be working toward uplifting and strengthening Native Hawaiians and other people of color, not punishing them for their economic status. I ask that you please consider offering your support for HB 1567.

Thank you for your consideration,

Emily Fong

HB-1567-HD-1

Submitted on: 3/29/2022 4:33:20 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Wendy Gibson-Viviani	Individual	Support	Written Testimony Only

Comments:

TO: COMMITTEE ON JUDICIARY

FROM: Wendy Gibson-Viviani RN/BSN

RE: HB1567 (In Support)

Hearing: March 31, 2022 at 9:30 a.m.

Dear, Chair Senator Karl Rhoads, Vice-Chair Senator Jarrett Keohokalole, 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 because we need some serious reform of the cash bail system in Hawaii.

As the ACLU points out: 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.**

- 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. 157 out of 322 people, or **49%** of the population are pretrial status

- 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 people or 49% of the population are locked up while awaiting trial.

- 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.

We need to stop having 2 different criminal justice systems, one for the poor and one for the wealthy—and return to a place where innocence is presumed until proven otherwise.

Thank you for your attention to this important matter.

Wendy Gibson-Viviani RN/BSN

Kailua

HB-1567-HD-1

Submitted on: 3/29/2022 4:31:01 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Elizabeth Nelson	Individual	Support	Written Testimony Only

Comments:

I am supportive of this bill. Too many people are in jail because they cannot afford bail. I am in favor of amending the bill to include Class C non violent felonies as listed in the original draft. The majority of women have Class C felonies for drug and property offenses. Many women will still be detained - unless the amendment is included.

I would request that the bill be amended so that language is restored authorizing the Director of Public Safety to release a defendant if that person is unable to post bail in the amount of \$99 or less.

I am also in favor of deleting Section D, which precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest. These are technical violations.

Thank you so much for all of your hard work on this bill. The passage of this bill would help so many in our community be able to continue to work, have housing and be with their families.

Elizabeth Nelson

HB-1567-HD-1

Submitted on: 3/29/2022 4:44:19 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kylie Akiona	Individual	Comments	Written Testimony Only

Comments:

Aloha e Chair Rhoads, Vice Chair Keohokalole, and Committee Members,

O Kylie ko‘u inoa, I'm a Kanaka Maoli wahine and haumana at the University of Hawai‘i at Mānoa studying Political Science and American Studies, and **I am offering my individual comments on HB1567 HD1.**

I understand that we all support bail reform, and for some of us, the elimination of bail, as echoed by Chair Rhoads in a cash bail legislation panel that I am grateful to have helped organize and attended. We understand that transforming our current bail system is necessary, and every moment that we waste with legislative and procedural processes directly multiplies irreversible and generational harm for those currently incarcerated while legally innocent. Unfortunately, I recognize that HB1567 HD1 in its current form is *not* the meaningful bail reform that we desperately need and deserve. In your seats of privilege and kuleana to your constituents and the citizens of Hawai‘i, I ask that you also recognize that public safety is not real safety unless it involves those suffering the consequences of the failures of our carceral institutions-- those directly impacted by incarceration.

If bail actually worked, why is Hawai‘i, one of the world's top incarcerators, not one of the safest nations in the world? If incarceration had any significant correlation to public safety, why is the United States, the current illegal occupant of Kō Hawai‘i Pae ‘Āina and the world’s top incarcerator, not the safest country in the world? Legitimated by the HCR 85 Task Force report and the work of countless scholars and community members, we know bail has nothing to do with real public safety.

It would be foolish and illogical to not follow the proven and growing successes of other jurisdictions that have implemented significant bail reform by passing HB1567 HD1 in its current form. Repeatedly taking incremental and “safe” measures will never achieve the liberation and social justice that you currently proclaim yourselves to be advocates of. To be an ally of the Indigenous peoples you are displacing, Chair Rhoads, and to be an active kia‘i aloha ‘āina, Vice Chair Keohokalole, means using your positions of power to dismantle systems of harm like bail by doing your jobs and ensuring that you are keeping your constituents safe by providing them with resources and care, not throwing them in cages.

I ask that you implement *all* of the amendments recommended by the ACLU of Hawai‘i and save millions of our taxpayer dollars, prevent the construction of a ridiculously expensive

and unnecessary jail, and, most importantly, keep our hoa, ‘ohana, and loved ones safe and in our kaiāulu.

Mahalo nui for the opportunity to comment on HB1567 HD1.

Kylie Akiona (she/they)

kylieakiona2@gmail.co

HB-1567-HD-1

Submitted on: 3/29/2022 6:39:06 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nancy Davlantes	Individual	Support	Written Testimony Only

Comments:

The idea that two people can be alleged to have committed the same infraction, but only one will be imprisoned because he or she cannot afford cash bail should be abhorrent to all of us.

This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system.

HB-1567-HD-1

Submitted on: 3/29/2022 6:42:14 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Leah Henry	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form. I worked in another state with those accused of low level crimes and don't believe the bond system is the way forward.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify,

Leah Henry

Hilo, HI

HB-1567-HD-1

Submitted on: 3/29/2022 6:52:42 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

I am testifying in support of HB1567, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

Mahalo for your consideration.

HB-1567-HD-1

Submitted on: 3/29/2022 7:13:29 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Keith Webster	Individual	Support	Written Testimony Only

Comments:

Aloha,

I'm writing in support of HB1567 HD1 to modify our cash bail system. The current system is punitive towards lower income residents, unable to afford bail they may lose their jobs which unfairly keeps them from supporting themselves and their families. Higher income people accused of the same crime continue to live their normal lives. The bill has provisions to protect society from violent criminals but should be modified to include elimination of cash bail for those accused of non-violent class C felonies. Many of these are drug possession crimes and incarceration before a trial is not an effective way to help people with addiction or protect society from drug use.

Please support this bill. thank you. Keith Webster, Kaneohe HI

HB-1567-HD-1

Submitted on: 3/29/2022 7:38:57 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Colleen Rost-Banik	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

My name is Colleen Rost-Banik. I am a resident of Honolulu and a lecturer within the University of Hawai‘i system. One of the places I have the opportunity to teach is at the Women's Community Correctional Center. I hear many stories about how people have not been able to afford bail and thus have been forced to remain in our largely overcrowded facility of OCCC. I am testifying in **support of HB1567**, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai‘i’s jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and all low income people. It also violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. **Please incorporate the ACLU of Hawaii’s amendments and vote yes on HB1567.**

Mahalo for your consideration,
Colleen Rost-Banik

HB-1567-HD-1

Submitted on: 3/29/2022 8:09:05 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dawn Young	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify,

Dawn Young

Punchbowl resident

HB-1567-HD-1

Submitted on: 3/29/2022 9:00:15 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Greg Puppione	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

My name is Greg, and I am testifying in support of HB1567, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

Mahalo for your consideration,

HB-1567-HD-1

Submitted on: 3/29/2022 9:13:57 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Diane S. Martinson	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill. If a person is not a threat to society, they should be released on their own recognizance. Those with the least resources are the ones who end up being disproportionately jailed which, in turn, crowds the jail and causes even greater disruption and harm to the person and their family. Thank you for your work to pass this bill.

HB-1567-HD-1

Submitted on: 3/29/2022 10:10:04 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kristen Young	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

I SUPPORT HB1567 which would eliminate the use of monetary bail and require defendants to be released on their own recognizance, and I respectfully ask that you consider restoring the original intent of the bill. I believe that this bill relating to criminal pretrial reform is a needed step toward a more just pretrial system, and public safety for our whole community.

I myself have never had to worry about or question the effectiveness or fairness of the cash bail system which locks up hundreds of our neighbors. It wasn't until I learned about the cash bail system through my faith communities that I became aware of its harm, cost, and the obstacle it creates toward any semblance of justice in our society.

The cash bail system gives a pass to those with access to money, while essentially punishing people for being poor; and it does nothing to address root causes of crime.

Without having to experience it firsthand, I think we can imagine that incarceration is deeply traumatizing—for those individuals who are detained AND for their loved ones who effectively lose a family member. In addition to the degrading conditions and isolation we think of, incarceration creates inequities that can permanently derail someone's life, making it a challenge to attain things like housing, education, child custody, employment.

On top of all this, it is extremely costly to the state, costing us over \$200 a day to lock up one person who is legally innocent, awaiting trial. We could use that money to invest in things like social services that bring about true public safety.

I support the following amendments and hope you will consider them:

- Include Class C non-violent felonies as listed in the original draft as the majority of incarcerated women have Class C felonies for drug and property offenses, according to ACLU Hawai'i policy director Carrie Ann Shirota. Without this important amendment, many women will still be detained.
- Restore the bill's language to authorize the Director of Public Safety to release a defendant if the defendant is unable to post bail in the amount of \$99 or less.

- Delete Section D that precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest. These are technical violations.

Instead of holding ourselves prisoner to the false idea that jails and prisons keep our communities safe, we could be investing in healing rather than harm, prevention rather than punishment. Please support HB1567 and help reunite communities and spark needed change in Hawai'i.

Mahalo nui for this opportunity to testify,
Kristen Young
Punchbowl resident

HB-1567-HD-1

Submitted on: 3/29/2022 10:16:49 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Seena Clowser	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoad, Vice Chair Keohokalole, and members of the Committee,

My name is Seena Clowser, and I support HB 1567. Please pass it with the condition that Class C felonies are added back into the bill along with the other amendments recommended by the ACLU. No one should be imprisoned solely because of an inability to afford cash bail.

Thank you for your attention to this issue,

Seena Clowser

HB-1567-HD-1

Submitted on: 3/29/2022 10:20:30 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Thaddeus Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

As a public health professional and concerned citizen, I am testifying in **support of HB1567**, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. **Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.**

Mahalo,

Thaddeus Pham (he/him)

HB-1567-HD-1

Submitted on: 3/29/2022 10:21:30 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Tjoeng	Individual	Support	Written Testimony Only

Comments:

Aloha. My name is Rachel Tjoeng, and I am currently a master’s candidate at University of Hawai`i. Previously, I was a bedside nurse. While in school, one of my nursing clinicals took place on a large hospital prison unit. This experience transformed how I perceived prisoners, guards, and the prison system as a place for justice and rehabilitation.

The current situation of jails in the state of Hawaii is unsustainable. At any given time, as many as fifty-seven percent of prisoners are awaiting trial. Trying to house this number of people in an institution during a global pandemic is unsafe and unjust– especially when the new Omicron variant spreads even more rapidly. We know that institutionalized populations are at high risk for infectious diseases, including COVID. Hawai`i jails and prisons have disproportionately high numbers of Native Hawaiians and Pacific Islanders– two groups that together make up 25% of the population in Hawai`i but make up 47% of the prison population in Hawai`i as of 2018. Additionally, these groups experience higher rates of chronic diseases, and Pacific Islanders experienced some of the highest rates of COVID and death related to COVID of any group.

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 is not a sustainable solution when it costs \$219 per day to house people accused, but not yet convicted, of crimes. In addition, I urge you to consider adding Class C felonies to this bill because lengthy pre-trial detentions are associated with increased plea bargains, and a felony conviction dramatically impacts a person’s ability to obtain housing and employment among other things. This, in turn, has adverse effects on the individual’s family members. 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. Please support HB1567.

HB-1567-HD-1

Submitted on: 3/30/2022 4:20:48 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Calvin Foo Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

I support restoring this bill to its original form.

If I were accused of a crime and I am maintaining my innocence, then I'm not accepting a plea deal to get out. However, if I can't afford to pay bail, then that means I'm stuck in jail. When people can't afford bail, then even short-term incarceration can destroy people's lives by preventing them from returning to work, pay bills, or otherwise conduct the regular business of their lives. You shouldn't have your life ruined because you've been accused of a crime and forced to remain jailed because you're poor.

This problem can become a self-fulfilling prophecy and perpetuate people being stuck in the criminal justice system. If people are not accused of violent crimes, or considered a danger to society or a flight risk, then people should be able to go about their lives and argue their innocence in court another day. This system ruins the lives of poor people accused of crimes and turns our justice system into an unjust system.

Mahalo for your consideration and support,

Foo Pham
Faith Action Member

HB-1567-HD-1

Submitted on: 3/30/2022 7:48:47 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Hilary Parkinson	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1, and request the following:

- Please restore the bill to its original form and include Class C non-violent felonies as listed in the original draft. The majority of women have Class C felonies for drug and property offenses. Under the current bail bill, many women will still be detained unless that amendment is made.
- Please amend the language to restore the Director of Public Safety the authority to release a defendant if the defendant is unable to post bail in the amount of \$99 or less.
- Please delete Section D, which precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest. These are technical violations.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person’s life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify,

Hilary Parkinson

Kaneohe, District 49

Faith Action Member

HB-1567-HD-1

Submitted on: 3/30/2022 8:28:00 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Susan Gorman-Chang	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo nui for this hearing on HB1567 HD1. This bill eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person’s life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Susan Gorman-Chang

District 39

Faith Action Member

HB-1567-HD-1

Submitted on: 3/30/2022 8:41:33 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mary Weir	Individual	Support	Written Testimony Only

Comments:

Chair Rhoads, Vice Chair Keohokelole and members of the committee:

My name is Mary Weir and I am in support with comments, of HB1567 HD1.

It is time for Hawaii to reform our current pretrial system and end cash bail. Cash bail is fundamentally unfair to people who are not wealthy. Our current pretrial system is not punishing the most guilty, but rather the people who cannot afford to pay for their release. Their presumption of innocence is being denied because they are unable to afford cash bail.

I request the bill be amended to include Class C nonviolent felonies as listed in the original draft. The majority of women have Class C felonies for drug and property offenses. Under the current bail bill, many women will still be detained unless this amendment is made.

Also, I request that the bill be amended so the language is restored 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.

I also request the deletion of Section D, which precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest. These are technical violations.

Thank you for your consideration.

Mary Weir

HB-1567-HD-1

Submitted on: 3/30/2022 8:51:39 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
James McCay	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

I am testifying in support of HB1567 under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

We need less people in jail and more participating instead in society. Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

**Mahalo,
James McCay**

HB-1567-HD-1

Submitted on: 3/30/2022 9:16:54 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

I urge you to pass HB 1567 HD1 that would provide for the release without bail of people charged with certain crimes. When there are objections to this, we forget that people are released on bail for quite serious crimes every day, if they are able to pay bail. And we forget that both the State and US Constitution forbid setting bail higher than a person can pay. I can only hope that this bill will in fact result in the release of individuals who pose no danger to society, allowing them to get on with their lives pending a trial or hearing. And, will save the State millions of dollars a year.

HB-1567-HD-1

Submitted on: 3/30/2022 9:17:05 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Alice Caddow	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

I also request that the bill be amended to include Class C non-violent felonies as listed in the original draft. Carrie Shirota, the policy director at ACLU Hawaii, shared that the majority of women held for cash bail have Class C felonies for drug and property offenses. Under the current bail bill, many women will still be detained unless this amendment is made. Please amend the bill so that the language is restored 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.

I also request that Section D, that precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest, be deleted. These are technical violations.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify,

Alice J. Caddow

Captain Cook, HI

Faith Action Member

acaddowj@gmail.com

HB-1567-HD-1

Submitted on: 3/30/2022 9:23:47 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Support	Written Testimony Only

Comments:

Aloha,

HB1567 HD1 is a bill long overdue. Monetary bail is responsible for our prison overcrowding problem and for the racial disparities in our criminal justice system. HB1567 HD1 will help make our system more just.

However, the bill could be made better by amending it to include Class C non-violent felonies (as was written in the original draft). It has been noted that the majority of incarcerated women have Class C felonies for drug and property offenses. As the bill is currently written many of these women will still be detained.

Also, please amend the bill to 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.

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 9:40:09 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Barbara L. George	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

I support HB1567, **under the condition** that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill as is would begin to reduce our reliance on wealth-based detention, **we must do more to overhaul the corrupt cash bail system.**

Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

Mahalo for your consideration,

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 9:40:25 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Roza Robinson	Individual	Support	Written Testimony Only

Comments:

Dear Honorable Senators,

My name is Roza Robinson and I want to testify in support of HB1567.

According to the ACLU bail report the average stay of an arrestee is 85 days, that is roughly 3 months. This is because it can take 5 to 6 weeks to for an arrestee to appear before a judge to have a bail hearing. When they do receive a bail amount many cannot pay because the charged-based system is not based on individual needs, so factors such as ability to pay or flight risk are not taken into consideration. In the span of 3 months someone could be fired from a job because they have not shown up for work, miss one academic quarter of their child's education, miss important medical appointments, be at risk for eviction, and possibly lose custody of their child. Being detained for a long period of time without being able to plead their case before a judge goes against the constitutional ideals of "innocent until proven guilty" and "a right to a speedy trial".

Arrestees are being held for long periods not only affect the individuals but also the state. As of January 24th, 2022, 57% of the people in Hawaii's jails are not convicted of a crime. There is an unnecessary overcrowding of Hawaii's jails. This creates a huge financial burden on the state, they either must send inmates to the mainland or create new facilities in order to house more inmates. All this unnecessary spending can be stopped if monetary bail was eliminated.

Overall, monetary bail sets people up to fail even before their trial. Instead of placing more burdens on the people of Hawaii we need to help lighten the load in order to set them up to succeed. I know that is the heart of legislator and eagerly ask that you vote yes on HB1567.

Mahalo for your time and consideration,

Roza Robinson.

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 9:47:19 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jacinda Clay	Individual	Support	Written Testimony Only

Comments:

My name is Jacinda Clay and I am a senior student at the University of Hawaii at Manoa and writing in support for the bill HB1567.

I support this bill because living in Hawai'i we all understand how expensive it is, and the average american today can barely afford a \$500 emergency. The ACLU has also done many studies and researched the topic of bail and how it doesn't necessarily help the community but rather hurts us due to the fact that if someone can't afford a \$200 bail, they are stuck in jail or worse just because they are "poor". How is it fair that having money can affect whether or not you get sent to jail or not, especially in a state where we all already have to work 2-3 jobs anyways? This is why i support this bill to eliminate monetary bail.

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 9:48:57 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Emily Sarasa	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

My name is Emily Sarasa and I am testifying in support of HB1567, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

Mahalo for your consideration,

Emily Sarasa

HB-1567-HD-1

Submitted on: 3/30/2022 10:56:30 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
cori	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

My name is Cori Farrow and I am testifying in support of HB1567, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. Please incorporate the ACLU of Hawaii's amendments and vote yes on HB1567.

Mahalo for your consideration,

Cori Farrow

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 12:42:27 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Grace Shapiro	Individual	Support	Written Testimony Only

Comments:

Honorable Senator Rhoads and Senator Keohokalole,

I write this letter in reference to HB1567, in an effort to urge legislators to vote in favor of the bill in order to keep families together and enhance our community. Keeping people in jail who are awaiting trial and cannot afford to post bail is a discriminatory system that favors the rich. The Hawaii state legislators should consider the possible obstacles one may face due to the current unemployment and houselessness crisis. These obstacles may include inability to keep a stable job due to life circumstances. Those facing houselessness or poverty may have committed the same crime as someone who is more affluent, and will serve jail time because of their inability to post bail. Even for a couple days, this will only exacerbate that individual's poverty problem by causing time away from work, resulting in loss of wage and possible termination. Causing a person to be put in this position to lose their stability is evidence of excessive bail, which we are protected against in the 8th amendment to the constitution. This possible loss of employment does not support our people, our economy, and is detrimental to the average working family.

The bill proposes a pretrial standard for release which means the end of the class discriminatory system of cash bail. It is important that any bail set is dependent on the crime committed. Nonviolent and misdemeanor offenses should not be punished the same as violent crimes. If someone has committed a non-violent crime, setting a bail that is too high may mean that person must wait in jail for their hearing. It is possible for people who have committed nonviolent offenses to rehabilitate and enter back into society, and should not be penalized for not having the available cash to release themselves from jail. The cash bail system needs reform, as it highly favors those with accessibility to resources like cash instead of prioritizing keeping violent and reoffending perpetrators incarcerated. This is economically discriminatory, and plenty of research shows that subjective judgement like cash bond has targeted minority populations, unable to pay their way out of jail due to various reasons. Again, as a student of the University of Hawaii and as a concerned citizen, I urge you to support HB 1567.

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 1:57:17 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Barbara Best	Individual	Support	Written Testimony Only

Comments:

I am testifying in support of HB1567, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold.

LATE

Aloha Honorable Senators,

My name is Vanessa Khachik and I am testifying in support of HB1567.

The economic devastation caused by the COVID-19 pandemic, along with the unequal distribution of wealth, high cost of living, and Hawai'i's poverty rate above the national average have made it incredibly difficult for many families to come up with even \$500 in the case of an emergency. The current monetary bail system in place has created barriers to freedom that disparately affect varying socioeconomic classes and ethnic groups—specifically low to middle income families, Kanaka Maoli (Native Hawaiians), and other people of color.

Monetary bail punishes Americans for their inability to pay rather than the act they have committed. A 2018 study by the ACLU–Hawaii reported that the primary reason for nearly 70% of those detained pretrial who changed their plea from innocent to guilty did so because they were unable to afford bail. Constitutional protections guaranteed under the Eighth Amendment defend Americans from being required to pay excessive bail and fines. The Fifth Amendment declares one cannot be deprived of life, liberty, or property without due process of law. A person incarcerated, even for several days, is at risk of becoming unemployed, missing necessary payments (e.g. rent, child support), losing custody of their children, and eviction. Detainment before one can plead their case before a judge directly defies the American ideology of “innocent until proven guilty” and can worsen the conditions of life for an individual which increases the chance of reoffense.

In addition, Kanaka Maoli are more likely to remain in jail after an arrest compared to white demographics, even in cases where they have been charged with the same offense and have similar prior histories. Kanaka Maoli and other Pacific Islanders are the most [over-represented](#) group in the homeless population, according to a 2019 comprehensive report prepared by Partners in Care Oahu. Article number [251](#) published in the American Journal of Community Psychology states that homeless individuals are at risk of committing low level and nonviolent offenses, but are also significantly less likely than housed individuals to be arrested for a violent crime. Furthermore, conviction rates for those detained pretrial are higher than for accused persons who were able to bail out. The criminalization of houselessness and imposition of monetary bail unfairly targets already struggling communities. These barriers could make it nearly impossible for a person to recover after an arrest.

This bill is a critical step in eliminating a wealth-based system of incarceration and removing inequitable barriers. Please support inserting ACLU Hawaii's amendments and vote yes on HB1567 with the inclusion of class C felony offenses.

Mahalo for your time and consideration,
Vanessa Khachik

LATE

Aloha Honorable senators,

My name is Tiana Williams. I am a student at the University of Hawai'i at Manoa. I come today to you in regards to the HB1567 bill. Which could alter the usage of cash bail and calls for defendants to be released for positive nonviolent offenses. I'm urging you to support HB1567 and hope you will include class C felonies with this bill. Cash bail can disrupt lives and I know personally just how it can do so. I am in strong support of this bill because Pretrial detention frequently results in devastating results which could have an effect on people along with their families for generations. The ACLU-Hawaii found that almost 70% of pretrial detainees who changed their pleas from innocent to guilty or no contest did so while in jail, primarily because they could not afford bail. Defendants who can't make bail are prone to losing their jobs, and along with the income that helps to support their children that can pay their rent, utilities and place food on the table. Oftentimes also leading families to be in debt and become homeless. I have experienced the effects of cash bail when my father was charged with a nonviolent offense. My father decided to stay in jail because he could not afford to pay bail knowing he had 4 children at home who needed that money to put food on the table. Which left my mother to try to make ends meet going in and out of shelters. For years to come after that my mother and father struggled to support and feed us. I felt the need to testify today in hopes that other families would not have to face the harsh effects of cash bail like my family has. By ending cash bail people will have a more equal opportunity and without the risks of debt, losing jobs, homelessness, and losing custody of their children.

Thank you for taking the time out of your day to read my testimony.

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 4:14:59 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rev Kyle Lovett	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the senate Judiciary Committee,

Mahalo for hearing HB1567 HD1, to eliminate the use of monetary bail and require defendants to be released on their own recognizance for low-level offenses.

My name is Rev. Kyle Lovett, a clergy member of the United Church of Christ.

I **strongly support** this bill, with encouragement to restore the bill to its **original form**.

I respectfully request that you consider amending the bill so that the original wording be reinstated:

- **including Class C non-violent felonies**, which affects the majority of accused women;
- **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;**
- **deleting Section D**, which precludes a defendant from being eligible for exemption from the bail requirement if on probation, parole or conditional release at the time of arrest, be deleted. These are technical violations.

Last summer the General Synod (biennial national meeting) of my denomination, the United Church of Christ, called on the whole church to work to reform cash bail.

I am so glad that Hawaii is taking up this critical issue of justice!

Here are some of the grim realities that inform my taking this opportunity to speak up:

- At any given time, roughly half of the people in Hawai'i's jails have not been convicted of the crime for which they are accused, at tremendous cost to the taxpayer.
- 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, employment, health insurance, and custody of their children. After maxing out their credit cards, a family may end up deep in debt or even homeless.
- The current cash bail process rips apart the fabric of society and makes us all less safe.

- The exact thing that the justice system seeks to affirm and enable – a safe and just society – is being undone by pretrial cash bail practices.

And finally, for me as a Christian clergy person, this text guides me:

- “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

Mahalo for this opportunity to testify,

~Kyle

Rev. Kyle Lovett

HI Senate District 13

SENATE COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

LATE

Thursday, March 31, 2022 at 0930 HST

RE: **Testimony in SUPPORT of HB1567** With Comments

Aloha Chair Rhoads, Vice Chair Keohokalole, and the members of the Committee on Judiciary:

I am submitting testimony in **support of HB1567**; however, I do have a suggestion to restore the bill to its original form **without the amendments**.

Class C felonies are the **least serious** felony crimes¹ which include:

- Lower forms of theft
- Fraud
- Obstruction of justice
- Damage to another person's property

What happened to the presumption of innocence?

- These offenses mentioned above are **nonviolent**; however, the accused are treated otherwise when incarcerated while awaiting trial.
- One can easily be accused of any of these offenses. Do we want to create a culture where people find it acceptable to overwhelm 911 & HPD with false accusations? We already have, because it is widely known that an arrest can disrupt someone's life.
- For example, missing even one shift at work or failing to pick up their child from school can result in loss of employment, homelessness, and removal of children.
- If someone is too poor to post bail, we're only **spending** money to keep them in jail.

Opponents of this bill may reference the murder in Kapolei; however, let us not be swayed by **survivorship bias**.² The media fails to highlight the fact that the accused was released with no aid for mental health because the prosecutor's office sought tougher charges. They failed to find sufficient evidence to do so,³ and it cost a woman her life.

In cases like this, cash bail is weaponized to make the state money while potentially violent offenders are released and expected to reoffend. **It does not protect the public.**

How often does the prosecution fail to find sufficient evidence for nonviolent offenses?

- Many nonviolent offenders who possess the same socioeconomic status as the aforementioned individual remain in jail, unable to post bail for nonviolent offenses.
- Nonviolent offenders are usually just poor, not violent; therefore, the prosecution has no incentive to release them, as they are unlikely to commit more serious offenses.
- If the nonviolent offender gets assistance with bail, the state makes money; and

¹ <https://www.bileckilawgroup.com/civilian-criminal-defense/state-court-criminal-defense/felony-cases/>

² <https://www.bbc.com/worklife/article/20200827-how-survivorship-bias-can-cause-you-to-make-mistakes>

³ <https://www.khon2.com/hawaii-crime/father-of-murder-suspect-calls-for-changes-to-help-the-mentally-ill/>

- Bloated prison and jail population statistics are reported to make the claim that “crime is on the rise;” hence, coercing the public into supporting unnecessary new jails and prisons.

After committing the violent offense, this person’s bail was set to \$1m,⁴ the same amount assessed for wealthy violent offenders who are able to post bail and walk free while awaiting trial.⁵ **Cash bail does not protect the public, it only enables the rich.**

Please include Class C felonies as the bill originally intended.

1. Additionally, **bail is a waste of talent for the employees and staff** who could get more out of spending time with their family or investing in their professional development. Instead, they are pushing an endless stack of papers.
 - a. The intake process in corrections is tedious and time consuming
 - b. Posting and processing bail is time consuming
 - c. All of that was for nothing if they post bail and are free, or get the charges dropped respectively
2. **It wastes more money than it generates.** Noting the aforementioned, the money spared by not building a new prison can fund programs or people thereby investing in our communities and economy. Noting the aforementioned, the murder in Kapolei would not have happened if the accused received proper mental health services.
3. Hawai‘i was impacted negatively by the pandemic. The only thing that kept us from total collapse were the many services that became available to our residents.
4. Continued care in the form of social services can set a precedent for the rest of the nation to follow: a “post-Covid success story” where people who were physically, psychologically, and economically harmed by the pandemic are able to emerge as survivors rather than victims.
5. Additionally, please consider:
 - a. How many hours do city and state workers (including law enforcement) spend processing papers?
 - b. How many of those hours result in overtime pay?
 - c. How much resources does one require upon entering the criminal legal system?
6. Finally, cash bail has not existed in the federal correction system since the 80s. Simply put, **it’s out of style.**

Let us modernize Hawai‘i’s criminal legal system by putting an end to cash bail.

Please pass HB1567 without the amendments.

Mahalo for considering my testimony,

Soon Kim
Senate District 15

4

<https://www.hawaiinewsnow.com/2022/02/19/suspect-charged-brutal-attack-outside-police-station-expected-use-insanity-defense-again/>

⁵ <https://www.khon2.com/local-news/honolulu-attempted-murder-sex-assault-suspect-seeking-bail-modification/>

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 7:18:57 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Aleni Loa	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

Mahalo for hearing HB1567 HD1 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567 HD1 with comments to restore the bill to its original form.

Incarceration is deeply traumatizing and creates inequities when needed to attain housing, education, employment, and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person’s life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in addition to the myriad of racial disparities that perpetuate their inability to post bail.

Mahalo for this opportunity to testify

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 7:19:25 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ashleigh Loa	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Judiciary,

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LATE

HB-1567-HD-1

Submitted on: 3/30/2022 9:19:53 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dave Kisor	Individual	Support	Written Testimony Only

Comments:

I have no idea who benefits from the cash bail system, but it certainly isn't the accused if they haven't the money. The current system is blatantly unfair, but then again when did fairness ever matter?

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 10:39:54 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Samuel Peck	Individual	Support	Written Testimony Only

Comments:

Honorable members of the Senate Judiciary Committee,

I am writing to you to express my strong belief that House Bill 1567 must be made into law. Hawaii's bail system is in desperate need of change and HB1567 will be a powerful step in the right direction. While it has been the norm for decades now, cash bail is an inherently racist and discriminatory system within our system of justice. Given the massive racial wealth gaps that our society thrives on, a monetary determinant of pretrial release will inevitably keep disproportionate numbers of Kanaka Maoli and other people of color locked up. In an illegally occupied country, incarcerating large numbers of its native people is the worst kind of imperialism. I believe that the United States has the potential to overcome its imperial legacy and I call on you as elected officials to fulfill your duty in aiding this transition.

While the inherent racism of cash bail alone is compulsion enough to abolish the system, it has many other flaws. For those living on the edge, coming up with a \$500 bail fee is likely an impossibility. Forced to remain in detention for weeks or months on end, these people are likely to lose jobs, housing and even custody of their children. While I would argue that this is unfair for all crimes, the injustice becomes especially clear when considering the example of shoplifting; a person who steals food out of necessity should not be further penalized. Being forced to pay money they clearly do not have or watch their life crumble from behind bars is hardly a just penalty for what can only be called desperation. I do not intend to over-simplify this issue and place those who commit crimes on a moral pedestal; however, I find it inarguably true that the criminal justice system treats the majority of those who interact with it much more punitively than needed.

Not only does excessive punishment ruin the lives of defendants, but it hurts society as whole. Multiple studies have shown that pre-trial detention increases the likelihood of a person's rearrest upon release, in addition to increasing one's chances of a conviction at trial. These are the first steps of a downward spiral that can transform somebody who

committed a minor crime into a life-long prison inhabitant. The cascading consequences of detention (losing jobs, housing, children, and/ or vehicles) are only the first step. Then comes the trauma endured in prison, followed by the subsequent personality adjustment necessary to survive. Jail and prison environments reward a set of behaviors that,- while effective at keeping one safe inside,- make reintegration into society very difficult.

All of this is to say that cash bail has no place in Hawaii's justice system. From its inherent racism to its cruel punishment of desperate citizens, it is a draconian policy that has long been due for the legislative garbage heap. HB1567 is a necessary first step in finally casting aside cash bail.

As a voting constituent in the State of Hawaii, I hope that you make the right choice in voting to pass HB1567 this upcoming legislative session.

Sincerely,

Sam Peck

UH Manoa class of 2024

[Get Rid Of Cash Bail In Hawaii - Honolulu Civil Beat](#)

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 11:25:23 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Alex Von Rohr	Individual	Support	Written Testimony Only

Comments:

Dear Honorable Senators,

My name is Alex Von Rohr, and I am currently a student at the University of Hawaii at Manoa. I am writing this to show my support for HB-1567, as I believe that bail has been a consistent and lingering problem within our justice system. It not only favors people with money, it incarcerates people before they have been given a chance to be proven guilty going against the very foundation of our justice system itself.

I have personally been able to see the effects that our bail system can have on people and families across Hawaii. As one of my father's good friends who was living primarily paycheck to paycheck and could not pay for bail of a nonviolent offense. As a result, he could not make it to work which eventually resulted in him getting fired, and not being able to afford rent. It took him a couple years of being homeless and support of friends to get him back on his feet and able to live a reasonable life again. However, this is just one example, as there are many people who cannot afford bail and are stuck in a similar if not worse situation. In fact, research shows that 69 percent of the arrestees who changed their pleas from innocent to guilty or no contest did so while held in jail, primarily because they could not afford bail. This is a very large percentage of people whose lives may be severely affected just because they could not afford to pay for their bail.

The foundation on which our justice system is founded on, innocent until proven guilty, has been hindered by the application of monetary bail. With many people having to give away that right, because of something as simple as not being able to afford it. Someone's innocence or guilt should not be affected by how much money they have, or if they can afford it. It should be affected by things that matter, such as evidence, and proving whether or not they did indeed do the crime. The current bail system in Hawaii is a direct flaw in our justice system as it was intended and goes against what our systems beliefs were built on. I see the corrupt and unjust flaws that bail bring to the table in our justice system, and I believe that it is time to address this problem and fix it, before it has the ability to affect more people and families.

Thank you for taking the time to read my testimony, and please remember to support HB-1567.

Senator Karl Rhoads, Chair
Senator Jarett Keohokalole, Vice Chair
Committee on Judiciary



Wednesday, March 30, 2022

Support for HB1567, Relating to Criminal Pretrial Reform

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

My name is Taylor Nobriga and I am a concerned Oahu resident and current student of University of Hawaii at Manoa. I am writing to you to express my support for House-Bill No. 1567. This bill aims to eliminate the use of monetary bail, allow defendants the option to participate in a bail report interview via videoconference, and require defendants to be released on their own recognizance of non-violent offenses.

Our current system allows for bail to benefit individuals with a higher income, while also harming the poor. This system also points towards the inequalities that exist within our administration, as it is allowing for the individuals who have great monetary access to gain leverage in escaping various crimes. Thus, not allowing for these individuals to be held accountable for their offenses. In doing so, it can create a sense of public distrust in our community. Those who may not have the ability to afford bail, are punished before they have a chance to defend themselves in court. Consequently, contributing to the overcrowding in our Hawaii jails, and contributing to social inequality issues such as mass incarceration. Each year at least 15,000 different people are booked into local jails in Hawaii. The pandemic has also played a role in contributing to the state's surging levels of COVID-19 cases. In a recent report by the Star Advertiser, more than 1,300 inmates in Hawaii's jails and prisons have tested positive for COVID-19 since the omicron variant in December. While COVID-19 has had a massive negative impact on our current jails and prisons, I believe that eliminating cash bail, especially in today's time can benefit our overall public health and safety.

I felt the need to testify after acquiring more knowledge about our current system through my education. A system that has room for improvement, but can aim towards bringing awareness on how monetary bail affects the public and legal socialization of a community. Therefore, affecting what people perceive to be fair, our crime rates, as well as deviance reflected in the community. Cash bail affects families, their housing, employment, and so much more. I believe there's a need to emphasize bail reform and adopt solutions such as implementing phone call reminders to increase appearance rates in courts. In addition, more rehabilitative programs and an emphasis on education is key to combat further risk assessments and improve public health and safety within our prisons and jails. I believe in HB1567 and feel that it can make some great changes for our community. Thank you for your time and consideration of these matters.

Sincerely,

Taylor Nobriga

LATE

HB-1567-HD-1

Submitted on: 3/30/2022 11:58:56 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kristine Crawford	Individual	Support	Written Testimony Only

Comments:

I strongly support this needed reform.

LATE

HB-1567-HD-1

Submitted on: 3/31/2022 12:05:22 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Tristan Yousuf-Leo	Individual	Support	Written Testimony Only

Comments:

My name is Tristan Yousuf-Leo. I am a citizen and current resident in the state of Hawaii and I am writing to testify in support of HB1567 on bail reform. Currently with our population growth, it is also inevitable that our jails will overcrowd to the point of no longer being tenable to maintain. In addition, our current bail system's reliance on cash money to determine whether a person awaiting trial will be able to return home or be required to stay in jail until the awaited court date heavily skews the system towards those who have more money than those less fortunate. This can devastate entire families who rely on the accused to bring food to the table and wipe out the savings of those who are in dire financial straits. I am therefore writing to ask that you consider supporting this bill so that we may have a more fair and just system for all.

LATE

HB-1567-HD-1

Submitted on: 3/31/2022 2:23:33 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sofia	Individual	Support	Written Testimony Only

Comments:

Aloha,

My name is Sofia Pricer, and I am a student at the University of Hawaii at Manoa. **I am testifying in strong support of HB1567 HD1.**

Cash bail is an unjust system that punishes individuals who can't afford bail before they have had a chance to defend themselves in court.

Cash bail has life-altering consequences for many. Including people with mental health issues, many of whom qualify as legally disabled. I battle mental illness. During my adolescence, I was in and out of treatment facilities for years until finally, when I was 17, I was properly diagnosed. Since then, my ability to function has been slightly compromised, but I am so fortunate that I received treatment and now take proper medications. I cannot fathom not having access to health care resources when I was struggling with my health. My experience has made me passionate about advocating for people with mental health issues, and I strongly believe in keeping mentally ill people out of prison. The OCCC, however, incarcerates a substantial amount of inmates with mental health issues. The Department of Public Safety estimates that about 12% of OCCC inmates are mentally ill. Additionally, in 2018 the OCCC incarcerated 696 individuals considered Severe and Persistently Mentally Ill (SPMI), 450 to 600 of which were on suicide watch. Being in prison further traumatizes mentally ill individuals and can have tragic outcomes. I was shocked to learn Hawaii ranks third among Western states in prison suicide rates. The majority also take place shortly after incarceration. The Bureau of Justice Statistics found that nearly two-thirds of jail suicides involving short-term inmates occurred during the first 30 days of incarceration.

For these reasons, it is crucial that we keep mentally ill individuals out of prison and provide them with mental health resources. Cash bail heavily impacts mentally ill and disabled people and needs to be eliminated.

Thank you for your consideration,

Sofia Pricer

LATE

HB-1567-HD-1

Submitted on: 3/31/2022 2:43:15 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Christyn Palting	Individual	Support	Written Testimony Only

Comments:

Honorable Senator Rhoads and/or Honorable Senator Keohokalole,

I would like to testify for HB1567, a bill that would eliminate the use of monetary bail and require defendants to be released depending on the severity of that crime that was committed and how much of a harm (in some cases) they would be if they were set free. Pretrial incarceration is a main reason there is an overcrowding in the State's jail so this bill would not only improve on the public's need for safety but also individual's constitutional rights.

Being unable to afford bail can result in the loss of a person's job, home, children, and more. According to the ACLU, cases where an individual could not afford bail constituted 49 percent of the cases reviewed, 69 percent of the arrestees who changed their pleas from innocent to guilty or no contest did so while held in jail, primarily because they could not afford bail . As of Jan. 24, 2022, 57% of all people in Hawaii's jails have not been convicted of a crime and money bail unfairly affects Native Hawaiians and other people of color who are more likely to be unable to afford bail in comparison to white people charged with the same crime and with similar histories. I find it particularly interesting because bail doesn't often cater to many people, especially here in Hawaii. With bail constantly being out of reach to many of those being incarcerated in our jails, our jails become overcrowded. Although I do understand that there are pros and cons to bail, I do think that bail doesn't often work in many favors, especially those who are wrongfully convicted of a crime. It has also been said that there are specific races that bail almost works against and this, I think, is unjust in many ways. In Hawai'i, the consequences of pretrial deten- tion fall disproportionately on Native Hawaiians and Pacific Islanders, who are more likely to be arrested, detained, and unable to afford money bail. The consequences are both permanent and harsh, not just for the person who has not yet been convicted of a crime, but also their families and loved ones . Even just a few days of pretrial deten- tion can lead to loss of employment, housing, and custody of children, as well as an increase in debt if the upfront bond was borrowed from a bail bond company .

Essentially, the size of your wallet determines whether you are granted freedom, which should definitely not be the case if we are looking for ways to improve our justice system. Court observations reveal that courts regularly place the burden on the defense to show why the financial condition to release should not be maintained. As costs become higher and jobs becoming harder to find, the minimum \$500 bail is still out of reach for so many, especially those of color. With this being said, I do think that some consideration would help our justice

system feel that they do care for the people rather than only catering to one specific type of social class and allow equality in all. Thank you for your time.

- Christyn Palting (Student at UHM)

LATE

HB-1567-HD-1

Submitted on: 3/31/2022 5:44:36 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jennifer Ruiz	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee,

My name is Jennifer Ruiz and I am testifying in **support of HB1567**, under the condition that Class C nonviolent felonies are added back into the bill and that other amendments proposed by the ACLU are incorporated.

Almost 60% of the people in Hawai'i's jails are innocent in the eyes of the law, yet remain imprisoned solely because they cannot afford cash bail. This unconstitutional practice disproportionately harms Native Hawaiians and Pacific Islanders and violates the presumption of innocence that our legal system is supposed to uphold. Additionally, prior the pandemic I volunteered with the ACLU as a court monitor for pre-trial hearings. Observed many pre-trial hearings where they were poor people just being recycled through the system. There were people who could not afford cash bail and had to just ask for jail time in lieu of paying the cash bail. There were locals that were already homeless and could not afford cash bail. And there were those who battling substance abuse problems and trying their best to not continue being apart of the system but they did not have money to pay for car insurance or previous penalties imposed on them. Which places them also in the same category of not being able to afford cash bail.

While this bill would begin to reduce our reliance on wealth-based detention, we must do more to overhaul the corrupt cash bail system. And there needs to be taken into account that so many fall below the poverty level here in Hawai'i, with the impact of the pandemic, inflation, and many more soaring prices that residents are paying here. There has to be an fair consideration from those at the legislative level. Not asking for zero accountability but that there is more propriety and nonpartisan for those who come from marganizilized backgrounds.

Please incorporate the ACLU of Hawai'i's amendments and vote yes on HB1567.

Mahalo for your consideration,

Jennifer Ruiz

LATE

HB-1567-HD-1

Submitted on: 3/31/2022 6:03:48 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Alan Edward Texeira	Testifying for ACLU Hawaii	Support	Written Testimony Only

Comments:

Hello Chair Rhoads; Vice Chair Keohokalole; Honorable Members,

I, Alan Edward Texeira, 4052A Keanu Street, Kaimuki, Hawaii 96816 request that you approve HB 1567.

Listen, most people here on the islands don't have money to begin with and will not be able to pay for bail. Yes, keep the violent individuals in jail, just let the other people go on bail without paying money that they don't have to begin with.

Cash Bail discriminates against people with money and people with no money. We need to correct this problem. This can only be done with you help.

Again, pass/support HB 1567 today!

Thank you for your consideration on this matter.

Sincerely.

Alan Edward Texeira

808 927-5821

LATE

HB1567 Testimony

Aloha Chair Karl Rhoads, Vice Chair Jarrett Keohokalole, and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs,

Mahalo for hearing HB1567 HD1 which abolishes the use of monetary bail and obliges defendants to be released on their own recognizance. I am in full support of HB1567, with comments to restore the bill to its original form.

The United States and the Philippines are the sole countries in the world with a legalized for-profit bail bond industry. This for-profit bail bond industry is manufactured on a naïve impression, and in practice, the procedures of this industry within our criminal justice system is tragically flawed. Incarceration profoundly traumatizes an individual's life, while also simultaneously causing inequities when needed of the individual such as attaining housing, education, employment, and child custody. This pre-trial detention procedure perpetually wrecks the trajectory of an incarcerated person's life and the lives of their loved ones. If this cash bail system continues to exist, then it will deliberately force the poor to jail, while also allowing individuals with access to extensive resources to buy their way out to freedom. Such existing system also causes unintentional side effects within our nation – it ravages taxpayer resources, declines public trust, and intensifies economic and racial inequality within the United States. In fact, incarcerating people in pre-trial detention is extremely costly to proceed; approximately 73 million per year including the cost of incarcerating people on the Neighbor Islands is being spent for such process to be taken place. For these numerous reasons, debtor imprisonment was banned decades ago. Yet, our nation and state has been continuing to rely on this broken, outdated system to this day.

Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system, in supplement to the countless of racial disparities that prolong their inability to post bail. As internalized and structural racism continues to persist within our country, this unavoidably causes greater fines and higher consequences to people of color and minorities within our state and our nation. When pretrial detainees are pressured into accepting plea bargains (irrespective as to whether they committed a crime), they are ultimately "deprived of life, liberty or property without due process of law." These harmful results hurt all of us. We are spending a lot of money incarcerating people, permitting substantial power to judge that allow such procedures to occur, and allowing the wheel of internalized and structural racism to persist within the United States. With this, you have a chance to fix a fundamental wrong and be the ones that will traject our nation into a better future.

Mahalo for this opportunity to testify,
Jerald Cascayan
District 38
Student at the University of Hawai'i at Manoa

LATE

HB-1567-HD-1

Submitted on: 3/31/2022 8:43:53 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

I support HB1567 with the addition of the previous language including Class C nonviolent felonies.