

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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Tuesday, February 1, 2022      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Lauren M. Nakamura, Deputy Attorney General

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Chair Nakashima 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, nonviolent misdemeanor offenses, and nonviolent class C felony 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 bill does not adequately address a number of important interests, including the need to secure the appearance of defendants and to protect the public. In particular, the addition of class C felony offenses to the list of offenses for which release is mandated under the bill, raises concerns about the safety of 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[.]

See 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 by 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 21) of the bill, requires that defendants charged with traffic offenses, violations, non-violent petty misdemeanor offenses, non-

violent misdemeanor offenses, or non-violent class C felony offenses be released on their own recognizance. On page 2, line 10, through page 3, line 20, 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 20, does not provide for every scenario where release on recognizance may not be appropriate. The inclusion of class C felony offenses for which release is mandated will result in the 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 Extortion in the Second Degree (section 707-766), Burglary in the Second Degree (section 708-811), Violation of Privacy in the First Degree (section 711-1110.9), Felon in Possession (section 134-7), Place to Keep a Firearm (section 134-25), Theft offenses (sections 708-830 through 708-833), Unauthorized Control of a Propelled Vehicle offenses (section 708-836), and Failure to Comply with Covered Offender Registration Requirements (section 846E-9) could all be characterized as "nonviolent" and defendants charged with such offenses would be released under the bill. Further, the list of exceptions does not include wording that would allow an exception for defendants who pose a risk to public health (e.g., defendants infected with COVID-19).

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.

Should the Committee choose to move forward with this bill, the Department recommends that, at a minimum, the changes suggested below be made in order for the amendments set forth in section 2 to be consistent both with the dual purposes of

bail (i.e., to ensure defendants' appearance in court and to protect the public) and the rest of chapter 804, HRS.

First, the Department recommends that the wording on page 1, line 16, to page 2, line 9, be changed as follows (shown in Ramseyer format compared to the bill):

**§804- Monetary bail; non violent offenders.** (a) Any defendant arrested, charged, and held for a traffic offense, violation, nonviolent petty misdemeanor offense, or nonviolent misdemeanor offense~~[, or nonviolent class C felony offense]~~ shall be ordered by the court to be released on the defendant's own recognizance at arraignment and plea conditioned upon:

- (1) The ~~[defendant's appearance in court;]~~ general conditions of release on bail set forth in section 804-7.4; and
- (2) Any other least restrictive, non-monetary condition necessary to:
  - (A) Ensure the defendant's appearance in court; and
  - (B) Protect the public.

This wording, referencing the appropriate section in chapter 804, HRS, will ensure consistency among the courts in setting conditions for the release of defendants that are designed to ensure defendants appearance in court and to protect the public.

Second, the Department recommends that the wording at page 4, line 1, to page 4, line 8, be changed as follows (shown in Ramseyer format compared to the bill):

(c) If any of the exceptions in subsection (b) apply, bail may be set in a reasonable amount pursuant to section 804-9, ~~[taking into consideration]~~ based upon all of the available information including the defendant's financial ability to afford bail. If defendant is unable to post the amount of bail~~;~~ set, the defendant shall be entitled to a prompt hearing ~~[under]~~ as set forth in section 804-7.5. ~~[If the defendant is unable to post bail in the amount of \$99 or less, the director of public safety may, in the director's discretion, release the defendant.]~~

The bill's current wording providing the Director of Public Safety the discretion to release defendants who are unable to post bail in the amount of \$99 or less (page 4, lines 6 through 8) is problematic for two reasons. First, the provision is inconsistent with the reasonable assumption that in setting bail, the court possessed and considered

information pertinent to: (1) determining the amount of bail pursuant to section 804-9, HRS, and (2) setting conditions of bail or release pursuant to section 804-7.1, HRS (e.g., a reasonable bail amount, and the defendant's financial ability to afford bail, and the defendant's right to a prompt hearing under section 804-7.5, HRS). Such proposed wording would, in effect, disregard and potentially contravene the judicial discretion provided for in chapter 804, HRS, and impede the ability of the courts to fulfill the second purpose of bail, which is to protect the public. Secondly, this type of "nominal bail" is generally set for defendants who are already in custody on other matters when they are arrested for a new offense. The setting of nominal bail allows the defendant to begin earning credit on the new case. Therefore, the language providing the Director of Public Safety with the discretion to release defendants appears to be unnecessary and inappropriate and is thus not included in the Department's proposed changes to the bill.

For the foregoing reasons, the Department respectfully requests the bill be deferred or, at a minimum be amended as set forth above. Thank you for the opportunity to testify.



**HB1567**  
RELATING TO CRIMINAL PRETRIAL REFORM  
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i  
House Committee on Judiciary & Hawaiian Affairs

Pepeluali 1, 2022

2:00 p.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1567, which would generally reduce reliance on monetary bail for low-level, non-violent offenses, subject to certain exceptions. HB1567 offers a prudent, phased approach to pretrial reform that can reduce unnecessary, costly, and dangerous pretrial incarceration while preserving public safety.

Unfortunately, Hawai‘i’s bail system remains overwhelmed, inefficient, and ineffective, and continues to result in harmful, unnecessary socioeconomic impacts<sup>1</sup> on low-income individuals and their families, a disproportionate number of whom may be Native Hawaiian. The purpose of bail is not to punish the accused, but allow for their pretrial release while ensuring their return to court. However, cash-secured bail has effectively served as a substantial punishment specifically for indigent individuals, before they are provided with any trial or found guilty of any crime. In Hawai‘i, indigent defendants must often decide between posting hefty cash bail or bond amounts that impose considerable financial hardship on themselves and their families, or remain in pretrial incarceration that places their employment and housing at risk. This measure is appropriately narrow as it would apply for non-violent offenses. Notably, detaining individuals for days or weeks before their trial simply because they are too poor to post bail also represents a substantial cost to taxpayers,<sup>2</sup> and further exacerbates the danger of overcrowding in our strained pretrial detention facilities.

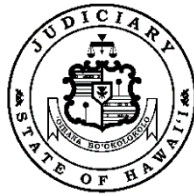
OHA appreciates that this bill represents a necessary next step in Hawai‘i’s phased approach to pretrial reform. This measure will help reduce unnecessary pretrial incarceration and reduce the harms of the cash bail system upon Native Hawaiians and the larger community. OHA has been committed to improving the wellbeing of Native Hawaiians, including disproportionate amount of incarcerated Native Hawaiians.

For these reasons, OHA urges the Committee to **PASS** HB1567. Mahalo piha for the opportunity to testify on this measure.

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<sup>1</sup> Socioeconomic effects include daily costs of detaining each inmate, family separations, child and welfare interventions, loss of family income, reduction of labor supply, forgone output, loss of tax revenue, increased housing instability, and destabilization of community networks. See, e.g., MELISSA S. KEARNEY THE ECONOMIC CHALLENGES OF CRIME & INCARCERATION IN THE UNITED STATES THE BROOKINGS INSTITUTION (2014) available at <https://www.brookings.edu/opinions/the-economic-challenges-of-crime-incarceration-in-the-united-states/>.

<sup>2</sup> On average, it costs \$198 per day—\$72,270 per year—to incarcerate an inmate in Hawai‘i. STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY: FISCAL YEAR 2019 ANNUAL REPORT 16 (2019) available at <https://dps.hawaii.gov/wp-content/uploads/2019/11/PSD-ANNUAL-REPORT-2019.pdf>.



## *The Judiciary, State of Hawai'i*

### Testimony to the Thirty-First State Legislature, 2022 Session

#### House Committee on Judiciary & Hawaiian Affairs

Representative Mark M. Nakashima, Chair

Representative Scot Z. Matayoshi, Vice-Chair

Tuesday, February 1, 2022 at 2:00 p.m.

Via Videoconference

#### **WRITTEN TESTIMONY ONLY**

By

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1567 Relating to Criminal Pretrial Reform

**Purpose:** Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions. Requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

#### **Judiciary's Position:**

The Judiciary fully supports the intent of the proposed legislation and offers 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.

In the vast majority of the cases, when a court sets bail in an amount of less than \$100 it is doing so because the defendant is already being held on another charge and the setting of

Testimony for House Bill No. 1567, Relating to Criminal Pretrial Reform  
House Committee on Judiciary & Hawaiian Affairs  
February 1, 2022, 2:00 p.m.  
Page 2

“nominal” bail in the instant matter allows defendant to begin receiving incarceration credit on the “new” charge. If the Director of Department of Public Safety were permitted to release the defendant at the Director’s discretion when bail is set at less than \$100, an unintended consequence may be that the defendant may still be held in custody, but be unable to receive any credit towards the newer case.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAI‘I  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on  
Judiciary & Hawaiian Affairs**

February 1, 2022

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

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender (“OPD”) strongly supports H.B. No. 1567 which eliminates the use of money bail for low level, non-violent offenses, including class C felonies, with certain exceptions. Rather than creating a “rebuttable presumption for release”, H.B. 1567 inserts the language “*shall* be ordered by the court to be released...” and **requires** release for those individuals that fall squarely into the criteria set forth. For these reasons, we applaud and support H.B. No. 1567 as a promising first step toward righting injustice, and the OPD offers recommendations to strengthen it.

Hawai‘i should abolish money bail as a condition of release. It is a poor tool for achieving pretrial justice. The money bail system incarcerates poor people because they are poor, not because they have been convicted of a crime, and not because they are a danger to others. Meanwhile, that same system allows potentially dangerous, but wealthy, people to post their bond and be released without issue.

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

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<sup>1</sup> Salerno v. United States, 481 U.S. 739, 755 (1987).

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

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

Hawai'i's practice of making the payment of a money bond a condition for pretrial release discriminates based on wealth, exacerbates racial disparities, results in over-incarceration, and imposes unnecessary costs on individuals and society at large.<sup>4</sup> On February 1, 2021, 883 people were incarcerated throughout the State even though they had not been convicted of a crime. Feeding and caring for an incarcerated person costs \$198 a day in Hawai'i.<sup>5</sup> Pre-COVID-19 the State was spending approximately \$209,000 a day (\$76 million annually) of taxpayer dollars to incarcerate more than 1,000 people statewide, simply because they were too poor to afford bail.<sup>6</sup> Data collected over the years tell us that 80 percent of these individuals are charged with relatively low-level offenses and many are homeless or living with mental illness or substance use disorders.<sup>7</sup>

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

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<sup>3</sup> Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i "HCR 134" (December 2018), [https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform\\_Final-Report\\_12.14.18.pdf](https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf).

<sup>4</sup> Final Report of the House Concurrent Resolution 85 Task Force on Prison Reform to the Hawai'i Legislature 2019 Regular Session, "Creating Better Outcomes, Safer Communities" (December 2018), [https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform\\_Final-Report\\_12.28.18.pdf](https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform_Final-Report_12.28.18.pdf).

<sup>5</sup> 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>.

<sup>6</sup> HCR 85 Report at 64.

<sup>7</sup> HCR 85 Report at 65.

University of Hawai‘i at Mānoa for the 2019-2020 school year, including tuition, room, board, books, supplies, and personal expenses, was \$30,000.<sup>8</sup> With the daily savings from bail reform, we could pay all expenses for a full year of education for 7 students at U.H. Mānoa, and with the savings from a year of bail reform, we could pay all expenses for more than 2,500 students.

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

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 witnessed firsthand that far too many innocent defendants plead guilty just to get out jail, and defendants are more likely to be acquitted if they post bail, in part because they are less likely to take plea deals just to get out of jail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

January 31, 2022

TO: Honorable Representative Takashi Ohno  
House Corrections, Military, & Veterans Committee.

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

SUBJECT: HB 1567 RELATING TO CRIMINAL PRETRIAL REFORM

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

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

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

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

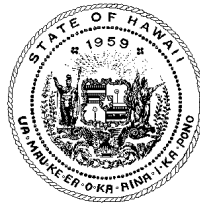
Therefore, the Hawai'i Correctional System Oversight Commission strongly supports HB1567. Mahalo Nui Loa for the opportunity to testify on this measure.

Sincerely,

Mark K. Patterson, Chair  
Correctional System Oversight Commission



DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
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**MAX N. OTANI**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Tommy Johnson**  
Deputy Director  
Corrections

**Jordan Lowe**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 1567  
RELATING TO CRIMINAL PRETRIAL REFORM.**

by  
**Max N. Otani, Director**  
Department of Public Safety

House Committee on Judiciary and Hawaiian Affairs  
Representative Mark M. Nakashima, Chair  
Representative Scot Z. Matayoshi, Vice Chair

Tuesday, February 1, 2022; 2:00 p.m.  
State Capitol, Via Videoconference

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Department of Public Safety (PSD) supports House Bill (HB) 1567, which proposes to implement pretrial reforms to help address overcrowding of pretrial defendants within PSD facilities.

The Department's Intake Service Centers are charged with providing bail reports for hearings to be conducted promptly and prefer to conduct bail evaluation interviews in person for pretrial detainees. Pretrial bail reports provided to the courts utilize an objective, research-based, validated assessment tool that provides an assessment of the risks of recidivism and non-appearance among other factors. Most interviews are conducted prior to defendants entering PSD facilities, however, not all incoming detainees choose to participate, or circumstances may make in-person interviews unfeasible.

While the Department agrees with the objectives of HB 1567, it is concerned about the additional costs that would be required to implement



videoconferencing at all facilities for defendants who are unable or decline to participate in in-person interviews.

The Intake Service Centers acknowledge that release on own recognizance is a viable option for defendants assessed to be at low risk for helping to achieve the objectives of this Bill.

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

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE MARK M. NAKASHIMA, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**  
**Thirty-first State Legislature**  
**Regular Session of 2022**  
**State of Hawai'i**

February 1, 2022

**RE: H.B. 1567; RELATING TO CRIMINAL PRETRIAL REFORM.**

Chair Nakashima, Vice-Chair Matayoshi and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1567.

The purpose of H.B. 1567, is to re-examine the current criminal pretrial procedures following the passage of Act 179 (2019) and to implement the remaining recommendations based on the findings of the House Concurrent Resolution 134 Task Force report. While the Department appreciates the Committee's good intentions of improving upon current procedures, and while we support the eventual elimination of the cash bail system provided there is a robust and well-funded process that allows for alternatives such as release on recognizance, signature bonds, and adequate supervision by the Department of Public Safety's Intake Services Center Division, we agree with the various committees which reviewed and received testimony during the passage of Act 179 during the 2019 Legislative Session which prompted the removal of the problematic provisions contained in this bill. Additionally, the Judiciary has the ability to implement some of the changes proposed in H.B. 1567 without statutory amendments.

The Department has strong opposition to the contents in section 2. Although the prosecution and defense may not always agree with the ruling by a judge as it pertains to bail, the Department does believe that a judge evaluates all the factors permitted by statute to make a sound decision. Although H.B. 1567 appears to add additional disqualifying offenses to subsection (b)(1), it includes "nonviolent," yet in many cases still dangerous class C felony offenses. Offenses that would not be covered by this bill but could be released without bail could include but is not limited to:

- Burglary in the Second Degree (708-811)

- Aggravated Harassment by Stalking (711-1106.4 and 711-1106.5)
- Arson in the Third and Fourth Degree (708-8253 and 708-8254)
- Violation of Privacy in the First and Second Degree (711-1110.9 and 711-1111)
- Promoting Gambling in the First and Second Degree (712-1221 and 712-1222)
- Promoting pornography (712-1214)
- Habitual solicitation of prostitution (712-1209.5)
- Negligent Injury in the First and Second Degree (707-705 and 707-706)
- Promoting a Dangerous Drug in the Third Degree (712-1243)
- Unlawful Imprisonment in the Second Degree (707-722)
- Unauthorized Possession of Confidential Personal Information (708-839.8)
- Identity Theft (708-839.7)

While the Department understands the Legislature's desire to lower the number of pretrial detainees, we urge the committee to maintain the current safeguards that are used to assess a pretrial detainee, beyond whether they will appear for court hearings. In particular, the Department believes it is extremely important that the courts be allowed to consider any potential dangerousness, obstruction of justice, witness tampering and illegal activity, when determining if and how to release an individual back into the community.

In addition, the Department is concerned with the amendments made on page 4, line 1-8, pertaining to the release of defendants who are unable to post bail that is set at an amount of \$99 or less. The Department notes that bail is routinely set at a nominal amount for defendants who may have additional felony offenses that preclude their release. By removing bail for the defendant's lower level offense this amendment would preclude that person from receiving jail credit for time that he or she may be serving. To create a blanket release by the Public Safety Department based on an arbitrary bail amount (\$99 or less) after a judge has deemed detention was necessary for public safety would be an unwarranted and an unsafe risk, not only for victims and witnesses, but potentially for the general public as well.

Lastly, if this committee intends to pass this bill, the Department would suggest amending subsection (C) on page 3, line 10 to include "pending arraignment".

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

This section attempts to exclude individuals who commit a new offense while pending trial on a previous case in which they were released. However, there is a gap of time where an individual who commits a new offense will not be pending trial, but rather pending arraignment. This gap of time could range from seven days in class C felony offenses to a few weeks for petty misdemeanor and misdemeanor offenses.

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



TESTIMONY OF TINA YAMAKI, PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
February 1, 2022  
Re: HB 1567 RELATING TO CRIMINAL PRETRIAL REFORM

Good afternoon Chair Nakashima members of the House Committee on Judiciary and Hawaiian Affairs. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

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

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

We are very concerned as this bill essentially gives those who have been arrested for a non-violent petty misdemeanor and Class C Felony crime like shoplifting, home invasions, drug dealing, harassment, disorderly conduct to name a few to be released without much consequence or an assurance they will in fact show up for court. **It's a big win for the offenders especially career criminals and an even bigger loss for anyone in the community who is a victim of a crime including shop lifting, break ins of their home, car or business.**

Retailers have major concerns on this measure.

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

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

 3610 Waiālae Ave • Honolulu, HI 96816  (808) 592-4200  tyamaki@rmhawaii.org

**HB-1567**

Submitted on: 1/28/2022 7:05:13 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

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

Comments:

We assumed that the various bail measures that passed a few years ago would go a long way towards reforming our penal system in Hawaii. To the extent that there are further reforms needed, the legislature should give serious consideration to that. While the issue extends beyond those individuals with mental illness, our focus is on that and unfortunately they do comprise a fairly high percentage of the pretrial inmates. Many of these individuals are arrested for relatively minor offenses and are held as pretrial detainees simply because they cannot post bond. While they are incarcerated their mental health can deteriorate. In reality they pose little risk of flight which is what the purpose of bail was intended to be. It makes no sense and serves no purpose to house these individuals for months on end while they are awaiting trial. If they are ultimately convicted and sentenced then so be it. However, in the meantime it is a waste of resources to the state to keep them there and it is an infringement on their liberty to be held simply because they are too poor to have the resources needed for the bail. Our facility at OCCC is particularly overcrowded and it would be a smart move for the state to seriously consider if it makes any financial sense to clog up the prison with individuals who do not pose a risk of not appearing for Court or any danger to the community.

**HB-1567**

Submitted on: 1/29/2022 1:02:00 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Rev. Samuel L Domingo	Faith Action for Community Equity	Support	No

Comments:

Aloha Chair and Members of the House JHA Committee:

The bail system has become a black hole for many low wage, working class and immigrant residents putting at risk the whole family into poverty. This practice is immoral and preys upon our most vulnerable of our sisters and brothers. I support the passage of HB1567 and trust that this committee will usher it through to the Governor's desk.

Mahalo for receiving my testimony.

Rev Samuel L Domingo



## HB 1567, RELATING TO CRIMINAL PRETRIAL REFORM

FEBRUARY 1, 2022 · HOUSE JUDICIARY AND  
HAWAIIAN AFFAIRS COMMITTEE · CHAIR REP.  
MARK NAKASHIMA

**POSITION:** Support.

**RATIONALE:** Imua Alliance supports HB 1567, relating to criminal pretrial reform, which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses, violations, and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions; 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.



# COMMUNITY ALLIANCE ON PRISONS

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

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



## COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Representative Mark Nakashima, Chair

Representative Scot Matayoshi, Vice Chair

Tuesday, February 2, 2022

2:00 PM

### HB 1567 - PRETRIAL REFORM - SUPPORT w COMMENTS

Aloha Chair Nakashima, Vice Chair Matayoshi and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the more than 4,103 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety or the corporate vendor on any given day. We are always mindful that 1,113 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<sup>1</sup> except in the most serious cases, “courts use unaffordable bail conditions to detain people deemed too dangerous or flight prone to release.” Recently, in *In re Humphrey*, the Supreme Court of California held that detaining a person pretrial solely because they cannot afford bail violates due process and equal protection. The *Humphrey* court explained that in the bail context, the state’s compelling interest is not to punish but rather “to ensure the defendant appears at court proceedings and to protect the victim, as well as the public, from further harm.””

Writing for the court, Justice Cuéllar held that **“conditioning freedom solely on whether an arrestee can afford bail is unconstitutional.”** In the bail context, an individual’s due process liberty interest in freedom from detention and equal protection right not to be detained solely because of indigency converge.<sup>1</sup>

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

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

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 January 17, 2022 population numbers from the Department of Public Safety reveal that 24% of the population - 990 persons - are pretrial detainees. We have asked service providers who work with marginalized populations about their clients' experience when arrested.

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

We are, therefore, grateful for Section 2.(c) lines 6-8: *"If the defendant is unable to post bail in the amount of \$99 or less, the director of public safety may, in the director's discretion, release the defendant."* Incarcerating the indigent should not be a hallmark of Hawai'i's legal system. Something is very wrong.

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

In summary, Community Alliance on Prisons reluctantly supports this bill, despite its many exceptions, as a step in the right direction. We prefer an independent judiciary to make these determinations. Mahalo for this opportunity to testify.

*The problem with money bail, for those who aren't familiar with it, is that it puts a price tag on freedom. It says to someone who is wealthy that no matter how dangerous you are, you can buy your way out.*

*Chesa Boudin*



Committee on Judiciary and Hawaiian Affairs  
Chair Nakashima, Vice Chair Matayoshi

February 1, 2022, 2 PM Videoconference  
HB1567 — RELATING TO CRIMINAL PRETRIAL REFORM

TESTIMONY

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

Chair Nakashima, Vice Chair Matayoshi, and Committee Members:

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

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

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

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

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

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

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

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

Thank you for the opportunity to submit testimony.



## **HB1567 BAIL REFORM**

### [COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

- Tuesday, Feb 1 2022: 2:00 pm : Videoconference

## **Hawaii Substance Abuse Coalition Comments HB1567:**

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

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

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

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

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

**HB-1567**

Submitted on: 1/30/2022 8:27:09 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Rev Kyle Lovett	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

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

I strongly support this bill.

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, 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 clergyperson, 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 House District 27

Member of Faith Action for Transformative Justice Task Force

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

January 30, 2022

**IN SUPPORT OF HB1567**

Aloha, honorable members of the Legislature –

Thank you for taking time to give this bill a hearing, and for considering the impact it has on our communities in Hawai'i nei.

For nearly fifteen years, I have been purposely listening to and observing people who have been incarcerated within our prison system. After having spent two days visiting the female inmates our state had sent to a federal corrections center in Wheelwright, KY, and making ensuing visits with them upon their return to our Women's Community Correctional Center in Kailua, my eyes have been completely opened to what is faced by people who have broken the law in our society.

Yes, 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?

Economically, how much money are we losing by placing those who cannot post cash bail into prison, and consequently paying estimates of \$200 PER DAY to keep them housed, guarded, and fed? How do we justify this when there already is such overcrowding in our prison population?

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.**

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



**HB-1567**

Submitted on: 1/31/2022 1:37:45 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Evelyn Aczon Hao	Faith Action for Community Equity	Support	No

Comments:

Aloha, Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

Thank you for hearing HB1567 which I *strongly support* because it supports eliminating bail for low level offenses.

Those who cannot afford bail are usually those who cannot afford to miss a day of work. Missing work cuts their already low income, affecting rent and other expenses; being detained detrimentally disrupts the care of their children and creates cracks in their already challenged lives. Incarceration is deeply traumatizing. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their loved ones.

Please put a stop to this unfair part of our system.

Statement Before The  
**HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

Tuesday, February 1, 2022

2:00 PM

Via Video Conference

in consideration of  
**HB 1567**  
**RELATING TO CRIMINAL PRETRIAL REFORM.**Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the House Judiciary & Hawaiian Affairs  
Committee

Common Cause Hawaii comments in support of HB 1567, which (1) eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions 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 unfair policies that do not result in any public gain, unfairly target BIPOC communities, and undermine the promise of a democracy that works for everyone. For these reasons, we are commenting in support of HB 1567. If you have questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii

**HB-1567**

Submitted on: 1/31/2022 10:06:54 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

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

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Rev. Amy C. Wake

Trinity United Methodist Church of Pearl City

Faith Action Member



**Testimony of Faith Action for Community Equity  
IN SUPPORT OF HB1567, Relating to Criminal Pretrial Reform  
To the House of Representatives Committee on Judiciary & Hawaiian Affairs  
February 1, 2022 2:00pm via video conference**

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and Members of the House of Representatives Committee on Judiciary & Hawaiian Affairs:

We at Faith Action for Community Equity believe in the inherent worth and dignity of all. Our members work together to address the root causes of systemic justice challenges facing our communities. We are writing in **SUPPORT** of HB1567 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions. It also requires the Public Safety Department to take steps to provide video conferencing to a defendant who chooses to participate in a bail report interview via videoconference.

Commented [1]: LOVE THIS

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

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](mailto:dfcurran@gmail.com) or (808) 394-8792, and Kylie Akiona at [kylieakiona2@gmail.com](mailto:kylieakiona2@gmail.com) or (808) 347-8672.

Mahalo for this opportunity to testify.

Lee Curran, Makaha

Kylie Akiona, Mililani

**HB-1567**

Submitted on: 1/31/2022 11:27:32 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Mary Paik	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

I am an ordained Minister of Word and Sacrament in the Presbyterian Church (U.S.A.) which has a long history of advocating for alternatives to incarceration. The General Assemblies of 1910 and 1915 issued statements calling for the criminal justice system to work toward restorative justice. The 196th General Assembly (1984) also took up the issue, urging all synods, presbyteries and sessions to study and advocate for alternatives at every level of government. In 2003, the 215th General Assembly spoke strongly against for-profit prisons, saying that there are some things in a humane society that should not be for sale.

And on a hot and humid June day in 2018, the PC(USA) took to the streets of downtown St. Louis during the 223rd General Assembly. With nearly \$50,000 in hand, hundreds marched from the convention center to the detention center to bail out people charged with misdemeanors.

Incarceration is deeply traumatizing and creates inequities in 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, in Hawaii, Native Hawaiians are overrepresented at every level of the criminal legal system. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Rev. Mary Paik

Kailua, HI

## TESTIMONY IN SUPPORT OF HB 1567

TO: Chair Nakashima, Vice-Chair Matayoshi, & Committee Members

FROM: Nikos Leverenz  
Grants & Advancement Manager

DATE: February 1, 2022 (2:00 PM)

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Hawai'i Health & Harm Reduction Center (HHRC) **supports** HB 1567, which would require state and local law enforcement to wear an authorized uniform and use a body-worn video camera when serving a warrant issued by a district court.

Unfortunately, the limits on circumstances where the proposed HRS Section 804 can apply will not address the underlying problem: cycling those from Native Hawaiian, Pasifika, and other under resourced communities in and out of jail, including those on probation. Toward that end, please consider an amendment to delete the proposed section (b)(2)(D), which precludes pre-trial release for those "on probation, parole, or conditional release at the time of arrest."

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

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

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

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

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

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

Thank you for the opportunity to testify on this measure.



**HB-1567**

Submitted on: 1/31/2022 11:46:00 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dwight Morita	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

I am an ordained Minister of Word and Sacrament in the Presbyterian Church (U.S.A.) which has a long history of advocating for alternatives to incarceration. The General Assemblies of 1910 and 1915 issued statements calling for the criminal justice system to work toward restorative justice. The 196th General Assembly (1984) also took up the issue, urging all synods, presbyteries and sessions to study and advocate for alternatives at every level of government. In 2003, the 215th General Assembly spoke strongly against for-profit prisons, saying that there are some things in a humane society that should not be for sale.

And on a hot and humid June day in 2018, the PC(USA) took to the streets of downtown St. Louis during the 223rd General Assembly. With nearly \$50,000 in hand, hundreds marched from the convention center to the detention center to bail out people charged with misdemeanors.

Incarceration is deeply traumatizing and creates inequities in 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, in Hawaii, Native Hawaiians are overrepresented at every level of the criminal legal system. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Rev. Dwight Morita

Kailua, HI



Hawai'i

Committees: House Committee on Judiciary and Hawaiian Affairs  
Hearing Date/Time: Tuesday, February 1, 2022, 2:00 P.M.  
Place: Via videoconference  
Re: *Testimony of the ACLU of Hawai'i with Comments regarding H.B. 1567 Relating to Criminal Pretrial Reform*

Dear Chair Nakashima, Vice Chair Matayoshi and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") offers **comments regarding HB1567** which seeks to reform the criminal pretrial system in Hawai'i.

The ACLU of Hawai'i envisions a criminal pretrial system consistent with the equal protection and due process rights enshrined in our federal and state Constitutions where people are considered innocent until proven guilty, and freedom is not based on the size of a person's bank account.<sup>1</sup> We strive for a dramatic reduction in pretrial detention (95% of people are released before trial), eliminate wealth based detention and combat bias and systemic racism, that disparately impacts Native Hawaiians, Pacific Islanders and African Americans (Blacks) in Hawai'i.<sup>2</sup>

Pretrial incarceration is one of the major drivers of incarceration in Hawai'i jails:

- Currently, roughly 1,114 or forty-two (42%) of all individuals imprisoned in Hawai'i jails and prisons have not been convicted of any crime and are merely awaiting trial, most often because they cannot afford the amount of bail in their case.
- Approximately 59% or 582 people incarcerated at Oahu Community Correctional Center ("OCCC")<sup>3</sup> are presumed innocent, yet are detained pending trial.
- At Maui Community Correctional Center ("MCCC"), 157 out of 322 people, or 49% of the population are pretrial status. COVID is spreading rapidly. As of January 27, 2022, the Department of Public Safety reported 183 active cases for incarcerated persons and four staff. The operational bed capacity is 301 and the design capacity is 209 people which means that public health strategies, including but not limited to social distancing to limit the spread of COVID is impossible.

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<sup>1</sup> 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.

<sup>2</sup> *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).

<sup>3</sup> State of Hawai'i Department of Public Safety, *Weekly Population Report* (January 24, 2022).

- 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.

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

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.

In order to address the substantial and continued overcrowding of facilities used to imprison people accused but not convicted of any crime, 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 crime<sup>4</sup>, 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 8-9: 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.

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<sup>4</sup> 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.

- (4) Page 2-3, Delete page 2 lines 10-21 and page 3 lines 1-20. The broad exemptions contravene the purported purposes of this bill to reduce the pretrial population at overcrowded conditions. At minimum, delete page 2, lines 19-20 (Operating a vehicle under the influence of an intoxicant) and page 3, line 2 (Unauthorized entry into a dwelling).
- (5) Page 3, lines 5-6: 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 7-9: This provision excludes any person with a history of a violent misdemeanor or violent felony offenses with the past eight years. While this may seem reasonable on first pass, a person's actions 8 years ago do 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 10-11: 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 12-13. 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, persons 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 18-20. 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 3- 4. The proposed statute does not provide specific guidance to take "into consideration the defendant's financial ability to afford bail." This provision should be amended to include "In the setting of bail, the following shall apply:
  - i. The Court shall exclude from consideration any income derived from public benefits; including supplemental security income, social security

disability insurance, and temporary assistance for needy families, and any income below the federal poverty level:

- ii. If the person has no income other than public benefits or is a member of a household income below the federal poverty level, the court shall presume that the person is unable to pay any bail amount; and
- iii. If the person's household income, exclusive of any income derived from public benefits, is above the federal poverty level, the court shall consider what the individual could reasonably pay within forty hours of arrest.

- (11) Given that pretrial detention results in the deprivation of liberty, the Court should be required to enter on the records its findings with respect to the detention decision when bail is denied.

In closing, we urge the State Legislature to keep your eyes on the prize and enact comprehensive pretrial reform consistent with emerging case law prohibiting detention on money bail without individualized consideration of alternatives, a growing number of states undertaking statutory reform to address our unfair pretrial system, and the Uniform Pretrial Release and Detention Act (2020) which seeks to limit restrictions on pretrial liberty to those necessary to meet the state's compelling interests during the pretrial phase<sup>5</sup>.

Thank you for the opportunity to testify.

Sincerely,

***Carrie Ann Shirota***

Carrie Ann Shirota

Policy Director

ACLU of Hawai'i

[cshirota@acluhawaii.org](mailto:cshirota@acluhawaii.org)

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

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522.5900  
F: 808.522.5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

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<sup>5</sup> The Uniform Pretrial Release and Detention Act is modeled on existing statutory framework in the federal system, the District of Columbia, New Jersey and New Mexico and the pretrial release standards of the American Bar Association and the National Association of Pretrial Services Agencies.

**HB-1567**

Submitted on: 1/31/2022 1:58:34 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Piula Alailima	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice-Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

Thank you for hearing HB1567 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567.

Incarceration greatly affects the poor economically, namely, Native Hawaiians and Pacific Islanders, in our island community. It is deeply traumatizing and creates inequities in 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. The "least among us", Native Hawaiians and Pacific Islanders are overrepresented at every level of the criminal legal system. The current system favors the elite and wealthy who can afford to post bail (at whatever amount). On the other hand, there is a myriad of racial, economic, and gender disparities that prevent individuals at the lower spectrum from posting bail. Besides, the opportunity to prove one's innocence depends on one's ability to post bail. If one can't afford it, then this right that is guaranteed of all citizens in this country is denied,

Mahalo for this opportunity to testify,

Rev. Piula Alailima  
District 18

Faith Action Member, and pastor of Wesley United Methodist Church, Kahala

**HB-1567**

Submitted on: 1/31/2022 2:11:17 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Brett Kulbis	Honolulu County Republican Party	Oppose	No

Comments:

We OPPOSE. This is basically a "Get Out of Jail Free" bill.

Bail guarantees criminals will show up for court hearing.

Under bond, the Bail Bond company monitor the individual and ensures appearance.

HRS 804 already provides the criteria for bail, which includes taking into consideration the criminals financial situation at a bond hearing.

The real solution is to increase the resources in the pre trial services, i.e. pre trial probation officers.

The Criminal Pre-Trial Task Force in their December 2018 report stated,

"A significant strength of Hawai'i's current pretrial process is that release or detention decisions remain largely a judicial decision. When a defendant is detained and unable to post bail, due process requires a meaningful opportunity to address bail before a judge who will carefully listen and consider all relevant information. A judicial adjudication is much preferred to a process relying on the use of "algorithms" or "bail schedules" to administratively release or detain defendants. While parties may disagree with a judge's decision, the legitimacy of the process is protected by having release and detention issues heard by a neutral decision-maker, after considering evidence, arguments, and ultimately, findings set forth before the parties.

Our district courts have long recognized the importance and value of after-hours judicial release of low-risk defendants on weekends and holidays by assigned duty judges. This demonstrates a willingness to be proactive and develop practices that permit non-violent low risk defendants to be released from police cellblock before being transported to court. The practice permits the release of those who do not pose a significant risk of either non-appearance or committing other crimes. There are also other practices, such as conducting district court arraignments for custody misdemeanor and traffic defendants on Saturday mornings, which permit bail matters to be addressed early in the process.

Our system relies upon money bail largely to the exclusion of other financially-neutral alternatives. While alternatives such as release on one's own recognizance and supervised

release are available, setting a monetary bail amount has been used for decades as the primary means of quantifying a defendant's perceived risks of nonappearance, danger and re-offending."



**HB-1567**

Submitted on: 1/31/2022 4:55:35 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Luanna Peterson	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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 and other marginalized groups are overrepresented at every level of the criminal legal system. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail. With that in mind, there should be a criminal justice model that takes into account these disparities and ensured that all citizens are receiving just and equitable treatment at every step of the trial process.

Mahalo for this opportunity to testify,

Luanna Peterson

Niu Valley

Faith Action Member

Hearing Date: Tuesday, Feb 1, 2022 at 2PM  
Committee on Judicial Affairs and Hawaiian Issues  
Submitted by [Planning for Community LLC](#)

**LATE**

**HB1567 - Relating to Criminal Pretrial Reform**

**To: Chair Nakashima and Vice Chair Matayoshi**

Planning for Community LLC consultants on urban planning and policy making for government agencies, nonprofits, and local businesses. Our work focuses on transportation and affordable housing improvements to create vibrant communities that support all people.

**Planning for Community is submitting testimony in support of HB1567.** Pretrial reform, particularly the end to monetary bail (or “cash bail”), is critically needed in Hawai‘i. Cash bail criminalizes poverty, fuels mass incarceration, and disproportionately affects communities of color. Unnecessary detainment of people who should be assumed innocent until found guilty by the courts has led to an overflowing prison population. The [January 17<sup>th</sup>, 2022 Population Report](#) shows that there are currently 990 pretrial detainees housed in Hawai‘i’s jails and prisons – 33% of the total incarcerated population. With these figures, it is unsurprisingly that four of State’s eight prisons/jails are well over their operational capacity.

This has severe economic impacts for Hawai‘i. Pretrial **detainees currently cost the State on average a staggering \$72,848,160 per year** (\$216,810 per day). This money would be much better spent on desperately needed services to serve vulnerable peoples, such as supportive housing, mental health and substance programs, and social service outreach – all of which have been proven to reduce crime and incarceration.

**Decriminalization of poverty has also contributed to our island’s growing houseless population.** Studies show that more than half of those released from jail or prison have unstable or nonexistent housing. Moreover, houselessness is being increasingly criminalized through policies (such as sit-lie bans) that prohibit sleeping, sitting or lying down in public spaces. In June, 2020 alone, police officers issued 4,277 citations related to houselessness in Honolulu. This is further confirmed by a recent [ACLU report](#), which found that of the 6,591 people who were admitted into Hawai‘i’s jails in 2020, 37.5% (2,474) reported being unsheltered.

**While we support this bill, there are needed amendments.** The bill would have greater impact if it stated there was a presumption of release until proven otherwise. Pretrial reform should not only provide exemptions for a small class of people, but should seek to weed-out the root causes which lead our state’s endemic of pretrial incarceration. This was recently accomplished by [Illinois, who passed comprehensive bail reform in 2021](#). The legislation not only abolished the cash bond system but also provided provisions to end mass pretrial incarceration.

Mahalo for the opportunity to testify.

*Abbey Seitz*  
Planning for Community  
Owner and Manager

**HB-1567**

Submitted on: 1/28/2022 1:02:13 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jack Edward Belsom	Individual	Support	No

Comments:

We hold before the world the ideal of justice for all, but the wealthy have access to recourses that help them navigate the justice system. The poor often cannot make cash bail and must stay in jail. There can be little doubt that this is a practice that costs the state approximately \$200 per day for each person held while waiting for trial. There also is ample evidence that our jails are seriously overcrowded.

Finding alternatives to cash bail for all but the most serious of crimes would demonstrate that we practice equal justice for all. Under the current system, those who cannot make bail and has not been convicted of anything, including a misdemeanor, are treated just like those who have been found guilty because they remain incarcerated. Prolonged incarceration may cause those held to lose jobs and to be cut off from their usual sources of community support.

I urge you to find ways to make the Hawaii Justice System one that provides an experience of justice for wealthy and poor.

Mahalo,

Jack Belsom

**HB-1567**

Submitted on: 1/28/2022 8:36:17 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Laura Young	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

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,

Laura Young

Punchbowl, District 25

**HB-1567**

Submitted on: 1/28/2022 10:04:43 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Linda Rich	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

My name is Linda L. Rich and I **strongly support HB1567**, which eliminates the use of monetary bail and requires defendants to be released on their own recognizance.

Incarceration of low level offenders because of their inability to pay discriminates against low income citizens, is deeply traumatizing and creates inequities in housing, education, employment, and child custody. Pre-trial detention has an unnecessary damaging effect on the incarcerated person's life and the lives of their loved ones. Additionally, Native Hawaiians are overrepresented at every level of the criminal legal system. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Linda L. Rich

[richl001@hawaii.rr.com](mailto:richl001@hawaii.rr.com)

3721 Kanaina Ave, Honolulu, 96815

**HB-1567**

Submitted on: 1/29/2022 6:00:52 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

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

Comments:

Aloha e Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

I don't believe we need to have been incarcerated or know someone incarcerated to realize how deeply traumatizing it can be to be locked away and disconnected from the community. Incarceration creates and exacerbates inequities in 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 just because they don't have enough money to afford bail.

It is mind-boggling to me that the incarceration rates in Hawai'i stand out internationally, with Native Hawaiians overrepresented at every level of the criminal legal system. We know it *shouldn't* be this way and thankfully it doesn't have to be this way. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail, rendering the cash bail system ineffective and harmful. With all the money that would be saved from NOT keeping people in jail, we could invest more in our communities—we deserve it.

Mahalo for the opportunity to testify!

Kristen Young  
Honolulu resident, District 25  
*Faith Action Member*

**HB-1567**

Submitted on: 1/29/2022 10:42:23 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
David	Individual	Support	No

Comments:

To Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee:

I write to encourage a positive consideration of HB1567 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance where the public safety is not endangered..

There are over \$14 billion in bonds issued annually in the US with the industry pocketing around \$2 billion in profits. While for-profit bail bonds line the pockets of CEOs, both the defendant and the courts are victimized by a failed system. The defendant by further stress and the courts by partnership with a predatory industry.

I urge the State of Hawai'i legislature favorably consider bail bond reform.

Rev. Dr. David K. Popham

**HB-1567**

Submitted on: 1/29/2022 11:23:24 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dawn Young	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

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, Honolulu resident, District 25



**HB-1567**

Submitted on: 1/29/2022 1:05:18 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dr.David Davis	Individual	Support	No

Comments:

I support SB1567 to eliminate cash bill because it discriminates against the disadvantaged and often results in grievous harm to an individual and his or her family while trial is awaited during an incarceration. During that time employment can be lost and families can be put in disarray. It can also force individuals into an onerous plea bargaining situation to just shorten the process. Eliminating this requirement for cash bail would also relieve prison crowding and prevent an individuals from experiencing unpleasant and sometimes damaging environment of incarceration.

**HB-1567**

Submitted on: 1/29/2022 3:38:20 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Carla Allison	Individual	Support	Yes

Comments:

The US Constitution says we are innocent until proven guilty, yet we in HI continue to use the monetary bail system to criminalize the under resourced...locking folks away who are not yet guilty of a crime...simply because they cannot afford bail.

And we do this at great expense, both to the well being of our citizens and our state budget.

Almost half the people in OCCC are there because they cannot afford bail. The January 2022 Population Report shows we/Hawaii spent over \$200,000 per day housing pretrial detainees. We are using our jails for housing and substitutes for mental health care facilities at a cost of over \$72 million a year. Imagine what that money could buy in services to prevent the need for incarceration.

While sitting in jail awaiting justice, people lose their jobs. No longer able to meet financial obligations or care for their families, their health deteriorates, their financial situation worsens, and they become more vulnerable to committing crimes. Studies show that putting people in jail, even for only a few days, increases the likelihood of lasting involvement in our carceral system.

Let us stop using the monetary bail system to allow people accused of low-level and non-violent offenses to languish in jail, simply due to their inability to afford bail. Many states have already made the change, reducing jail populations and without a rise in crime.

Please support HB1567.

Thank you.

**HB-1567**

Submitted on: 1/29/2022 10:14:10 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Brandon Duran	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice-Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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. There is a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Brandon Duran

Manoa, Honolulu  
Faith Action Member

**HB-1567**

Submitted on: 1/29/2022 10:54:27 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Matthew Geyer	Individual	Support	Yes

Comments:

Mahalo for your support of HB1567, Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

This desperately needed legislation will reduce the population in our overcrowded jail and hopefully reduce or eliminate the need to send prisoners out of state.

It will also reduce the amount of time the state will be unjustly detaining innocents.

It will level the field between people who can afford to pay bail and people who cannot, as people who cannot afford bail and are detained are more likely to be found guilty, whether they are truly guilty or not.

Incarceration is deeply traumatizing and creates inequities in 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. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo again for your support of this measure

Matt Geyer

**HB-1567**

Submitted on: 1/29/2022 11:00:25 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Christy MacPherson	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

I am in strong support of HB 1567. There are so many reasons to eliminate cash bail. In the name of racial and gender equity as well as economic justice, I hope you will pass this piece of legislation that is long overdue.

Mahalo.

**HB-1567**

Submitted on: 1/30/2022 10:28:16 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

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

Comments:

To: COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

From: Wendy Gibson-Viviani RN (Kailua)

Dear Rep. Mark M. Nakashima, Chair, Rep. Scot Z. Matayoshi, Vice Chair and Members of the Committee,

Please support HB1567 and reform our cash bail system. In a 2021 Civil Beat article **Source:** <https://www.civilbeat.org/2021/02/restore-justice-end-the-bail-system/>, author Robert Merce points out:

*The money bail system was designed to ensure that those charged with a crime **would show up for trial and would pose no threat to society.** In practice, money bail now ensures that the **indigent go to jail while the affluent remain free***

*Studies have also shown that the **inequities** of the cash bail system in Hawaii fall disproportionately on **Native Hawaiians and Pacific Islanders** who are more likely to be **arrested, detained and unable to afford bail.***

*And that . . . **the District of Columbia significantly reduced its reliance on cash bail** by adopting a strong presumption of release, strict timelines for assessing defendants after arrest and procedural protections for preventative detention. Under the new system, **94% of the people who are arrested in the District are released without bail, and of that group 91% make their scheduled court dates and 98% are not arrested for a violent crime** while awaiting trial.*

Please help reform Hawaii's criminal justice system by passing HB1567. Thank you for your consideration of this important matter.

Wendy Gibson-Viviani RN/BSN

Kailua

Oahu resident for 29 years.

**HB-1567**

Submitted on: 1/30/2022 12:02:05 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
donn viviani	Individual	Support	No

Comments:

My wife and I live in Kailua and have extended family in Punchbowl and Niu Valley. None of us have ever had to post bail. But others less fortunate than us have had to.

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. mahalo Donn Viviani

**HB-1567**

Submitted on: 1/30/2022 12:34:17 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Carolyn Eaton	Individual	Support	Yes

Comments:

Aloha, Chair Nakashima, Vice Chair Matayoshi and members of the Committee. My name is Carolyn Eaton and I support this bill. As a State, we must turn away from the indiscriminate use of cash bail for individuals arrested for low level offenses and non-violent violations of law. The practice is being replaced in other states which reviewed research identifying the harms of cash bail over-reliance. The cost to the State in housing and board for these individuals imprisoned before trial is significant, but the harm we do to ourselves in confining the accused before trial is greater...it clouds our consciences and tears the fabric of our communities. Please advance this measure.



**HB-1567**

Submitted on: 1/30/2022 1:01:54 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Anne Leake	Individual	Support	No

Comments:

I am in support of HB1567 because it creates equity between the rich and the poor to avoid pre-trial incarceration for poor people who cannot make bail. For minor legal infractions when the public is not endangered by the defendant, this is a way to save money in the juducual system and prevent trauma caused by incarceration for the presumed innocent. Mahalo.

**HB-1567**

Submitted on: 1/30/2022 4:22:24 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Marya Grambs	Individual	Support	No

Comments:

Eliminating cash bail for petty misdemeanors and other minor infractions merely means that low income people will not continue to be unfairly penalized. Pre trial detention has a huge negative impact on people's lives. Racial, economic, and gender disparities play a major role in determining why some people cannot make bail and others can. It's simply a matter of fairness to discontinue this onerous financial penalty.

## Written Testimony on HB 1567

As one with 30 plus years as a criminal defense attorney I submit this testimony supporting HB 1567. HB 1567 addresses the inequity suffered by pretrial detainees who could not afford cash bail for low level and non-violent offenses. A 2018 ACLU study out that 50% of the accused do not post bail because they cannot afford to do so. 70% of those incarcerated will change their pleas from not guilty to guilty during the time of their incarceration.

It is much harder to accord the accused the full range of constitutional rights while in prison. The lack of privacy even during attorney client conversations, the non segregation of violent convicted felons from pre trial detainees and the separation from family and other support groups make a guilty plea attractive irrespective of culpability especially if such pleas are a ticket to freedom.

The implementation of HB 1567 will also effect the present overcrowding and problems associated with such at OCCC. Such overcrowding exacerbates the problems that occur at prison such as violence, intimidation and bullying. To some degree it will also make prison a safer place to work at, especially for the correctional officers who have at times felt the brunt of policy that has resulted in such overcrowding.

HB 1567 also has risk assessment tools that will look at people charged with offenses to ensure the safety and well being of the community. This is not a new idea as the Intake Service Center as been doing such assessments for years. However the risk assessment tools provided for in HB 1567 provides additional resources and training to assist in such assessment.

I would also advocate for follow up research on the effects on the community after HB 1567 is implemented. I think that such a study will show greater equity and justice for those accused, especially when identified by race and socio economic status.

Mahalo for the opportunity to provide this testimony. The benefits of HB 1567 will be to reduce the number of pre-trial detainees, enable the accessed to retain family, work and community ties and lessen the present overcrowding caused by pre trial detainees.

Malama pono, clay kimoto

**HB-1567**

Submitted on: 1/30/2022 6:55:05 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

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

Comments:

**For non-violent offenses, I wish there was a presumption of release until proven otherwise. I hate to see poor people frightened into admitting to being criminals just because they really can't afford to come up with bail.**

**I was appalled to learn that the 1.17.22 Population Report shows 990 pretrial detainees - costing \$216,810 a day; \$1,517,670 a week; \$6,070,680 a month and a whopping \$72,848,160 a year!**

**With just a fraction of that money Hawai`i could provide useful services to some of our most vulnerable people instead of using jails as very expensive housing paid for by we taxpayers. The rest of the savings could reduce our taxes load!**

**The comprehensive Illinois bail bill establishes a data collection system that would allow the state to make evidence-based, fact-based decisions about what should happen and what modifications we may need to make down the road. This act is one of the most comprehensive pieces of legislation that not only abolishes the cash bond system but also aims to end mass pretrial incarceration. One GREAT THING about this bill on page 4 gives the DPS Director discretion to release a defendant who is unable to post bail of \$99 or less. It makes so much sense to me, and I hope to you, too. I'd like to see us do as well.**

**HB-1567**

Submitted on: 1/30/2022 7:13:21 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Susan Yamane-Carpenter	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Susan Yamane-Carpenter  
Waianae, District 44

**HB-1567**

Submitted on: 1/30/2022 9:12:58 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Calvin Foo Pham	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

I support HB 1567 because people should not be imprisoned over an inability to pay bail prior to a trial. The cost of cash bail for people accused but not convicted of crimes has an impact on people by disrupting their lives, employment, relationships, and emotional wellbeing if they cannot pay and must remain imprisoned.

Foo Pham  
House District 32  
Faith Action Member

**HB-1567**

Submitted on: 1/30/2022 10:29:35 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Logan Bessara	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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.

Mahalo for this opportunity to testify,

Logan Bessara

(96822)

**HB-1567**

Submitted on: 1/30/2022 10:53:55 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Makaiwa kanui	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Makaiwa Kanui



**HB-1567**

Submitted on: 1/31/2022 9:23:22 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Elizabeth Nelson	Individual	Support	No

Comments:

Aloha,

I would appreciate your support of this very important bill. I have heard from people how being incarcerated before even being convicted was so difficult on them, their families, losing jobs, and their homes. I strongly support this bill and think having people out of jail where they can continue to earn a living and be with their families is such a better way of doing things. And it seems laws like this do particularly affect lower income people who so desperately need their wages and homes.

Thank you so much.

Elizabeth Nelson

Temple Valley

**HB-1567**

Submitted on: 1/31/2022 10:57:08 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ms. Jill Rabinov	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

Thank you for hearing HB1567, which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly support HB1567!

There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail. For example, Native Hawaiians are overrepresented at every level of the criminal legal system, including pre-trial detention. Due process is the only command mentioned twice in the U.S. Constitution (5th Amendment & 14th Amendment). When pretrial detainees are coerced into accepting plea bargains (irrespective as to whether or not they actually committed a crime), they are "deprived of life, liberty or property without due process of law." The United States and the Philippines are the only two countries in the world with a legalized for-profit bail bond industry. Incarceration is deeply traumatizing and creates inequities in housing, education, employment and child custody. Pre-trial detention permanently derails the trajectory of an incarcerated person's life and the lives of their families and loved ones.

Mahalo for this opportunity to testify in support of HB1567.

Sincerely,

Jill Rabinov

District 50

**HB-1567**

Submitted on: 1/31/2022 11:37:44 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ashleigh Loa	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee:

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

Incarceration is deeply traumatizing and creates inequities in 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. There is a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,  
Ashleigh Loa  
District 35  
Faith Action Member

**HB-1567**

Submitted on: 1/31/2022 11:41:37 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Nanea Lo	Individual	Support	No

Comments:

Hello Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

As a Kanaka Maoli I feel like this needs to be addressed.

me ke aloha 'āina,

Nanea Lo

Mō'ili'ili District 1

**HB-1567**

Submitted on: 1/31/2022 11:58:25 AM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Cassandra Chee	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Incarceration is deeply traumatizing and creates inequities in 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. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

Mahalo for this opportunity to testify,

Cassandra Chee, District 29

**HB-1567**

Submitted on: 1/31/2022 12:01:47 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

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

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and Members of the House of Representatives Committee on Judiciary & Hawaiian Affairs.

My name is Lee Curran and I am testifying both as an individual who is a co-facilitator of the Transformative Justice Task Force which is part of the non-profit grass roots faith-based organization, Faith Action for Community Equity, (FACE) I am testifying in **SUPPORT** of HB1567.

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

I believe that 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 generational trauma which the cash bail system perpetuates. This can be done by diverting monies currently used to house people in pre-trial detention and spend it in the aforementioned way.

I am grateful for this opportunity to testify in support of HB1567 and ask 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**

Submitted on: 1/31/2022 12:08:31 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
kevin landers	Individual	Comments	No

Comments:

Aloha

This measure couldn't be pared down any further. It is literally the bare minimum of common decency, justice, intellectual honesty around the abomination that money bail is. You should pass it quickly and move on to the work of improving upon it.

Good luck,

Kevin

**HB-1567**

Submitted on: 1/31/2022 12:45:12 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Susan Gorman-Chang	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

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

Washington D.C. abolished cash bail in 1992. What happened? In 2017, for instance, 94% of all people were arrested without using cash bail, 88% made every court appearance, and 85% were never arrested for any criminal offense subsequent.

New Jersey eliminated cash bail for low level offenders with no flight risk on January 1, 2017. A New Jersey study done years before the cash bail system elimination for low level offenders found about 12% of jail inmates were there because they could not come up with the cash to post bail.

Incarceration is deeply traumatizing and creates inequities in 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 criminal legal system. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail. Mahalo for this opportunity to testify.

Susan Gorman-Chang

Ewa Beach, HI

Member of Faith Action for Community Equity



**HB-1567**

Submitted on: 1/31/2022 1:10:23 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Diana Bethel	Individual	Support	No

Comments:

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

I am writing in strong support of HB 1567 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions. It also requires PSD to take steps to provide videoconferencing to a defendant who chooses to participate in a bail report interview via videoconference.

HB 1567 will be a major reform that will help reduce the overcrowding of our carceral institutions. There is no point in incarcerating people whose traffic offenses, violations, nonviolent petty misdemeanors, or class C felony offenses (with exceptions) present no danger to the public. If they are detained because they cannot post bail, they could be in prison for weeks or months until their hearing or trial. According to a January 17, 2022, report on Hawaii's inmate population numbers, we have 990 pretrial detainees. At a cost of \$219 per day, per individual, we are paying \$216,810 for 990 people per day, \$1,517,670 per week, and \$72,848,160 per year.

This is an unacceptable waste of taxpayer money that could be used more effectively to address the many other problems the State is facing. There are more cost-effective, evidence-based ways to manage our criminal justice institutions and reduce recidivism, if only decision makers would avail themselves of successful examples from others states and summon the political will to make needed reforms.

Please support HB 1567.

Mahalo,

Diana Bethel, Honolulu

**HB-1567**

Submitted on: 1/31/2022 1:22:36 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
nicole rhton	Individual	Support	No

Comments:

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

I strongly support HB 1567, and you should to. Incarceration and the prison industrial complex disproportionately impact Kanaka Maoli, and poor folks. Pre-trial detention especially is cruel and unnecessary. Stop racist and class disparities, take the data seriously, and please do more with your elected power and responsibility to represent and protect those targeted by the system.

Mahalo for this opportunity to testify,

nicole

**Testimony IN SUPPORT OF HB1567 Relating to Criminal Pretrial Reform  
To the House of Representatives Committee on Judiciary & Hawaiian Affairs  
February 1, 2022 2:00pm via video conference**

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and Members of the House of Representatives Committee on Judiciary & Hawaiian Affairs,

I am writing in **SUPPORT** of HB1567 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions. It also requires the Public Safety Department to take steps to provide video conferencing to a defendant who chooses to participate in a bail report interview via videoconference.

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 according to the “presumption of innocence” as determined by past case precedents (*Taylor v. Kentucky*). Additionally, offering the use of videoconferencing would meet a much needed “access need” for people who do not have access to technology or other resources. This will help to ensure the defendant’s appearance in court, and is paramount to an effective justice system.

The monetary bail system criminalizes people based on their socioeconomic status. Unsurprisingly, Kānaka Maoli are overrepresented at **every** level of the criminal legal system including pre-trial detention due to the detrimental impact of colonization. According to the American Civil Liberties Union (ACLU) of Hawai‘i, approximately half of the detainees in our local jails have not been convicted of a crime. In other words, they are incarcerated because they lack the disposable income required to post bail. Eliminating cash bail will ensure that people have access to the family and community support they need. It is an investment in our communities where opportunities for growth are paramount to a well-functioning society.

Mahalo for considering our community,

Soon Kim  
House District 32

**Testimony IN SUPPORT OF HB1567, Relating to Criminal Pretrial Reform  
To the House of Representatives Committee on Judiciary & Hawaiian Affairs  
February 1, 2022 2:00pm HST via video conference**

Aloha Chair Mark Nakashima, Vice Chair Scot Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee,

Mahalo for hearing HB1567 which eliminates the use of monetary bail and requires defendants to be released on their own recognizance. I strongly **SUPPORT** HB1567.

Incarceration is deeply traumatizing and creates inequities in 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, Kānaka Maoli are overrepresented at every level of the criminal legal system, including pre-trial detention. There are a myriad of racial, economic, and gender disparities that prevent individuals from posting bail.

According to the American Civil Liberties Union (ACLU) of Hawai'i, approximately half of the detainees in our local jails have not been convicted of a crime. In other words, they are incarcerated because they lack the disposable income required to post bail. Eliminating cash bail will ensure that people have access to the family and community support they need. It is an investment in our communities where opportunities for growth are paramount to a well-functioning society.

Mahalo for this opportunity to testify,

Soon Kim  
House District 32

**HB-1567**

Submitted on: 1/31/2022 1:59:56 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kelsey Mills	Individual	Support	No

Comments:

The cash bail system criminalizes poverty, destroys lives, and unjustly detains those who cannot afford to pay. Incarceration is deeply traumatizing and creates inequities in 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. I strongly support HB1567.

**HB-1567**

Submitted on: 1/31/2022 2:00:42 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Barbara Polk	Individual	Support	No

Comments:

Please pass this bill. People who are pre-trial are NOT-GUILTY under the US Constitution. Holding them in jail for any reason other than danger to the community or repeated failure to appear in court is basically unconstitutional. Setting bail that a person cannot pay is also illegal under the US Constitution. Please put our criminal justice system on the right track by passing this bill.

**HB-1567**

Submitted on: 1/31/2022 8:13:22 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Grace Bezilla	Individual	Support	No

Comments:

‘A‘ole e ho‘olilo ka moku‘āina ma ka ho‘opa‘ahao ma muli o ka hiki ‘ole i kekahi ke uku pēla inā he hewa mua i ho‘ēha ‘ole ai iā ha‘i.

**LATE**

**HB-1567**

Submitted on: 2/1/2022 1:14:29 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Arjuna	Individual	Support	No

Comments:

**We should end cash bail, cashbail criminalizes poverty.**

**Pretrial detainees currently cost the State on average a staggering \$72,848,160 per year (\$216,810 per day). This money would be much better spent on desperately needed services to serve vulnerable peoples, such as supportive housing, mental health and substance programs, and social service outreach – all of which have been proven to reduce crime and incarceration.**

**Decriminalization of poverty has also contributed to our island’s growing houseless population. Studies show that more than half of those released from jail or prison have unstable or nonexistent housing. Moreover, houselessness is being increasingly criminalized through policies (such as sit-lie bans) that prohibit sleeping, sitting or lying down in public spaces. In June, 2020 alone, police officers issued 4,277 citations related to houselessness in Honolulu.**