



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

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

Tuesday, February 23, 2021, 9:45 a.m.
State Capitol
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by:

Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: Senate Bill No. 1244, S.D. 1, Relating to the Modernization of Criminal Justice.

Purpose: Defines serious crime as murder or attempted murder in the first degree or class A felony, or a class B or C felony involving violence of threat or violence. Allows the court to determine if bail may be denied where the charge is for a serious crime. Requires the judicial council to appoint a committee to review and recommend changes to the Hawai'i penal code. Takes effect 7/1/25. (SD1)

Judiciary's Position:

The Judiciary provides the following comments on part III of this measure, which pertains to a review of the Hawai'i penal code with recommendations to the Legislature for statutory revisions, with particular attention to certain enumerated issues.

1. Reviews of the penal code are large undertakings that require extensive time commitments by dozens of key stakeholders across the state, and since 1972 have occurred approximately every ten years. Just five years ago, in 2016, the Legislature

considered recommendations from a 29-member penal code review committee, and passed the 137-page Act 231 (SLH 2016) (HB2561, HD1, SD1, CD1).

2. Under the current challenges of an ongoing pandemic, and in particular the extraordinary workload and backlog of criminal matters across the state (e.g., well over 2,000 pending criminal jury trials statewide), the several months between when this measure may become law and the deadline of twenty days before the 2022 legislative session is not practicable to complete the work described in this measure-- a complete and thorough report, findings, recommendations, and proposed legislation. Completion by twenty days before the 2023 legislative session would be practicable.

Thank you for the opportunity to testify on this measure.

STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai'i to the Senate Committee on the Judiciary**

February 23, 2021

S.B. No. 1244, SD1: RELATING TO THE MODERNIZATION OF CRIMINAL JUSTICE.

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

The Office of the Public Defender (“OPD”) supports the intention of the Bill but strongly opposes the removal of key components of the **original S.B. 1244** referring to eliminating the use of money bail for low level, non-violent offenses and creating rebuttable presumptions. Without this language, S.B. 1244 is vitiated and cannot fully realize the Legislature’s own expressed intention of reducing the jail populations. Hence the OPD vigorously recommends restoring the original language from S.B. 1244. The OPD further offers comment to Part II and recommends expanding the list of possible members for a Penal Code Review Committee contemplated in Part III.

The Pretrial Task Force sought to create a more efficient pretrial system and to reduce the State’s pretrial population without sacrificing public safety. Currently, the jail and prison populations have not been reduced. The jail and prison system continues to remain above operational and design capacity.¹ Hence, the Oversight Commission has endorsed the Pretrial Task Force recommendations and has since introduced **SB 1260**, those recommendations reflected in the former S.B. 1244.

S.B 1244, SD 1 is a clear regression from “modernization” by leaving out Pretrial Task Force Recommendations 20 and 21.

Recommendation 20: Eliminate the use of money bail and require defendants to be release on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses with certain exceptions.

Recommendation 21: Create rebuttable presumptions regarding both release and detention. This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many **low-risk** defendants will be released, while those who pose significant risks of non-appearance, re-offending and violence will be detained.²

¹ Hawaii Correctional System Oversight Commission Annual Report December 2020, <https://ag.hawaii.gov/wp-content/uploads/2021/01/HCSOC-Final-Report.pdf>

² Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i “HCR 134” (December 2018), <https://19of32x2y133s8o4xza0gf14-wpengine.netdna->

These critical pieces of the pretrial system were sorely missing in Act 179. Implementing just these two recommendations under the original S.B. 1244, will enhance the system and reduce the population without sacrificing public safety. The **original** SB1244 creates less reliance on money bail and establishes a rebuttable presumption of release and levels the playing field. This proposal is similar successful systems to those implemented in other parts of the country, such as New Jersey, New Mexico, Washington D.C. and even the federal government, have eliminated money bail or reduced their reliance upon it.

As currently written, SB 1244 SD 1 will have the opposite effect by making it easier to detain individuals. Specifically, in Part II, removing language “involving violence against a person” from the requirements for rebuttable presumptions involving serious risk determinations will result in making it harder for people to make bail. Furthermore, “serious risk” should be more clearly defined as being “significant risk of danger” under 804-(3)(b).

The Office of the Public Defender (“OPD”) supports abolishing money bail, ending mandatory sentencing, decriminalizing drug offenses, and expanding sentencing options and alternatives to incarceration in our state.

Hawai‘i should abolish money bail as a condition of release.³ Eliminating money bail for low-risk offenders is a good place to start. Money bail is a poor tool for achieving pretrial justice. The money bail system incarcerates poor people because they are poor, not because they have been convicted of a crime and not because they are a danger to others. Meanwhile, that same system allows dangerous but wealthy people to post their bond and be released.

The United States Supreme Court affirmed over thirty years ago that “[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”⁴ 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.⁵

ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf. See, pp 91 – 93, (citing Lisa Pilnick, A Framework for Pretrial Justice: Essential elements of an Effective Pretrial System and Agency, National Institute of Corrections (Feb. 2017) at 10.)

See also. Harvard Guide to Bail Reform: A Guide for State and Policy Makers (2019) <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9a804d1d-f9be-e0f0-b7cd-cf487ec70339&forceDialog=0>

³ Harvard Guide to Bail Reform: A Guide for State and Policy Makers (2019) at pages 12-13.

⁴ Salerno v. United States, 481 U.S. 739, 755 (1987).

⁵ ACLU Hawai‘i, “As Much Justice As You Can Afford” (2018) at 23, <https://www.acluhi.org/sites/default/files/2018/01/aclu-of-hawaii-bail-report.pdf>

The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail. But the Hawai‘i Criminal Pretrial Reform 134 Task Force Report chaired by judge (now U.S. magistrate) Rom A. Trader stated, “There is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody.”⁶ 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.⁷ On February 1, 2021, 883 people were incarcerated throughout the State even though they have not been convicted of a crime. Feeding and caring for an incarcerated person costs \$198 a day in Hawai‘i.⁸ Pre-COVID19 the State was spending approximately \$209,000 a day (\$76 million annually) of taxpayer dollars to incarcerate more than 1,000 people statewide simply because they were too poor to afford bail.⁹ 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.¹⁰

These costs come with trade-offs in other state spending priorities like education and healthcare. Between 1987 and 2007, corrections budgets rose by 127 percent while higher education funding increased by only 21 percent forcing the cost of attending higher education to increase each year. The cost of attending the University of Hawai‘i at Mānoa for the 2019-2020 school year, including tuition, room, board, books, supplies, and personal expenses, was \$30,000.¹¹ 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.

⁶ 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.

⁷ 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.

⁸ 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>.

⁹ HCR 85 Report at 64.

¹⁰ HCR 85 Report at 65.

¹¹ 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/>.

Beyond the wasteful money, pretrial incarceration leads to devastating collateral consequences that can impact individuals for lifetime and families for generations. People who cannot make bail stand to lose their job and with that the money that pays the rent and utilities and puts food on the table for their family. They may lose their house, their car, their health insurance, and after maxing out on their credit cards the family may end up deep in debt or even homeless. Holding people in jail who do not pose a significant safety risk of danger also exacerbates overcrowding, creates unsafe conditions, places a huge financial burden on taxpayers, and compromises public safety.¹² It is not surprising, therefore, that extended pretrial detention is correlated to longer jail and prison terms, increased rates of recidivism, and smaller chance that defendants will return to court, according to the Laura and John Arnold Foundation.

Our current bail practice in Hawai‘i is inequitable and unjust and operates to extract guilty pleas from the most vulnerable people in our community and not with public safety in mind. As attorneys assigned to represent indigent clients, many of whom are in jail because they cannot afford to make bail; we have seen firsthand that some innocent people plead guilty just to get out jail, and people are more likely to be acquitted if they pay bail, in part because they are less likely to take plea deals just to get out of jail.

For these reasons, the OPD supports the reversion to **the original Bill under SB 1244**, which eliminates the use of monetary bail for low level, non-violent offenses and creates a rebuttable presumption regarding both release and detention for certain offenses and specific circumstances, is a step in the right direction.

OPD strongly supports Part III of the Act to review the Hawai‘i Penal Code to examine areas of concern and that improve the system. Mandatory sentencing provisions and drug offenses are severely unfair to people living in poverty, with mental health and substance use disorders, women, and Native Hawaiians, Pacific Islanders, and Black communities and fail to make us safer.¹³

The OPD would further recommend a committee to include a more diverse group which would include, but not limited to, representation from the Oversight Commission, the American Civil Liberties Union, a representative from a substance abuse treatment program, and a professor from the University of Hawaii, Thompson School of Social Work and Public Health.

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. The original Bill is a step in the right direction to eliminate money bail for low risk, non-violent offenders and establishing a

¹² National Institute of Corrections, “The Hidden Costs of Pretrial Detention” (2018) at 4, https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf (Finding the longer low-risk defendants are detained, the more likely they are to commit another low-level offense).

¹³ ACLU Hawai‘i, “Blueprint for Smart Justice Hawai‘i” (2019), <https://50stateblueprint.aclu.org/states/hawaii/>.

committee to review and recommend changes to the Hawai'i Penal Code to create a justice system that treats everyone equally and makes us all safer.

We thank you for the opportunity to comment on S.B. No. 1244, SD 1.

SB1244 SD1
RELATING TO THE PENAL CODE
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo

Pepeluali 23, 2021

9:45 a.m.

Room 325

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB1244 SD1, which would 1) amend HRS Section 804-3 to expand the definition of serious crimes and the circumstances under which judges could deny bail; and 2) require the judicial council to convene an advisory committee to review the penal code for potential areas for reform, to focus specifically on mandatory sentencing provisions, drug offense decriminalization, and sentencing alternatives. To further the state’s vision to improve public safety while reducing unnecessary pretrial incarceration and its cost to taxpayers, **OHA respectfully recommends that 1) Parts I and II of this measure be reverted to their original form, and 2) that Part III be amended to ensure an appropriate level of expertise and representation on the proposed Penal Code Review Committee.**

SB1244 SD1, as drafted, will not achieve its stated purpose; instead, it may represent a regressive step away from current efforts to improve our pretrial system, and may likely increase the burdens of pretrial detention on our pa‘ahao and our criminal justice system. Notably, the preamble of this measure remarks upon the failure of Act 179 (Regular Session 2019) to reduce the incarcerated pretrial population as envisioned by the HCR 134 Task Force on Pretrial Reform, and calls for more aggressive reform than contemplated before. However, the amendments to HRS Section 804-3, as proposed in SB1244 SD1 Part II, Section 2, would be a regressive step away from the preamble’s stated goal. As drafted, this measure would expand the definition of “serious crimes,” and would increase the number of cases in which a rebuttable presumption of a serious risk of danger or future commission of crime would arise. These amendments would only increase the number of cases where bail may be denied, and thereby increase, rather than decrease, our pretrial incarcerated population – contrary to the recommendations and goals of the HCR134 Task Force as well as this measure’s own preamble.

The original draft of SB1244 would best address unnecessary pretrial incarceration rates, and align with the recommendations of the HCR 134 Pretrial Reform Task Force. The HCR134 Task Force was composed of judges and attorneys from across the state who had demonstrable expertise in criminal practice and procedure. In its 2018 report, the Task Force recommended specific and comprehensive amendments to relevant HRS Chapters that, if adopted together, would have improved public safety while reducing unnecessary pretrial incarceration. The most critical components of this package of recommendations would have mostly eliminated the use of cash bail for low-level, non-violent offenses, and would have established new presumptions and procedural requirements for bail determinations for higher level, non-violent, offenses.¹ Unfortunately these key recommendations were not incorporated into Act 179 (2019) along with the rest of the HCR134 Task Force recommendations. The Hawai‘i State Correctional System Oversight Commission, also composed of experts on our criminal justice system, has since endorsed the HCR134 Task Force’s key recommendations, which are reflected in SB1260, and were formerly reflected in the original draft of this bill.

¹ See Recommendations 20 and 21, HAWAI‘I CRIMINAL PRETRIAL REFORM: RECOMMENDATIONS OF THE CRIMINAL PRETRIAL TASK FORCE TO THE THIRTIETH LEGISLATURE OF THE STATE OF HAWAI‘I (Dec. 2018), available at https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf.

Therefore, **OHA urges this Committee to restore Parts I and II of SB1244 SD1 to their original form in SB1244, as introduced.**

OHA does support a reconvening of the Penal Code Review Committee (PCRC), especially with specific guidance to consider potential reforms to mandatory sentencing provisions, drug offense decriminalization, and sentencing alternatives. However, to maximize its effectiveness, the contemplated 2021 PCRC should be provided a more complete membership with additional expertise and perspectives. **It is critical that the PCRC's membership be provided with a *balanced* set of key experts and stakeholders who can provide the necessary expertise on our penal code and systems.**

Therefore, OHA recommends amending Part III to expand the list of required representatives to the PCRC. OHA offers the following potential candidates, to enable the PCRC to meet its important mandate:

- A representative of the Hawai'i State Correctional System Oversight Commission;
- Representatives of community organizations focused on reentry or community-based sentencing alternatives;
- A representative with expertise in Native Hawaiian culturally based healing modalities;
- A representative of the family reunification working group;
- A representative of a law enforcement assisted diversion program;
- A representative of a drug treatment program;
- A representative of a drug policy forum or a drug policy expert;
- A representative of the Alcohol and Drug Addiction Division or the Adult Mental Health Division of the Department of Health;
- A criminal law professor at the University of Hawai'i William S. Richardson School of Law; and
- A professor of criminology at the University of Hawai'i.

Mahalo piha for the opportunity to testify on this measure.

Charlotte A. Carter-Yamauchi
Director

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First Assistant

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

SB1244 SD1

RELATING TO THE MODERNIZATION OF CRIMINAL JUSTICE

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Judiciary

Tuesday, February 23, 2021, 9:45 a.m.
Via Video Conference

Chair Rhoads and Members of the Committee:

I am Charlotte Carter-Yamauchi, Director of the Legislative Reference Bureau (LRB). Thank you for this opportunity to provide written **comments** on S.B. No. 1244, S.D. 1, Relating to the Modernization of Criminal Justice.

The purpose of this measure is to:

- (1) Define "serious crime" as murder or attempted murder in the first degree or a class A felony, or a class B or C felony involving violence or threat of violence to any person;
- (2) Allow the court to determine if bail may be denied where the charge is for a serious crime;
- (3) Clarify the elements required when a court invokes a rebuttable presumption to deny bail in certain cases;
- (4) Require the Judicial Council to appoint a committee to review the Hawaii Penal Code and recommend amendments that the committee concludes are fair and proportionate to the crime committed, with particular attention to:
 - (A) Whether mandatory sentencing provisions, particularly those for repeat offenders, should remain incorporated in the Hawaii Penal Code;

- (B) Whether certain drug offenses should be decriminalized; and
 - (C) Additional sentencing options and alternatives that the committee concludes will aid in the enforcement of the Hawaii Penal Code; and
- (5) Authorize the Judicial Council-appointed committee to, among other things, request assistance from the Legislative Reference Bureau in drafting proposed legislation, as may be needed to carry out the purposes of the measure.

The Bureau takes no position on this measure but submits the following comments for your consideration.

With regard to authorizing the Judicial Council-appointed committee to request assistance from the Legislative Reference Bureau to draft proposed legislation, as may be needed to carry out the purposes of the measure, we note that the Bureau is able to draft proposed legislation for the committee; provided that doing so does not adversely impact the Bureau's ability to provide services to the Legislature.

If the Committee decides to recommend passage of this measure and desires to keep the Bureau involved, we respectfully request that the measure be amended to specify that the request to draft proposed legislation be submitted to the Bureau no later than September 1, 2021, so that work on the proposed legislation would not adversely impact our ability to provide our core services to the Legislature for the upcoming Regular Session. The Bureau also notes that the Senate Standing Committee on Public Safety, Intergovernmental, and Military Affairs noted in its committee report on this measure that it should be amended to include our request for the inclusion of a September 1, 2021, submission deadline.

If the measure is amended to address the concerns noted above to have the Bureau assist with proposed legislation, and a specific deadline is inserted for submission to the Bureau of proposed legislation, the Bureau believes that the services requested under the measure would be manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting studies, writing or finalizing other reports, drafting legislation, or any combination of these for the Legislature or for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for the opportunity to submit written comments.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, February 23, 2021

9:45 a.m.

COMMENTS ON SB 1244 SD1 - THE MODERNIZATION OF CRIMINAL JUSTICE

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 4,100 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that 1,000 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 Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in strong support of eliminating money bail and releasing defendants on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses as did the original version of this measure. We humbly ask that the committee either restore the original draft of this measure or schedule a hearing for SB 1260.

The SD1 has weakened the bill and does not modernize the criminal justice system; it maintains the inequitable and unjust status quo that criminalizes poverty and promotes injustice by imprisoning people of color, especially Kanaka Maoli and our cousins from Oceania.

It removes two recommendations of the HCR 134 Pretrial Task Force¹:

¹ 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

Recommendation 20: Eliminate the use of money bail and require defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses with certain exceptions.

Recommendation 21: Create rebuttable presumptions regarding both release and detention. This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many **low-risk** defendants will be released, while those who pose significant risks of non-appearance, re-offending and violence will be detained.

A review of the Department of Public Safety Population Report² shows that as of February 15, 2021 there were 899 pretrial detainees (innocent until proven guilty) statewide. This costs taxpayers \$178,002 a day, \$1,246,014 a week, \$4,984,056 a month, and \$59,808,672 a year.

When combined, the pretrial population (**899 persons**) and the parole and probation population (**1,075 persons**) add up to **48% of the total incarcerated population** (4,124). These individuals have not been convicted or who are imprisoned for technical violations of their parole or probation. That costs taxpayers \$390,852 a day, \$2,735,964 a week, \$10,943,856 a month and \$131,326,272 a year to tear apart families and communities and further burden those already struggling.

Community Alliance on Prisons asked the Department of Public Safety Intake Services Division if they could determine how many people were living unsheltered at the time of arrest. PSD has been very helpful in obtaining this information; here is the information we received regarding 2020 jail admissions:

Of the 6591 people who were admitted into the community correctional centers in 2020, 37.5% of them (2474) reported being unsheltered. There were another 20 who reported staying in an emergency or transitional shelter. The information gathered was self-reported and unverified. Also, the number of unsheltered is likely higher as 3.5% of the people (233) who were admitted could not or did not disclose any information.

Unfortunately, the data that was pulled was not identified by county. The numbers are for Statewide admissions. For some perspective, Oahu accounts for 59% of the admissions, Hawaii 21%, Maui 12%, and Kauai 8%.

The data show that in 2020, approximately 40% of admissions to Hawai'i jails statewide were persons living unsheltered or in an emergency or transitional shelter at the time of arrest.

² Dept. of Public Safety, Bi-Monthly Population Report, February 15, 2021.

<https://dps.hawaii.gov/wp-content/uploads/2021/02/Pop-Reports-Weekly-2021-02-15.pdf>

Hawai`i data show that non-felony conviction rates jump from 50% for people released pre-trial to 92% for those jailed. (ACLU Bail Report).

A report from Harvard on Bail Reform highlights the urgency of bail reform:

Money bail exacerbates the disparities of the criminal justice system. By nature, money Bail discriminates against low-income people through bond amounts that are either burdensome or unaffordable. Because wealth and race are correlated, money bail disproportionately harms Black and Latinx defendants. Implicit and explicit racial biases make this worse. Recent empirical research finds that judges overpredict the risk of Black defendants committing crimes on pretrial release and underpredict the risk of white defendants committing crimes on pretrial release.³

Hawai`i has to face the fact that the policies that have been passed and enacted into law have created these social disparities. Blaming individuals and families for their hardship does not address the challenges they face daily. The ALICE⁴ data show that 48% of our families are barely making it. That is shameful.

Criminalizing poverty should be a clarion call that we are on the wrong course.

Community Alliance on Prisons humbly asks this committee to either

- restore the original draft of this measure that would best address unnecessary pretrial incarceration rates and align with the recommendations of the HCR 134 Pretrial Reform Task Force
- OR
- schedule SB 1260 for a hearing.

Mahalo for this opportunity to testify and for your consideration of our suggestion.

"My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice."

Bryan Stevenson

³ David Arnold et al., Racial Bias in Bail Decisions, 133 Q. J. ECON. 1885, at 1889–90 (2018).

⁴ ALICE: A Study in Financial Hardship in Hawaii. <https://www.unitedforalice.org/Hawaii>

SB-1244-SD-1

Submitted on: 2/21/2021 10:52:56 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Nagao	Individual	Support	No

Comments:

Cash bail must be abolished espeiclaly for misdemeanors and class C felonies. We should not seek to further incarcerate people because they are simply too poor. In addition to the moral injustice, this costs taxpayers a great deal to the tune of \$64 million a year.

An equitable justice system treats both rich and poor alike, which is clearly not possible with the existing cash bail system. It subverts the presumption of innocense, undermines the principle of equal protection and perpetuates a cycle of hardship for detainees and their families.

Please support SB1244, and take the first step towards ending cash bail.

SB-1244-SD-1

Submitted on: 2/21/2021 1:15:54 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

My name is Carla Allison and I ask that you support a fair and just criminal legal system by passing SB1244 SD1 with its ORIGINAL language about ending cash bail. We are locking up many people who have been accused of a crime, but have not been convicted - simply because they can't afford bail. Our current system also disparately impacts Native Hawaiians, African Americans and other Pacific Islanders. Please pass this bill in its original form to address significant disparities in our criminal legal system by ending cash bail! Thank you.

SB-1244-SD-1

Submitted on: 2/21/2021 3:49:03 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy lee	Individual	Support	No

Comments:

The cash bail system is inherently flawed. It clearly favors the rich and disproportionately affects the poor under the guise of keeping us "safer" by keeping dangerous people in jail. But you're not more or less dangerous because you can or cannot post bail.

Kalief Browder, a young boy whose family couldn't post the preposterous \$900 bail, spent 3 years on Rikers, two of which were spent in solitary. He was wrongly accused of stealing a *backpack*. A backpack. This poor man ended up committing suicide after his time in prison despite not being convicted of a crime.

On the other hand, Michale Hirokawa, a man who violently sexually assaulted a woman leaving her for dead, was released after posting a \$500,000 bail, right here in Honolulu. Who is more dangerous? But who got to walk out?

Our prisons are overflowing with pre-trial detainees and instead of having a conversation about the root of the problem, we are instead talking about treating the symptom by building even bigger prisons. Abolish the cash bail system for low-level offenses and this problem wouldn't exist at all. We are disproportionately attacking the poor and decimating the integrity of the presumption of innocence. Oh and by the way, it costs a significant amount of taxpayers' funds to unnecessarily keep people in prisons. There are about a hundred better uses I could think of off the bat that this money could and should be used for instead.

There are now several states that have adopted laws that significantly reduce their reliance on the cash bail system and the data shows these programs have been successful. Shouldn't Hawai'i strive to be an early adopter of a more human justice system? We are criminalizing the poor with our cash bail system, keeping them imprisoned because they can't post bond and then creating a vicious cycle because those who cannot post bail might lose their jobs, are separated from their families and are now stuck in a system that refuses to give them an opportunity. Meanwhile, if you're rich, you can walk no matter the offense. How is this a just system?

Abolish cash bail.

SB-1244-SD-1

Submitted on: 2/22/2021 8:30:45 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shiota	Individual	Comments	No

Comments:

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

I am writing in support of the ORIGINAL VERSION of this measure that included eliminating money bail and releasing defendants on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses.

Based on research, we know that our current bail system disproportionately targets the poor, Native Hawaiians and other ethnic minority groups in Hawai'i. The current measure does not align with our professed values of equality and diversity. We must do better.

SB1244SD1 as drafted has weakened this bill and gives the illusion of "reform" but actually reinforces the status quo system of a two tiered criminal legal system.

This legislative body created the HCR 134 Criminal Pretrial Task Force. The Criminal Pretrial Task Force issued a report with various recommendations, and now this legislative body is REMOVING two of its recommendations from the original bill:

Recommendation 20: Eliminate the use of money bail and require defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses with certain exceptions.

Recommendation 21: Create rebuttable presumptions regarding both release and detention. This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many low-risk defendants will be released, while those who pose significant risks of non-appearance, re-offending and violence will be detained.

During this economic crisis, this legislative body should enact public policies that adhere to evidence based practices and saves money. The original version of this bill would

help to accomplish both of these goals, as well as giving meaning to the fundamental principle that a person is innocent until proven guilty.

I would also like to point out that this body has an ethical duty to reduce overcrowding in our jails. Restoring the original version will help to reduce our jail populations, and save public funds in the short and long term.

According to the Department of Public Safety Population Report from February 15, 2021, there were 899 pretrial detainees (innocent until proven guilty) statewide. This costs taxpayers \$178,002 a day, \$1,246,014 a week, \$4,984,056 a month, and \$59,808,672 a year. Eliminating cash bail will reduce the number of pre-trial detainees on a daily, monthly and annual basis.

In the long run, reducing the pre-trial population through cash bail elimination will also avert construction costs for the proposed jail to replace OCCC, estimated to cost between \$500-600 MILLION dollars. Hawai'i has already sunk \$10 MILLION in planning for a jail on O'ahu based upon a flawed and outdated inmate forecast analysis. Hawai'i has also spent over \$15 MILLION on consultants to build a new Maui jail complex. Both of these constructions projects are unnecessary if we adopt sensible policies like eliminating cash bail and investing in other justice reinvestment strategies.

In closing, I respectfully request that this Committee restore the original draft of this measure to enact pre-trial practices that reflect evidence-based practices and would ultimately save public funds. Other states have successfully reduced its pretrial population by eliminating cash bail and other reforms, while also promoting public safety. Please restore the original version of SB1244.

Thank you for the opportunity to submit testimony.

Sincerely,

Carrie Ann Shirota, Esq.

Honolulu, Hawaii

SB-1244-SD-1

Submitted on: 2/22/2021 9:44:37 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

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

Comments:

Unfortunately, while SB1244 was written to modernize our judicial sytem, and while the SB1 continues that as a goal, it, in fact, does almost nothing to modernize! The major point of the initial bill was to substantially restrict the use of cash bail. Doing so would save the State millions of dollars every year--very important with our substantial budget shortage. This has been studied repeately and no further study is necessary.

I urge you to restore the original SB1244--for the sake of people who are innocent, yet held in jail, for the families of people who cannot afford bail, for those incarcerated unnecesarily, and for the good of the state budget.

LATE

SB-1244-SD-1

Submitted on: 2/22/2021 11:02:20 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Fujiyoshi	Testifying for Ohana Ho`opakele	Support	No

Comments:

Ohana Ho`opakele congratulates those who submitted this bill and strongly supports it.

I cannot quite understand the amendments made to the original bill.

The prison system is badly in need of major repair. The rate of incarceration in Hawaii, especially the disproportionate incarceration of native Hawaiians, is abominable. Ending the cash bail will greatly reduce the number who are incarcerated. The Covid-19 pandemic has shown us that among the most vulnerable were those incarcerated. If this bill were in effect earlier, we would have reduced the danger to many of our pa`ahao.

Please pass this bill, and if possible retain the original language.

Mahalo for allowing us to testify in this manner!

LATE

SB-1244-SD-1

Submitted on: 2/22/2021 2:00:54 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

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

Comments:

I am writing in support of SB1244 SD1.

Unfortunately, the most important parts of SB1244 were stripped from the bill and SB1244 SD1 would no longer help make our criminal justice system more fair and less punitive for low-income individuals. As it stands, our current monetary bail system imposes undue financial hardship or makes an unaffordable demand on the poor while allowing those who can afford bail to go free. This is not justice.

Please restore the provision that would eliminate the use of money bail and require defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanors, and non-violent misdemeanor offenses. Alternatively, please schedule SB1260 for a hearing.

Mahalo for your consideration.

Diana Bethel, Honolulu

LATE

SB-1244-SD-1

Submitted on: 2/22/2021 3:48:05 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Danielle Sears	Individual	Comments	No

Comments:

Aloha Senators,

Please support a fair and just criminal legal system, and pass SB1244 SD1 by returning to the **ORIGINAL language of the bill**. We are locking up many people who have been accused of a crime, but have not been convicted - simply because they are poor, and homeless. Our current criminal legal system also disparately impacts Native Hawaiians, African Americans and other Pacific Islanders. **Please pass this bill in its original form** to address significant disparities in our criminal legal system by ending cash bail!

Thank you,

Danielle Sears, Supervising Attorney of the Maui Office of the Public Defender

LATE

SB-1244-SD-1

Submitted on: 2/22/2021 10:37:07 PM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jen Jenkins	Individual	Support	No

Comments:

Please pass SB1244!

LATE

SB-1244-SD-1

Submitted on: 2/23/2021 9:08:06 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John A. H. Tomoso	Individual	Oppose	No

Comments:

02-23-21

RE: SB1244SD1

Aloha,

I join my Criminal Justice Network colleagues in asking that you return to the original language of this Bill.

Mahalo

John A H Tomoso+, MSW

51 Ku'ula Street, Kahului, Maui, HI 9632-2906

808-280-1749, john.a.h.tomoso@gmail.com

cc: Maui Reentry Hui

LATE

SB-1244-SD-1

Submitted on: 2/23/2021 9:25:09 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nanea Lo	Individual	Support	No

Comments:

Hello,

My name is Nanea Lo and I'm writing in support of SB1244 SD1. I've been following on how the system of prisons has failed under represented people and classes. There must be new procedures and law put in place to have checks and balances to a more fair and justified system for the community.

Please support this bill.

me ke aloha 'Ä• ina,

Nanea Lo