

The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2021 Regular Session

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice-Chair

Wednesday, March 31, 2021 at 2:30 p.m.
Via Videoconference

WRITTEN TESTIMONY ONLY

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

Bill No. and Title: Senate Bill No. 1260, S.D. 1, H.D. 1, Relating to Criminal Pretrial Reform.

Purpose: Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses, violations, and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions. Effective 7/1/3021.

Judiciary's Position:

The Judiciary takes no position on this proposed legislation and provides the following comments for the Committee's information.

It is the Judiciary's understanding that the current version of the measure will require a Court to release, on their own recognizance, certain defendants charged with repeat felony offenses. Specifically, a defendant who is charged with any "nonviolent class C felony offense" must be released on their own recognizance unless the Court finds a "specific threat of imminent harm to an identifiable person or persons or the community," **even if that defendant is already pending a felony matter, on probation or parole for a felony matter, the offense involves any of the exceptions delineated in section (b)(1) or (2), or the Court finds the defendant presents a risk of danger** to the community.



House Bill No. 189, Relating to Designating Substitute Judges on the
Senate Bill No. 1260, S.D. 1, H.D. 1, Relating to Criminal Pretrial Reform
House Committee on Finance
Wednesday, March 31, 2021
Page 2

If the Court does find such specific threat of imminent harm, and finds that no condition or combination of conditions can protect against that specific threat of imminent harm, only then can the Court set bail in a reasonable amount considering the defendant's financial circumstances (and presumably cannot hold the defendant without bail).

These nonviolent C felony offenses include, but are not limited to:

- Habitual property crime
- Burglary in the second degree
- Unauthorized entry into a dwelling in the second degree
- Unauthorized control of a propelled vehicle
- Theft in the second degree
- Theft of copper
- Unauthorized entry into a motor vehicle in the first degree
- Identity theft in the third degree
- Unauthorized possession of confidential personal information
- Forgery in the second degree
- Fraudulent use of a credit card
- Credit card theft
- Arson in the third degree
- Violation of privacy in the first degree
- Habitually operating a vehicle under the influence of an intoxicant

Thus, for example, it appears the current version requires that a defendant who has multiple pending charges for unauthorized control of a propelled vehicle, and is again arrested for allegedly stealing a stranger's vehicle will be released on his or her own recognizance as there is no specific threat of imminent harm to any person or the community; a defendant who has a pending burglary case and a pending identity theft case, and is arrested for forgery or fraudulent use of a credit card, will be released unless the Court finds a specific threat of imminent harm to a person or the community; and a defendant, who is on probation for a robbery charge, and is arrested for a burglary charge, will be released.

In conclusion, a significant number of criminal defendants are charged with repeated Class C felony property crimes, and under the statute as worded, without specific threat of imminent harm, the courts will be required to release such individuals each time they appear.

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 the Finance**

March 31, 2021

S.B. No. 1260, SD1 HD1 : RELATING TO PRETRIAL BAIL REFORM

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

The Office of the Public Defender (“OPD”) supports S.B. 1260 SD 1 HD1. This measure eliminates the use of money bail for low level, non-violent offenses. This is a good start and should be implemented as soon as possible. This phased and measured approach may be a better way toward bail reform and creating a more efficient pretrial bail system.

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, this proposal is consistent with the intention of the Pretrial Task Force, the Hawai‘i Correctional System Oversight Commission and the legislative purpose to prevent unnecessary pretrial incarceration, reduce the costs to our taxpayers while protecting against risks to public safety.

The OPD would like to make further comments that may improve the measure:

1. Amend HRS § 804-3(b)(2)(F) (Section 2, page 3), lines 17-18

Strike the language “including but not limited to risk of infection.” The language is vague, ambiguous, and invasive. It is unclear as to what kind of infection or health risk this refers to. Courts already have the power, and do in fact consider public health, and thus impose conditions for release with COVID-19 in mind by including language referring to the observation of federal, state, and local regulations and

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

proclamations. Furthermore, courts are mindful to issue orders that consider compliance with CDC guidelines, quarantine provisions, and pre-release procedures of the Department of Public Safety and Department of Health.

2. Amend HRS § 804(c) (Section 2, page 4), lines 12-14

The OPD suggests an amendment as follows: “nor prevent a court from determining bail or conditions of release at initial appearance or arraignment should an initial bail be set by law enforcement before arraignment.” Defendant’s initial appearance may come before an arraignment in certain felony cases.

3. Amend 804(b)(2)(D) (Section 2, page 3)

“The defendant was on probation, parole, or conditional release at the time of arrest for a subsequent offense.” The focus should be on behavior after release from custody. There are often delays in the prosecution of charges. Old charges should not stand in the way of release after a person has been released from custody.

For these reasons, the OPD supports S.B. No. 1260 SD1 HD1. We thank you for the opportunity to comment on S.B. No. 1260 SD 1.

SB1260 SD1 HD1
RELATING TO CRIMINAL PRETRIAL REFORM
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā
House Committee on Finance

Malaki 31, 2021

2:30 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1260 SD1 HD1, which would generally reduce our reliance on monetary bail for low-level, non-violent offenses, subject to certain exceptions. SB1260 SD1 HD1 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 impacts¹ 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 poor 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. 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,² and further exacerbates the danger of overcrowding in our strained pretrial detention facilities.

SB1260 SD1 HD1 represents a prudent, process-oriented approach to pretrial reform, to reduce Hawai‘i’s overreliance on cash bail and ensure that bail and detention determinations are instead tailored to individualized risks of flight or danger to the community. Executing this measure will (1) substantially align with the vision of the House Concurrent Resolution 134 (Reg. Sess. 2017) Task Force and the Hawai‘i State Correctional Systems Oversight Commission, and (2) further the State’s vision to improve public safety while reducing unnecessary pretrial incarceration and its cost to taxpayers and the community.

¹ 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/>.

² 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>.

OHA notes that, the present HD1 draft of this measure improves on the previous SD1 draft by narrowing the focus of this reform effort to lower-level, non-violent offenses, and addressing several additional concerns raised in prior testimony. Moreover, as noted by the Kaua‘i Prosecutor’s Office in prior testimony, the present HD1 aligns with the current Hawai‘i Supreme Court order³ limiting the application of cash bail to certain violent offenses.

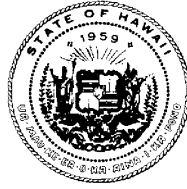
OHA does share concerns raised in the testimonies of the Office of the Public Defender, as well as the ACLU of Hawai‘i. In particular, OHA highlights one amendment in the present HD1, which would prevent the pretrial release of any defendant who “presents a risk of danger to any identifiable person or persons or to the community, **including but not limited to a risk of infection.**” This provision may be too far-reaching in potentially precluding the release of any defendant who may be capable of acquiring and transmitting any disease, and is irrelevant to the purpose of bail to ensure appearance of defendants as required. The vagueness of the “risk of infection” would also be difficult for courts to apply at the bail determination stage and without medical or other relevant evidence. To prevent these unintended consequences, OHA offers the following amendment to the language on page 3, lines 15-18 to read as follows:

“(F) The defendant presents a risk of danger to any identifiable person or persons or to the community.”

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.

For these reasons, OHA urges the Committee to **PASS** SB1260 SD1 HD1. Mahalo piha for the opportunity to testify on this measure.

³ *Order re: Petty Misdemeanor, Misdemeanor, and Felony Defendants*, SCPW-20-0000509, Supreme Court of the State of Hawai‘i (Aug. 27, 2020).



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

March 31, 2021

TO: Honorable Representative Sylvia Luke, Chair
House Committee on Finance

FROM: Ronald Ibarra, Commissioner
Hawaii Correctional System Oversight Commission

SUBJECT: SB 1260 SD1 HD1 RELATING TO CRIMINAL PRETRIAL REFORM

POSITION: The HCSOC **Strongly Supports** SB1260 SD1 HD1

PUPOSE: Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for nonviolent traffic offenses, violations, petty misdemeanor, misdemeanor, and felony c offenses, with certain exceptions.

The Hawai'i Correctional System Oversight Commission (HCSOC) urges the legislature to revisit pretrial reform efforts, as presented in SB1260 SD1 HD1, to help realize the important goals of the HCR 134 Task Force on Pretrial Reform to reduce unnecessary, costly, and dangerous pretrial incarceration.

This bill was originally 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). The present HD1 draft of this measure represents a prudent and balanced approach, with a narrower focus than the bill originally offered. This measure will help Hawai'i realize a more complete pretrial reform vision of the HCR134 Task Force and help reduce costly and unnecessary pretrial incarceration. Ensuring the safety of those in state custody 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 continues to support SB1260 SD1 HD1. Mahalo nui loa for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 1260, S.D. 1, H.D. 1, RELATING TO CRIMINAL PRETRIAL REFORM.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 31, 2021 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 308, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Landon M.M. Murata, Deputy Attorney General

Chair Luke and Members of the Committee:

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

The purpose of this bill is to eliminate the use of monetary bail, with certain exceptions, for traffic offenses, violations, nonviolent petty misdemeanor offenses, nonviolent misdemeanor offenses, and nonviolent class C felony offenses.

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 process. At this point in time, no determination about what metric properly measures the success or failure of the prior changes exists. 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. Accordingly, the Department respectfully requests the bill be deferred.

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 House Concurrent Resolution No. 134, House Draft 1 (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 enacted 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 Conference Committee Report No. 149, Regular Session 2019. A substantial number of the task force's recommended changes to the bail statutes were made in Act 179. In addition, Act 179 also 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.

The 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 12, through page 4, line 14) of the bill, requires 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 6, through page 3, line 18, the bill sets forth a

number of exceptions that would allow the court to set bail pursuant to section 804-9. 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.

Even if the identified exceptions allow for some judicial discretion, the list of exceptions to the mandatory release on page 2, line 7, through page 3, line 18, does not address every possible scenario where release on recognizance may not be appropriate. The inclusion of class C felony offenses in the list of offenses for which release is mandated will result in the release of numerous defendants charged with so-called "nonviolent" offenses who do not fall under any of the proposed exceptions but who nevertheless pose a danger to the public. Offenses 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), and Place to Keep a Firearm (section 134-25, HRS) could all be characterized as "nonviolent" and defendants charged with such offenses would be released under the bill. 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 set forth 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.

First, the wording on page 1, line 12, to page 2, line 5, should be replaced with the following:

§804- Monetary bail; non violent offenders. (a) Any defendant arrested, charged, and held for a traffic offense, violation, nonviolent petty misdemeanor offense, or noviolent misdemeanor offense shall be ordered by the

court to be released on the defendant's own recognizance at arraignment and plea conditioned upon:

- (1) The 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, 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 wording at page 3, line19, to page 4, line 9, should be replaced with the following:

(c) If any of the exceptions in subsection (b) apply, bail may be set in a reasonable amount pursuant to section 804-9, 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 as set forth in section 804-7.5.

The bill's wording requiring the court to make a finding that "no condition or combination of non-monetary conditions in section 804-7.1 will ensure the defendant's appearance or protect against specific threats of imminent harm to an identifiable person or persons or the community" is problematic for two reasons. First, it is internally inconsistent in that it requires the court to make a finding that no condition or combination of conditions will suffice before setting bail in a reasonable amount and imposing conditions of bail. If no condition or combination of non-monetary conditions will ensure the defendant's appearance or protect the public then the proper course of action would be to hold the defendant without bail, rather than release the defendant under circumstances the court has already found will not suffice. Second, the wording "protect against specific threats of imminent harm to an identifiable person or persons or the community" will impede the ability of the courts to fulfill the second purpose of bail which is to protect the public.

The requirement of “specific threats of imminent harm to an identifiable person or persons” is far too narrow.

Additionally, the bill’s proposed amendment on page 4, lines 7-9, regarding a defendant’s inability “to post bail in the amount of \$99 or less,” is unnecessary and is thus not included in the Department’s proposed changes to the bill. 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.

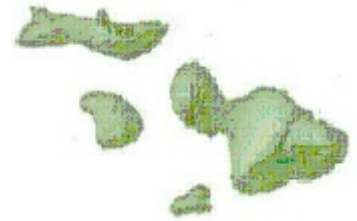
For the foregoing reasons, the Department respectfully requests the bill either be deferred or, in the alternative, be amended as set forth above. Thank you for the opportunity to testify.

MICHAEL P. VICTORINO
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

MICHAEL S. KAGAMI
First Deputy Prosecuting Attorney

ROBERT D. RIVERA
Second Deputy Prosecuting Attorney



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TESTIMONY
ON
S.B. 1260 SD1 HD1 RELATING TO
CRIMINAL PRETRIAL REFORM

March 30, 2021

The Honorable Sylvia Luke
Chair
The Honorable Ty J.K. Cullen
Vice Chair
and Members of the Committee on Finance

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

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 1260 SD1 HD1, Relating to Criminal Pretrial Reform. We would like to respectfully express our opposition to S.B. 1260 SD1 HD1 in its current form.

We share the Department of the Attorney General's previously-stated concerns about this bill in their entirety, including the Department's concerns about the lack of time to assess the effects of the 2019 changes to our pretrial systems. Accordingly, we would request that this bill be deferred.

However, should this Committee choose to move forward with this bill, we respectfully request that the Department's proposed amendments to S.B. 1260 SD1 HD1 be implemented in their entirety. We believe that those proposed amendments are sufficient to preserve judicial discretion on bail decisions, ensure the appearance of the defendant and protect the public, while maximizing the potential for pretrial release of those who do not pose a danger or a flight risk.

For these reasons, the Department of the Prosecuting Attorney, County of Maui respectfully requests that S.B. 1260 SD1 HD1 be deferred or, in the alternative, amended per our comments above. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

LATE

**THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i**

March 31, 2021

RE: S.B. 1260, S.D. 1, H.D. 1; RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 1260, S.D. 1, H.D. 1.

The purpose of S.B. 1260, S.D. 1, H.D. 1, 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/or appropriate 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 S.B. 1260, S.D. 1, H.D. 1 without statutory amendments.

The Department appreciates the amendments made at the House Committee on Judiciary and Hawaiian Affairs, however we still have 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 is evaluating all the factors permitted by statute to make a sound decision. Although S.B. 1260, S.D. 1, H.D. 1 appears to add additional disqualifying offenses to subsection (b)(1), it was necessary with the dangerous expansion of this bill to include nonviolent 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 1-9, 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 7 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 S.B. 1260, S.D. 1, H.D. 1. Thank you for the opportunity to testify on this matter.

SB-1260-HD-1

Submitted on: 3/29/2021 3:29:04 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
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.



Young Progressives Demanding Action
P.O. Box 11105
Honolulu, HI 96828

March 29, 2021

TO: HOUSE COMMITTEE ON FINANCE
RE: Testimony in Support of SB1260 SD1 HD1

Dear Representatives,

Young Progressives Demanding Action (YPDA) stands in **strong support** of SB1260 SD1 HD1, which eliminates the use of monetary bail in Hawai'i. This policy change would be a huge victory for social, economic and racial justice in our communities. Here are 10 solid reasons to abolish cash bail.

- 1. Cash bail does not serve the function for which it was intended.** The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like [Washington D.C.](#) that have all-but replaced cash bail with [smart justice](#) reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties.
- 2. Cash bail has serious societal costs.** Incarceration always disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, leading to increased criminality, homelessness, health problems and [other societal costs for which we all pay the price](#).
- 3. Cash bail is overused and arbitrary.** Hawai'i's courts require bail as a condition of release in [88 percent of cases](#). More than half of the arrestees in those cases were unable to post the amount required by the court. Although Hawai'i's Constitution prohibits "excessive bail," many judges in Hawai'i admit to arbitrarily setting bail at a certain amount based solely on the offense the individual is accused of committing.

- 4. Cash bail violates the right to presumption of innocence.** In the United States, the accused is presumed innocent until proven guilty, and the Fifth and Fourteenth Amendments to U.S. Constitution prohibit depriving a person of their liberty without due process of law (including while awaiting trial and regardless of indigence). Yet, in Hawai'i, some [1,145 individuals are currently being held](#) behind bars without having been convicted of a crime. Nationwide, [443,000 people are being detained](#) without ever having been tried in a court of law. This is a gross violation of their civil liberties and amounts to an unconstitutional, extrajudicial punishment.
- 5. Cash bail makes a mockery of justice.** In Hawai'i, 64 percent of those who could not afford bail [changed their plea to guilty to get out of jail sooner](#). Using pre-trial detention to coerce arrestees into guilty pleas is [routine practice](#) for prosecutors throughout the country. Furthermore, a 2012 study conducted by the New York City Criminal Justice Agency [found that pretrial detention has a negative impact on trial outcomes](#): among non-felony cases with no pretrial detention, 50 percent ended in conviction compared to a 92 percent conviction rate among cases with an arrestee who was detained.
- 6. Cash bail allows the wealthy to buy their way out of jail.** Most bail for all felony charges in the First Circuit is set in the [\\$11,000 to \\$25,000](#) range, but it was as high as \$1 million in eight cases and \$2 million in two cases in 2015. Detention or release should not be conditioned on an individual's wealth or income. A wealthy person can be just as dangerous as a poor person.
- 7. Cash bail exacerbates institutional racism within the penal system.** In Hawai'i, Native Hawaiians and Pacific Islanders are [more likely to be arrested and detained with a bail amount set to an unreasonable cost](#) based on their charge, record or lack thereof, and socioeconomic status. This is reflected nationally with other communities of color.
- 8. Cash bail is a way for corporations to exploit poor communities.** Often, the only way a person can maintain their freedom and return to their lives while awaiting trial is to pay a bail bondsman to front the cost of bail. These bail bondsmen do not reimburse accused people for the cost of their services should they be found innocent. Nor are they small businesses providing a service, as they often claim. In fact, [they are fronts for multinational insurance companies](#) that use America's backward penal system to extract wealth from poor communities that are over-targeted by police departments and suffer disproportionately from racist policies like "Three Strikes" and mandatory minimum sentences.
- 9. Hawai'i spends more than \$60 million on pretrial incarceration each year.** It costs a lot of money to lock people up behind bars: about [\\$54,500 per detainee each year, or \\$150 per day](#). Compare this to Washington D.C., which releases 85-90 percent of pretrial arrestees and spends a mere [\\$18 a day](#) in supervising costs per individual. The U.S. spends [\\$13.6 billion annually](#) to detain people who have not been convicted of a crime.

10. Hawai'i's correctional facilities are a liability. Six out of nine Hawai'i facilities are "over design capacity" and a four are over "operational capacity." The Department of Justice has warned the State of Hawai'i that it will sue unless the issue is addressed quickly. While building a newer, larger, prison will alleviate crowding, it won't address the underlying causes of over-incarceration. Bail reform is the swiftest and most sure-fire way to reduce our overcrowded jail population, while simultaneously beginning to reform the penal system toward true justice.

Mahalo for the opportunity to testify,

Will Caron
Board President & Secretary
action@ypdahawaii.org



**HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021**

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty Cullen, Vice Chair

Wednesday, March 31, 2021, 2:30 PM
Conference Room 308 and Via Videoconference

Re: Testimony in Support of SB1260 SD1, HD1 – RELATING TO CRIMINAL PRETRIAL REFORM

Chair Luke, Vice Chair Cullen, and Members of the Committee on Finance:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

UPW **supports** SB1260 SD1, HD1, 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.

During AFSCME’s 44th International Convention, which was held online last August, the International Executive Board passed out a number of resolutions during the two-day convention. One resolution was related to changes in policing and criminal justice. In this resolution, AFSCME expressed its support to substantial changes to the criminal justice system including, “limiting when cash bail is required for nonviolent offenses and offering more liberal pretrial release” and “ending the use of racially biased risk assessment tools used to determine eligibility for pretrial release.”

Thank you for the opportunity to submit this testimony.



SB 1260, SD 1, HD 1, RELATING TO CRIMINAL PRETRIAL REFORM

MARCH 31, 2021 · HOUSE FINANCE COMMITTEE ·
CHAIR REP. SYLVIA LUKE

POSITION: Support.

RATIONALE: Imua Alliance supports SB 1260, SD 1, HD 1, relating to criminal pretrial reform, which Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses; violations; and nonviolent petty misdemeanor, misdemeanor, and class C felony offenses, with certain exceptions.

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.

Hawaii
Holding Power Accountable

Statement Before The
HOUSE COMMITTEE ON FINANCE
Wednesday, March 31, 2021
2:30 PM
Via Video Conference, Conference Room 308

in consideration of
SB 1260, SD1, HD1
RELATING TO CRIMINAL PRETRIAL REFORM.

Chair LUKE, Vice Chair CULLEN, and Members of the House Finance Committee

Common Cause Hawaii comments in support of SB 1260, SD1, HD1, 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.

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>. 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 SB 1260, SD1, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



AMERICANS FOR DEMOCRATIC ACTION

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Doug Pyle, Secretary	Jan Lubin	Lyn Pyle		

March 30, 2021

TO: Chair Luke and members of Finance Committee

RE: SB 1260 SD1 HD1 RELATING TO CRIMINAL PRETRIAL REFORM

Support for hearing on March 31

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

We support SB 1260 SD1 HD1 as it would eliminate 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. Too many people are held in OCCC awaiting trial because they cannot afford bail. The expense of pretrial detention of defendants who are too poor to afford bail is a cost to the State we should not incur.

Thank you for your favorable consideration.

Sincerely,
John Bickel, President



COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Wednesday, March 31, 2021

2:30 p.m.

STRONG SUPPORT FOR SB 1260 SD1 HD1- PRETRIAL REFORM

Aloha Chair Luke, Vice Chair Cullen, 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 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 1,075 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, non-violent misdemeanor, and non-violent Class C offenses.

We support the HCR 134 Task Force 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.

A review of the March 22, 2021 Department of Public Safety Population Report¹ should make everyone question what is really going on:

- **The statewide jail population is 1, 623 persons:**
 - **HCCC = 296 persons**
 - **KCCC = 150 persons**
 - **MCCC = 304 persons**
 - **OCCC = 873 persons**

All the jails statewide are over the design capacity and the emergency capacities² set by the Hawai'i Systems Correctional Oversight Commission due to COVID.

¹ Department of Public Safety, March 22, 2021 Population Report.

<https://dps.hawaii.gov/wp-content/uploads/2021/03/Pop-Reports-Weekly-2021-03-22.pdf>

² Hawai'i Correctional Facilities, Infectious Disease Emergency Capacities, September 2020.

<https://ag.hawaii.gov/wp-content/uploads/2020/09/FINAL-REPORT-091120.pdf>

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, here is the information we received regarding 2020 statewide 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.

The statewide pretrial population (**1,623 persons**) represent **40% of the total incarcerated population** (4,050). These individuals have not been convicted – they are innocent until proven guilty. That costs taxpayers \$355,437 a day, \$2,488,059 a week, \$9,952,236 a month and \$119,426,832 a year to tear apart families and communities and further burden those already struggling.

The data show that in 2020, a significant number of admissions to Hawai'i jails statewide were persons living unsheltered or in an emergency or transitional shelter at the time of arrest. This is unconscionable.

Hawai'i data show that non-felony conviction rates jump from 50% for people released pre-trial to 92% for those jailed. Our jails have become housing for the unsheltered and Hawai'i's de facto mental health centers.

Even three days in jail is enough for people to lose their housing, lose their job, and strain family connections.

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*

Criminal justice reformers have long supported such measures, but opponents — including district attorneys, police departments, and the commercial bail industry — often claim pretrial reform puts community safety at risk. The Prison Policy Initiative (PPI) put these claims to the test.⁴

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

⁴ Bail Reform, Reducing Pretrial Populations and Public Safety, By Tiana Herring | Tuesday, November 17, 2020. <https://thecrimereport.org/2020/11/17/bail-reform-reducing-pretrial-populations-and-public-safety/>

We found four states, as well as nine cities and counties, where there is existing data on public safety from before and after the adoption of pretrial reforms. All but one of these jurisdictions saw decreases or negligible increases in crime after implementing reforms.

The one exception is New York State, where a [law eliminating bail for most non-felony offenses](#) was amended after objections from a wide group of opponents.

Below, we describe the reforms implemented in each of the 13 jurisdictions we studied, the effect these reforms had on the pretrial population (if available), and the effect on public safety.

We find that whether the jurisdictions eliminated money bail for some or all charges, began using a validated risk assessment tool, introduced services to remind people of upcoming court dates, or implemented some combination of these policies, the results were the same: **Releasing people pretrial did not negatively impact public safety.**

About 75 percent of people held in jails are [legally innocent and awaiting trial](#), often because they are too poor to make bail. The overall jail population hasn't always been so heavily dominated by pretrial detainees.

As we've previously reported, increased arrests and a growing reliance on money bail over the last three decades have contributed to a [significant rise in pretrial detention](#). And just [three days](#) of pretrial detention can have detrimental effects on an individual's employment, housing, financial stability, and family wellbeing.

In this analysis, public safety is measured through the narrow lens of crime rates. But pretrial reforms promote other types of safety that are more difficult to measure, such as the safety of individuals who can remain at home instead of in a jail cell, children who are able to stay in their parents' care, and community members who are spared the health risks (including, currently, the increased risk of COVID-19 exposure) that come from [jail churn](#).

States and counties can and should build on these pretrial reforms. More progress can be made to continue reducing the number of people held pretrial, and address concerns such as [racial bias](#) inherent in pretrial risk assessment tools.^[1] But the data is clear: When it comes to public safety, these reforms are a step in the right direction.

State Reforms

New Jersey - In 2017, the New Jersey legislature passed a law implementing a risk-informed approach to pretrial release and virtually eliminated the use of cash bail. As a result, the pretrial population [decreased](#) 50 percent from 2015 to 2018.

Impact on Public Safety: Violent crimes decreased by 16 percent from 2016 to 2018. There was a negligible difference in the number of people arrested while on pretrial release.

New Mexico - A 2016 voter-approved constitutional amendment prohibits judges from imposing bail amounts that people cannot afford, enables the release of many low-risk defendants without bond, and allows defendants to request relief from the requirement to post bond (The Eighth Amendment already forbids excessive bail, but in practice, bail is regularly set at unaffordable levels in courts around the country.)

Impact on Public Safety: State-wide crime rates have [declined](#) since the reforms took effect in mid-2017. Furthermore, the safety rate, or the number of people released pretrial who are not charged with committing a new crime, [increased](#) from 74 percent to 83.2 percent after the reforms took effect.

Kentucky - began using a validated pretrial risk assessment tool in 2013. In 2017, the state began allowing release of low-risk defendants without seeing a judge. In addition, a statewide pretrial services agency is required to make a release recommendation within 24 hours of arrest, and reminds people of upcoming court dates via automated texts and calls.

Impact on Public Safety: The new criminal activity rate, which measures the rate at which people commit new crimes while awaiting trial, has not changed.

County/City Level Reforms

San Francisco - Following collaboration between various judicial and public safety departments, the [city](#) has used a validated risk assessment tool since 2016. The San Francisco Pretrial Diversion Project also helps by offering alternatives to fines, dismissals of charges for “first time misdemeanor offenders” who complete treatment plans, and other forms of support for people navigating the system. In 2020, the District Attorney [announced](#) his office would no longer ask for cash bail.

Impact on Public Safety: The city’s new criminal activity rate, which measures the rate at which people commit new crimes while awaiting trial, is 10 percent. This puts it on par with Washington, D.C. which is often used as a model of pretrial reform success.

Washington, D.C. - The District’s Pretrial Services Agency has used a risk assessment tool since the agency was created by Congress in 1967, but their reforms go much [further](#): Judges cannot set money bail that results in someone’s pretrial detention, there are limits to the amount of time people can spend in jail after their arrest, and the Pretrial Services Agency can connect people to employment, housing, and general social services resources.

Impact on Public Safety: In [FY 2019](#), 87 percent of people were not rearrested when released pretrial, and 99 percent weren’t rearrested for a violent crime.

Philadelphia - In 2018, the District Attorney’s office [stopped](#) seeking money bail for some misdemeanors and nonviolent felonies, which made up the majority of all cases.

Impact on Public Safety: Researchers found no difference in recidivism after the reforms.

Santa Clara County, Ca. - [courts](#) began using a validated risk assessment in 2012, and their pretrial services agency sends court date reminders to those released pretrial. In addition, community organizations such as a churches partner with individuals to remind them of court dates, provide transportation, and offer other assistance.

Impact on Public Safety: 99 percent of people released were not rearrested.

Cook County, Il. - As of 2017, judges must consider what people can afford when setting bail amounts.

Impact on Public Safety: The number of overall crimes and violent crimes have continued to decline. The vast [majority](#) (99.4 percent) of people who were released pretrial between October 2017 and December 2018 were not charged with any new violent offenses, and 83 percent remained charge-free while their cases were pending.

Yakima County, Wa. - began using a validated risk assessment tool in 2015, at the recommendation of local judicial and public safety stakeholders. The county also implemented a pretrial services program that offers services like helping people obtain mental health or drug treatment and sending automatic court date reminders.

Impact on Public Safety: After pretrial services were instituted, the re-offense rate declined by 20 percent.

New Orleans, La. - A 2017 ordinance passed by the city council virtually eliminated money bail for people arrested on municipal offenses. Since then, the city has implemented a risk assessment tool and releases some low-risk arrestees without bail.

Impact on Public Safety: People released on lower bail amounts were less likely to be rearrested than those released on higher bail amounts, disputing the idea that higher bail keeps the public safe.

Harris County, Tx. - Since 2019, the majority of misdemeanor defendants automatically qualify for jail release on no-cash bonds.

Impact on Public Safety: Rearrest rates did not increase after the reforms were implemented.

Jefferson County, Co. - Following a pretrial reform pilot study, Jefferson County eliminated its money bail schedule and began using a risk assessment tool in 2010.

Impact on Public Safety: People released without money bail were slightly less likely to have a new arrest or filing than those released on money bail.

Research⁵ has found that pretrial detention can actually increase the odds of future offending, which is clearly counterproductive from a crime rate-defined public safety standpoint.

Blaming individuals and families for their hardship does not address the challenges they face daily. The ALICE⁶ data show that 48% of our families are barely making it. This data, along with the Intake Services data make it impossible to ignore that more than 40% of the people at Intake Services have reported living unsheltered. Eliminating money bail for low-level offenses and offering services to assist the person is a more sustainable option that using our jails as housing and as our de facto mental health centers.

Community Alliance on Prisons urges the Finance Committee to pass this important measure to bring Hawai'i into step with jurisdictions that have found that incarceration does not protect public safety and, in fact, threatens it.

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

Mahalo for this opportunity to testify.

Poverty is the worst form of violence.

Mahatma Gandhi

⁵ 3 Days Count for State-Level Change, Pretrial Justice Institute, <https://www.pretrial.org/what-we-do/plan-and-implement/3dayscount-for-state-level-change/>.

⁶ ALICE: A Study in Financial Hardship in Hawaii. <https://www.unitedforalice.org/Hawaii>



Hawai'i

Committees: Committee on Finance
Hearing Date/Time: Wednesday, March 31, 2021, 2:30 p.m.
Place: Via videoconference
Re: Testimony of the ACLU of Hawai'i with comments regarding S.B. 1260, S.D.1, H.D.1, Relating to Criminal Pretrial Reform

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

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") offers comments regarding S.B. 1260, S.D. 1, H.D. 1, which seeks to reform the current bail system in Hawai'i. While we generally support the intent of this bill, we are concerned by the broad exceptions in this bill.

Pretrial incarceration is one of the major drivers of overcrowding in Hawai'i's jails. Currently, roughly one-third of all individuals housed in Hawai'i's correctional facilities and more than half of those housed at the Oahu Community Correctional Center have not been convicted of any crime and are merely awaiting trial,¹ most often because they cannot afford the amount of bail set in their case.

To better understand why so many people, who are innocent in the eyes of the law, are being held pretrial in Hawai'i's jails, the ACLU of Hawai'i conducted an in-depth study of the state's bail setting practices in all cases filed in Hawai'i's circuit courts in 2017. While we only published the preliminary findings of cases between January and June of 2017,² this testimony reflects the findings for all of 2017.

Our research revealed that circuit courts heavily rely on the use of money bail to secure court appearances instead of individualizing the process. The ACLU of Hawai'i found that circuit courts set cash bail as a condition of release in 90 percent of cases, meaning that other forms of bail such as release on recognizance or supervised release were rarely assigned even if these options were more appropriate for arrestees. Moreover, the courts assigned bail at amounts without regard to an individual's financial circumstances but rather solely based on the crime charged. Indeed, the average bail amount on Oahu for a single class C felony was over \$20,000. This is despite the lack of any serious inquiry into someone's ability to pay or specific risks of flight or danger to the community. Given these large amounts, it was not a surprise when we learned that only 46 percent of arrestees were able to post bail.

Bail, in any form, *should never be used* as a punitive tool, and any conditions set for release should be only as restrictive as is absolutely necessary to ensure that the accused shows up to 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." But over the years our State has fallen short of that dictate. And, unfortunately, the list of exceptions in this bill is not "carefully limited" and will only cement a system in which detention prior to trial *is* the norm.

¹ State of Hawai'i Dep't of Pub. Safety, Weekly Population Report (February 1, 2021).

² 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), <https://www.acluhi.org/sites/default/files/2018/01/aclu-of-hawaii-bail-report.pdf>.

While we support the general intent behind this legislation, we have concerns that with its broad exceptions, this legislation will not sufficiently address the problems created by our existing pretrial system. Specifically, ACLU of Hawai'i has concerns with the following provisions of the bill:

- 1) Throughout, *see, e.g.*, P. 2, lines 4-5: References to nonappearance in court and “protect[ing] the public” or “danger . . . to the community.” As a matter of policy, the appropriate risks should be that of: 1) intentional, willful flight; or 2) specific threat of imminent harm to an *identifiable* person or persons.
- 2) P. 3, lines 2 & 3: The word “history” as used in this provision is vague, and could be clarified to include a pattern of convictions for non-appearance, not a single occurrence.
- 3) P. 3, lines 4-6: This provision excludes anyone with a history of a violent misdemeanor or violent felony offense within the last eight years. While this may sound reasonable on first pass, a person’s actions 8 years ago do not indicate a person’s present-day flight risk or dangerousness to a specific person in the community.
- 4) P. 3, lines 15-18: “Danger . . . to the community” is broad. As stated above, as a matter of policy, the appropriate risks should be that of: 1) intentional, willful flight; or 2) specific threat of imminent harm to an identifiable person or persons. The “risk of infection” is particularly concerning, as it could be used to deny release to anyone capable of contracting or transmitting *any* disease.

Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes
Policy Director
ACLU of Hawai'i

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.

SB-1260-HD-1

Submitted on: 3/30/2021 11:46:57 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Brandt	Foresight/Policy Analysis	Support	No

Comments:

Chair Luke, Vice Chair Cullen, and members of the House Committee on Finance.

Thank you for the opportunity to offer these comments.

FIRST AND FOREMOST, ELIMINATING CASH BAIL WILL SAVE HAWAII TAXPAYERS BIG MONEY IN SEVERAL WAYS, SUMMARIZED FURTHER BELOW.

Bail reform is part of larger efforts to reform the criminal-legal system and law enforcement to implement:

- meaningful sentencing reform;*
 - reduce repeat offenders, recidivism and over-representation of minorities in our criminal justice legal system;*
 - eliminate for-profit prisons;*
 - remove non-violent offenders from prisons and to divert them, instead, to mental health, drug treatment and other community-based programs that have been proven to be more successful correctional tools than incarceration; and*
 - efforts to implement place-based, restorative justice methods, especially in Hawai'i where Hawaiian over-representation in the "prison industrial complex" can be directly attributed, in part, to a disconnection from culture and community.*
- Cash bail does not serve the function for which it was intended.**
 - Cash bail has serious societal costs.**
 - Cash bail is overused and arbitrary.**
 - Cash bail violates the right to presumption of innocence.**
 - Cash bail makes a mockery of justice.**

In Hawai'i, 64 percent of those who could not afford bail [changed their plea to guilty to get out of jail sooner](#). Using pre-trial detention to coerce arrestees into guilty pleas is [routine practice](#) for prosecutors throughout the country.

- **Cash bail allows the wealthy to buy their way out of jail.**
- **Cash bail exacerbates institutional racism within the penal system.**

Native Hawaiians and Pacific Islanders are more likely to be arrested and detained with a bail amount set to an unreasonable cost based on their charge, record or lack thereof, and socioeconomic status. This is reflected nationally with other communities of color.

- **Cash bail is a way for corporations to exploit poor communities.**

Often, the only way a person can maintain their freedom and return to their lives while awaiting trial is to pay a bail bondsman to front the cost of bail. **These bail bondsmen do not reimburse accused people for the cost of their services should they be found innocent.**

Nor are they small businesses providing a service, as they often claim.

In fact, they are fronts for multinational insurance companies that use America's backward penal system to extract wealth from poor communities that are over-targeted by police departments and suffer disproportionately from racist policies like Three Strikes and mandatory minimum sentences.

- **Hawai'i spends more than \$60 million on pretrial incarceration each year.**

It costs a lot of money to lock people up behind bars: about \$54,500 per detainee each year, or \$150 per day.

Compare this to Washington D.C., which releases 85-90 percent of pretrial arrestees and spends a mere \$18 a day in supervising costs per individual. The U.S. spends \$13.6 billion annually to detain people who have not been convicted of a crime.

- **Hawai'i's correctional facilities are a liability. Six out of nine Hawai'i facilities are "over design capacity" and a four are over "operational capacity."**

The Department of Justice has warned the State of Hawai'i that it will sue unless the issue is addressed quickly. While building a newer, larger, prison will alleviate crowding, it won't address the underlying causes of over-incarceration.

Bail reform is the swiftest and more sure-fire way to reduce our overcrowded jail population, while simultaneously beginning to reform the penal system toward true justice.

Hawai'i has a serious problem when it comes to its prison system.

The state's 40-year-old community correctional centers are dilapidated and horribly overcrowded, and the situation in these jails has now become a liability.

Clearly something must be done to reduce crowding in these out-of-date facilities.

Over the last 20 years, it's become clear the draconian austerity of the prison system incurs a high and multi-faceted cost on the inmate. It's also clearly a strain on overburdened state budgets, and on the taxpayers themselves.

Restorative, rather than punitive, solutions seek to heal and restore troubled people, returning them back to society in a condition in which they can be productive and contribute to society.

This is the alternative path, and the one advocated for by the Community Justice Coalition, a network of organizations campaigning for criminal justice reform in Hawai'i.

ELIMINATING CASH BAIL, COMBINED WITH THE OTHER REFORMS SUMMARIZED ABOVE, ARE THE FAR MORE COST-EFFECTIVE ALTERNATIVES FOR HAWAII TAXPAYERS, IN MY OPINION.

Thanks again for your time and consideration.

Thomas Brandt

Foresight/Policy Analysis



LATE

LATE

TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 31, 2021

Re: SB 1260 SD1 HD1 RELATING TO CRIMINAL PRETRIAL REFORM

Good afternoon Chair Luke members of the House Committee on Financ. 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 SB 1260 SD1 HD1. Relating To Criminal Pretrial Reform This measure eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions; and creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

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

SB-1260-HD-1

Submitted on: 3/29/2021 2:15:56 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathleen Rooney	Individual	Support	No

Comments:

Please eliminate cash bail. It is unjust and expensive.

SB-1260-HD-1

Submitted on: 3/29/2021 2:29:34 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

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

Comments:

My name is Carla Allison and I am writing in strong support of SB1260. With this bill, we have the opportunity to significantly decrease Hawaii's incarcerated population. With almost 50% of the people in our overcrowded jails being pre-trial detainees, we are locking up people who have not been convicted because they cannot afford bail. What kind of justice is this? Too many poor and unhoused people are being locked up when they aren't even dangerous. Other states have adopted bail reform, recognizing that the cash bail system is racially biased and disparately impacts black, indigenous and people of color. With Hawaii's jails being severely overcrowded and inmates experiencing inhumane conditions SB1260 makes both logical and humane sense. We can divert the almost \$200 dollars a day we spending locking up a person to help people receive community based resources. Please support SB1260. Thank you.

SB-1260-HD-1

Submitted on: 3/29/2021 2:36:54 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Eaton	Individual	Support	No

Comments:

Aloha, my name is Carolyn Eaton, and I am an Oahu voter. I'm in strong support of this measure, which will eliminate cash bail for traffic violations, non-violent misdemeanors, misdemeanors and Class C felonies. At present a majority of those offenders who can't post bail are our poorest citizens. Incarceration is the only alternative offered in State law now for low level offenders who are unable to come up with bail. This arrangement is a waste of money (costs of bed and board and processing) and so inconsiderate to our struggling neighbors and friends. It has also been shown to have a negative impact on the community--removing low level offenders from family is traumatic, and compounds the trauma of arrest and the trauma of poverty itself.

Thank you for your consideration of my views.

SB-1260-HD-1

Submitted on: 3/29/2021 3:16:41 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eduardo Hernandez	Individual	Support	No

Comments:

Aloha Chair Luke and Members of the Committee

Cash bail – monetary bail – is rarely used in other nations besides the United States. Research clearly shows that cash bail discriminates against racial minorities and the poor. 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. This is profoundly unfair and stigmatizing for an individual and unreasonably costly for taxpayers and society.

Illinois, New York, and New Jersey and the City of Philadelphia have all implemented some form of cash bail reform. It is time for Hawaii to adopt this reasonable reform measure.

I urge you to pass this SB1260I. Thank you for the opportunity to testify.

SB-1260-HD-1

Submitted on: 3/29/2021 6:37:54 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney Mrowczynski	Individual	Support	No

Comments:

I strongly **SUPPORT** SB1260 SD1 HD1 for the following reasons:

- Bail is not designed to be punitive, but rather to ensure the defendant appears for his or her hearings and complies with the conditions set, as well as to ensure the safety of the community.
- Money bail exacerbates the disparities in the criminal justice system.
- PSD reports that more than 40% of statewide admissions in 2020 were people living unsheltered or in an emergency shelter at the time of their arrest.
- According to the ACLU Bail Report, Hawai`i data show that non-felony conviction rates jump from 50% for people released pre-trial to 92% for those jailed.

SB-1260-HD-1

Submitted on: 3/29/2021 10:51:00 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

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

Comments:

Hello,

My name is Nanea Lo. I come from Papakāleia, O'ahu currently living in my ancestral homelands. I'm writing in support of SB1260.

Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties.

Support SB1260.

me ke aloha 'Āina,

Nanea Lo

SB-1260-HD-1

Submitted on: 3/30/2021 7:46:21 AM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments:

SUPPORT!

SB-1260-HD-1

Submitted on: 3/30/2021 12:35:49 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lauren Kawahakui	Individual	Support	No

Comments:

Chair Luke, Vice Chair Cullen and Members of the committee:

As a native Hawaiian woman, I am concerned about the efficacy of our criminal justice system and the use of money bail. I support SB1260 SD 1 HD 1, to eliminate the use of money bail for low level, non-violent offenses. I believe this bill should be implemented as soon possible. Mahalo for the opportunity to tesify on this bill.

Lauren Kawahakui

SB-1260-HD-1

Submitted on: 3/30/2021 12:36:24 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cu Ri Lee	Individual	Support	No

Comments:

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

I **support** S.B. 1260 SD 1 HD 1. This measure eliminates the use of money bail for low level, non-violent offenses and should be implemented as soon as possible.

Mahalo for the opportunity to testify on this measure.

SB-1260-HD-1

Submitted on: 3/30/2021 12:39:38 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Meleana Shim	Individual	Support	No

Comments:

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

As a Native Hawaiian and someone concerned about the efficacy of our criminal justice system, I **support** S.B. 1260 SD 1 HD 1. This measure eliminates the use of money bail for low level, non-violent offenses and should be implemented as soon as possible. Mahalo for the opportunity to testify on this bill.

- Meleana Shim

SB-1260-HD-1

Submitted on: 3/30/2021 12:50:51 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gloria Palma	Individual	Support	No

Comments:

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

I **support** S.B. 1260 SD 1 HD 1. This measure eliminates the use of money bail for low level, non-violent offenses and should be implemented as soon as possible. Mahalo for the opportunity to testify on this measure.

SB-1260-HD-1

Submitted on: 3/30/2021 1:03:19 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amanda	Individual	Support	No

Comments:

Cash bail negatively affects our vulnerable communities and is the opposite of equity - something we all deserve.

SB-1260-HD-1

Submitted on: 3/30/2021 1:41:11 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alejandro Balandran	Individual	Support	No

Comments:

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

I **support** S.B. 1260 SD 1 HD 1. This measure eliminates the use of money bail for low level, non-violent offenses and should be implemented as soon as possible. Mahalo for the opportunity to testify on this measure.

SB-1260-HD-1

Submitted on: 3/30/2021 1:48:54 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brittany Horn	Individual	Support	No

Comments:

I support SB1260 pretrial reform for the following reasons:

Cash bail does not serve the function for which it was intended.

Cash bail has serious societal costs.

Cash bail is overused and arbitrary.

Cash bail violates the right to presumption of innocence.

Cash bail makes a mockery of justice.

Cash bail allows the wealthy to buy their way out of jail.

Cash bail exacerbates institutional racism within the penal system.

Cash bail is a way for corporations to exploit poor communities.

Hawai'i spends more than \$60 million on pretrial incarceration each year.

Hawai'i's correctional facilities are a liability.

SB-1260-HD-1

Submitted on: 3/30/2021 1:52:31 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
May Nachum	Individual	Support	No

Comments:

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

I **support** S.B. 1260 SD 1 HD 1. This measure eliminates the use of money bail for low level, non-violent offenses and should be implemented as soon as possible. Mahalo for the opportunity to testify on this measure. Let us all work together to mend and restructure a system that currently perpetuates suffering into one that respects human dignity.

SB-1260-HD-1

Submitted on: 3/30/2021 2:17:15 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kellie Dinwiddie Kala	Individual	Support	No

Comments:

Aloha Chair, Vice Chair, and other committee members,

Mahalo for providing this opportunity to submit testimony. I am writing in strong support of **SB 1260** as it is my firm belief that it will reform our criminal justice system by (1) eliminating the use of cash bail and requiring that defendants of low-level and non-violent crimes be released on their own recognizance, and (2) making bail and detention determinations based on individual risks of flight and community safety. The current practice criminalizes poverty and often leads to further criminal behavior. No one should be held in jail because they/their families are too poor to provide cash bail prior to their hearing. Furthermore, cash bail is inequitable and unjustifiable for low-level offenses.

Pretrial incarceration is also one of the major reasons for overcrowding in our correctional facilities. Currently, our criminal justice system is overwhelmed. Hawaii Community Correctional Center is currently operating at 131% of its capacity; Maui Community Correctional Center is operating at 100.7% capacity, Kauai Community Correctional Center is operating at 110.2% of its capacity, and Oahu Community Correctional Center is operating at 95.7% of its capacity. Did you know that it costs \$198 per day to hold an inmate in Hawaii? The imprisonment of pretrial detainees and probation violators ends up costing Hawaii's taxpayers a total of \$138,006 per day, \$966,042 per week, \$3,864,168 per month, and \$46,370,016 per year. This figure is staggering, but SB 1260 will eliminate these fees and we can divert them to community resources.

Please support this bill.

Mahalo for the opportunity to submit testimony,
Kellie K. Dinwiddie Kala

SB-1260-HD-1

Submitted on: 3/30/2021 2:26:42 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong Support.

SB-1260-HD-1

Submitted on: 3/30/2021 2:27:11 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Natasha White	Individual	Support	No

Comments:

Thank you for the opportunity to testify in support of SB1260.

The cash bail system is arbitrary and unjust. A person's wealth does not determine their risk to society, and whether someone is jailed while awaiting trial should only be determined by their danger to the community, or likelihood to attempt to flee. The cash bail system criminalizes poverty, allows the wealthy to buy their way out of jail, and perpetuates institutional racism. It is an unjust system that has no place in a modern society, and we must eliminate it immediately.

Mahalo,
Natasha

LATE

SB-1260-HD-1

Submitted on: 3/30/2021 2:30:05 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dina Shek	Individual	Support	No

Comments:

Dear Committee Members,

I **support** S.B. 1260 SD 1 HD 1 which would eliminate the use of money bail for low level, non-violent offenses. This measure is a significant step -- but only a preliminary and baseline step -- towards ensuring racial and economic justice in the bail system. Please pass this important measure.

Thank you,

Dina Shek.

LATE

SB-1260-HD-1

Submitted on: 3/30/2021 2:54:17 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Imari Olipani	Individual	Support	No

Comments:

The cash bail system has long operated in a manner that prioritizes money as the main determining factor of a person's freedom, and not the seriousness of the crime they have committed. In other words, what determines a man's freedom is his socioeconomic status. The message that the cash bail system sends, therefore, is that the law does not apply to those who can literally afford to break it. As such, this system disproportionately affects low-income/black and brown communities the most which criminalizes then for even the most petty misdemeanors. As a member of the community, the cash bail system is unethical. It does not make the community safer--and neither does it demonstrate the intent to do so--if a rich man who commits a serious crime is allowed to walk free simply because he has the resources to buy his way out of being held accountable.

LATE

SB-1260-HD-1

Submitted on: 3/30/2021 3:23:50 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Calvin Foo Pham	Individual	Support	No

Comments:

Cash bail violates the right to presumption of innocence. In the United States, the accused is presumed innocent until proven guilty, and the the Fifth and Fourteenth Amendments prohibit depriving a person of his or her liberty without due process of law (including while awaiting trial and regardless of indigence). Yet, in Hawai'i, some 1,145 individuals are currently being held behind bars without having been convicted of a crime. Nationwide, 443,000 people are being detained without ever having been tried in a court of law. This is a gross violation of their civil liberties and amounts to an unconstitutional, extrajudicial punishment.

Hawai'i spends more than \$60 million on pretrial incarceration each year. It costs a lot of money to lock people up behind bars: about \$54,500 per detainee each year, or \$150 per day. Compare this to Washington D.C., which releases 85-90 percent of pretrial arrestees and spends a mere \$18 a day in supervising costs per individual.

SB-1260-HD-1

Submitted on: 3/30/2021 3:45:34 PM

Testimony for FIN on 3/31/2021 2:30:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Jacque Esser	Individual	Support	No

Comments:

I support this bill and agree with the comments outlined in the Office of the Public Defender's written testimony. This is an incremental step towards ending the injustice of our money bail system.

LATE

SB-1260-HD-1

Submitted on: 3/30/2021 3:58:25 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

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

Comments:

We must lead the way along with other progressive states (that have ALREADY implemented an end to the cash bail system) in creating a future that doesn't constantly criminalize the poor. No one should be in jail because they can't afford a ludicrous bail, ESPECIALLY during a pandemic. Keeping defendants arrested, charged and held for traffic offenses, violations, nonviolent petty misdemeanor offenses, nonviolent misdemeanor offenses or nonviolent class C felony offenses in our jails for an undetermined length of time does nothing to make our communities 'safer'. We all know that's just an illusion. Further, it puts them and their families in further economic precarity as they could lose their jobs and/or other opportunities. It's a vicious cycle that has no intention of promoting actual rehabilitation. Lastly, ending cash bail would remedy the overcrowding of our jails today. We must end the cash bail system. We should've done this years ago.

SB-1260-HD-1

Submitted on: 3/30/2021 6:12:53 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Henry boothe	Individual	Support	No

Comments:

Aloha,

I strongly SUPPORT this bill to end cash bail for minor offenses. We cannot continue the classist nature of cash bail for minor offenses that, in effect, over-penalize poorer individuals simply for being poor.

Mahalo,

Henry Boothe

SB-1260-HD-1

Submitted on: 3/30/2021 6:39:42 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lucie Schragger	Individual	Support	No

Comments:

Aloha Members of the Finance Committee,

There are many reasons why eliminating the cash bail system would be a step in the right direction in terms of justice system reform. The cash bail system, above all, is an arbitrary and overused system with 88 percent of cases requiring it as a condition of release. It violates the right to presumption of innocence. In Hawai'i, 64 percent of those incarcerated who could not afford bail ended up changing the plea to guilty in order to get out of jail sooner. Placing monetary bail above someone's innocence is not right, and it is a mockery of justice. Someone should not have to endure prison because they are unable to afford bail.

I urge you to support this bill.

Mahalo for your time and consideration,

Lucie Schragger

SB-1260-HD-1

Submitted on: 3/30/2021 9:02:22 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Leong	Individual	Oppose	No

Comments:

Strongly oppose. This bill is terrible. Eliminating bail is already bad enough, including Class C felonies in this as Released on Own Recognizance (ROR) is even worse. Do you realize Burglary 2nd (anything not a dwelling), UCPV (driving a stolen car), UEMV (breaking into a car), Theft 2nd etc. are all considered non violent property crimes? These criminals are terrorizing our communities and dont care about the consequences as it stands now. Eliminating cash bail for them will embolden them further. But of course you guys dont care because youre not the ones being victimized or the ones who have to keep putting their safety at risk catching them over and over again

SB-1260-HD-1

Submitted on: 3/30/2021 11:01:27 PM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Support	No

Comments:

Our jails are severely overcrowded. They are filled with people who have not been convicted of any crime, yet are warehoused because they are too poor to post bail.

This two tiered system of justice is contrary to our professed values of fairness and equality in Hawai'i.

Please support SB1260 SD 1, HD1 and consider the proposed amendments recommended by the ACLU of Hawai'i as this bill moves forward.

Mahalo,
Carrie Ann Shirota, Esq.

SB-1260-HD-1

Submitted on: 3/31/2021 9:56:06 AM

Testimony for FIN on 3/31/2021 2:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Zack Stoddard	Individual	Support	No

Comments:

Please end cash bail! It is a painfully obvious way people with money are treated differently in our justice system. You have the power to change this! Mahalo.