



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1260, RELATING TO CRIMINAL PRETRIAL REFORM.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 2, 2021

TIME: 9:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Landon M.M. Murata,
Deputy Attorney General, at 586-1049)

Chair Rhoads and Members of the Committee:

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

The purposes of this bill are to (1) eliminate the use of monetary bail, with certain exceptions, for traffic offenses, violations, and non-violent petty misdemeanor and misdemeanor offenses; and (2) create a rebuttable presumption for both release and detention for certain offenses and specify the circumstances in which the presumptions apply.

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 what may be needed to improve the process. At this point in time, we cannot assess the effects of the 2019 changes or even determine what metric to use to properly measure the success or failure of those changes. The bill's implication that a reduction in the State's prison population is the only metric by which the State's criminal pretrial system should be evaluated (page 2, lines 16-21) does not consider a number of important interests, including the need to secure the appearance of defendants and to protect the public. Should this Committee choose to move forward with this bill, the Department suggests amendments to the bill to avoid internal inconsistencies and unnecessary and possibly detrimental changes to the bail statutes.

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 through the adoption of certain recommendations made by the criminal pretrial task force regarding pretrial detention and release," page 1, lines 1-5, and that the only metric by which to measure the success or failure of Act 179 is whether or not the Act's reforms succeeded in substantially reducing the "pretrial population in Hawaii's jails", page 2, lines 16-18. The State already has a robust and flexible criminal pretrial system that the Legislature has only recently changed by Act 179. Given the brief amount of time that has passed 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.

Should the Committee choose to move forward with this bill, the Department requests the Committee to consider the following comments and recommendations:

The new section being added to chapter 804, Hawaii Revised Statutes (HRS), by section 2 (page 3, line 15, through page 6, line 2) of the bill, requires defendants charged with traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses be released. On page 4, line 8, through page 5, line 16, the bill sets forth a number of exceptions that would allow the court to set bail "in a reasonable amount." See page 5, line 18. 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. Additionally, the list of exceptions to the mandatory release on page 4, line 8, through page 5, line 16, does not address every possible scenario under which release on recognizance may not be appropriate. For example, pursuant to the bill's amendments to chapter 804, the courts would be required to release defendants who are arrested for violating the State's mandatory travel self-quarantine, even if they were still within their period of self-quarantine or if they had no place to self-quarantine. Accordingly, the Department recommends deleting section 2 of the bill in its entirety 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.

Section 3 (page 6, line 3, through page 8, line 14) seeks to amend section 804-3, HRS, to change the definition of "serious crime," separate the definition of "bail" from the definition of "serious crime," and create a rebuttable presumption for release or bail on the "least restrictive conditions" for defendants charged with any crimes that do not

fall under the new definition of "serious crime." The Department has no concerns with respect to the bill's amendments to section 804-3(a), HRS, on page 6, lines 6-14, regarding the definitions of "serious crime" and "bail." However, the Department recommends deleting the bill's proposed amendments to section 804-3(b), HRS, on page 6, line 15, through page 7, line 17, for the following reasons.

The current wording of section 804-3(b), HRS, already establishes that "[a]ny person charged with a criminal offense shall be bailable" unless the defendant is charged with a serious offense and the court finds:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

Given that the definition of "bail" in section 804-3, HRS, includes release on one's own recognizance, the current wording of section 804-3(b), already fulfills the intent of the Legislature with respect to the bill's amendments to section 804-3(b), HRS, on page 6, line 15, through page 7, line 17. The courts already have the authority, pursuant to the current statute, to release defendants on their own recognizance, thus making many of the amendments in section 3 unnecessary.

The Department recommends section 3 of the bill be replaced with the following:

SECTION 3. Section 804-3, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

"(a) For purposes of this section[, "serious]:

"Serious crime" means murder or attempted murder in the first degree, murder or attempted murder in the second degree, [or] a class A [or B] felony, [except forgery in the first degree and failing to render aid under section 291C-12, and "bail"] or a class B or C felony involving violence or threat of violence to any person.

"Bail" includes release on one's own recognizance, supervised release, and conditional release.

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and~~[:]~~ the court determines that:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

(c) Under subsection (b)(1) a rebuttable presumption arises that there is a serious risk that the person will flee or will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life with or without possibility of parole. For purposes of subsection (b)(3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:

- (1) The defendant has been previously convicted of a serious crime ~~[involving violence against a person]~~ within the ten-year period preceding the date of the charge against the defendant;
- (2) The defendant is ~~[already on bail on]~~ pending trial or sentencing for a felony charge ~~[involving violence against a person]~~; or
- (3) The defendant is on probation or parole for a ~~[serious crime involving violence to a person.]~~ felony charge."

These changes to section 3 will ensure that (1) the current wording of the statute that "[a]ny person charged with a criminal offense shall be bailable" will remain the same; (2) it is clear that the courts retain the discretion to determine whether defendants should be released on recognizance, supervised release, or conditional release, and whether

circumstances exist to deny bail only for those defendants charged with serious crimes; and (3) the amendments to section 804-3(a), HRS, on page 6, lines 6-14, are consistent with the rest of the chapter.

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.

STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

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

March 2, 2021

S.B. No. 1260: RELATING TO PRETRIAL BAIL REFORM

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

The Office of the Public Defender (“OPD”) strongly supports S.B. 1260 which eliminates the use of money bail for low level, non-violent offenses and creating rebuttable presumptions. These actions will complete Act 179 (2019) and is a good start to realize the Legislature’s expressed intention of reducing the jail populations.

The Pretrial Task Force sought to create a more efficient pretrial system and to reduce the State’s pretrial population without sacrificing public safety. Currently, the jail and prison populations have not been reduced. The jail and prison system continues to remain above operational and design capacity.¹ Hence, the Hawai’i Correctional System Oversight Commission has endorsed the Pretrial Task Force recommendations and has since introduced this Bill.

S.B 1260 simply enacts Pretrial Task Force Recommendations 20 and 21 that was not included in Act 179:

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

Recommendation 21: Create rebuttable presumptions regarding both release and detention. This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many *low-risk* defendants will be released, while

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

those who pose significant risks of non-appearance, re-offending and violence will be detained.²

These critical pieces of the pretrial system were sorely missing in Act 179. Implementing just these two recommendations under this Bill, will enhance the system and reduce the population without sacrificing public safety.

Myths Regarding Bail Reform

In anticipation of testimony in opposition to this important measure, the OPD wishes to debunk the myths regarding bail reform.

Myth No. 1: *Let us wait to see what the data suggests and give more time for Act 179 (2019) to work. Besides, we need more time to get ready, etc.*

Truth: Act 179 was incomplete. We already know that the incarcerated population did ***not*** decrease. This data has not changed. If anything, if a more complete package of the pretrial task force is implemented now, the new Criminal Justice Institute would be able to assess how the bail reform measures are truly working as originally recommended. We have waited long enough to implement this modest, low risk reform. These needed changes have been foreseeable already for a long time.

Myth No. 2: *Bad people with bad charges are going be released or fall through the cracks.*

Truth: The measure is focused on ***low level, non-violent offenders***. Furthermore, the measure is focused on process and ensuring that detention is only used to address particularized risks of danger or non-appearance. With safety in mind, under this measure, there is a long list of charges and circumstances that will render an individual ineligible. The rationale behind the law is sound. If the prosecutor believes a defendant is truly dangerous, the prosecutor will be able to file a motion to set bail, increase bail or hold a person without bail if such a person fits the criteria under the law.

² Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i "HCR 134" (December 2018), https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf

Myth No. 3: *Repeat offenders, i.e., people who steal are going to go right back out and steal again.*

Truth: Defendants on probation, pending sentencing, pending trial etc. are not eligible under this measure for presumptive release. The measure does not eliminate money bail for felonies, which would trigger repeat offender or habitual property crimes. Period.

Myth No. 4: *It will be necessary for the victims to testify (causing re-victimization). This will cause a backlog and influx of contested hearings.*

Truth: Direct testimony from the victim is not necessary. In fact, direct testimony is not required in the vast majority of bail hearings. Many alternatives to direct testimony are available to prove dangerousness. Courts can and do consider, among other factors the following: an individual's arrest and conviction record, the facts of the case, history of violence, history of substance abuse, pending restraining orders. These factors are considered without anyone testifying. Moreover, because the rules of evidence are relaxed in bail hearings, judges rely on pretrial bail reports to render their decisions daily.

Proposed Amendments

Although the OPD is in support of this measure, we do have a few concerns with the bill, and we respectfully recommend the following amendments:

1. Amend HRS § 804-3(b) (Section 3, pages 6-7)

In amending § 804-3, the Bill essentially replaced the following language pertaining to the denial of bail for serious crimes:

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or

- (4) There is a serious risk that the person will engage in illegal activity.

The Bill proposes the following:

(b) There shall be a rebuttable presumption that a person charged with a criminal offense, other than a serious crime, shall be released or admitted to bail under the least restrictive conditions required to ensure the person's appearance and to protect the public, unless the prosecution demonstrates by clear and convincing evidence that :

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or [~~therefore,~~] injure [~~;~~] or intimidate, or attempt to thereafter[~~;~~] injure[~~;~~] or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

Under the current law, bail may only be denied for a serious crime if one of the four enumerated serious risk factors in subsection (b) are present. However, under the proposed measure, it can be misinterpreted to read that bail for a serious crime may be denied without any of the serious risk factors present. In other words, bail can be denied for all class A and violent Class B felonies. Therefore, under the measure, first-time defendants who are charged with assault in the first degree or burglary in the first degree may be denied bail even if there are no serious risk factors. To remedy this potential ambiguity, the OPD suggests the following amendments:

(b) There shall be a rebuttable presumption that a person charged with a criminal offense, other than a serious crime, shall be released or admitted to bail under the least restrictive conditions required to ensure the person's appearance and to protect the public, unless the prosecution demonstrates by clear and convincing evidence that :

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or [~~therefore,~~] injure [~~;~~] or intimidate, or attempt to thereafter[~~;~~] injure[~~;~~] or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

- (c) Bail may be denied where the charge is for a serious crime, and
(1) There is a serious risk that the person will flee;
(2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
(3) There is a serious risk that the person poses a danger to any person or the community; or
(4) There is a serious risk that the person will engage in illegal activity.

(e) (d) Under subsection (b)(1) and (c)(1) a rebuttable presumption For purposes of subsection (b)(3) and (4) and subsection (c)(3) and (4) a rebuttable presumption arises that

2. Amend HRS § 804(c) (Section 3, page 5), lines 17-18

To be consistent with Act 179, the courts should be allowed to consider the financial circumstances of the defendant. Therefore, the language in Section 3, page 5, 804(c) should read: “bail may be set in a reasonable amount, in light of the financial circumstances of the defendant.”

3. Amend HRS 804(b)(2)(B), (Section 2 page 5), lines 4-6

We believe the look back provision of 10 years in HRS §804(b)(2)(B) should be reduced to five (5) years. Ten (10) years is a very long time to have a prior charge disqualify a person particularly for a new, non-violent offense. It appears to be too restrictive and would otherwise prevent consideration of certain individuals who can be safely released. An incident that happened, for example, 9 years ago may have very little to do with the current or present-day dangerousness, appearance, and risk of flight determinations. Currently the provision will restrict a court from releasing a defendant even if the he or she determines that it is safe and reasonable to do so, and despite a number of intervening years since the prior offense or the current circumstances of the accused.

4. Amend HRS § 804-3(b)(2)(F) (Section 3, page 5), lines 15-16

The proposed language in Section 3, 804-3(b)(2)(F), page 5, line 15 and 16 should be amended from "presents a risk of danger to any person or the community" to clarify the level of risk to "significant" and state a "specific threat of imminent harm to an identifiable person or persons. The suggested language should read as "The defendant presents a significant risk of danger with a specific threat of imminent harm to an identifiable person or the community."

5. Amend HRS § 808-3(c) (Section 3, pages 7-8)

The Bill seeks to insert "life with the possibility of parole" to the rebuttable presumption a person will flee. There is, however, no demonstrable need to include individuals charged with crimes punishable by imprisonment for "life with the possibility of parole." Therefore, we urge that this language is removed, and the statute is returned to the original language of just "life without the possibility of parole."

For these reasons, the OPD supports S.B. No. 1260 with the above proposed amendments.

We thank you for the opportunity to comment on S.B. No. 1260.


OFFICE OF HAWAIIAN AFFAIRS
‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai
Legislative Testimony

SB1260
RELATING TO CRIMINAL PRETRIAL REFORM
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo
Senate Committee on Judiciary

Malaki 2, 2021

9:30 a.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1260, which would 1) generally eliminate the use of monetary bail for low-level, non-violent offenses, subject to certain exceptions; and 2) create rebuttable presumptions regarding detention and release for higher level offenses.

SB1260 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) align with the recommendations 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.

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.

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 HAWAI‘I 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>.

To address systemic problems with our bail system, the HCR134 Task Force, in its 2018 report, recommended specific and comprehensive amendments to relevant HRS Chapters that, if adopted together, would have improved public safety while reducing unnecessary pretrial incarceration. The most critical components of this package of recommendations would have mostly eliminated the use of cash bail for low-level, non-violent offenses, and would have established new presumptions and procedural requirements for bail determinations for higher level, non-violent, offenses.³ Unfortunately, these key recommendations were not incorporated into Act 179 (Regular Session 2019), which otherwise adopted most of the recommendations of the HCR134 Task Force as well as the HCR85 Task Force on Prison Reform.

The Hawai'i State Correctional Systems Oversight Commission has since reported that **in the two years after the passage of Act 179, our incarcerated pretrial population has not been substantially reduced.** In fact, despite coordinated state action to “decompress” overcrowded jail populations by over 800 detainees in light of COVID-19 threats, **the pretrial proportion of the total jail population has risen.**⁴ Therefore, **the Oversight Commission has since endorsed, and SB1260 presents, a renewed push for the HCR134 Task Force’s two critical recommendations that were omitted from Act 179.**⁵

SB1260 would reduce the unnecessary incarceration of pretrial defendants, while ensuring that pretrial determinations are tied to individualized risks. Specifically, this measure would: limit the use of cash bail, especially in low-level, non-violent cases, subject to exceptions; provide defendants who are subjected to cash bail with a prompt bail hearing and, for those with bail amounts of \$99 or less, authorize the Director of Public Safety to release such defendants to avoid overcrowding; and require that, for those accused of higher level, non-violent crimes, conditions on their release or detention be tied to a particularized and serious risk of nonappearance or danger to the community. **By reducing our reliance on categorically applied cash bail schedules and instead providing for individualized bail and detention determinations based on defendants’ risk of flight and community safety, this measure will help to reduce the rampant overcrowding in our pretrial detention facilities, mitigate the disproportionate impacts of cash bail on indigent defendants and Native Hawaiians, and save significant taxpayer dollars, without compromising public safety.**

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

³ See Recommendations 20 and 21, HAWAI’I CRIMINAL PRETRIAL REFORM: RECOMMENDATIONS OF THE CRIMINAL PRETRIAL TASK FORCE TO THE THIRTIETH LEGISLATURE OF THE STATE OF HAWAI’I (Dec. 2018), *available at* https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf.

⁴ HAWAI’I CORRECTIONAL SYSTEM OVERSIGHT COMMISSION, 2020 ANNUAL REPORT, 36-37 (Dec. 2020) *available at* <https://ag.hawaii.gov/wp-content/uploads/2021/01/HCSOC-Final-Report.pdf>.

⁵ *Id.* at Section 2.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

March 2, 2021

RE: S.B. 1260; RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 1260.

The purpose of S.B.1260, 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 without statutory amendments.

With regards to the specific contents of S.B. 1260, we note the following issues:

Section 2 (pg. 3-6, ln. 18-20, 1-2)

By creating a broad range of eligible offenses (traffic offenses, violations, and non-violent misdemeanor or petty misdemeanor offenses) while creating a static list of excludable offenses (domestic violence, sexual assault, robbery, assault, terroristic threatening, violations of TROs and VOPs, OVUII, negligent homicide and any other crimes of violence) this section fails to take into account the plethora of charges classified as non-violent misdemeanor and petty misdemeanor offenses that are not excluded. This includes but is not limited to Promoting Pornography for Minors (§712-1215, H.R.S.), and Solicitation of a Minor for Prostitution (§712-1209.1, H.R.S.), Harassment by Stalking (§711-1106.1, H.R.S.), and Violation of an Injunction Against Harassment

(§604-10.5, H.R.S.). 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, pending trial.

In addition, the Department is concerned with the amendments made in S.B. 1260, 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.

Section 3 (pg. 6-8, ln. 6-21, 1-14)

The Department notes that although this section was a recommendation by the task force, no proposed legislation was provided and this section merely contains as much substantive language from the task force's recommendation. This section seeks to create a rebuttable presumption for release of all offenses with the exception of Murder, Attempted Murder, Class A felonies, and B and C felonies involving violence or threats of violence. This places the burden on the prosecution to establish, via an evidentiary hearing, that individuals charged with offenses such as Habitually Operating a Vehicle Under the Influence of an Intoxicant, Burglary, Criminal Property Damage, felony Theft, car theft, Forgery, Fraud, Bribery, Computer Crimes, Credit Card offenses, Money Laundering, Arson, Cruelty to Animals, Violation of Privacy, Gambling, Promoting Pornography, and various drug offenses should not be automatically released from custody. This proposal creates a mandated contested hearing by shifting the burden to the state to show, by clear and convincing evidence that a serious risk exists to require an individual's continued detention. This would only add to the "victimization" that victims in these cases already feel, in the course of their involvement with our criminal justice system, and all prior to the actual trial. For example, victims of Sex Assault in the Third Degree would first be subpoenaed to testify regarding the sexual assault in a preliminary hearing or grand jury proceeding. Then, as proposed in S.B. 1260, this very same sex assault victim would be required to testify in a bail hearing; then they would be subpoenaed for court (at minimum) a third time for trial, to recount and re-live their sexual assault on the witness stand, subject to cross-examination, face-to-face with the perpetrator. And the minimum three appearances would only apply if the proceedings are never continued, which is rarely the case. The added time-commitment, stress, and potential re-traumatization could potentially lead to reduced participation by victims who feel re-victimized by the system, which is ostensibly put in place to provide for their protection. This section will additionally create a huge influx of contested hearings which will delay trial cases, create a backlog, and impose a large financial burden for a number of agencies without proper funding. Lastly, as currently written, this section does not outline any procedure or mechanism to initiate such a hearing on behalf of the defendant.

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. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney



Rebecca Vogt Like
Second Deputy

Jennifer S. Winn
First Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Līhu'e, Hawai'i 96766
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**THE HONORABLE KARL RHOADS, CHAIR
THE HONORABLE JARRETT KEOHOKALO, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii**

March 2, 2021

RE: S.B. 1260 – RELATING TO CRIMINAL PRETRIAL REFORM

Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kauai submits the following testimony in support of S.B. 1260 as an initial step in the process of eliminating money bail in Hawaii.

This bill eliminates the use of monetary bail, with certain exceptions and requires individuals charged with traffic offenses, violations, non-violent petty misdemeanor and misdemeanor offenses to be released on their own recognizance.

Article 1, Section 12 of the Hawaii State Constitution prohibits excessive bail and states, "the court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment." Further, the Hawaii Revised Statutes allow bail to be denied in four circumstances: (1) flight risk, (2) serious danger to witness or juror, (3) serious danger to person or community, or, (4) serious risk that person will engage in illegal activity.

In August of 2020, the Hawaii Supreme Court limited the types of cases in which a court could set bail to felony persons offenses, including sexual assault, burglary, robbery, abuse of family or household member, restraining order and protective order violations, and violation of quarantine requirements. Outside of these specific offenses, courts are prohibited from setting bail. This rule is currently still in effect. This bill would codify some of what the Hawaii

Supreme Court ordered in August of 2020, while allowing for bail to be set in additional offenses and articulating more exceptions in which bail can be set.

Overcrowding remains a problem in all jails in Hawaii. This bill would allow the pretrial release of individuals who do not pose a danger to society or a flight risk. It balances public safety concerns by allowing bail to be set in cases where defendants have a history of nonappearance, prior convictions, pending cases, or charges involving violence. Bail can also be set if the defendant was on probation, parole or conditional release when arrested or if the court determines that the defendant presents a risk to an individual or the community.

The consequences of the current monetary bail system make our community less safe by eliminating an individual's ability to contribute to and participate in their community solely based on their income. Further, jails have been one of the epicenters of COVID-19 transmission leading to further spread in adjacent communities making bail reform not just a public safety concern, but a public health concern as well.

For these reasons, the Office of the Prosecuting Attorney supports the passage of S.B. 1260. Thank you for this opportunity to testify.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
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Telephone: (808) 241-4188
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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

March 1, 2021

**TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 1260, RELATING TO CRIMINAL PRETRIAL REFORM
Senate Committee on Judiciary
Tuesday, March 2, 2021
9:30 a.m.
Via Videoconference**

Dear Chair Rhoads and Members of the Committee:

Thank you for this opportunity to provide testimony in SUPPORT of SB 1260, Relating to Criminal Pretrial Reform. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

SB 1260 proposes to eliminate the use of monetary bail for non-violent petty misdemeanors, traffic violations, and misdemeanor offenses. This assists our criminal justice system from filling our correctional center with the impoverished and mentally ill.

My exposure and exploration of this topic includes routine and active interface with our houseless community in our Kaua'i permitted encampments and those living in the bushes, time spent at Kaua'i Community Correctional Center with particularly our female inmates, court time assisting young or confused offenders, as a mediator with Kaua'i Economic Opportunity, and as a member of the National Association of Counties Justice and Public Safety Committee.

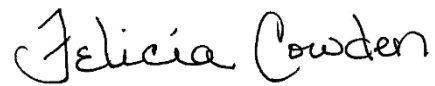
Poverty should not be a central crime. The incarceration time visited upon the poor accelerates instability through a cascade of difficulties including loss of identification, housing, job, credit, belongings, etc. For those without family stability, this can create permanent, negative, life-altering consequences.

SB 1260 is appropriately written to simply separate the impoverished individuals from those with a criminal pattern that are a threat to the community and society. For some pre-trial inmates, their time of incarceration represents stability, shelter, and food. Time in a correctional facility is a highly expensive solution to this broadly needed assistance. Our current cash bail system effectively causes our correctional center to be the homeless shelter and mental facility. It is unfair to our Adult Corrections Officers to have to be a social services facility on top of managing violent criminal offenders.

Senate Committee on Judiciary
RE: SB 1260, Relating to Criminal Pretrial Reform
March 1, 2021
Page 2

Mahalo for considering my testimony and the work on this important bill. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

A handwritten signature in black ink that reads "Felicia Cowden". The signature is written in a cursive, flowing style.

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:mn

TESTIMONY IN SUPPORT OF SB 1260

TO: Chair Rhoads, Vice-Chair Keohokalole, & Judiciary Committee Members

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: March 2, 2019 (9:30 AM)

Hawai'i Health & Harm Reduction Center (HHRC) **supports** SB 1260, 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 and misdemeanor offenses, with certain exceptions. HHRC hopes that this bill could be amended to include drug possession offenses that are currently a Class C felony.

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

HHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance use and underlying mental health conditions. Incarceration for any length of time for those with undiagnosed or undertreated behavioral health conditions compounds their suffering and is neither wise nor compassionate public policy.

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

Thank you for the opportunity to testify on this measure.



Hawai'i

Committees: Committee on Judiciary
Hearing Date/Time: Tuesday, March 2, 2021, 9:30 a.m.
Place: Via videoconference
Re: Testimony of the ACLU of Hawai'i with comments regarding S.B. 1260, Relating to Criminal Pretrial Reform

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

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") offers comments regarding S.B. 1260, which seeks to reform the current bail system in Hawai'i. While we generally support the intent of this bill, as written, the broad exceptions in this bill will significantly limit its impact.

Pretrial incarceration is one of the major drivers of overcrowding in Hawaii's jails. Currently, roughly one-third of all individuals housed in Hawaii'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 Hawaii's jails, the ACLU of Hawai'i conducted an in-depth study of the state's bail setting practices in all cases filed in Hawaii's circuit courts in 2017. While we have 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

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>.

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 S.B. 1260 is not “carefully limited” and will only cement a system in which detention prior to trial *is* the norm.

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 within our pretrial system. We therefore respectfully request the Committee amend this bill to reflect the following:

- 1) Throughout, *see, e.g.*, P. 4, lines 3-7: References to nonappearance in court and “protect[ing] the public” should be amended. As a matter of policy, the appropriate risks should be that of: 1) intentional, willful flight; or 2) specific threat of imminent harm to an *identifiable* person or persons.
- 2) P. 5, lines 2 & 3: This provision should be amended to clarify the word “history” to mean a pattern of non-appearance, not a single occurrence. The period of time should also be reduced.
- 3) P. 5, lines 4-6: This provision excludes anyone with a history of a violent misdemeanor or violent felony offense within the last decade. While this may sound reasonable on first pass, a person’s actions nine years ago do not automatically determine a person’s present-day flight risk or dangerousness to a specific person in the community. This provision should be narrowed further.
- 4) P. 5, lines 15-16: This should be amended to read “The defendant presents a risk specific threat of imminent harm ~~of danger to any other identifiable person or persons to the community.~~”
- 5) P. 5, lines 17-18: This should be amended to read “bail may be set in a reasonable amount, in light of the financial circumstances of the defendant.”
- 6) P. 7, lines 11-12: This provision could be used to justify detaining all houseless people who are arrested, because if they go back on the street and sleep on the sidewalk or in the park, they will be engaging in illegal activity. This provision of HRS § 804-3(b) should be narrowed further.
- 7) Section 3: References to “threats of violence” are vague and should be deleted.

ACLU of Hawai'i comments on S.B. 1260
March 2, 2021
Page 3 of 3

- 8) Section 3: As written, this section could be interpreted in a way that allows bail to be denied based solely on the fact that the charges involve a serious crime, which raises constitutional concerns.

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.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Hawaii
*Holding Power Accountable*Statement Before The
SENATE COMMITTEE ON JUDICIARY

Tuesday, March 2, 2021

9:30 AM

Via Videoconference

in consideration of

SB 1260**RELATING TO CRIMINAL PRETRIAL REFORM.**

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

Common Cause Hawaii comments in support of SB 1260, which (1) eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions and (2) creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

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. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,
Sandy Ma
Executive Director, Common Cause Hawaii

SB-1260

Submitted on: 2/26/2021 3:31:25 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for 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.

SB-1260

Submitted on: 2/27/2021 10:25:40 AM

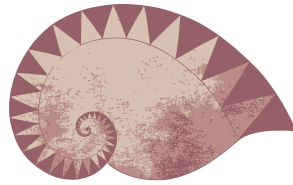
Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	Testifying for We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

Strongly support SB1260

www.WeAreOne.cc



Pono Hawai'i Initiative

Patrick Shea - Treasurer • Lena Mochimaru - Secretary
Nelson Ho • Summer Starr

Monday, March 2, 2021

Relating to Criminal Pretrial Reform
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB1260 Relating to Criminal Pretrial Reform. This measure eliminates monetary bails and requires defendants to be released on their own recognizance for certain small and nonviolent offenses.**

By removing monetary bails, we can move toward a justice system that treats offenders more fairly. This measure will help to decrease the states prison population and lower costs associated with the incarceration rates of people who have not been found guilty. **A person's freedom should not be dependent on how much money they have access to.**

We urge the Committee to **vote in favor of SB1260.**

Mahalo for the opportunity to testify,

Gary Hooser
Executive Director
Pono Hawai'i Initiative



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

February 28, 2021

TO: SENATE COMMITTEE ON JUDICIARY
RE: Testimony in Support of SB1260

Dear Senators,

Young Progressives Demanding Action (YPDA) stands in **strong support of SB1260**, 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.

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.

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.](#)

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.

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.

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.

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.

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.

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 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



SB 1260, RELATING TO CRIMINAL PRETRIAL REFORM

MARCH 2, 2021 · SENATE JUDICIARY COMMITTEE ·
CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: Imua Alliance supports SB 1260, 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 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.

Imua Alliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention services to over 160 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims in total. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name. Yet, sadly, **many of the victims with whom we work are misidentified as so-called "voluntary prostitutes" and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release.**

Hawai'i has approximately 5,500 inmates, over 1,500 of whom are incarcerated overseas, away from their families and homeland. According to a report by the American Civil Liberties Union released last year, pre-trial detainees in Honolulu wait an average of 71 days for trial because they cannot afford bail. Additionally, researchers found that circuit courts in Hawai'i set money bail as a condition of release in 88 percent of cases, though only 44 percent of those people managed to post the amount of bail set by the court. Moreover, the study found the average bail amount for a Class C felony on O'ahu is set at \$20,000. Even with help from a bail bonding agency, posting bond, in such cases, would require an out-of-pocket expense of roughly \$2,000. Finally, while officials claim that bail amounts are supposed to be based on a consideration of multiple factors—including flight risk, ability to pay, and danger to the community—researchers learned that in 91 percent of cases in Hawai'i, money bail mirrored the amount set by police in arrest warrants, an amount based solely on the crime charged. These injustices led the ACLU to declare that our state's pretrial detention system was and remains unconstitutional.

Furthermore, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, continue to suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and, importantly for this measure, harsher drug-related punishments than other ethnic groups. Therefore, passage this measure is a step toward reforming and preventing more people from becoming victims of our unjust and racially coded prison system.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 2, 2021

9:30 a.m.

SB 1260 - SUPPORT ELIMINATING MONEY BAIL FOR LOW LEVEL OFFENSES

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

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the more than 4,100 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that 1,000 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in strong support of eliminating money bail and releasing defendants on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses.

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 Department of Public Safety Population Report¹ shows that as of February 15, 2021 there were 899 pretrial detainees (innocent until proven guilty) statewide. This costs taxpayers \$178,002 a day, \$1,246,014 a week, \$4,984,056 a month, and \$59,808,672 a year.

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

¹ Dept. of Public Safety, Bi-Monthly Population Report, February 15, 2021.

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

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

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

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

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

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

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

Money bail exacerbates the disparities of the criminal justice system. By nature, money bail discriminates against low-income people through bond amounts that are either burdensome or unaffordable. Because wealth and race are correlated, money bail disproportionately harms Black and Latinx defendants. Implicit and explicit racial biases make this worse. Recent empirical research finds that judges overpredict the risk of Black defendants committing crimes on pretrial release and underpredict the risk of white defendants committing crimes on pretrial release.²

Hawai'i has to face the fact that the policies that have been passed and enacted into law have created these social disparities. Blaming individuals and families for their hardship does not address the challenges they face daily. The ALICE³ data show that 48% of our families are barely making it. That is shameful.

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

Mahalo for this opportunity to testify.

Poverty is the worst form of violence.

Mahatma Gandhi

² David Arnold et al., Racial Bias in Bail Decisions, 133 Q. J. ECON. 1885, at 1889–90 (2018).

³ ALICE: A Study in Financial Hardship in Hawaii. <https://www.unitedforalice.org/Hawaii>



**THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021**

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Tuesday, March 2, 2021, 9:30 AM
Via Videoconference

Re: Testimony in Support of SB1260 - RELATING TO CRIMINAL PRETRIAL REFORM

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

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** of SB1260, 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 and misdemeanor offenses, with certain exceptions. This bill would also create rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

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.

UNITED PUBLIC WORKERS
AFSCME Local 646, AFL-CIO





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March 1, 2021

S. B. No. 1260: RELATING TO CRIMINAL PRETRIAL REFORM

Chair Karl Rhoads
Vice-Chair Jarret Keohokalole
Honorable Committee Members

I'm a criminal defense attorney on Maui and was a Public Defender for nearly 20 years.

I strongly **SUPPORT** S. B. No. 1260. Our current criminal justice system conditions pretrial release with how much money a defendant can afford to either deposit with the court or post a bond with a third-party bond company.

In doing so, our system loses sight of the twin goals of pretrial release: safety to the community and ensuring that the accused will come to court when ordered by the court. The cash bail system has resulted in the mass confinement of poor people who are not guilty and have not been found guilty of a crime. It has converted county jails into an overcrowded, modern-day poorhouses. Studies have shown that 80% of those released will appear, whether they have to post bail and 20% will not, even if they had to put up Grandma's house as collateral on a bail bond. It's not equitable or fair to continue to lock up the poor.

S. B. No. 1260 is a step in the right direction. It is a progressive and equitable approach to our criminal justice system that should reduce the number of people who find themselves in jail and unsentenced simply because they are poor. The bill is overdue and should become law.

Very truly yours,

/s/ Wendy A. Hudson

Wendy A. Hudson

Hawai'i Association of Criminal Defense Lawyers

Testimony of the Hawai'i Association of Criminal Defense Lawyers to
the Senate Committee on the Judiciary

March 1, 2021

S. B. No. 1260: RELATING TO CRIMINAL PRETRIAL REFORM

Chair Karl Rhoads
Vice-Chair Jarret Keohokalole
Honorable Committee Members

The Hawai'i Association of Criminal Defense Attorneys (HACDL) is an organization of lawyers practicing criminal defense in state, federal, and appellate courts throughout the State of Hawai'i. HACDL members include public defenders, private counsel, and other attorneys asserting the rights of the accused in criminal cases.

HACDL strongly **SUPPORTS** S. B. No. 1260. Our current criminal justice system conditions pretrial release with how much money a defendant can afford to either deposit with the court or post a bond with a third-party bond company.

In doing so, our system loses sight of the twin goals of pretrial release: safety to the community and ensuring that the accused will come to court when ordered by the court. The cash bail system has resulted in the mass confinement of poor people who are not guilty and have not been found guilty of a crime. It has converted county jails into an overcrowded, modern-day poorhouse.

S. B. No. 1260 is a step in the right direction. It is a progressive and equitable approach to our criminal justice system that should reduce the number of people who find themselves in jail and unsentenced simply because they are poor. The bill is overdue and should become law.

Thank you for considering these concerns.

SB-1260

Submitted on: 2/28/2021 11:33:21 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

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

I am writing in support of SB1260.

Based on research, we know that our current bail system disproportionately targets the poor, Native Hawaiians and other ethnic minority groups in Hawai'i. The current measure is in greater alignment with our professed values of equality and diversity.

This legislative body created the HCR 134 Criminal Pretrial Task Force. The Criminal Pretrial Task Force issued a report with various recommendations, and now this legislative body has the opportunity to codify those recommendations and go even further to make significant bail reform changes.

During this economic crisis, this legislative body should enact public policies that adhere to evidence based practices, and saves public monies. .

According to the Department of Public Safety Population Report from February 15, 2021, there were 899 pretrial detainees (innocent until proven guilty) statewide. This costs taxpayers \$178,002 a day, \$1,246,014 a week, \$4,984,056 a month, and \$59,808,672 a year. Eliminating cash bail and not creating exceptions that will swallow the rule will reduce the number of pre-trial detainees on a daily, monthly and annual basis.

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

In closing, I respectfully request that this Committee pass SB1260 with any amendments recommended by the ACLU of Hawai'i who studied this issue extensively in its Bail Report. <https://www.acluhi.org/en/aclu-hawaii-report-shows-current-bail-practices-prioritize-wealth-accused-over-risk-community>

Thank you for the opportunity to submit testimony in support of SB1260.

Sincerely,

Carrie Ann Shirota, Esq.

Honolulu, Hawaii

SB 1260 Testimony, James Waldron Lindblad. Support with Caution and Amendment.

THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

DATE: Tuesday, March 2, 2021
TIME: 9:30 a.m.

A G E N D A

SB 1260

Status &
Testimony

RELATING TO CRIMINAL PRETRIAL REFORM. JDC
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. Creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

Testimony in Support with Caution & Subject to Amendment to Page 6, Section 3(b) Sufficient Sureties

By: James Waldron Lindblad. Ph: 808-780-8887 James.Lindblad@Gmail.com

Chair and Members of the Committee:

My name is James Waldron Lindblad. I am a former pretrial worker and am presently a bail bond agent. I also sell surety bonds including licensing bonds. I have followed bail and pretrial release matters since 1973. Bail by sufficient sureties or secured bail and its cousins cash bail, money bail, property bail and even credit card bail have helped to make the American justice system a worldwide leader and an example of fairness and accountability. Bail is at the foundation of justice in America and is a constitutional right upheld by the Eighth Amendment to our Constitution. Bail by sufficient sureties is mentioned in at least 39 state constitutions.¹

¹ Reform considerations for states with a constitutional right to bail:
[Devil Take The Hindmost: Reform Considerations for States with a Constitutional Right to Bail \(uakron.edu\)](http://uakron.edu)

My decision to become a bail agent was precipitated by my work as a recognizance officer at Clark County Community Corrections in Washington State, where we concentrated most of our efforts on those who could pay cash bail and consequently ignored too many of the truly needy.² My work to provide bail by sufficient sureties addresses the needs of defendants and provides a good option for pretrial release. Bail is community-based and has been since Socrates asked Plato to become surety. Family members should decide bail issues and we should support family-based decisions.

The purpose of proposed SB 1260 is to change the criminal justice system in Hawaii by deleting bail requirements for certain classes of crime. The proposed bill seeks to eliminate the use of monetary bail for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses, with certain exceptions, and requires defendants to be released on their own recognizance. **The measure does not (and should not) seek to eliminate bail by sufficient sureties, nor does the bill seek to impact bail agents or those persons requiring secured bail when set by the court.**

As such, my testimony will focus on page 6 of the proposed SB 1260 and its attempt to amend Chapter 804, Hawaii Revised Statutes by striking the following line: *“Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime...”*. It is my opinion, which will be substantially supported in the following pages, that the removal of language regarding access to bail by sufficient sureties is unnecessary as it does not apply to those with lesser criminal offenses as described in this bill. Further, the removal of such language does not support the purpose of this bill which is not to eliminate bail for those offenses for which it has been deemed necessary by a judge. (Note: During the 2019 legislative session, there was an attempt to remove this type of language from SB 192 and HB 1552 which ultimately resulted in the language being restored and left intact.) I ask that the language regarding *bail by sufficient sureties*, referenced above, be restored to any version of SB 1260 to be adopted by the Hawaii State Legislature.

Among the many reasons to restore the aforementioned language to this bill prior to the consideration of its passage is the fact that the HCR 134 Task Force Report never asked for

² The Barton Case explains bail by sufficient surety and how cash bail differs.
<http://blog.808bail.com/2015/02/>

elimination of bail by sufficient sureties (i.e. secured bail). The removal of this language would be counter intuitive as it would result in less options for pretrial defendants and not more. As the report proves, any attempt to remove options or limit pretrial release contributes to the overcrowding of Hawaii's jails and increases the burden on taxpayers.

We all want fewer people in jail, are concerned about the decrepit conditions of our present facilities, and know the need for adequate jail/prison bedspace. The HCR 134 Report positions us for a giant step in the right direction and I support any and all recommendations of the HCR 134 Task Force. The Task Force, however, did not ask for bail by sufficient sureties to be eliminated and the report does not seek to ban bail agents. The recommendations in the report instead seek to improve current pretrial practices, with the goal of achieving a more just and fair pretrial release and detention system. They also seek to maximize the release of defendants, ensure their appearance in court and, importantly, protect the public.³

Since 2019, we have had HRS 804-9.5 in place regarding unsecured bail, which outlines the terms for this type of bail. With this legislation already in place, it would be harmful to remove the language regarding bail by sufficient sureties from the newly proposed SB 1260 as doing so would remove options for pretrial release.

A quick review of the booking logs available online at <https://www.honolulu.hpd.org/information/arrest-logs/> will confirm that judges currently release the majority of detainees from HPD. The judiciary has taken many positive steps to release more pretrial defendants both at court and at HPD. Further, HPD arrest and booking numbers have been greatly reduced. A look at the number of arrests for each year from 2007 to 2019 when compared to those actually held at OCCC shows that less than 3% of those arrested are actually held pretrial. Hawaii ranks in the top 5 of all 50 states for fewest numbers of those held pretrial and has a high functioning pretrial process. We are not in need of legislation that would decrease the number of good options for release that work to ensure that criminal defendants appear in court.

³ This article out of Utah speaks of lawmakers repealing bail reform and explains why: <https://www.deseret.com/utah/2021/2/6/22268717/legislature-bail-reform-took-effect-4-months-ago-utah-lawmakers-want-repeal-jail>

The Intake Service Center in Hawaii is among the best in the nation. The HRC 134 Task Force Report proves Hawaii has a high functioning pretrial process. Unlike Hawaii, there are many states that have much higher numbers of defendants being held pretrial. This includes Washington D.C., where approximately 11% or about 2,000 of those 19,000 arrested annually are held pretrial. Washington D.C. measures incarceration rates relevant to the overall population and not the actual number of those arrested; but we can approximate that pretrial services supervises the same numbers of those arrested and these numbers are close to that of Honolulu if using an average of 17,000 arrests annually. The 2017 Pretrial Service Agency Financial Report for Washington D.C., states that 16,407 offenders were supervised over the course of one year.⁴ The cost for this is about \$65MM annually. There was an approximate 12% failure rate in 2017 according to the annual report. Even with a \$65MM annual budget, Washington D.C. is worse off than Honolulu. Clearly their system with its high incarceration rate is in need of reform and when compared to that of Hawaii, it can be seen that our pretrial process provides diverse options for release.⁵

The point here is much testing on use of unsecured release is being done on the mainland that we can learn from and follow, but also avoid the pitfalls. Secured bail using sufficient sureties, bail bonds sold by bail agents and insured by an insurance company, real property pledged (pursuant to §804-11.5), cash, credit and debit card authorization, stocks, bonds, or real property all provide better choices that are fairer and reliable as opposed to detention. HCR 134 Task Force members included members of the judiciary who are all taking steps to reduce jail populations. OCCC numbers in pretrial have been reduced by at least 50% or more (452 as of January 2021). Prior to adopting additional legislation, it is my feeling that more time is needed to allow both our judiciary and our DPS to sort out Act 179 of 2019. We still do not have 24-hour bail implemented as required by Act 179 and we still do not have bail release uniformity statewide; although we are in the process and DPS cooperates in every way.

The intent of SB 1260 is to improve the pretrial process and not to eliminate bail by sufficient surety and not to eliminate bail agents. There is no purpose or reason that requires the bill to

⁴ 2017 Pretrial Service Agency Financial Report for Washington D.C.:

https://www.psa.gov/?q=about/budget_and_performance

⁵ Washington D.C.'s incarceration rate is among the highest in the country.

<https://wamu.org/story/19/09/10/district-of-corrections-does-d-c-really-have-the-highest-incarceration-rate-in-the-country/>

eliminate the *sufficient sureties* language from our statutory scheme as is the case on page 6 of the bill. Further, since the intent is not to eliminate bail agents, by eliminating the words, ***bailable by sufficient sureties***, it would make it easier to eliminate bail agents in future legislation which is not the purpose or intent of SB 1260. I ask that the committee report reflect that the intent of this measure is not to eliminate bail agents or any other means of bail or pretrial release by sufficient sureties (secured bail). In other words, the bill does not seek to limit judicial options or choices but rather to add options and choices for our judges. The intent of SB 1260 is to drop the bail requirement altogether for certain crimes and release those accused without bail. I favor this and I have testified many times in support of reform to help reduce the jail population and to ensure justice and fairness in the criminal justice system.

However, when we drop the bail requirement, there is a rebound effect that must be taken into account. There will inevitably be more crime and more warrants.⁶ In 2011, HPD listed 1,356 felony warrants received and 1,146 felony warrants served. There were 9,189 misdemeanor warrants received by HPD and 5,771 served. Unbelievably, HPD lists another 2,150 felony warrants on file and 21,210 misdemeanor warrants on file in their 2011 annual report on page 32. That is a lot of warrants, but that is what happens when courts cannot set bail and ISC cannot find defendants. If SB 1260 is passed, we must prepare our infrastructure to deal with more warrants. Bail agents utilize third party co-signers to avoid almost every problem regarding failure to appear. ISC cannot do this and must deal only with the defendant which puts them at a disadvantage.

Bail by sufficient sureties or secured bail is very important to the integrity of our judicial system and, as such, I ask that Section 3(b) be restored to the proposed bill. The existence of Section 3(b) as it is currently written does not have a negative impact on the intent and purpose of SB 1260. In fact, its existence serves to provide additional options to those assigned bail by a judge. One solution would be to insert the word, ***however***, into the clause as shown below:

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, ~~and~~ however, there shall be a rebuttable presumption...

⁶ Chicago's bail reform has resulted in increased crime.
<https://www.city-journal.org/bail-reform-in-chicago-has-increased-crime>

Another option would be to use the word, **provided**, as shown below:

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, ~~and~~ provided there shall be a rebuttable presumption...

A third option would be to clarify that the bail wording does not apply to the aforementioned nonviolent offenders by inserting the words, **and assigned bail by a judge**, as shown below:

(b) Any person charged with a criminal offense and assigned bail by a judge shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and there shall be a rebuttable presumption...

Removing the language in Section 3(b) is not necessary and doing so would lead to adverse outcomes. Its removal would both decrease equal access to pretrial release by limiting options and impede the goal of decreasing mass incarceration. Removing the specific words “sufficient sureties” inadvertently removes the practice of third party actors assisting the most vulnerable of detainees and strengthening their argument for release. For example, a bail agent is a third party, which functions as a “sufficient surety” to guarantee a detainee will return to court after release from custody. It’s critical to recognize sufficient sureties, because stand alone, many detainees do not qualify for release upon review of their attendance record, previous arrests, and mental health/substance abuse/housing history. Additionally, a liberal definition of “sufficient sureties” can expand access to pretrial release by involving many “alternative sureties” that are both sufficient and effective. Examples of these alternatives are social service agencies, military chain of command units, church or faith-based groups, non-profit and community outreach groups, clean and sober home programs, drug treatment programs (both inpatient and outpatient), mental health agencies and sponsors pledged to assist in supervised release programs. My experience has been that the help of a third party, sufficient surety, overwhelmingly strengthens the case for a detainee’s release. Without a sufficient surety’s involvement, a judge essentially releases a detainee on their own recognizance, with optional conditions set by the court. This is the least effective way to guarantee a defendant appears in court and puts the defendant in the highest category for re-arrest according to the US Department of Justice’s Bureau of Justice Statistics report on pretrial released felony defendants.⁷

⁷ <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>

Bail by sufficient sureties and secured bail is at the heart of our American justice system. Release or detain is not in the public interest. That is why I chose to participate in the legislative process. The goal is to find more ways to reduce the jail population while keeping the safety of the public at the forefront. If we eliminate bail altogether, take away judicial discretion, insist on police citation releases, spend thousands of dollars hoping to convert criminals to law abiding citizens, change sentencing laws to reduce jail time, and legalize crimes such as drug possession, we may decrease jail populations but will certainly increase crime. I have studied pretrial release and prison population management since 1973. When I compare our Hawaii pretrial system to those of the mainland, it is clear that we are leaders in pretrial modernization. The small number of pretrial detainees at OCCC (averaging about 500-750 in January 2021) as compared to the number of arrests (between 15,000 and 18,000) proves that our system is high functioning. To pass SB 1260 with the sufficient sureties language removed would be a move to limit pretrial release options and not expand them. Maintaining the right to bail by sufficient sureties is certainly essential to the pretrial process and I ask for this language to remain in SB 1260 or any other bill pertaining to pretrial release on bail. One size does not fit all and we need more ways to safely release, not less.

Thank you for this opportunity to testify on this measure.

James Waldron Lindblad

808-780-8887

James.Lindblad@Gmail.com

Re 02.28.2021

ROBERT K. MERCE
2467 Aha Aina Place
Honolulu, Hawai'i 96821
(808) 398-9594

TO: Committee on Judiciary
RE: SB 1260
HEARING DATE: Tuesday, March 2, 2021
TIME: 9:30 a.m.
CONF. Via Videoconference
POSITION: **Strong Support**

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

Our money bail system is unjust. It keeps poor people accused of minor crimes in jail simply because they are poor, while allowing rich people accused of major crimes to go free simply because they are rich.

It is also ineffective. As the HCR 134 Task Force on Pretrial Reform said in its report to the 2019 legislature, “there is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody. Thus, money bail is a poor method of assessing and managing a defendant’s risks.”¹

Our bail system is also incredibly expensive. Prior to the coronavirus pandemic we were spending around \$209,000 *per day* to incarcerate pretrial detainees statewide. We have reduced our pretrial population due to the pandemic, but pretrial detainees still cost taxpayers around \$175,00 a day or 64 million a year.² SB 1260 would permanently reduce our pretrial population and save millions of dollars a year. It would also allow us to build a smaller jail to replace OCCC which would save tens of millions in construction costs.

I discussed some of the problems with our money bail system in an article that appeared in Honolulu Civil Beat on February 21, 2021. I hope you will take a moment to read it.

Thank you for allowing me to testify on this important bill.

¹ House Concurrent Resolution 134 Task Force, “Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature, December 2018, p. 68.

² On February 1, 2021 there were 883 pretrial detainees in Hawaii’s jails. See Hawaii Department of Public Safety Headcount, February 1, 2021. <https://dps.hawaii.gov/wp-content/uploads/2021/02/Pop-Reports-Weekly-2021-02-01.pdf>. It costs \$198/day to incarcerate a person in Hawaii. See *Hawaii Department of Public Safety 2019 Annual Report*, p. 16. \$198/day x 883 inmates = \$174,834 per day, or approximately \$64 million/year.

Restore Justice. End The Cash Bail System

On any given day close to 900 people are locked up in Hawaii's dismal and decrepit jails even though they are presumed innocent and have not been convicted of a crime. The vast majority are charged with relatively low-level offenses — misdemeanors, petty misdemeanors or class C felonies — and many are homeless or suffer from mental illness or substance use disorders. The legal system calls these people “pretrial detainees” and they are locked up not because they are dangerous or a flight risk, but because they are too poor to afford bail. They make up over half of the Oahu Community Correctional Center population, and on a statewide basis they cost taxpayers about \$175,000 a day or \$64 million a year.

Most of us would like to believe that our legal system treats the rich and poor alike, but it doesn't, and nowhere is the disparity more evident than in our money bail system, which subverts the presumption of innocence, undermines the principle of equal protection and causes untold harm to detainees, their families and society at large.

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

In *United States v. Salerno*, the U.S. Supreme Court said that “in our society liberty is the norm and detention prior to trial, or without trial, is the exception.”

Those are fine words, but in practice, just the opposite is true. In the past 45 years the number of pretrial detainees in jails nationwide has increased 433% due in large part to the increased use of money bail. A 2018 study by the ACLU-Hawaii found that overall judges in Hawaii required bail as a condition of release in 88% of cases, and in the majority of those cases it was set at a level the defendant could not afford.

The reality is that in our society detention is the norm and liberty is the exception.

Pretrial detention often leads to devastating collateral consequences that can have an impact on individuals for a lifetime and families for generations. Defendants who can't make bail are at risk of losing their jobs, and with it the income that supports their children, pays their rent and utilities and puts food on the table.

In the long run they can also lose their house or apartment, health insurance and custody of their children. After maxing out their credit cards, a family may end up deep in debt or even homeless.

Pretrial detainees can be locked up for weeks, months or even years under terrible conditions while awaiting trial. Overcrowding, broken telephones, long lockdowns and no-contact visits have led to riots at the Maui and Hilo jails. These and other inhumane and arguably unconstitutional conditions have led detainees facing relatively short sentences to waive their

constitutional rights and plead guilty just to get their sentence over with and get out of jail. The ACLU-Hawaii found that almost 70% of pretrial detainees who changed their pleas from innocent to guilty or no contest did so while in jail, primarily because they could not afford bail.

People who can't make bail face another problem: They are more likely to be sentenced to a term of incarceration if convicted. A national study by the Arnold Foundation found that defendants who are detained for the entire pretrial period are 5.41 times more likely to be sentenced to jail and 3.76 times more likely to be sentenced to prison when compared to defendants who are released at some point before trial or case disposition.

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

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

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

In 2017 New Jersey overhauled its pretrial justice system in a collaborative process that included a wide range of private and government stakeholders. The reforms almost entirely eliminated money bail and achieved a 94% release rate. In cases where prosecutors did not seek preventative detention, courts made 81.3% of release decisions within 24 hours and 99.5% of release decisions within 48 hours. There has been no spike in crime in New Jersey since the pretrial reforms were implemented.

In 2016 New Mexico passed a constitutional amendment that made it easier for judges to deny bail for defendants who are deemed to be dangerous and to release low-risk defendants who are unable to make bail. A study found that four out of five defendants were not arrested for a crime while on pretrial release and 96% were not accused of a violent crime. Of the 6,392 defendants who were released pending trial, only 12, or 0.2%, were arrested for a first-degree felony.

In addition to abolishing money bail, to optimize the effectiveness of its pretrial system Hawaii should also:

- Conduct a risk assessment of detainees and make recommendations for release or detention within 24 hours;
- Develop and validate a method of assessing risk that does not discriminate against minorities or the poor;
- Make greater use of programs and agencies that divert low-level offenders away from the criminal legal system;
- Conduct frequent reviews of the pretrial detainee population and where appropriate make releases without motions or court appearances; and
- Give Hawaii's police officers greater discretion to issue citations in lieu of arrest for low-level offenses.

Ending money bail could easily reduce the number of pretrial detainees statewide from close to a thousand to a few hundred and that would save millions. It would also allow us to replace OCCC with a much smaller jail and that would save hundreds of millions.

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

SB-1260

Submitted on: 2/26/2021 10:30:53 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Strongly Support

SB-1260

Submitted on: 2/26/2021 10:37:09 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jesse Palmer	Individual	Support	No

Comments:

Cash bail disproportionately affects poor people, effectively criminalizing poverty and perpetuating racial injustice. Eliminating it will make our justice system more equitable, treating everyone the same, regardless of whether they have money or not. Policing reform is still very necessary, both in terms of making police more accountable to the public, but also better enforcement of our existing laws and more results in prosecuting crime. Eliminating cash bail is not going easy on criminals. If someone is deemed likely to reoffend or fail to report to trail, they do not have to be released. But the determination should be made on those factors, not on whether or not they can afford bail.

SB-1260

Submitted on: 2/26/2021 10:46:56 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Aloha mai kākou,

I strongly urge you, the representatives of our people, to support this small step towards a more equitable and compassionate justice system. Cash bail criminalizes poverty. Native Hawaiians, Black Americans, and Pacific Islanders are disproportionately impacted by money bail systems, perpetuating racial disparities. Money bail systems do not make our islands safer, they only make a profit at the expense of our most vulnerable populations. Mahalo for your time.

SB-1260

Submitted on: 2/26/2021 10:47:14 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Greetings Senators! 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

Submitted on: 2/26/2021 11:11:29 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Hello,

My name is Nanea Lo. I come Papakāleā, O'ahu currently living in Māhala 'ili'ili. I'm a lifelong resident here in my ancestral homelands. I'm writing in support of SB1260.

I've seen first hand how the cash bail system criminalizes poor folks and let's rich people get away with murder, literally.

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. 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.

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.

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 these bail bondsmen 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.

Support this bill. It's the right thing to do.

me ke aloha 'Āina,

Nanea Lo

SB-1260

Submitted on: 2/26/2021 11:32:35 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Noelani Ahia	Individual	Support	No

Comments:

I strongly support SB1260 for the following reasons:

Almost 50% of the people in our overcrowded jails are pre-trial detainees who have NOT been convicted of the crimes for which they are accused.

Money bail does not make our community safer.

We are locking up too many people who are poor and homeless, not dangerous.

The cash bail system is racially biased and disparately impacts Native Hawaiians.

Our jails are severely overcrowded, leading to inhumane conditions. Instead of spending almost \$200 dollars a day to lock up a person, we should spend that money helping people receive community based resources.

Other states have adopted bail reforms and decreased the incarcerated population.

Please support SB1260.

SB-1260

Submitted on: 2/26/2021 12:59:49 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Merle Hayward	Individual	Support	No

Comments:

Equality is needed, but bonds prevent the impoverished from being set free before trial.

SB-1260

Submitted on: 2/26/2021 2:02:52 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Support

Here are a few reasons why I support this bill. Have been reading and learned:

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. THIS IS HUGE!!!

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.

Hawai'i is a unique place, we should have unique solutions that work for us here in our islands.

SB-1260

Submitted on: 2/26/2021 2:03:48 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dee Green	Individual	Support	No

Comments:

SUPPORT

In our islands, we need solutions that work best for our people and communities. Please pass this bill.

SB-1260

Submitted on: 2/26/2021 4:00:37 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew Foy	Individual	Support	No

Comments:

I strongly support Rep. Ganaden's bill to eliminate cash bail in the state of Hawaii. Cash bail unfairly privileges those with wealth, and negatively impacts those without it. In a system that is supposed to deliver justice & treat everyone equally, cash bail fail to accomplish those ends. Two people could've committed the same crime, however the one with money is able pay the bail fees, get out of jail, and go back to the comfort of their home, family, job, etc. until their trail date. Meanwhile, the other person who cannot afford bail is forced to remain in jail, is ripped away from the comfort & support of their family & home, and potentially misses their work shifts & loses their job. All because they couldn't afford bail and had to remain in jail time for a crime that they have not legally been convicted of.

SB-1260

Submitted on: 2/26/2021 6:34:24 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashli Miyasato	Individual	Support	No

Comments:

As a constituent, I believe that cash bail only serves to criminalize the poor. I don't think it's fair that an individual who commits a serious offense gets to be released because they can afford bail, but an individual with a minor offense remains in custody. Thus, the logic of cash bail is counterproductive, and does not uphold the safety of the community because the standard for deciding who gets to roam free is based not on the seriousness of the crime, but on the offender's socioeconomic status.

SB-1260

Submitted on: 2/26/2021 10:25:08 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

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

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

Please support SB1260, and take the first step towards ending cash bail.

SB-1260

Submitted on: 2/26/2021 7:21:43 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brianna Fehrer	Individual	Support	No

Comments:

As a student and a member of the community I think ending cash bail is necessary to have a more ethical and sustainable criminal justice system. Cash bail sets people free on serious offenses simply because they have the monetary resources, and this system does not make a safe community. Conversely, individuals with a minor misdemeanor is essentially kept in prison simply because they can't afford to post bail, demonstrating that this system of cash bail discriminates against low income communities. As such, I see no benefits of cash bail for the safety of the community or for the stability of low income communities.

SB-1260

Submitted on: 2/27/2021 10:05:35 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sue Coates	Individual	Support	No

Comments:

Dear/Aloha Senators:

I am writing in strong support of SB1260.

Almost 50% of the people in our overcrowded jails are pre-trial detainees who have NOT been convicted of the crimes for which they are accused.

Money bail does not make our community safer.

We are locking up too many people who are poor and homeless, not dangerous.

The cash bail system is racially biased and disparately impacts Native Hawaiians.

Our jails are severely overcrowded, leading to inhumane conditions. Instead of spending almost \$200 dollars a day to lock up a person, we should spend that money helping people receive community based resources.

Other states have adopted bail reforms and decreased the incarcerated population.

Please support SB1260.

Mahalo,
Sue Coates

SB-1260

Submitted on: 2/27/2021 10:37:13 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherry Pollock	Individual	Support	No

Comments:

Please pass this bill! Our current bail system favors the rich over the poor.

In the past 45 years the number of pretrial detainees in jails nationwide has increased 433% due in large part to the increased use of money bail. [A 2018 study by the ACLU-Hawaii](#) found that overall judges in Hawaii required bail as a condition of release in 88% of cases, and in the majority of those cases it was set at a level the defendant could not afford.

The legal system calls these people “pretrial detainees” and they are locked up not because they are dangerous or a flight risk, but because they are too poor to afford bail. They make up over half of the Oahu Community Correctional Center population, and on a statewide basis they cost taxpayers about \$175,000 a day or \$64 million a year.

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

Mahalo!

Sherry Pollock, Anahola, HI

SB-1260

Submitted on: 2/27/2021 10:41:10 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Radmilovich	Individual	Support	No

Comments:

Plain fairness requires this reform.. Please pass it.

SB-1260

Submitted on: 2/27/2021 10:42:32 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sunny Savage	Individual	Support	No

Comments:

Aloha, this makes sense to me...not clogging up our system with the petty.

SB-1260

Submitted on: 2/27/2021 11:50:20 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L. George	Individual	Support	No

Comments:

SUPPORT!!

SB-1260

Submitted on: 2/27/2021 2:25:53 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
janice palma-glennie	Individual	Support	No

Comments:

aloha,

OUR criminal justice system is broken. please help fix it by supporting this important legislation that eliminates the use of monetary bail for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions.

sincerely,

janice palma-glennie

kailua-kona

SB-1260

Submitted on: 2/27/2021 3:33:48 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Maltz	Individual	Support	No

Comments:

We must invest in our education system to reduce these petty crimes. Where is all this bail money gone? Educational community service is a much better way to deal with petty crimes.

SB-1260

Submitted on: 2/27/2021 3:34:35 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

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.

SB-1260

Submitted on: 2/27/2021 4:06:44 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
jessica hernandez	Individual	Support	No

Comments:

I am in **strong support** of this bill. If we've learned anything over the last year, it's that we, as a society, need to take accountability for the legal and practical structures that exacerbate economic disparities and racial injustices. Money bail maintains poverty and pushes people even further into poverty. Studies have shown that money bail doesn't keep communities safer. Instead, money bail places even more stress on families who are impacted by their loved ones' incarceration. What's even worse: jailing innocent people because they don't have the money to free themselves. If we want to be able to say that our criminal legal system is just because everyone is innocent until proven guilty, we cannot continue to jail people pre-trial simply because they don't have the money to be released.

It's common knowledge that jails are not safe, but the pandemic has expanded this beyond anyone's control. We're also in the throes of a fiscal crisis. Ending money bail will reduce the strains on our public funds in multiple ways: 1) less money spent on incarcerated people, 2) people who are employed and arrested can maintain employment, 3) by maintaining employment, people and families are less likely to end up houseless or in further need of public assistance.

Once again, I support this bill and ask that your committee support it, too.

SB-1260

Submitted on: 2/27/2021 4:09:21 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
jeanne wheeler	Individual	Support	No

Comments:

This would greatly help improve our current system - please pass it :) Mahalo

SB-1260

Submitted on: 2/27/2021 4:21:49 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane E Arnold	Individual	Support	No

Comments:

It is very unjust that a poor person spends time in jail pre-trial simply because he or she cannot afford bail, while a more affluent person just posts bail and goes on with their life until their trial. The person who cannot afford bail may lose their job because they are in jail and can't show up for work. Their family suffers too. Not to mention the burden on taxpayers who are paying for the pre-trial jail time.

Cash bail should only be used to prevent a flight risk or to keep a dangerous person behind bars so that they don't commit a violent crime.

SB-1260

Submitted on: 2/27/2021 5:14:01 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Legrande	Individual	Support	No

Comments:

I support this Bill. Thank you.

SB-1260

Submitted on: 2/27/2021 8:20:04 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Gannon	Individual	Support	No

Comments:

Aloha Joan here from West Hawaii supporting SB1260. This bill eliminates the use of monetary bail for traffic offenses, violations, and nonviolent petty misdemeanor offenses with certain exceptions. This is fare to the poor and will cost much less for the tax payers.

Thanks you

Joan Gannon

SB-1260

Submitted on: 2/28/2021 12:47:58 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Valkenaar	Individual	Support	No

Comments:

Cash bail disproportionately affects the lower class and those who are not able to afford high class lawyers. Please remove this for the lessor crimes in which incarceration is not necessary.

SB-1260

Submitted on: 2/28/2021 12:49:19 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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.

SB-1260

Submitted on: 2/28/2021 5:27:08 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rick Gerding	Individual	Support	No

Comments:

Please keep our legal, judicial system fair to all concerned.

SB-1260

Submitted on: 2/28/2021 6:51:40 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

Black Lives Matter has shown millions of American's and people from around the world that we have a very broken (in)justice system.

Blacks, hispanic, kanakas, and other people of color have always know that there is institutional racism in our country and that the (in)justice system is a way of keeping people of color and the poor enslaved. The Bail Bond system is one such institution that keeps people of color and the poor locked up. Being a past crim clouds all of your chances for a productive and democratic life after jail. Having a record diminishes your employment, educational, housing, banking possibilities and takes away your ability to vote, The Bail Bond system needs to be change so it doesn't adversely effect people of color and the poor. Please pass this out of committee,

Mahalo for your consideration,

Tlaloc Tokuda

Kailua Kona, HI 96740

SB-1260

Submitted on: 2/28/2021 8:45:17 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Dandurand	Individual	Support	No

Comments:

I fully support this bill. It unfairly limits the non-wealthy to a fair trial.

SB-1260

Submitted on: 2/28/2021 8:58:07 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Bruce Leonard	Individual	Support	No

Comments:

Aloha,

As someone who has organized and run men's groups in the Maui County Jail (MCCC) I feel compelled to ask you to support SB1260. Our criminal justice system is in a shambles and monetary bail for minor offenses and nonviolent crimes only drives the system deeper into disrepair and inordinately impacts the poor.

Thank you.

SB-1260

Submitted on: 2/28/2021 9:21:47 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rebecca DiLiberto	Individual	Support	No

Comments:

Aloha

I am writing in strong support of this bill to end monetary bail in our state. Though we are told cash bail is meant to keep society safe and minimize the risk of flight, it rarely does that. More often, it keeps people who can't pay their bail in jail, while allowing the people who can to walk free - regardless of the severity of their offense. Cash bail puts poor people at a huge disadvantage and it violates a person's right to the presumption of innocence. It is the opposite of justice, In the state, 64 percent of those who could not afford bail changed their plea to guilty to get out of jail sooner. Freedom should not be contingent on a person's wealth or income. Please pass this bill.

Mahalo nui,

Rebecca DiLiberto

Kahului, Maui

SB-1260

Submitted on: 2/28/2021 9:29:32 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
M. Llanes	Individual	Support	No

Comments:

Dear Senate members:

Please support SB1260. The disparity between the rich and the poor has become so pronounced here in Hawai'i. Nowhere is the disparity more evident than in our money bail system, which subverts the presumption of innocence, undermines the principle of equal protection and causes untold harm to detainees, their families and society at large.

The cost of housing pre-trial detainees is a staggering \$175,000 a day or \$64 million a year.

Something drastic needs to change, and this is the change that is needed.

Mahalo for considering my testimony.

MeleLani Llanes

Kapolei Resident

SB-1260

Submitted on: 2/28/2021 9:36:39 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Justin Guerber	Individual	Support	No

Comments:

Please consider passing this measure to eliminate the cash bail system in Hawaii for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses.

People that meet the criteria layed out in the bill should not be housed, at the our expense, in a state institution, if only for the lack of ability to pay bail. This amounts to a version of a poor tax, and we cannot in good conscience continue this practice. The lessening of overcrowded jails, and reduction of administration costs would also benefit us as well.

Thank you for your consideration,

Justin Guerber

SB-1260

Submitted on: 2/28/2021 10:23:12 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Aloha mai kākou e Chair Rhoads, Vice Chair Keohokalole, and other Committee members,

My name is Kellie Dinwiddie Kala and I write in strong support of this bill. It is time to put an end to the use of cash bail and demand that defendants be released on their own recognizance for all traffic violations and nonviolent petty misdemeanor and misdemeanor offenses. The cash bail requirement results in many people being stuck in jail because they or their families do not have enough available cash to make bail. At a glance, the current system advocates for keeping people in jail because they do not have access to money, and this is wrong. Why do we criminalize poverty? We should not keep people in cages simply due to the fact that they do not have money.

I urge you to pass SB 1260.

Mahalo nui loa for the opportunity to provide testimony on this bill.

SB-1260

Submitted on: 2/28/2021 11:51:56 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Bursack	Individual	Support	No

Comments:

Cash bail is unjust. You're economic status should not grant you extra rights.

TESTIMONY ON SB1260 RELATING CRIMINAL PRETRIAL REFORM BEFORE THE
SENATE COMMITTEE ON JUDICIARY

March 2, 2021
Time: 9:30am
Via Video Conference

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary, **my name is Lilinoe Kauahikaua, I am a Masters of Social Work Candidate at the University of Hawai'i at Mānoa and I am here today to strongly support SB 1260 Relating to Criminal Pretrial Reform.**

Almost 50% of the people in our overcrowded jails are pre-trial detainees who have NOT been convicted of the crimes for which they are accused.

Money bail does not make our community safer and instead exacerbates the disparities in the criminal justice system.

We are locking up too many people who are poor and homeless, not dangerous. According to PSD, more than 40% of statewide admissions in 2020 were persons living unsheltered or in an emergency shelter at the time of arrest.

The cash bail system is racially biased and disparately impacts Native Hawaiians.

Our jails are severely overcrowded, leading to inhumane conditions. Instead of spending almost \$200 dollars a day to lock up a person, we should spend that money helping people receive community based resources. Helping the individual, their 'ohana, and communities to heal.

Other states have adopted bail reforms and decreased the incarcerated population.

Please support SB1260.

Mahalo,
Lilinoe Kauahikaua
MSW Candidate
Lkauahik@hawaii.edu

SB-1260

Submitted on: 2/28/2021 1:40:38 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melia Leslie	Individual	Support	No

Comments:

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

SB-1260

Submitted on: 2/28/2021 2:02:41 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Vickie Parker Kam	Individual	Support	No

Comments:

Dear Chair Rhodes, Vice-Chair Keohokalole, and esteemed members of the committee,

My name is Vickie Parker Kam and I am writing in support of SB1260.

This bill eliminates the need for monetary bail for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions.

Minor offenses by defendants that do not pose a threat are frequently the beginning of a downward spiral if the bail is more than the defendant can raise. Job loss occurs when people can't make bail and are unable to go to work to earn the money they need for restitution of their offense. Overcrowding of our jails/prisons due to these non violent offenders also cause misery, as we have seen with the recent COVID-19 outbreak, as well as, cost taxpayers more money to house these defendants till trial.

Thank you for the opportunity to testify in support for SB1260,

Vickie Parker Kam

vlpkam96707@gmail.com

96707

SB-1260

Submitted on: 2/28/2021 2:05:17 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wray Jose	Individual	Support	No

Comments:

Aloha! I rise in support of SB1260, which would eliminate the use of monetary bail for traffic offenses, violations and nonviolent petty crimes. The inability of some to be able to make monetary bail for such petty offenses would only increase the crowding in our jails, and increase the myriad problems attending such a result. I therefor urge passage of SB1260. Mahalo.

--- Wray Jose

SB-1260

Submitted on: 2/28/2021 2:43:03 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Casidy Chan	Individual	Support	No

Comments:

Aloha,

Thank you for allowing my voice to be heard in the process of deliberating the SB1260 bill to reform the pretrial system.

Passing this bill would bring **more equality** into the criminal justice system. People convicted of these minor crimes will no longer face greater punishment for what they did solely based upon the amount of cash they lack. That is an **unfair** way to treat crime and punishment. People from wealthier backgrounds may be able to walk free, no problem, while those with little money may not be able to afford to free themselves. Two individuals from either of these backgrounds could commit the **same exact crime** but one of them may walk free sooner.

Is that fair?

With keeping the current system in place, history will repeat itself where certain individuals will automatically have an **upper hand** when in the face of punishment because they will be able to **pay their way out** of serving time. Not everyone is as fortunate to have that amount of money.

For these minor offenses, **freedom from jail shouldn't be based on the amount of cash the individual has.**

Thank you for listening to what I have to say.

With love,

Casidy

SB-1260

Submitted on: 2/28/2021 2:40:55 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Murphy	Individual	Support	No

Comments:

Please support this vital legislation.

[“Restore Justice: End The Cash Bail System.”](#)

SB-1260

Submitted on: 2/28/2021 2:57:05 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Support	No

Comments:

Aloha,

I fully support this important Bill.

The time is long overdue to address cash bail for traffic violations, offenses and non violent petty misdemeanors and misdemeanor offenses with certain exceptions.

The end result will free up our county jails and allow justice to be served in a less restrictive way.

Mahalo for your consideration,

Barbara Barry

Maui County

SB-1260

Submitted on: 2/28/2021 3:22:28 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Whispering Wind	Individual	Support	No

Comments:

Aloha Senators,

Please, SUPPORT this vital legislation.

SB-1260

Submitted on: 2/28/2021 6:18:20 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
sharon douglas	Individual	Support	No

Comments:

Please bring fairness back to our justice system. After reading <https://www.civilbeat.org/2021/02/restore-justice-end-the-bail-system/> I am more convinced than ever that an aloha filled society needs to revise systems that are not in sync with the native hawaiian way of being mindful of the bigger picture.

Thank you for doing what is pono.

sharon douglas (808)652-1896

SB-1260

Submitted on: 2/28/2021 6:29:20 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Seikai Darcy	Individual	Support	No

Comments:

Aloha and mahalo for hearing SB1260.

As a community advocate for those in poverty, I STRONGLY support SB 1260 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 and misdemeanor offenses, with certain exceptions. It also creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

Just this week I assisted people in poverty to release a family member and they were forced to come up with \$500 which they will never see again to have their family member released from the jail amidst the raging Covid cluster in Maui Correctional Center. This is disgraceful and unfair that those with little money lose their jobs because they cannot afford bail.

Changing this will bring healing to an already fatigued community and allow them to use their money to further their lives, not dispose into a system which keeps them in poverty.

Mahalo for this Bill!

With appreciation,

Lisa Seikai Darcy

Maui County Resident

SB-1260

Submitted on: 2/28/2021 6:39:10 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
sylvia cabral	Individual	Support	No

Comments:

end cash bail. let all released who are sitting without cash bail. against bill of rights of unjust fines. \$10 can be a lot for a person with no funds, no friends.

SB-1260

Submitted on: 2/28/2021 6:47:08 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Maisie Klem	Individual	Support	No

Comments:

Mahalo for the opportunity to submit testimony in strong support of the SB1260 bill to reform the pretrial system.

As a young person, it is easy to buy into the narrative that issues such as those pertaining to the criminal justice system are bigger than me. However, I recognize that our current pretrial system negatively impacts my community, the youth, and generations to come. I believe this bill will serve as a step toward addressing the numerous structural issues within the current criminal justice system. The pretrial systems in Hawai'i, particularly the policies on cash-bail, disproportionately affect communities of color and incriminates poverty. In order to address the issues of mass incarceration and racism within the criminal justice system, I believe it is essential that our pretrial system does not detain defendants based on traffic violations, nonviolent misdemeanors, or those who are not a risk to our community. The pretrial system should work as a safeguard to our community. Instead, it prioritizes the wealthy and disproportionately incriminates people who simply can not afford to post bail. Looking at the unique context of Hawai'i, I believe it is essential that the current government addresses the issues of mass incarceration of Hawaiians and other communities of color. Reading the findings of the recent studies from the ACLU on the demographics of the pretrial detainees has opened my eyes to the critical need for pretrial reform in the state of Hawai'i.

Beyond the issues of mass incarceration and racial inequities, I believe this bill will serve to combat the issues of overcrowding in our currently deteriorating correctional facilities. The overcrowding in prisons within Hawai'i has displaced and brought physical and mental deterioration to numerous prisoners. Our current system and facilities are not equipped to handle the mass amounts of prisoners in this state, and the Covid-19 Pandemic has only shed light on the lack of infrastructure and dire issue of overcrowding in our prisons. Not only will addressing the overcrowding of prisons serve to protect the human rights of the incarcerated, but will also address the amount of taxpayer money going toward running the prison system.

I believe that the reform to the pretrial system that this bill poses will work toward ending the injustice within our legal system, protect the human rights of the incarcerated, and eradicate the overcrowding of our prison system, while recognizing that no one should be favored within our legal system based on wealth.

SB-1260

Submitted on: 2/28/2021 6:56:39 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

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

- 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.
- Detention or release should not be decided on an individual’s wealth or income. Money bail allows the wealthy to buy their way out of jail – a wealthy person can be just as dangerous as an indigent person. PSD reports that more than 40% of statewide admissions in 2020 were persons living unsheltered or in an emergency shelter at the time of arrest.
- Money 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.
- Money bail exacerbates the disparities/institutional racism in the criminal justice 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.
- 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.
- 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 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.
- ACLU Hawai`i Bail Report: <https://www.acluhi.org/en/aclu-hawaii-report-shows-current-bail-practices-prioritize-wealth-accused-over-risk-community>

SB-1260

Submitted on: 2/28/2021 7:14:45 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Brandt	Individual	Support	No

Comments:

Support.

SB-1260

Submitted on: 2/28/2021 7:22:15 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Emma Trainor	Individual	Support	No

Comments:

I, Emma Trainor live in Pahoia, HI and am in support of SB1260, eliminating the use of monetary bail for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions.

SB-1260

Submitted on: 2/28/2021 7:36:26 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Aloha JDC Committee,

As a public health professional and concerned community member, I am writing in strong support of SB1260, which eliminates cash 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.

This measure is important for Hawai'i because it would make steps to make the criminal justice system more equitable, especially since cash bail has been shown to disproportionately affect people who with lower income. That is, people who are poorer are more likely to be imprisoned longer.

In the context of the COVID-19 pandemic, it is important to promote systems that support our families under economic strain rather than perpetuate unjust burdens on people who make less money. In passing this measure, the Judiciary Committee will also help to reassure local communities that our system is both just and fair.

Please pass SB1260.

With aloha,

Thaddeus Pham (he/him)

SB-1260

Submitted on: 2/28/2021 8:03:16 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Meredith Buck	Individual	Support	No

Comments:

I strongly support SB 1260 as an important positive step towards ending the cash bail system! Mahalo nui for your time.

SB-1260

Submitted on: 2/28/2021 8:04:23 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
kevin landers	Individual	Support	No

Comments:

This is the bare minimum the legislature can do to approach fairness within the social construction of criminality. Support is a no brainer.

SB-1260

Submitted on: 2/28/2021 8:14:07 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Renee Riley	Individual	Support	No

Comments:

Please support SB1260 to eliminate cash bail for misdemeanor and non-violent charges. According to the recent *Civil Beat* "Restore Justice. End the Cash Bail System,"

"On any given day close to 900 people are locked up in Hawaii's dismal and decrepit jails even though they are presumed innocent and have not been convicted of a crime. The vast majority are charged with relatively low-level offenses — misdemeanors, petty misdemeanors or class C felonies — and many are homeless or suffer from mental illness or substance use disorders.

The legal system calls these people "pretrial detainees" and they are locked up not because they are dangerous or a flight risk, but because they are too poor to afford bail. They make up over half of the Oahu Community Correctional Center population, and on a statewide basis they cost taxpayers about \$175,000 a day or \$64 million a year." This cost does not factor in the human toll on people who are already poor and often challenged in other ways.

For example, I had a student in my Maui College English class, who was stopped for a traffic violation. Because he couldn't make bail, he was stuck in jail as a pretrial detainee; he lost his job, his apartment, and couldn't finish his classes that semester!

Cash bail benefits those with assets. Please support SB1260 to eliminate cash bail.

Mahalo,

Renée Riley, Kihei, Maui voter

To: COMMITTEE ON JUDICIARY
From: Wendy Gibson-Viviani RN/BSN
RE: SB1260 –in Strong Support
HEARING: Tuesday, March 2, 2021 at 9:30 a.m. Via Videoconference

Aloha, Senator Karl Rhoads, Chair, Senator Jarrett Keohokalole, Vice Chair and Members of the Committee.

I am Wendy Gibson-Viviani, a healthcare professional (RN) who has lived and worked in Hawaii for 28 years. I am also a conscientious objector in the failed, racist, violent war on drugs that has criminalized millions of non-violent people. I believe we need restorative justice and that includes ending the cash bail system.

Please read this (slightly edited for brevity) Civil Beat article by Robert Merce, dated February 21, 2021, entitled “***Most of us would like to believe that the law treats the rich and the poor alike, but it doesn’t***”. The Author Robert Merce is a retired attorney who served as vice-chair of the House **Concurrent Resolution 85 Task Force on Prison Reform** and was **the principal author of the group's final report to the 2019 Legislature**. He is on the Board of Directors of the Native Hawaiian Legal Corporation and **served on the Hawaii Reentry Commission**. He writes:

On any given day close to 900 people are locked up in Hawaii’s dismal and decrepit jails even though they are **presumed innocent and have not been convicted of a crime**.

The **vast majority are charged with relatively low-level offenses** — misdemeanors, petty misdemeanors or class C felonies — and **many are homeless or suffer from mental illness or substance use disorders**.

The legal system calls these people “**pretrial detainees**” and they are locked up not because they are dangerous or a flight risk, but because they are **too poor to afford bail**. They make up **over half of the Oahu Community Correctional Center population**, and on a statewide basis they cost taxpayers about \$175,000 a day or \$64 million a year.

Most of us would like to believe that our legal system treats the rich and poor alike, but it doesn’t, and nowhere is the disparity more evident than in our money bail system, which **subverts the presumption of innocence, undermines the principle of equal protection and causes untold harm to detainees, their families and society at large**.

In *United States v. Salerno*, the U.S. Supreme Court said that “**in our society liberty is the norm and detention prior to trial, or without trial, is the exception**.” Those are fine words, but in practice, **just the opposite is true**. In the **past 45 years** the number of pretrial detainees in jails nationwide **has increased 433% due in large part to the increased use of money bail**.

A 2018 study by the ACLU-Hawaii found that overall judges in Hawaii required bail as a **condition of release in 88% of cases**, and in the majority of those cases it was set at a level the defendant could not afford.

The reality is that in our society detention is the norm and liberty is the exception.

Pretrial detention often leads to **devastating collateral consequences** that can have an impact on individuals **for a lifetime and families for generations**. Defendants who can't make bail are at risk of **losing their jobs**, and with it the income that supports their children, pays their rent and utilities and puts food on the table.

In the long run they can also **lose their house or apartment, health insurance and custody of their children**. After maxing out their credit cards, a family may end up deep in debt or even homeless.

Pretrial detainees can be locked up for **weeks, months or even years** under terrible conditions while awaiting trial. Overcrowding, broken telephones, long lockdowns and no-contact visits have **led to riots at the Maui and Hilo jails**.

These and other inhumane and arguably unconstitutional conditions have led detainees facing relatively short sentences to waive their constitutional rights and **plead guilty just to get their sentence over with and get out of jail**. The ACLU-Hawaii found that almost **70% of pretrial detainees** who changed their pleas from innocent to guilty or no contest did so while in jail, primarily because they could not afford bail.

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

People who can't make bail face another problem: They are **more likely to be sentenced** to a term of incarceration if convicted. A national study by the Arnold Foundation found that defendants who are **detained for the entire pretrial period are 5.41 times more likely to be sentenced to jail and 3.76 times more likely to be sentenced to prison** when compared to defendants who are released at some point before trial or case disposition.

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

The use of money bail is often justified on the grounds that it **makes us safer** by keeping dangerous people in jail. But a report from the 2018 Criminal Pretrial Task Force chaired by **Hawaii circuit judge (now U.S. magistrate) Rom Trader** found that **“there is virtually no correlation between the setting of a particular bail amount and whether the defendant will**

commit further crime or engage in violent behavior when released from custody. Thus, money bail is a **poor method of assessing and managing a defendant's risks."**

The idea that we must end cash bail to create a truly just pretrial system is not a radical one. **The federal government did it**, and many jurisdictions are moving in that direction. But we are not — at least not yet.

Bail is the norm in Hawaii, even for low-level offenders, and those who cannot afford bail — the majority — will go to jail. On Oahu, they wind up here, inside the **Oahu Community Correctional Center**.

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

In 2017 New Jersey overhauled its pretrial justice system in a collaborative process that included a wide range of private and government stakeholders. The reforms almost entirely eliminated money bail and achieved a **94% release rate**. In cases where prosecutors did not seek preventative detention, courts made 81.3% of release decisions within 24 hours and 99.5% of release decisions within 48 hours. There has been **no spike in crime in New Jersey** since the pretrial reforms were implemented.

In 2016 New Mexico passed a constitutional amendment that made it easier for judges to deny bail for defendants who are deemed to be dangerous and to release low-risk defendants who are unable to make bail. A study found that four out of five defendants were not arrested for a crime while on pretrial release and **96% were not accused of a violent crime**. Of the 6,392 defendants who were released pending trial, only 12, or 0.2%, were arrested for a first-degree felony.

The movement to abolish money bail has grown across the United States; here a **2019 faith-based protest in Chicago calls for an end to the system**.

In addition to abolishing bail, to optimize the effectiveness of its pretrial system Hawaii should also:

- Conduct a risk assessment of detainees and make recommendations for release or detention within 24 hours;
- Develop and validate a method of assessing risk that does not discriminate against minorities or the poor;
- Make greater use of programs and agencies that divert low-level offenders away from the criminal legal system;
- Conduct frequent reviews of the pretrial detainee population and where appropriate make releases without motions or court appearances; and

- Give Hawaii's police officers greater discretion to issue citations in lieu of arrest for low-level offenses.

Ending money bail could easily reduce the number of pretrial detainees statewide from close to **a thousand to a few hundred and that would save millions**. It would also **allow us to replace OCCC with a much smaller jail and that would save hundreds of millions**.

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

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

Please consider all of these facts when making your decision. I encourage you to pass SB1260 to end the cash bail system.

Mahalo for the opportunity to share this information with you,

Wendy Gibson-Viviani RN/BSN
Kailua Resident

SB-1260

Submitted on: 2/28/2021 8:20:48 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Fontana	Individual	Support	No

Comments:

The presumption of innocence is a corner stone of our criminal justice system, and monetary bail (especially for lesser alledged offenses) goes contrary to that goal. Monetary bail also reinforces the injustice of income inequality, allowing the wealthy to walk and the poor to endure an unjust incarceration prior to any established guilt. It is imparative that this bill be passed so that the people of this state not be criminalized PRIOR to any conviction by our courts.

SB-1260

Submitted on: 2/28/2021 8:25:44 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jun Shin	Individual	Support	No

Comments:

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.

SB-1260

Submitted on: 2/28/2021 8:30:56 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leilani Bronson-Crelly	Individual	Support	No

Comments:

Mahalo for drafting this simple yet deeply-necessary and much-needed bill. I support it and hope the Committee on Judiciary will too. Aloha.

SB-1260

Submitted on: 2/28/2021 8:31:56 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tane Datta	Individual	Support	No

Comments:

I support this bill.

SB-1260

Submitted on: 2/28/2021 8:32:16 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
donn viviani	Individual	Support	No

Comments:

I support SB1260. The purpose of bail is to prevent flight and to assure appearance at trial. The purpose is not to punish suspects (presumed innocent) or to create two classes of citizens under the law. The two classes are those who can afford bail and those who cannot. The punishment of those who cannot is often way out of proportion to the offense they are suspected of: loss of income, loss of a job, or may result in their children or kopona not being properly cared for. Let's treat every person equally and not let the size of someone's wallet determine how the law treats them Thank you
Donn Viviani, Kailua

SB-1260

Submitted on: 2/28/2021 8:57:18 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

SB-1260

Submitted on: 2/28/2021 9:39:38 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jisella Saito	Individual	Support	No

Comments:

February 27, 2021

To: Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

From: Jisella Saito

Re: SB1260

Position: SUPPORT

Mahalo for the opportunity to submit testimony in strong support of the SB1260 bill to reform the pretrial system.

As a young person, it is easy to buy into the narrative that issues such as those pertaining to the criminal justice system are bigger than me. However, I recognize that our current pretrial system negatively impacts my community, the youth, and generations to come. I believe this bill will serve as a step toward addressing the numerous structural issues within the current criminal justice system. The pretrial systems in Hawai'i, particularly the policies on cash-bail, disproportionately affect communities of color and incriminates poverty. In order to address the issues of mass incarceration and racism within the criminal justice

system, I believe it is essential that our pretrial system does not detain defendants based on traffic violations, nonviolent misdemeanors, or those who are not a risk to our community. The pretrial system should work as a safeguard to our community. Instead, it prioritizes the wealthy and disproportionately incriminates people who simply can not afford to post bail. Looking at the unique context of Hawai'i, I believe it is essential that the current government addresses the issues of mass incarceration of Hawaiians and other communities of color. Reading the findings of the recent studies from the ACLU on the demographics of the pretrial detainees has opened my eyes to the critical need for pretrial reform in the state of Hawai'i.

Beyond the issues of mass incarceration and racial inequities, I believe this bill will serve to combat the issues of overcrowding in our currently deteriorating correctional facilities. The overcrowding in prisons within Hawai'i has displaced and brought physical and mental deterioration to numerous prisoners. Our current system and facilities are not equipped to handle the mass amounts of prisoners in this state, and the Covid-19 Pandemic has only shed light on the lack of infrastructure and dire issue of overcrowding in our prisons. Not only will addressing the overcrowding of prisons serve to protect the human rights of the incarcerated, but will also address the amount of taxpayer money going toward running the prison system.

I believe that the reform to the pretrial system that this bill poses will work toward ending the injustice within our legal system, protect the human rights of the incarcerated, and eradicate the overcrowding of our prison system, while recognizing that no one should be favored within our legal system based on wealth.

SB-1260

Submitted on: 2/28/2021 10:26:33 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Riley Nakamura	Individual	Support	No

Comments:

February 28, 2021

To: Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

From: Riley Nakamura

Re: SB1260

Position: SUPPORT

I am writing to express my support for bill SB1260 regarding reforms to the current pretrial system.

Our current pretrial system, particularly the cash bail policy, is unjust and perpetuates lasting issues in our communities, particularly to those of color and those in poverty. Furthermore, I believe that the detriment that pretrial detention brings to those who can not afford to buy their freedom is unfair and contributes to generational issues of poverty. Those who can not afford to pay bail for petty nonviolent misdemeanors should not be denied the opportunity to continue to work, provide for their families, and pay their bills. By detaining those who do not

pose a threat to our society, we are endangering their livelihoods and families solely based on their inability to pay bail.

Beyond the systemic injustice that our pretrial system contributes to, I believe that this bill will be a step toward addressing the dire issue of overcrowding in our prison system. The pandemic has shed light on the extent to which overcrowding in prisons is inhumane and threatens the human rights of prisoners. I believe that this bill will help to address this issue, as pretrial detainees are increasingly becoming the majority population in prisons.

The issues in our current criminal justice system are increasingly becoming aware to the public eye, and I believe it is crucial that I take responsibility as a member of this community to advocate for a system that no longer discriminates against color or class.

SB-1260

Submitted on: 2/28/2021 10:31:59 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Cash bail does not work and presents serious equity and social justice issues.

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.

SB-1260

Submitted on: 2/28/2021 11:38:40 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Alice	Individual	Support	No

Comments:

Monetary bail is no better than selling indulgences. Such an unjust system has no place in our justice system. Please support this bill. Mahalo.

SB-1260

Submitted on: 2/28/2021 11:48:24 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lua Bowman	Individual	Support	No

Comments:

Mahalo for the oppourtunity to submit a testitomy in strong support of the SB1260 bill to reform the pretrial system.

As a young black American, I believe this bill will serve as a step toward adressing the numerous structural issues within the criminal justice system. The pretrial systems in Hawai'i, particularly the policies on cash-bail, disproportionately affect communities of color and incriminates poverty. The pretrial system should work as a safegaurd to our community. Instead, it prioritizes the wealthy and disproportionately incriminates people who simply can not afford to post bail.

I believe that the reform to the pretrial system that this bill poses will work toward ending the injustice within our legal system, protect the human rights of the incarcerated, and eradicate the overcrowding of our prison system, while recognizing that no one should be favored within our legal system based on wealth.

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

From: Lokelani Cameros, BSW Student at the Thompson School of Social Work.

Hearing: Tuesday, 3/02/21; 9:30am; via videoconference

Position: Strongly Support

Subject: SB1260 – RELATING TO CRIMINAL PRETRIAL REFORM.

Aloha,

My name is Lokelani Cameros and I strongly support SB1260 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 and misdemeanor offenses, with certain exceptions. Creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

Overcrowding of prisons has been an issue for sometime now and this bill will allow people with minor offenses to be allowed to return to court on their own. Not all people can afford to put up bail money which keeps these places full. Overcrowding of prisons and jails creates tension and an unsafe environment for both inmates and guards. According to officials HCCC is more than 85 percent over capacity and keeps steadily increasing. The overcrowding takes away space that could be used for programs.

If we look at the cost of housing an inmate per day, it doesn't make sense that taxpayers have to pay to house people with minor offenses when that money could be used for the needs of the state. According to the Hawaii Department of Public Safety, the state spends about \$140 per inmate per day, which includes program services, food, health care, and administrative costs.

Because of the reasons mentioned above, I support this act because of its purpose and intentions as well as I believe it will help to eventually stop the overcrowding of prisons and will also create better use of taxpayers funds.

Mahalo for allowing me the opportunity to share my support of SB1260.

SB-1260

Submitted on: 3/1/2021 3:35:26 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Jaworowski	Individual	Support	No

Comments:

I support the elimination monetary bail for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions as specified in the bill.

SB-1260

Submitted on: 3/1/2021 4:03:13 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Colleen Rost-Banik	Individual	Support	No

Comments:

Aloha. My name is Colleen Rost-Banik and I am a resident of Honolulu. I write urging you to support SB1260 which will end the cash bail system for traffic violations and other nonviolent minor offenses. Cash bail disproportionately keeps people with low incomes incarcerated rather than in communities of support. It is a system that is discriminatory and prioritizes punishment over repairing for harms committed.

Moreover, cash bail is one of the major reasons why OCCC is overcrowded. By eliminating cash bail, we can treat people more humanely as well as end a practice that has negatively and disproportionately impacted people with less money.

Mahalo for your time and attention to this matter.

Respectfully,

Colleen Rost-Banik, PhD

SB-1260

Submitted on: 3/1/2021 6:12:43 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ralph Garcia	Individual	Support	No

Comments:

Aloha

Please support SB 1260. When it comes to crime, wealth should not be a ticket out of jail. In fact, money bail usually criminalizes poverty. Lastly, money bail perpetuates racial disparities. The research is clear. Money bail is unfair and not necessary.

Mahalo,

SB-1260

Submitted on: 3/1/2021 7:53:20 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

Testimony in support of SB 1260. In these lean financial times, eliminating monetary bail for nonviolent petty misdemeanor and misdemeanor offenses would save the state millions of dollars.

Please take a few minutes to read this excellent article by Robert Merce, who has made a very solid case for the removal of pre-trial cash bail: <https://www.civilbeat.org/2021/02/restore-justice-end-the-bail-system/>

SB-1260

Submitted on: 3/1/2021 9:03:04 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

I am submitting testimony in Strong Support of this bill. Pre-trial detention is a waste of precious community resources and the cause of dangerous overcrowding in our State's jails. We cannot incarcerate our way out of our issues with homelessness and lack of community based beds for those needing mental health care. This bill is a great first step towards real solutions in our State.

Sincerely-

Raelyn Reyno Yeomans

SB-1260

Submitted on: 3/1/2021 9:04:38 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cathi Schar	Individual	Support	No

Comments:

I support this criminal justice reform effort to reduce the number of detainees in our jails and to address the inequitable impacts of monetary bail and incarceration on individuals without financial means, and the disproportionate negative impact that this has on Native Hawaiian and Pacific Islander communities.

SB-1260

Submitted on: 3/1/2021 9:07:57 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hilary Parkinson	Individual	Support	No

Comments:

I support SB1260 for the following reasons:

Money bail exacerbates the disparities in the criminal justice system.

PSD reports that more than 40% of statewide admissions in 2020 were persons living unsheltered or in an emergency shelter at the time of arrest.

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

Thanks,

Hilary Parkinson

SB-1260

Submitted on: 3/1/2021 9:12:24 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marsha Hee	Individual	Support	No

Comments:

I support SB1260 because the money bail system is not fair, equitable or just. Those who can't afford to make bail often are detained unnecessarily costing taxpayers about \$175,000 a day or \$64 million a year to house them, many who are homeless or live with mental health conditions. It undermines the principle of equal protection and causes untold harm to detainees, their families and society at large.

SB-1260

Submitted on: 3/1/2021 9:23:06 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ingrid Peterson	Individual	Support	No

Comments:

Please support this bill that will end cash bail in appropriate cases and bring more equality to people of all incomes, races and ethnic groups, since some of the latter are impacted at a rate higher than their share of the population. (From a Windward O'ahu resident since 1963.)

SB-1260

Submitted on: 3/1/2021 9:25:12 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

I support this bill with the amendments outlined in the Office of the Public Defender's written testimony. This is an incremental step towards ending cash bail.

SB-1260

Submitted on: 3/1/2021 9:29:46 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Testimony in Support of SB 1260, Relating to Criminal Pretrial Reform

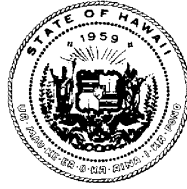
Chair Rhoads, Vice Chair Keohokalole, and members of the Senate Committee on Judiciary,

Thank you for the opportunity to present testimony on SB 1260 - Relating to Criminal Pretrial Reform. My name is Meleana Shim and I SUPPORT this measure. I urge the committee to pass this measure out of committee.

Reform of our criminal justice system is urgently needed. Our current cash bail system criminalizes poverty, perpetuates racial disparities, and results in overcrowding of our facilities. Pretrial detainees make up half of our OCCC population, simply because they cannot afford bail. Many of our community members live paycheck to paycheck, meaning that any cash bail amount is excessive. **Ending cash bail and releasing offenders on their own recognizance for traffic offenses, violations, nonviolent petty misdemeanor offenses, and nonviolent misdemeanor offenses is one very important step in this reform.**

I know everyone on your committee is abreast on this issue, and I am only writing to express my unwavering support for this measure. Thank you for your commitment to serving our community.

Meleana Shim



MARK PATTERSON
CHAIR

COMMISSIONERS
JUDGE MICHAEL A. TOWN
(ret.)
JUDGE RONALD IBARRA
(ret.)
TED SAKAI
MARTHA TORNEY

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

March 1, 2021

TO: Honorable Senator Karl Rhoads
Senate Committee on Judiciary

FROM: Ronald Ibarra, Commissioner Hawaii Correctional System Oversight Commission.

SUBJECT: SB 1260 RELATING TO CRIMINAL PRETRIAL REFORM

POSITION: The Hawaii Correctional System Oversight Commission Strongly Supports SB1260.

PUPOSE: 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. Creates rebuttable presumptions regarding release and detention for certain offenses and specifics circumstances in which these presumptions apply.

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

This is a bill proposed by the Oversight Commission to incorporate the language suggested by the HCR134 Task Force, as well as two amendments (to the HCR134 Task Force recommendations) which were previously proposed by House Committees during the 2019 session and are described below:

- The new HRS Section proposed in Section 2 of the bill, Subsection (b)(2) includes a list of exclusions from eligibility for application of the proposed process favoring release on recognizance. As indicated in Part (B) of this Subsection, (page 4, line 19), the Commission elected to impose a 10-year time limit upon the exclusion for defendants with prior convictions for crimes of violence. Although the House Judiciary Committee originally proposed a 20-year time limit for this exclusion,³ the Commission hopes that a 10-year time restriction will limit this exclusion to the most recent and relevant violent

crimes, while expanding the pool of defendants eligible for release on recognizance under the proposed new section.

- Also, in the new HRS Section proposed in Section 2 of this bill, in Subsection (c) (page 5, lines 10-13), the Commission added language to authorize the Director of Public Safety to release any defendant detained for the inability to post a bail amount of less than \$99. This language was originally added to this subsection by the House Committee on Public Safety, Military, and Intergovernmental Affairs,⁴ including a requirement that electronic monitoring equipment be used. The Commission agrees that the Director of Public Safety should maintain and nimbly exercise authority to help reduce overcrowding and unnecessary pretrial incarceration. However, the Commission declined to include the electronic monitoring requirement due to concerns about the availability and affordability of electronic monitoring devices for defendants who could not afford even very low bail amounts. Such a requirement would likely obstruct the use of the proposed administrative release authority.

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 supports SB1260. Mahalo nui loa.

LATE

SB-1260

Submitted on: 3/1/2021 11:03:35 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gustavo Gonzalez	Testifying for Office of the Public Defender - Maui	Support	No

Comments:

Members of the Legislature:

Cash bail is an antiquated, systemically racist, unfair system that targets the least favored among us, those accused of crimes. Oftentimes I have seen clients admit to crimes they have not committed, just to be released from jail, because they cannot afford even the most nominal of bail. I have seen numerous "bail studies" conducted by individuals who don't so much seek to assess the likelihood that the accused will flee the jurisdiction or reoffend, but rather look for any reason to deny them release. Our jails are too full, which even before COVID was a cause of concern for safety and health. Societies have long sought to punish those who do not follow their laws by removing them from society for varying periods of time, which one way of trying to ensure compliance with the law, but it shouldn't happen before they are convicted, and often with the indigent clients we represent, there is no other choice. It is brutal, it is unjust, and it is immoral. We need to fix this.

Gustavo H. Gonzalez

LATE

SB-1260

Submitted on: 3/1/2021 3:13:08 PM
Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Tomchak	Testifying for League of Woman Voters	Support	No

Comments:

It is time that our state eliminates economic inequity in our justice system. In our current system, wealthy people do not have to go to jail before trial if they have the money to avoid it. Those who do not own property to put up or friends or relatives to help them are condemned to stay in jail until their case comes up. This may take as long as a year or two, adding to the overcrowding of our prison system. Please eliminate this inequity by limiting bail to serious cases. Those who have money are more likely to avoid capture, since they can afford to travel or hide from police.

Laurie Tomchak

League of Women Voters

Retired Lecturer--UH



LATE

TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII

March 2, 2021

Re: SB 1260 RELATING TO CRIMINAL PRETRIAL REFORM

Good morning Chair Rhoads members of the Senate Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

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

While we understand the intent, RMH is **STRONGLY OPPOSED** to SB 1260 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.

LATE

SB-1260

Submitted on: 3/1/2021 9:34:19 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

I am writing in strong support of SB1260 which would eliminate the use of cash 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. Creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

It is widely recognized that money bail inflicts enormous injury on poor defendants, their families, and their communities. Yet many people, including many in the criminal justice system and the legislature, still fail to acknowledge the short term as well as long term severe consequences of pretrial detainment, including loss of job, housing, and children, etc. Those who can pay are free to go, but those who are too poor to pay are detained, even though bail is supposed to be a "reasonable" amount.

Rather than complain that the jails are overcrowded, it is highly recommended that people accused of minor offenses, including traffic violations, who are not a danger to others and who are not a flight risk be released on their own recognizance before trial. This would dramatically reduce the overcrowding as well as waste of taxpayer money.

Please pass SB1269. Mahalo for your consideration.

Diana Bethel, Honolulu

LATE

SB-1260

Submitted on: 3/1/2021 9:38:22 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Penn	Individual	Support	No

Comments:

I am FOR this bill SB1260. It is not fair for people to sit in jail because they do not have the money to bail out. It is highly discriminatory against the poor.

LATE

SB-1260

Submitted on: 3/1/2021 9:44:27 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

eliminate cash bail now

LATE

SB-1260

Submitted on: 3/1/2021 10:30:55 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Nelson	Individual	Support	No

Comments:

I fully support this bill. I have read that OCCC has many persons who are incarcerated waiting for trial for months just because they cannot afford bail. I think this is an expensive and very unfair solution. It seems that justice for them depends on their financial situation.

Thank you,

Elizabeth Nelson

Kaneohe

LATE

SB-1260

Submitted on: 3/1/2021 12:17:38 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

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

Comments:

Thank you for hearing this important measure.

LATE

SB-1260

Submitted on: 3/1/2021 2:47:32 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ana Tejada	Individual	Support	No

Comments:

I support this measure.

LATE

SB-1260

Submitted on: 3/1/2021 3:55:18 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Mulinix	Testifying for Our Revolution Hawaii	Support	No

Comments:

Aloha Committee,

On behalf of Our Revolution Hawaii's 7,000 members and supporters statewide, we are in STRONG SUPPORT of passage of SB1260.

Mahalo for your kind attention,

Dave Mulinix

Hawaii State Community Organizer

Our Revolution Hawaii

LATE

SB-1260

Submitted on: 3/1/2021 6:06:19 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Rodwell	Individual	Support	No

Comments:

I thoroughly support SB1260

LATE

SB-1260

Submitted on: 3/1/2021 6:50:26 PM
Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	No

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawai'i, Hawaii's oldest and largest policy and political LGBTQIA+ focused organization, fully supports Senate Bill 1260.

Mahalo nui loa for your time and consideration,

Michael Golojuch, Jr.
Chair

LATE

SB-1260

Submitted on: 3/1/2021 8:44:09 PM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Albertini	Testifying for Malu 'Aina	Support	No

Comments:

I support this bill to move toward eliminating wealth as a condition of release. Money bail, especially for minor offenses, should be put in the scrap heap of history. Surely we can do better for equal justice for all. People should be judged on the content of their character, not the size of their bank account.

Mahalo for your consideration.

Jim

LATE

SB-1260

Submitted on: 3/1/2021 9:29:25 PM
Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Kawamoto	Individual	Support	No

Comments:

My name is John Kawamoto, and I support SB 1260.

Nearly half of the people in our overcrowded jails are pre-trial detainees who have NOT been convicted of the crimes for which they are accused. They are in jail because they are too poor to come up with bail. They have been detained for minor, nonviolent offenses, and keeping them in jail does not make our community safer. We are locking up too many people who are poor and homeless, not dangerous.

Furthermore, the cash bail system is racially biased and disparately impacts Native Hawaiians.

Our jails are severely overcrowded, leading to inhumane conditions. Instead of spending almost \$200 dollars a day to keep a person in jail, we should spend that money helping people receive community-based services.

Other states have adopted bail reforms to safely reduce their incarcerated population.

For the foregoing reasons, I support SB 1260.

LATE

SB-1260

Submitted on: 3/2/2021 9:25:25 AM

Testimony for JDC on 3/2/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Becky Gardner	Individual	Support	No

Comments:

Although it appears many details need to be worked out, I strongly support this bill and its intent. I am encouraged to see both public defenders and prosecutors in favor of it.