

STAND. COM. REP. NO.

1093

Honolulu, Hawaii

, 2023

**MAR 03**

RE: H.B. No. 1336

H.D. 2

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-Second State Legislature  
Regular Session of 2023  
State of Hawaii

Sir:

Your Committee on Judiciary & Hawaiian Affairs, to which was referred H.B. No. 1336, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL JUSTICE REFORM,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Reduce the number of unnecessary arrests made in criminal cases by authorizing:
  - (A) A forty-eight hour grace period after a missed initial court appearance; and
  - (B) Officers to issue citations in lieu of making certain arrests;
- (2) Make meaningful reforms to the determination of eligibility for pretrial release and promote greater fairness and equity in the criminal courts by:
  - (A) Requiring that copies of the bail report be provided to the parties, including the defendant's counsel, no later than the commencement of the bail hearing;

2023-2325 HB1336 HD2 HSCR HMSO



- (B) Establishing a rebuttable presumption that a defendant is entitled to pretrial release and requiring the prosecution to prove by a preponderance of the evidence that release of a defendant would be inappropriate, based on certain specified criteria;
  - (C) Requiring that bail be set in an amount affordable to the defendant, under certain circumstances;
  - (D) Prohibiting the denial of pretrial release based solely upon certain factors, such as the defendant's positive test for drug use;
  - (E) Requiring automatic issuance of no-contact orders in assaultive cases;
  - (F) Prohibiting a defendant from being arrested for a violation of conditions of release solely because the defendant tested positive for drug use;
  - (G) Requiring the prosecution, with respect to sanctions for violations of conditions of release, to prove by a preponderance of the evidence, based on certain specified criteria, that the defendant intentionally or knowingly violated reasonable conditions of release; and
  - (H) Requiring the court to enter certain findings into the record; and
- (3) Increase diversion from incarceration by:
- (A) Allowing a request that the defendant be ordered to undergo a substance abuse assessment and treatment to be made any time before trial by any party representing the defendant or providing information to the court; and
  - (B) Prohibiting the revocation of parole or arrest of a parolee solely due to the person testing positive for drug use.



Your Committee received testimony in support of this measure from the Hawaii Correctional System Oversight Commission, Office of the Public Defender, Hawai'i Health & Harm Reduction Center, Community Alliance on Prisons, American Civil Liberties Union of Hawai'i, Ho'opono Na Mea Ola, Hawai'i Alliance for Progressive Action, and nine individuals. Your Committee received testimony in opposition to this measure from the Judiciary, Department of the Attorney General, Hawaii Paroling Authority, Office of the Mayor of the County of Hawai'i, Department of the Prosecuting Attorney of the City and County of Honolulu, Office of the Prosecuting Attorney of the County of Hawai'i, Hawai'i Police Department, Honolulu Police Department, State of Hawaii Organization of Police Officers, Hawaii Federation of Republican Women, Stolen Stuff Hawaii, American Bail Coalition, and seventeen individuals. Your Committee received comments on this measure from the Department of Public Safety.

Your Committee finds that the State's correctional facilities are overcrowded. There are multiple factors that are driving this overcrowding, such as arrests that are needlessly made when a citation to appear in court would have sufficed; pretrial incarceration of defendants who have been denied release based on the defendant's positive pretrial drug test; and arrests of individuals on parole who have tested positive for drug use. Your Committee further finds that unnecessary arrests and incarcerations can significantly jeopardize the defendant's housing and employment and set into motion a chain of economic and logistical hardships for the defendant's family. This measure, among other things, introduces meaningful reforms that promote greater fairness and equity in the criminal courts.

Your Committee has amended this measure by:

- (1) Deleting language that would have authorized a law enforcement officer to issue a citation in lieu of arrest for a felony offense;
- (2) Clarifying that a law enforcement officer issuing a citation in lieu of arrest must find and be reasonably satisfied that the person poses no significant danger to a specific or reasonably identifiable person or persons;

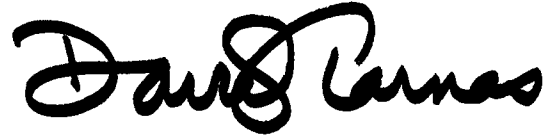


- (3) Requiring that copies of the bail report be provided to the parties as soon as available, rather than no later than the commencement of the bail hearing;
- (4) Repealing language that allowed bail to be denied where there is a serious risk that the person will flee;
- (5) Deleting language that would have established a rebuttable presumption that a defendant is entitled to pretrial release and required the prosecution to prove by a preponderance of the evidence that release of a defendant would be inappropriate, based on certain specified criteria;
- (6) Clarifying that one positive test for drug use shall not be the sole reason for:
  - (A) The denial of release on bail, recognizance, or supervised release;
  - (B) A defendant being arrested for violations of conditions of release on bail, recognizance, or supervised release;
  - (C) Revoking parole or forfeiting credits; or
  - (D) Arresting a paroled prisoner;
- (7) Deleting language that would have allowed any party representing the defendant, or providing information to the court concerning the defendant, to request the court to order the defendant to undergo a substance abuse assessment and participate in any necessary treatment; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary & Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1336, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1336, H.D. 2.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary &  
Hawaiian Affairs,

A handwritten signature in black ink, reading "David Tarnas". The signature is written in a cursive, flowing style.

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DAVID A. TARNAS, Chair



