The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice-Chair

Tuesday, February 28, 2023, 2:00 P.M.
Conference Room 325 & Via Videoconference

by
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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1336, H.D. 1, Relating to Criminal Justice Reform.

Purpose: Part I: Authorizes officers to issue citations in lieu of making certain arrests. Authorizes a forty-eight hour grace period after a missed initial court appearance. Part II: Establishes a rebuttable presumption that a defendant is entitled to pretrial release. Requires the prosecution to prove by a preponderance of the evidence that release of a defendant would be inappropriate, based on certain specified criteria. Requires that bail be set in an amount that the defendant can afford, under certain circumstances. Prohibits the denial of pretrial release based solely upon certain factors, such as testing positive for drug use. Requires automatic issuance of no-contact orders in assaultive cases. Requires the prosecution, when seeking to revoke pretrial release, to prove by a preponderance of the evidence, based on certain specified criteria. Requires the court to enter certain findings into the record. Part III: Provides that a request that the defendant be ordered to undergo a substance abuse assessment may be made any time before trial. Prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person having tested positive for drug use. Effective 6/30/3000. (HD1)

Judiciary's Position:

As the Committee is aware, the vast majority of the pretrial bail reforms passed by the Legislature and codified under Act 179 went into effect just prior to the global pandemic in 2020. Any pretrial bail reform should be tailored to the presumption of innocence, ensuring the appearance of the defendant, minimizing the risk of danger to the community, and ensuring the equal treatment of individuals regardless of race, wealth, or social class. While the Judiciary fully supports the intent of the proposed legislation, the Judiciary opposes the bill as currently written as it is directly in contradiction to the provisions of Act 179 and endangers public safety. In addition, the bill includes provisions which will greatly impact the orderly operations of the courts and will permit defendants in criminal cases to directly and without consequence violate court orders, essentially allowing them to dictate when their case is heard.

A. Permitting Defendants to Appear Anytime Within 48 Hours of their Court Hearing is Untenable, Counter to the Interests of Justice, and Disruptive to Daily Court Operations

Part I, Sections 2 and 3 of the bill provide that a defendant who has previously been released on bail with notice of a hearing or who has previously been issued a citation or summons to appear at the "initial appearance," has the freedom to "voluntarily appear" at any time within 48 hours of that hearing without any notice to the court. The Judiciary **strongly opposes** this section of the bill as untenable and disruptive to daily court operations.

This proposed legislation disregards the function of the court and disrupts the orderly judicial process, and detracts from the serious nature of court proceedings. The court is an institution based on rules and procedures. For every hearing, the court provides notice to the litigants and counsel based on established rules. Court calendars exist for a reason. Hearings are intentionally scheduled in advance to provide the judge and staff time to adequately prepare. Such a scheduling system is vital to maintaining an organized and thoughtful judicial process. Permitting defendants to suddenly appear for their court hearings without notice to the court and parties disrupts this system. This bill forces courts to accommodate walk-ins and requires prosecutors and defense counsel to be on standby at every courthouse. There are insufficient resources for such accommodations.

The concern is exponential for the district and rural courts. Many courthouses do not have criminal sessions every day. Some courts convene only a few times a week – or even just a few times per month – with some days designated for criminal matters and other days designated for civil matters. For many of the District courts, this would require holding additional court sessions on days where court is not currently held, requiring judges and court staff to be dispatched to those courts. The addition of these court sessions may require significant appropriations for additional personnel. For example, in the Second Circuit, the Hana District Court convenes on first Friday of each month, with arraignment and plea held on that day only; the Lanai District Court convenes on third Tuesday of each month, with arraignment held on that

day only; and the Molokaʻi District Court convenes on the second and fourth Tuesday each month, with arraignment and plea held on those days only.

Finally, the Judiciary understands that there are times where defendants miss their initial appearances for legitimate reasons. Currently, defendants who miss their court dates may file motions to recall bench warrants, without being required to post bail. These motions are routinely granted, and initial appearances are reset with notice to all parties, on dates and times where a prosecutor, judge, court staff, and courtroom are available. In those instances where a bench warrant has not been issued, a continued hearing has been set, and those defendants may contact their counsel or refer to the court's calendar to determine their next appearance date. As noted, permitting defendants to appear at any time without notice within the 48 hour period is simply untenable. The bill subverts the orderly operations of the Court.

B. Permitting Law Enforcement Officers to Issue a Citation Where the Person Poses a Significant Danger Jeopardizes Public Safety

Section 4 of Part I permits certain law enforcement officers to issue a citation for felony offenses, misdemeanor offenses, petty misdemeanor offenses, and violations when "the person poses a significant danger to a specific or reasonably identifiable person or persons, based upon an articulable risk to a specific person or the community, as evidenced by the circumstances of the offense or by the person's record of prior convictions." The Judiciary believes that this may be a typographical error, however, in an abundance of caution the Judiciary notes its **strong opposition** to this provision. Permitting a law enforcement officer to issue a citation instead of arresting a person who poses such a specific risk clearly jeopardizes public safety.

C. The Proposed Legislation Delays the Provision of Pretrial Bail Reports

The proposed bill requires that a copy of a pretrial bail report shall be provided no later than the commencement of **the bail hearing** to all the people or entities listed in subparagraphs (9)(A) – (F). Currently, pretrial bail reports prepared under section 353-10(b)(9) are filed in the defendant's case and a hard copy is provided to defense counsel at arraignment in circuit court when available. In the First Circuit, arguments for release. i.e. "bail hearings," are considered at initial appearances and at arraignment. If necessary, further bail hearings are requested and take place within three days after arraignment. Bail reports should be provided as soon as they are completed to counsel for defendant and the prosecuting attorney. If a bail report is required prior to the commencement of a bail hearing, then a number of defendant will be unable to address bail at the earliest opportunity. Furthermore, as written, the bill appears to prohibit the provision of the bail report to any of the persons or entities listed in (A) – (F) once the "bail hearing" has commenced. This is unsound and has rippling effects for public safety, treatment providers, and the adult client services branch in that the vital information that may be contained in the pretrial bail reports will not be provided to them.

D. Pretrial Bail Provisions of the Bill

The Judiciary notes that Act 179 codified section 804-7.5 of the Hawai'i Revised Statutes which requires a prompt bail hearing[1] and, in combination with the current section 804-3 and section 804-9, as amended on January 1, 2020,[2] sets forth the determinations that must be made by the court relative to defendant's release.

Part II, Section 8 of the bill, creates a rebuttable presumption in subsection (d) that all defendants are entitled to release on recognizance or supervised release and will appear in court when required which directly contradicts the rebuttable presumption in subsection (c). Subsection (d) further only permits defendants to be held if the prosecution shows by convincing preponderance of the evidence at the first instance before the court that the person is not entitled to release "under this section." It is unclear if this refers to subsection (b), (c), or (d) or to all three of them. As noted, these provisions are inconsistent.

With respect to subsection (f), first, in light of subsections (b), (c), (d), and (e), it is unclear from the bill when the court has authority to set monetary bail. Second, this provision appears to severely limit the determination to be made as currently set forth in section 804-9. Finally, as to the consideration of a defendant's available funds, the court is not regularly provided with any financial information of the defendant. Financial information, if any, would

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[1] Haw. Rev. Stat. Ann. § 804-7.5, enacted January 1, 2020, states:

> Right to a prompt hearing; release or detention
> (a) For the purposes of this section, "prompt hearing" means a hearing that occurs at the time of the defendant's arraignment, or as soon as practicable.
> (b) Upon formal charge and detention, a defendant shall have the right to a prompt hearing concerning:
> (1) Release or detention; and
> (2) Whether any condition or combination of conditions will reasonably ensure:
> (A) The defendant's appearance as required; and
> (B) The safety of any other person and the community.
> (c) At the hearing, the defendant shall have the right to be represented by counsel and, if financially unable to obtain representation, to have counsel appointed. The defendant shall be afforded an opportunity to testify at the hearing. The defendant and the prosecution shall both be afforded an opportunity to present information by proffer or otherwise.
> (d) The rules concerning the admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing.
> (e) The defendant may be detained pending completion of the hearing.

[2] Haw. Rev. Stat. Ann. § 804-9 states:

> The amount of bail rests in the discretion of the justice or judge or the officers named in section 804-5 and shall be set in a reasonable amount based upon all available information, including the offense alleged, the possible punishment upon conviction, and the defendant's financial ability to afford bail. The bail amount should be so determined as not to suffer the wealthy to escape by the payment of a pecuniary penalty, nor to render the privilege useless to the poor.

be garnered directly from the defendant and the court would have no ability to verify whether or not a defendant is receiving any form of public assistance or that the defendant's household income is at, below, or above the federal poverty level.

Section 9 of the bill, puts additional restraints on the court's discretion to determine a defendant's potential dangerousness. Currently under section 804-7.1, bail may be denied where there has been a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate a witness or unlawfully interfere with the orderly administration of justice. However, the bill requires the additional provisions that any such denial cannot be based solely on the defendant's positive drug use, prior criminal history, if that history is only for arrests and not convictions, or a prior revocation of release. These measures will endanger public safety and usurps judicial discretion and will require repeated release of individuals who are at a high risk of recidivism. Regarding the prohibition on prior arrests that have not resulted in a conviction or the geographical location of the defendant's prior arrests or convictions, this will permit repeat offenders currently pending multiple cases from being held after allegedly committing another crime while awaiting trial and is inconsistent with the rebuttable presumption outlined in section 804-3(c)(2). If the defendant is currently pending another charge, that "arrest" will not yet have resulted in a conviction. For example, when a defendant who is pending multiple felony property crimes is charged with yet another, the court will not be able to use that information to hold the defendant in custody.

Section 10 prohibits the issuance of a bench warrant where the pretrial defendant has tested positive for drug use. Where the least restrictive conditions of release set forth in section 804-7.1 are ordered by the court and include the prohibition against drug and alcohol use or require testing, repeated violation of these terms and conditions should result in the ability of a court to take a defendant into custody to ensure the protection of the public.

E. The Provisions in Sections 13 and 14 of Part III are Vague and Ambiguous

The bill proposes two new sections to Chapter 805 and 806 permitting "any party representing the defendant, or providing information to the court concerning the defendant" may request that the court order the defendant to participate in a drug assessment and any recommended treatment. It is unclear what is intended by this provision or who is permitted to make such a request to the court.

F. The Provisions of the previous Sections 17 and 18 of Part III that are Described in the "Description" will have Negative Effects on the Implementation of Probation and Treatment Courts

The current HD1 does not have the previous sections 17 and 18 of Part III regarding the prohibition on the arrest of a probationer due to the probationer having tested positive for drug use. However, the description of the bill still indicates that those provisions are contained in the bill. In an abundance of caution the Judiciary states that while currently probationers are generally not arrested and incarcerated for a single positive drug test, arrest and/or a jail sanction

are just one tool in the toolbox of available sanctions for non-compliance with the terms and conditions of probation, especially for high risk offenders like those in the HOPE probation program and high need offenders like those in the Drug Court, Mental Health Court, and Veterans' Court programs. Prohibiting the arrest of a defendant based on numerous positive tests, or the ability to revoke a defendant's probation based on numerous positive tests in order to either order treatment, enforce treatment, or divert that defendant into one of our specialty courts, will severely limit the effectiveness probation or those programs.

Thank you for the opportunity to testify on this measure.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
H.B. NO. 1336, H.D. 1, RELATING TO CRIMINAL JUSTICE REFORM.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 28, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lauren M. Nakamura, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill and offers the following comments.

The bill attempts to address concerns regarding prison overcrowding and the effects of incarceration on individuals by reforming statutes involving court appearances, arrests, pretrial release, and bail. While the Department supports the bill's intended purpose, the Department has concerns about the effect it will have on public safety. Further, bail reforms that have already been instituted since the issuance of recommendations from the Criminal Pretrial Task Force have significantly decreased pretrial bail populations.

Part I of this bill allows for a court to grant a grace period of 48 hours before the court issues an arrest warrant for the person's non-appearance, and provides that during the grace period, the person may appear at court without the need to provide advance notice to the court (page 2, line 16, through page 3, line 17). As noted in the testimony of the Judiciary on the original version of this bill, such a provision will not only disrupt the judicial process, but will place an undue burden on law enforcement, prosecutors, defense counsel, and judicial staff who lack sufficient resources to handle the sudden appearance of a person at court. Additionally, such wording conflicts with the goals sought to be accomplished by the proposed changes to chapter 803, HRS,

and potentially allows persons who may pose a threat to public safety (addressed *infra*) to remain in the community despite their failure to appear in court.

The bill also proposes that police officers be allowed to issue citations to defendants in lieu of arresting them for a broad range of offenses, including felonies, without sufficient limits that would prevent officers from issuing citations in lieu of arrest for offenses that may significantly jeopardize public safety (page 4, line 1, through page 5, line 2). This includes offenses involving minors, Negligent Homicide, Terroristic Threatening, Unauthorized Entry into a Home, Extortion in the Second Degree, Burglary in the Second Degree (e.g., "smash and grabs" at retail establishments), Violation of Privacy in the First Degree, Felon in Possession, Place to Keep a Firearm, Unauthorized Control of a Propelled Vehicle offenses, Harassment by Stalking; Rendering a False Alarm; Impersonating a law enforcement officer; Sex Offender Registry violators; and an array of theft offenses (including vehicular theft offenses).

Allowing law enforcement officers to issue citations in lieu of arrest substitutes an officer's judgment at the scene of a potential arrest for the discretion of a judge who has the benefit of additional information in deciding whether to release a defendant. This bill would repeal provisions of section 803-6 that protect public safety, including assuring the defendant's appearance in court (page 4, line 11).

The wording also allows citations rather than arrest when the officer is reasonably satisfied that:

> (2) The person poses a significant danger to a specific or reasonably identifiable person or persons, based upon an articulable risk to a specific person or the community, as evidence by the circumstances of the offense or by the person's record of prior convictions.

(Page 4, line 18, through page 5, line 2). At a minimum, the wording should be amended to state "[t]he person does not poses a significant danger . . ." to clarify that a law enforcement officer may not issue a citation when the person poses a significant danger to the community. However, as stated above, substituting an officer's discretion for a court's discretion, when the officer does not possess the range of information that the court possesses, increases the risk to public safety. Further, when read in concert with the proposed wording giving defendants a 48-hour grace period prior to issuance of

bench warrant (page 2, line 16, through page 3, line 17), a law enforcement officer could issue a citation to a person who has already failed to appear in court on a prior matter. This will not only endanger public safety by keeping potentially dangerous defendants in the community, but may also reward defendants who have previously failed to appear in court.

Part II of this bill, at page 14, line 15, though page 15, line 2, amends section 804-3, HRS, to create a rebuttable presumption that a person is entitled to release or to supervised release, and that the person will appear in court when required. It places a "preponderance of the evidence" burden of proof on the prosecution to establish that the person is not entitled to release. And while a court must find that no condition or combination of conditions would reasonably assure the appearance of the person (page 14, line 15, through page 16, line 5), a "release hearing" requires the court to hold an evidentiary hearing, requiring the prosecutor to produce witnesses and evidence at the defendant's initial appearance or bail hearing, whichever occurs sooner. If such evidentiary hearing is required, undue burden will be placed on judicial staff, prosecutors, and defense attorneys and additional resources will be required for each of these entities.

Proposed amendments to section 804-7.1, HRS (page 16, line 8, through page 17, line 3) may prevent courts from denying bail even in the event that it has been demonstrated that (1) the individual previously convicted or pending adjudication of another matter cannot follow the orders of the court set by another judge who may have ordered that the defendant remain drug free; (2) the person has a history of non-appearance in court; or (3) the person’s release has been previously revoked in the instant case or a prior case, regardless of the reasons why such release was revoked. Typically, the court is given such information in order to determine whether bail is appropriate and what, if any, conditions must be imposed upon a defendant. Courts already give due weight to the fact that the information contains merely arrests, but not convictions; and will not consider contempt of court arrests, which are often "no-actioned" or "dismissed" pursuant to plea deal, or in circumstances where the defendant is arrested on a bench warrant or contempt of court arrest. In doing so, this bill could

have the effect of having prosecutors pursue contempt of court charges against defendants and result in numerous additional convictions. Further, if the purpose of bail conditions is to ensure that the defendant appears as ordered, such contempt of court arrests would be invaluable information to a court, as each separate contempt of court arrest represents an incident of prior absconding, regardless of conviction.

Proposed amendments to section 804-7.3, HRS (page 16, line 8, through page 17, line 3), require the prosecution to prove by clear and convincing evidence that a defendant intentionally violated a condition of release; and the condition was reasonable under the totality of the circumstances. According to the bill's own proposed wording, such totality of the circumstances would not include recent drug test failures or prior history involving contempt of court. This will result in the release of defendants who have shown themselves unable to follow court orders designed to ensure the safety of the public and the appearance of defendants in court. If the Committee is inclined to keep this provision in the bill, we recommend that the bill be amended to include the mens rea of "knowingly", which would be consistent with section 702-208, HRS.

Part III of this bill seeks to explicitly prohibit the arrest or revocation of a defendant, probationer, or parolee for a positive drug screen; in effect eliminating the discretion of the individuals most intimately involved with the case at hand. Blanket restrictions such as these are unnecessarily prohibitive and prevent those with the significant knowledge and experience with each defendant from making determinations on a case-by-case basis.

Accordingly, the Department recommends deferring the bill and allowing the courts to retain the discretion and flexibility to set bail and conditions of bail or release to ensure both the continued appearance of defendants and the protection of the public.

Thank you for the opportunity to testify.

STATE OF HAWAI'I

OFFICE OF THE PUBLIC DEFENDER

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

February 28, 2023

H.B. No. 1336, HD1: RELATING TO CRIMINAL JUSTICE REFORM

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Office of the Public Defender ("OPD") supports H.B. No. 1336, HD1 which is a comprehensive, multi-faceted approach to addressing issues of overcrowding in Hawaii's jails and prisons, the impact of unnecessary and disruptive arrests in our communities, and the disparate treatment of indigent defendants in the criminal justice bail system. While the OPD prefers the H.B. No. 1336 in its original form, the OPD nevertheless supports H.B. No. 1336, HD1 as a promising first step toward true bail reform.

Specifically, the OPD supports (1) the discretionary issuance of citations in lieu of arrest for felonies, misdemeanors, petty misdemeanors, and violations; (2) allowing the court discretion to allow defendants who have missed their initial court appearance a 48-hour grace period in which to appear at court; (3) prohibiting the revocation or denial of release solely because the defendant has tested positive for drug use, the defendant has only prior arrests but no convictions, and the defendant was previously revoked from release; prohibiting a probationer from having their probation revoked or arrested for a probation violation solely because the probationer has tested positive for drug use; (4) allowing a 48-hour grace period for a missed initial court appearance and failure to respond to penal summons; and (5) requiring bail be set in an amount that the defendant is able to afford.

Discretionary Issuance of Citations

Most significantly, H.B. No. 1336, HD1 permits law enforcement officers discretion to issue a citation in situations where a warrantless arrest could otherwise be effected

for felonies, misdemeanors, petty misdemeanors, and violations when the individual (1) has no outstanding warrants and (2) the individual does not pose a significant danger to a specific or reasonably identifiable person or persons, based upon an articulable risk to a specific person or the community, as evidenced by the circumstances of the offense of by the person's criminal record. Rather than arresting the individual, law enforcement would be allowed to release individuals after the issuance of a citation. Being arrested, physically handcuffed and transported to a holding cell or jail or prison, deprived of their freedom, even for a few days, can potentially have harsh and irreversible effects on an individual.

Research suggests that pretrial detention leads to worse outcomes for people who are held in jail – both personally and legally – compared with similarly situated individuals who are able to secure pretrial release. Individuals who are unable to make bail stand to lose their job, and with that, the money that pays the rent and utilities and puts food on the table for their family. They may lose their home, their car, their health insurance, and after maxing out on their credit cards, the family may end up deep in debt or even homeless. Holding individuals in jail who do not pose a significant safety risk of danger also exacerbates overcrowding, creates unsafe conditions, places a huge financial burden on taxpayers, and compromises public safety.[1]

The legislature has recently received many recommendations, testimonies, and studies relating to the devasting impact of incarceration and jail time on individuals, their families, and our communities, including from the Criminal Pretrial Task Force ("Pretrial Task Force").[2] The Pretrial Task Force, in its report, concluded that that

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

[2] The Task Force was convened by the Hawai'i State Judiciary to carry out the requests in House Concurrent Resolution No. 134, HD1, Regular Session of 2017, ("HCR 134"). HCR 134 requested that the Judiciary convene 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. Their report, Hawai'i Criminal Pretrial Reform, Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i (Dec. 2018),

time in jail, even if brief, has minimal impact on reducing crime, yet entails significant costs. *See* Hawai'i Criminal Pretrial Reform, Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i (Dec. 2018), pp. 24-26.[3] In reaching this conclusion, the Pretrial Task Force, at page 25 of the report, quoted the Vera Institute of Justice:[4]

> These consequences – in lost wages, worsening physical and mental health, possible loss of custody of children, a job, or place to live – harm those incarcerated, and, by extension, their families and communities. Ultimately, these consequences are corrosive and costly for everyone because no matter how disadvantaged people are when they enter jail, they are likely to emerge with their lives further destabilized and, therefore, less able to be healthy, contributing members of society.

This measure will streamline the process by which an individual is summoned to court in order to answer to criminal charges. Rather than spending the night in jail (or multiple nights if the arrest occurs on a weekend) before making an initial appearance before a judge to argue for release and/or bail reduction, the individual can receive a citation which simply instructs them to appear in court on a particular day at a particular time. It should be noted that once a defendant appears in court pursuant to a citation, the Court possesses wide latitude in ordering terms and conditions of release.

Rebuttable Presumption for Release

Amendment to Hawai'i Revised Statutes (HRS) § 804-3(d) requires a rebuttable presumption for release, which the prosecution may rebut by establishing, by a preponderance of the evidence, that the individual is not entitled to release under

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is available at https://www.courts.state.hi.us/wp-content/uploads/2018/12/POST_12-14-18_HCR134TF_REPORT.pdf

[3] *See* footnote 2, supra.

[4] The Vera Institute of Justice, founded in 1961 to advocate for alternatives to money bail in New York City, is a national organization that partners with impacted communities and government leaders for change. Vera is comprised of advocates, researchers and activists working to end mass incarceration. *See* https://www.vera.org.

HRS § 804. This amendment originates with 2019 Hawai'i Session Laws Act 179 (Act 179) 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 systems continue to remain above operational and design capacity.[5] This amendment is consistent with Pretrial Task Force Recommendation 21 that was not part of Act 179:

> Recommendation 21: Create rebuttable presumptions regarding both release and detention. This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many ***low-risk defendants*** will be released, while those who pose significant risks of non-appearance, re-offending and violence will be detained.[6]

The creation of the rebuttable presumption will enhance the system and reduce the population without sacrificing public safety.

Release and Jail Sanctions

Defendants, who are found to have violated probation, are frequently sanctioned with jail or prison time. Although jail sanctions for violations are common, there is very little evidence that they are effective at reducing violations or new offenses while people are on probation or parole. Studies have found that jail sanctions either result in higher recidivism rates or are no more effective than community based sanctions, such as community service or mandated treatment, suggesting that less expensive and disruptive non-jail sanctions should generally be used instead.[7] H.B.

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[5] Hawai'i Correctional System Oversight Commission Annual Report December 2020, available at https://ag.hawaii.gov/wp-content/uploads/2021/01/HCSOC-Final-Report.pdf

[6] *See* footnote 2, supra.

[7] Alex Roth et al, "The Perils of Probation: How Supervision Contributes to Jail Populations," Vera Institute of Justice, October 2021, available at https://www.vera.org/downloads/publications/the-perils-of-probation.pdf

No. 1336, HD1 protects defendants released on bail, own recognizance, and supervised release, and defendants on probation from being revoked, violated, or arrested ***solely*** because the defendant has tested positive for drug use.

These provisions recognize the often overlooked and misunderstood truth about drug addiction – it's not that simple. Or, in the words of a former client, "If I could quit drugs because the judge told me to quit drugs, I wouldn't have a drug problem, would I?" The National Institute on Drug Abuse described drug addiction as follows:

> Many people don't understand why or how other people become addicted to drugs. They may mistakenly think that those who use drugs lack moral principles or willpower and that they could stop their drug use simply by choosing to. In reality, drug addiction is a complex disease, and quitting usually takes more than good intentions or a strong will. ***Drugs change the brain in ways that make quitting hard, even for those who want to***.[8]

This bill takes into account the struggles that almost all drug addicts experience. Many defendants suffering from drug addiction are not successful at their first attempt at treatment, and sometimes not on their second or third attempts either. To expect a drug addict to quit "cold turkey" because a judge orders it as a condition of release or as a term and condition of probation, is simply unrealistic. The amendments to HRS §§ 804-7.2 and 706-625 represent a more holistic and humane consideration of the realities of drug addiction.

48-hour grace period

The OPD is strongly supportive of the concept of allowing a grace period of 48 hours to individuals who miss an initial court date and for individuals who miss their court date after receiving a summons to appear in court. Especially for individuals who simply missed court because of an honest mistake or as the result of an emergency, a 48-hour opportunity to fix that mistake would short-cut the inconvenience and heartache that generally follows a bench warrant.

This grace period benefits all parties involved and will conserve resources by obviating the need for law enforcement from having to go into the community to

[8] "Understanding Drug Use and Addiction Drug Facts," National Institute on Drug Abuse, June 2018, available at https://nida.nih.gov/publications/drugfacts/understanding-drug-use-addiction

execute a bench warrant, the attorneys to file motions, and the courts from setting an additional hearing. The grace period is a more civil and user-friendly policy.

Affordable bail

In the event that a defendant does not qualify for release on own recognizance or supervised release pursuant to HRS Chapter 804, this bill's proposed amendment to HRS § 804-3 adds subsection (f) that requires the court, in determining an appropriate bail amount, to set bail in an amount that the person is able to afford.

While the OPD has consistently advocated for the abolition of money bail, this measure would be a promising and worthwhile step toward that end. Individuals who lack economic resources and who are often people of color, may be particularly likely to be held in custody pretrial – irrespective of the merits of their cases or their likelihood of pretrial success.[9] Thus, money bail is a poor tool for achieving pretrial justice. The money bail system incarcerates poor people because they are poor, not because they have been convicted of a crime and not because they are a danger to others. Meanwhile, that same system allows the affluent person charged with a violent offense to post bond and be released back into the community.

Although a core purpose of pretrial detention and monetary bail is to prevent failure to appear ("FTA") for subsequent court hearings, research findings on their efficacy in achieving this have been mixed. The use of money bail is often justified on the grounds that it makes us safer by keeping dangerous people in jail. But the Pretrial Task Force Report stated, "***There is virtually no correlation between the setting of a particular bail amount and whether the defendant will commit further crime or engage in violent behavior when released from custody***."[10] Thus, money bail is a poor method of assessing and managing a defendant's risks.

Our current bail practice in Hawai'i is not punishing the "most guilty," but rather the people who cannot afford to pay for their release. As attorneys assigned to represent indigent clients, many of whom are in jail because they cannot afford to make bail, our office has seen firsthand that defendants can be detained in jail for weeks or months waiting for a court hearing. Often, the only alternative to waiting for a court

[9] *See* footnote 3, supra.

[10] *See* footnote 2, supra.

hearing is to accept a plea deal that promises a release date – frustration and impatience set in and the only priority becomes getting out of jail. This means even people who are innocent or have a viable defense at trial, end up pleading guilty to avoid spending more time in jail.

Thank you for the opportunity to comment on H.B. No. 1336 HD1.

JOSH GREEN, M.D.
GOVERNOR

TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William F. Oku
Deputy Director
Law Enforcement

STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF PUBLIC SAFETY
Ka ʻOihana Hoʻopalekana Lehulehu
1177 Alakea Street
Honolulu, Hawaiʻi 96813

No. _____

TESTIMONY ON HOUSE BILL 1336, HOUSE DRAFT 1
RELATING TO CRIMINAL JUSTICE REFORM.
By
Tommy Johnson, Director

House Committee on Judiciary and Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, February 28, 2023; 2:00 p.m.
State Capitol, Conference Room 325 and via Video Conference

Chair Tarnas, Vice Chair Takayama, and Members of the Committees:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 1336 House Draft (HD) 1, which proposes to introduce meaningful reforms for pretrial release, and to promote fairness and equity.

The Department of Public Safety offers the following comments regarding Part II, Section 10, which proposes to amend Section 804-7.2, Hawai'i Revised Statutes, limiting issuance of a warrant for violations of conditions of release on bail, recognizance, or supervised release solely because a defendant has tested positive for drug use.

The pretrial risk assessment completed by the Department's Intake Service Centers identifies dynamic risk factors that drive a person toward criminal behavior. Recommended conditions of supervised release are intended to target an individual's criminogenic risk factors to mitigate the associated negative behaviors that lead to non-appearance and/or reoffending.

Whenever possible, the Intake Service Centers apply the risk-needs-responsivity model when defendants on supervised release, and those who have conditions placed on their bail, test positive for illicit substances and agrees that defendants should be

afforded the opportunity to enter substance abuse treatment. However, pretrial supervision is based on court-ordered conditions. When no condition exists that requires a defendant to seek and maintain substance abuse treatment, issuance of a warrant for revocation of release may be the only option for defendants testing positive for drug use.

Limiting revocation of pretrial release solely based on current illegal drug use implies that illicit substance use is condoned and has the potential to restrict the ability to effectively manage defendants in the community, especially when treatment cannot be presented as an option.

While the Department agrees with the objectives of HB 1336, HD 1, it is suggested that judicial discretion regarding the issuance of warrants remain with the Courts.

Thank you for the opportunity to provide testimony to offer comments on HB 1336, HD 1.

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
HAWAII PAROLING AUTHORITY
Ka 'Ākena Palola o Hawai'i
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON HOUSE BILL 1336, HD 1
RELATING TO CRIMINAL JUSTICE REFORM

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, February 28, 2023 – 2:00 p.m.
Conference Room 325

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Hawaii Paroling Authority (HPA) STRONGLY OPPOSES House Bill (HB) 1336, HD1 that will hinder the management and supervision of parolees.

Return to custody is a LAST RESORT when testing positive or "dirty". Drug of choice is often times the highly addictive Methamphetamine (or ICE). As noted in parole minimum hearings, offenders admit to their addiction while committing property crimes to support their habit and related offenses such as Robbery, Assault and Sex offenses.

The majority of parolees are acknowledged substance abusers (addicts) who have completed drug programs prior to incarceration, during prison as well as after release. Sobriety is a lifelong challenge and the reason for regular drug testing.

The terms and conditions of parole are firm guidelines that promote pro-social behavior to enhance successful reintegration back into the community. The parole population consists of low risk to high-risk offenders (Murderers, Sex Offenders) who are addicts but also have mental health concerns.

Limiting HPA's response, subverts parole officers' efforts to emphasize pro-social accountability while minimizing risk to the public for new offenses.

Thank you for the opportunity to present testimony on HB 1336, HD1

STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary and Hawaii Affairs

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 1336, House Draft 1, Relating to Criminal Justice Reform
Hearing: Tuesday, February 28, 2023; 2:00 p.m.
State Capitol, Room 325

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (the Commission) **supports the intent** of House Bill 1336, House Draft 1, Relating to Criminal Justice Reform, which has the potential to reduce the jail population by providing law enforcement options to issue citations in lieu of arrest in certain instances and allowing the Courts to consider granting a grace period of 48-hours when a person fails to appear for initial appearance. This also establishes rebuttal presumption that a defendant is entitled to pretrial release under certain specified criteria. Furthermore, under certain circumstances bail may be set in an amount that the defendant can afford.

Section 353L-3 (b) (2) states one of the responsibilities of the Commission is to:

> Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.

This measure is consistent with that mandate by potentially reducing the number of persons committed to jail pursuant to an arrest.

We defer to the Judiciary and other appropriate agencies as to the details of this measure.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

SB310, Relating to Children and Family of Incarcerated Individuals
Senate Committee on Health and Humans Services
Senate Committee on Public Safety and Intergovernmental and Military Affairs
February 10, 2023, 3:00 p.m.

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director

County of Hawai'i
Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokalole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

February 27, 2023

Chair, Rep. David A. Tarnas
Vice Chair, Rep. Gregg Takayama
House Committee on Judiciary & Hawaiian Affairs

Hawai'i State Legislature
415 S. Beretania Street
Honolulu, Hawai'i 96813

Subject: H.B. 1336 RELATING TO CRIMINAL JUSTICE REFORM
Hearing Date: Tuesday, February 28, 2023, at 2:00 p.m.
Time/Place of Hearing: Via Video Conference, Conference Room 325

Aloha Chair Tarnas, Vice Chair Takayama, and members of the Committee on Judiciary & Hawaiian Affairs,

I strongly oppose H.B. 1336 and stand with the testimony submitted by our Office of the Prosecuting Attorney in opposition to this bill.

As a former Prosecuting Attorney for the County of Hawai'i, I find this measure to be overly broad, with the potential to create more threats to our communities through the issuance of a "citation without arrest" for a wide range of serious offenses. This includes negligent homicide, harassment, possession of controlled substances with intent to distribute, promoting pornography to minors, burglary in the second degree and impersonating a law enforcement officer.

I firmly believe that the price for criminal justice reform should not be paid for with the health and safety of our community.

I recommend the Committee on Judiciary & Hawaiian Affairs defer H.B.1336.

Mahalo,

Mitchell D. Roth
Mayor
County of Hawai'i

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY

THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE DAVID TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

February 28, 2023

RE: H.B. 1336, H.D. 1; RELATING TO CRIMINAL JUSTICE REFORM.

Chair Tarnas, Vice-Chair Takayama and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu ("Department"), submits the following testimony in **opposition** to H.B. 1336, H.D. 1.

While the Department appreciates the prior committee's considerable efforts to amend the original version of this bill, to better account for public safety considerations, the Department continues to have concerns about several portions of H.B. 1336, H.D. 1.

Pg. 4, Ln. 6:

The Department believes (and hopes) that retention of the word "felony," on page 4, line 6, of H.B. 1336, H.D. 1, was purely an accident / oversight, and strongly recommends that that word be deleted. Because the prior committee intentionally "delet[ed] language that specified various offenses and circumstances in which law enforcement officers would have been required to issue a citation in lieu of arrest,"[1] all limitations on the types of felonies (for which citations would be issued) were removed.[2] The Department finds it very hard to believe that the prior committee would intentionally delete that language, but intentionally retain the word "felony," as that would mean (and the current effect of the word "felony" in H.B. 1336, H.D. 1, page 4, line 6 is) that citations could be issued for any felony, including all types of murder, class A felonies, class B felonies, domestic abuse, operating a vehicle under the influence of an intoxicant, physical or sexual assault, and offenses that require a mandatory term of imprisonment. Thus, we believe the word "felony" was kept inadvertently here, and would urge this Committee to delete it.

[1] See House Stand. Com. Rep. No. 360, at 3 (2023).
[2] H.B. 1336, Section 4, page 4, lines 17-19—which was deleted for purposes of the H.D. 1—stated in relevant part: "…unless…the case involves any of the following offenses…[a] 'serious crime' as defined in section 8-4-3(a)…").

In addition, we note that H.B. 1336, H.D. 1, makes no attempt to provide a court procedure or mechanism for initiating a felony case in which a citation was issued. This further illustrates that the prior committee did not intent to retain the word "felony" in this instance.

Pg. 14, Ln. 15:

Rather than having a (rebuttable) presumption of release, the Department strongly believes that each defendant who is being held in custody should be assessed on a case-by-case basis. Even if a particular misdemeanor charge is or appears to be "non-violent," there are often a lot more factors for consideration, beyond just the present charge that prompting the court appearance.

Moreover, the current language is still somewhat unclear on whether evidentiary hearings would be required. If so, that would likely trigger a huge influx of contested hearings, which would then delay trial cases, create a backlog in our courts, and impose a large financial burden for a number of agencies without proper funding.

Pg. 15, Ln. 10:

Although subsection-(f) has good intentions, it presents a very high risk of abuse upon implementation. Attempting to estimate an amount that a person is able to afford—based on self-reporting alone (in a bail report or through the person's sworn affidavit or testimony)—incentivizes under-reporting finances or not reporting undocumented streams of income. Because a lot of jobs are paid "under the table" in cash, that system of self-reporting, combined with the limited amount of time and resources that a prosecutor would have prior to a bail hearing, would make it virtually impossible to gather or provide rebuttal evidence.

Sections 9, 10, 11 & 15 (pg. 16-22, pg. 25-26):

These sections would prohibit probation officers, parole officers and courts from arresting or revoking the probation/parole, of a probationer or parolee, for a positive drug test/screen. Such a blanket prohibition would significantly hinder some specialty courts maintained by the Judiciary, which are built upon the court's ability to impose brief periods of incarceration as an immediate ramification for certain violations, **not** as an end in itself but to further the rehabilitative process. In particular, the HOPE Program—which targets the most challenging probationers, has been the focus of numerous top quality studies, and has been adopted by courts across the nation—has used this approach for many years, to the benefit of many prior offenders. One study conducted by researchers from Pepperdine University and the University of California, Los Angeles, found that:

> In a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer and 53 percent less likely to have their probation revoked.

Notably, the study found that jail bed days for HOPE probationers and those on regular probation were the same, while HOPE probationers were sentenced to 48% fewer days in prison. Additionally, Native Hawaiians in HOPE were 42% less likely to have their probation revoked and sent to prison compared to Native Hawaiians in regular probation, and women were 50% less likely.

Integral to HOPE's success was the court's ability to arrest and at times revoke probationers for positive drug tests.

While proponents of H.B. 1336, H.D. 1, seem to fear that people on probation are having their probation revoked for a single, insignificant violation of their terms and conditions of probation, that has not been the Department's observation or experience in these proceedings. In fact, courts in the First Circuit are widely known to allow probationers multiple chances, and great efforts are taken to weigh the severity of an offender's particular violations and circumstances, sometimes to the frustration of the Department and crime victims who are affected by the offender's underlying crime. Rather than removing this much needed and sparingly-used mechanism, the Department respectfully asks that Sections 9, 10, 11, and 15 of the bill be removed.

While the Department appreciates the intent to improve upon current procedures, and even supports the eventual elimination of the cash bail system—once a robust and well-funded process can be developed to allow suitable alternatives (such as signature bonds and adequate supervision by the Department of Public Safety's Intake Services Center Division)—H.B. 1336, H.D. 1, does not present such a system. Thus, at this time, we urge the committee to maintain the current safeguards that are used to assess a pretrial detainee, and allow our courts to continue to consider each defendant's circumstances and background on a case-by-case basis. Not only does this provide the best opportunity for the court to consider each person's potential for dangerousness, obstruction of justice, witness tampering and other illegal activity, it also provides the best opportunity for courts to determine if and how to safely release an individual back into the community, at any given point in the criminal justice process.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **opposes** the passage of H.B. 1336, H.D. 1. Thank you for the opportunity to testify on this matter.

KELDEN B.A. WALTJEN
PROSECUTING ATTORNEY

STEPHEN L. FRYE
FIRST DEPUTY
PROSECUTING ATTORNEY

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN STRONG OPPOSITION OF H.B. 1336

A BILL FOR AN ACT RELATING TO
CRIMINAL JUSTICE REFORM

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Tuesday, February 28, 2023 at 2:00 p.m.
Via Videoconference
State Capitol Conference Room 325
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Takayama, and Members of the Committee on Judiciary & Hawaiian Affairs: The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in strong opposition of H.B. 1336.

Although our Office appreciates the intent of the Legislature and acknowledges the need to address overcrowding concerns at our prisons and jails, we disagree that the imposition of a presumption of release mandate that jeopardizes the safety of our community is an appropriate means to address overcrowding at our outdated and undersized correctional facilities. We believe that a defendant's pretrial release status, should continue to be evaluated on a case-by-case basis by a presiding Judge in order to appropriately assess a defendant and determine any public safety concerns.

Part II creates a "rebuttable presumption" that a defendant is entitled to release on recognizance or supervised release. The burden is then placed upon the prosecution to establish by clear and convincing evidence that release would be inappropriate based upon certain criteria. This additional requirement will necessitate additional evidentiary hearings, prolonging and delaying criminal proceedings, and subjecting victims and witnesses to unnecessary inconveniences and trauma. Presumption of release mandates like these further decrease the public's trust and confidence in our criminal justice system.

Our Office also expresses concerns regarding Part III of the measure which prohibits the revocation of parole and/or probation solely based on a positive drug test. This provision jeopardizes the safety of not only the public, but the defendants themselves. Substance misuse does not only impact the individual user. It negatively impacts the user's family, friends, and community. Court ordered supervision authorities are in the best position to make an educated decision regarding the health, safety, and well-being of their clients and should be provided with

the discretion necessary to determine the best course of action to assist their clients in addressing their substance misuse.

Hawai‘i has already taken steps in recent years to address overcrowding and has decreased the number of persons in its correctional facilities, including the Saguaro Correctional Center in Arizona. According to the Department of Public Safety's website, on December 31, 2014, there were a total of 5,558 inmates in custody on Hawai‘i State charges. In comparison, on February 13, 2023, there were only 4,090 inmates, a difference of 1,468 fewer incarcerated persons today than in 2014. Despite these trends, the Hawai‘i Community Correctional Center, which is the primary correctional facility on Hawai‘i Island, continues to maintain the highest over occupancy rate in the State at 136.7%, as of February 13, 2023. It is also important to note that the operational capacities of our State correctional facilities have remained relatively the same despite population growth and the disrepair and decline of our aging facilities. Hawai‘i needs to revisit discussions regarding the expedited repair of existing facilities and the construction of new correctional facilities that incorporate internal social services, mental health, substance abuse, domestic violence, anger management, rehabilitative treatment services, and restorative justice programs to equip incarcerated persons with the necessary tools and resources to reintegrate successfully into society.

Hawai‘i Island is at a substantial disadvantage to address crime motivators such as substance abuse, mental health, and homelessness, given our limited community resources and funding, geographic restrictions, limitations of court supervision authorities, and shortage of direct service providers. In the alternative to blindly releasing defendants, we believe that by supporting funding, staffing, and programs for supervision and reintegration services and prioritizing the utilization of alternative forms of supervision, such as electronic monitoring where appropriate, we will be able to ease overcrowding concerns, assist incarcerated persons reintegrating back into society, and reduce recidivism.

The County of Hawai‘i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. Given the crime trends in Hawai‘i and the acknowledged limited resources and limitations of pre-trial services and providers, the County of Hawai‘i, Office of the Prosecuting Attorney strongly opposes the passage of H.B. 1336. Thank you for the opportunity to testify on this matter.

Mitchell D. Roth
Mayor

Benjamin T. Moszkowicz
Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

February 27, 2023

Representative David A. Tarnas
Chairperson and Committee Members
Committee on Judiciary and Hawaiian Affairs
415 South Beretania Street
Honolulu, Hawai`i 96813

RE: HOUSE BILL 1336, HD1, RELATING TO CRIMINAL JUSTICE REFORM
HEARING DATE: FEBRUARY 28, 2023
TIME: 2:00 P.M.

Dear Representative Tarnas:

The Hawai`i Police Department **strongly opposes** House Bill 1336, HD1, with its purpose to authorize officers to issue citations in lieu of making certain arrests, authorizes a forty-eight hour grace period after a missed initial court appearance, establishes that a defendant is *entitled to pretrial release* based on various requirements.

Our department appreciates the intent of the Legislature and acknowledges the need to address overcrowding concerns at our prisons and jails, we disagree that the imposition of a presumption of release mandate that jeopardizes the safety of our community is an appropriate means to address overcrowding correctional facilities. A defendant's pretrial release status should continue to be evaluated on a case-by-case basis by a presiding Judge in order to appropriately assess a defendant and determine any public safety concerns.

This measure also contemplates the omission of a defendant's prior arrests from pre-trial bail reports if the arrest did not result in a conviction. This is problematic because the Court will not be afforded all the relevant information available to make an informed decision regarding an accused's custody status. As a result, the fact that an individual was released after posting bail on several other unrelated pending felony matters would be deemed immaterial and not be considered as a basis to deny a defendant's subsequent request for supervised release or release on recognizance.

Correctional facility overcrowding is a concern, the changes as submitted will allow individuals who are arrested to be released without bail, allowing them to reoffend and further victimize our communities and create additional safety concerns for the community at large. Our community cannot afford the consequences of this bill.

It is for these reasons, we urge this committee to strongly oppose this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 1336, HD1.

Sincerely,

BENJAMIN T. MOSZKOWICZ
POLICE CHIEF

POLICE DEPARTMENT

CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org

RICK BLANGIARDI
MAYOR

ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE RT-JK

February 28, 2023

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 1336, H.D. 1, Relating to Criminal Justice Reform

I am Major Roland Turner of District 5 (Kalihi) of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD has concerns with House Bill No. 1336, H.D. 1, leading us to support it in one part but otherwise oppose it. This bill authorizes officers to issue citations in lieu of making certain arrests, authorizes a 48-hour grace period after a missed initial court appearance, establishes that a defendant is entitled to pretrial release based on various requirements, and makes changes to pretrial reports.

We appreciate the concerns regarding overcrowding in correctional facilities and understand the intent of the legislature to address this issue. To that end, the HPD is in support of creating a system in which citations may be issued in lieu of arrests for certain criminal offenses. However, we oppose the other substantive parts of this legislation. The imposition of a presumption of release mandate will potentially jeopardize public safety. We believe the defendant's pretrial release status should continue to be evaluated on a case-by-case basis by a presiding judge in order to appropriately assess a defendant and determine any public safety concerns.

This measure also contemplates the omission of a defendant's prior arrests from pretrial bail reports if the arrest did not result in a conviction. This is problematic because the court will not be afforded all the relevant information available to make an informed decision regarding an accused's custody status. As a result, the fact that an individual was released after posting bail for several other unrelated pending felony matters would be deemed immaterial and would not be considered as a basis to deny a defendant's subsequent request for supervised release or to be released on one's own recognizance.

While correctional facility overcrowding is a valid concern, this bill will allow most individuals who are arrested to be released without bail, allowing them to immediately reoffend and further victimize our communities. For these reasons the HPD believes that the community cannot afford the consequences of this bill in its current form.

The HPD urges you to oppose House Bill No. 1336, H.D. 1, Relating to Criminal Justice Reform.

Thank you for the opportunity to testify.

Sincerely,

For Roland Turner, Major
District 5

APPROVED:

For Arthur J. Logan
Chief of Police

S H  P O

STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

" A Police Organization for Police Officers Only "
Founded 1971

February 24, 2023

VIA ONLINE

The Honorable David A. Tarnas
Chair
The Honorable Gregg Takayama
Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol, Rooms 442, 404
415 South Beretania Street
Honolulu, HI 96813

Re: **HB 1336 HD1 - Relating to Criminal Justice Reform**

Dear Chair Tarnas, Vice-Chair Takayama, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union in **strong opposition** to HB 1336 HD1. This bill establishes a rebuttable presumption that a defendant is *entitled to release* unless release of a defendant would be inappropriate based on certain specified criteria. Recent deletion of the prior language indicating the prosecution's burden of proof by clear and convincing evidence does nothing to change the reality that prosecutors will still bear the burden of overcoming this rebuttable presumption of *entitlement* to release.

The bill also requires that any bail set by the court be in an amount that the defendant can afford (under certain conditions) and prohibits denial of pretrial release based solely upon certain factors, such as a positive drug test. This bill also provides that with respect to a revocation of release on bail, recognizance, or supervised release, prosecutors must prove, by a preponderance of the evidence (changed from the clear and convincing evidence language), that the defendant *intentionally or knowingly* violated a condition of release, and that the condition was reasonable under the totality of the circumstances and requires the court, in certain cases when revoking a defendant's release, to enter a finding that no conditions can be imposed that would reasonably ensure the defendant's appearance and the safety of the public, and that the revocation is therefore necessary as an action of last resort.

Re: **HB 1336 HD1 - Relating to Criminal Justice Reform**

This bill is troubling in many respects. Our officers are on the front lines battling crime 24 hours a day, seven (7) days a week, 365 days a year. We know who the habitual criminals and repeat offenders are who we arrest repeatedly, just to see them set free without any consequences. The rate of certain types of criminal activity, including violent crimes, have jumped over the last several years. The homicide rate is more than double the rate from 2021 and going back to 2017. Robberies and auto thefts have also leaped to their highest levels in over five years. Passing over the needs of victims of these crimes in our community, this bill arbitrarily emphasizes the need to address life disruption and bias experienced by those arrested and positions bail reform as the way to address it and solve prison overcrowding. But we ask at what cost? Our community cannot afford the consequences of this bill.

For one, it broadly provides for a presumption of release, allows for the issuance of a citation rather than an arrest and unreasonably burdens our officers, prosecutors and judges and needlessly prolongs the criminal justice process, which is already harshly criticized as being too slow. For example, where revocation of release on bail, recognizance, or supervised release is sought, prosecutors will likely need to schedule evidentiary hearings just to show by a preponderance of the evidence (changed from clear and convincing evidence) that the defendant's condition violation was intentional or done knowingly. Shifting the burden to prosecutors in this manner, clogging our court system with unnecessary additional hearings, shielding material information from judges who are making critical pretrial bail decisions, and adding presumption of release mandates like these will directly affect the safety of our communities and further decrease the public's trust and confidence in our criminal justice system.

We respectfully suggest that another more effective way to address our overcrowded prisons is to build a new prison with greater capacity which has been in the works for years but seems to be going nowhere. Millions of dollars have been spent on studies and planning for the construction of a new prison, but a way forward is still unclear.

Rather than build a new prison, the solution being offered is to limit our police officers' ability to effect arrests, burden our prosecutors with processes to overcome unreasonable presumptions of release that will only prolong the criminal justice process, and allowing repeat offenders to be set free in our community without bail, where they will be allowed to continue terrorizing our citizens. It is not coincidental that we often hear it reported in the media that a person with an extensive rap sheet has been arrested again and again without ever being locked up. Our citizens wonder out loud, "how was that person allowed to be out?" Eliminating bail will only exacerbate this entire problem.

Re: **HB 1336 HD1 - Relating to Criminal Justice Reform**

A very tragic case illustrates what can happen and will happen when someone is arrested for committing a crime and is simply set free. Less than a year ago, the media reported on the case involving a suspect that was arrested for assaulting a police officer. No sooner after the suspect was arrested, he was allowed to go free. He was subsequently arrested for second-degree murder outside the Kapolei police station where he had been released, after reportedly viciously attacking an innocent woman with a tree trunk who was killed.

We fully understand and appreciate the social issues involved with bail reform. However, we have laws in place for a reason which is to protect our community from harm. We are police officers entrusted to enforce those laws. Many times, the same criminal offenders have numerous misdemeanor offenses on their records together with more violent offenses. Although they may be arrested today for a non-violent misdemeanor offense, they may have a long rap sheet that includes the commission of other violent and more heinous crimes on their records. The proposals in this bill will only compound the existing dangers our community already faces by having repeat offenders walking freely in our neighborhoods and will constrain our hard-working officers and prosecutors from doing their jobs to keep our communities safe.

If the legislature is going to address the underlying social and economic issues related to bail reform, burdening our prosecutors and judges, and limiting our police officers' abilities to keep our streets safe by freeing arrested criminals through a revolving door is not the answer nor the approach we should take to address such issues. We thank you for allowing us to be heard and to share our concerns on this bill and hope your committee will unanimously reject this bill.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President

RC jmo

HAWAIʻI HEALTH
& HARM REDUCTION CENTER
The New Chapter for Life Foundation and The CHOW Project

TESTIMONY IN SUPPORT OF HB 1336, HD 1

TO: Chair Tarnas, Vice Chair Takayama, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 28, 2023 (2:00 PM)

Hawaiʻi Health & Harm Reduction Center (HHHRC) **strongly supports** HB 1336, HD1, which would offer a range of reforms that would advance pretrial fairness and place limits on pretrial incarceration. This bill importantly prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person testing positive for drug use. This bill would also reduce the number of arrests made in criminal cases. As the bill's finding notes, "an arrest can significantly jeopardize [an] arrestee's housing and employment and set into motion a chain of economic and logistical hardships for the arrestee's family, especially when the arrestee is the main source of household income and has multiple dependents."

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)***.

The criminal legal system has disproportionately impacted Native Hawaiians since the establishment of the Republic of Hawaiʻi in the late 19th Century. Native Hawaiians are more likely to get a prison sentence, and for longer periods of time, than other groups. Native Hawaiians comprise the highest percentage of those incarcerated in out-of-state and women's prisons. Native Hawaiians are sentenced to longer probation terms than other groups. Native Hawaiians also bear a disproportionate burden of the punitive response to drug use, with sentencing structures, police practices, and prosecutorial practices contributing to that disproportionality.

As noted in a 2020 report from the Pew Charitable Trusts, Hawaiʻi has the highest average term of probation in the nation at just under five years. Statewide probation reform that substantially reduces terms is another tangible means of repairing the harm of structural racism that is manifest in the operation of the state's criminal legal system.

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

The high individual, familial, and governmental costs associated with consigning persons with behavioral health problems to protracted involvement in the criminal legal system are readily apparent to those familiar with assessing punitive responses to drug use at the state, national, and international levels.

The APHA vigorously endorses a public health response to drug use and misuse, including the decriminalization of personal drug possession and use. It urges state governments to eliminate "criminal penalties and collateral sanctions for personal drug use and possession offenses and to avoid unduly harsh administrative penalties, such as civil asset forfeiture…"

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

Thank you for the opportunity to testify on this measure.

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 AND HAWAIIAN AFFAIRS
Rep. David Tarnas, Chair
Rep. Gregg Takayama, Vice Chair
Tuesday, February 28, 2023
Room 325
2:00 PM

STRONG SUPPORT FOR HB 1336 HD1 – CRIMINAL JUSTICE REFORM

Aloha Chair Tarnas, Vice Chair Takayama and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the 4,028 Hawai`i individuals living behind bars[1] and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 917 (41% of the male imprisoned population[2]) of Hawai`i's imprisoned people are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to testify in strong support of HB 1336 HD1 that is a 3-part bill: **Part I:** Authorizes officers to issue citations in lieu of making certain arrests; **Part II:** Establishes a rebuttable presumption that a defendant is entitled to pretrial release; and **Part III:** Provides that a request that the defendant be ordered to undergo a substance abuse assessment may be made any time before trial and prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person having tested positive for drug use.

HB 1336 HD1 addresses one of the most persistent public health challenges in ways that treat drug dependence/substance use disorder as public health issues, not ones that the criminal legal system can solve.

Fifty years, over a trillion dollars wasted, and millions of lives have been sacrificed for the failed war on drugs – that has actually been a war on families – and

[1] Department of Public Safety, Weekly Population Report, February 13, 2023. https://dps.hawaii.gov/wp-content/uploads/2023/02/Pop-Reports-Weekly-2023-02-13_George-King.pdf

[2] Why are 41% of Hawai`i's male prison population sent thousands of miles from home when the following prisons in Hawai`i have room? Here are the capacity rates of the following prisons: Halawa is at 74.3%; Halawa Special Needs Facility is at 63.6%; Kulani is at 39.5%; Waiawa is at 59% of operational capacity. SEE FN1

has proven that the criminal legal system is inappropriate to treat persistent public health challenges.

Hawai`i has been feeling the social and economic impacts that the war on drugs has brought us – overcrowded jails, fattening the coffers of prison profiteers, ripping families and communities apart by shipping 41% of male prison population to a private prison in Arizona, and native Hawaiians living unsheltered in their homeland, to name just a few of the persistent impacts.

There are a plethora of research resources that make clear that even a few days in jail can have lifelong consequences for individuals and their families. The loss of employment can lead to loss of housing when the breadwinner is incarcerated, and the impact on children is immense.

Incarceration should be the last resort when we know the harms it causes that have long-term impacts on Hawai`i's economic stability.

The Center for American Progress produced a fact sheet about the War on Drugs and its impacts[3]

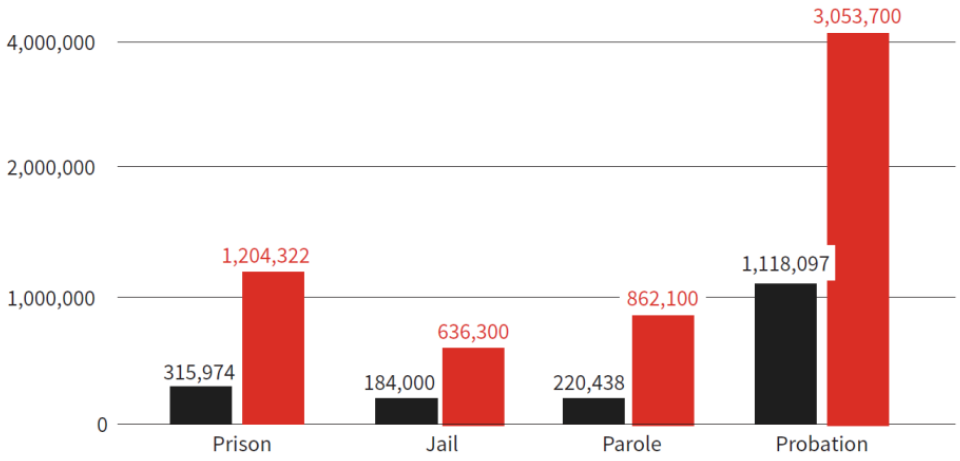
> *"President Richard Nixon called for a war on drugs in 1971, setting in motion a tough-on-crime policy agenda that continues to produce disastrous results today. Policymakers at all levels of government passed harsher sentencing laws and increased enforcementactions, especially for low-level drug offenses. The consequences of these actions are magnified for communities of color, which are disproportionately targeted for enforcement and face discriminatory practices across the justice system. Today, researchers and policymakers alike agree that the war on drugs is a failure. This fact sheet summarizes research findings that capture the need to replace the war on drugs with a fairer, more effective model that treats substance misuse as a public health issue—not a criminal justice issue.*

The war on drugs

- *Every 25 seconds, someone in America is arrested for drug possession. The number of Americans arrested for possession has tripled since 1980, reaching 1.3 million arrests per year in 2015—six times the number of arrests for drug sales.*
- *One-fifth of the incarcerated population—or 456,000 individuals—is serving time for a drug charge. Another 1.15 million people are on probation and parole for drug-related offenses.*
- *Incarcerating people for drug-related offenses has been shown to have little impact on substance misuse rates. Instead, incarceration is linked with increased mortality from overdose. In the first two weeks after their release from prison, individuals are almost 13 times more likely to die than the general population. The leading cause of death among recently released individuals is overdose. During that period, individuals are at a 129 percent greater risk of dying from an overdose than the general public.*
- *Incarceration has a negligible effect on public safety. Crime rates have trended downward since 1990, and researchers attribute 75 to 100 percent of these reductions to factors other than incarceration."*

[3] Ending the War on Drugs: By the Numbers, FACT SHEET, JUN 27, 2018. https://www.americanprogress.org/article/ending-war-drugs-numbers/

"People Under U.S. Correctional Supervision, 1980 and 2021[4]



Sources: Cahalan, M. W. (1986). *Historical corrections statistics in the United States*, 1850-1984. Bureau of Justice Statistics, Table 7-9A; Carson, E. A. (2022). *Prisoners in 2021–Statistical tables*. Bureau of Justice Statistics; Kluckow, R. & Zeng, Z. (2022). *Correctional populations in the United States, 2020 – Statistical tables*; Zeng Z. (2022). *Jail inmates in 2021 – Statistical tables*. Bureau of Justice Statistics. Probation and parole figures are as of year end 2020, the most recent data available.

PROBATION AND PAROLE

Probation and parole have expanded both in the absolute number and length of supervision for several decades now. Between 1980 and 2020, the number of people on probation nearly tripled and the number of people under parole supervision nearly quadrupled.

LESSONS LEARNED

There are important lessons to be learned from this experience. The first is that adopting major policy shifts in an emotional political climate is never a wise course of action. Policymakers who promoted increased transfer of children to adult courts in the early 1990s did so at a time when youth (and adult) violence had risen precipitously. In retrospect we know that the spike in violence was largely due to the emergence of crack cocaine drug markets, and was relatively short-lived. The second lesson is that revising how we think about people who commit crime changes how we respond to their actions. Taken with an understanding of structural disadvantages that permeate American society leading to disparate economic, education, housing and health outcomes should lead policymakers to aggressively pursue reforms in these areas while also investing in evidence-based individual-level prevention and intervention programs. The life history of individuals in prison shows that, more often than not, they committed their crimes after major setbacks — addiction, loss of jobs or housing — for which they received little support. There are few individuals in the prison system so dangerous that they can never be released back into the community. If we truly want to end mass incarceration we need to change the mindset about crime to one that emphasizes prevention and restoration over punishment."

Community Alliance on Prisons urges the committee to take note that Pew research has found that Hawai`i has the longest probation in the country – 59 months! We urge the committee to pass this measure to facilitate Hawai`i's transition to a rehabilitative and therapeutic model to address the underlying issues that capture people in the criminal legal web. Hawai`i needs more open and honest discussions about the impact of state policies on some of our most challenged communities.

[4] MASS INCARCERATION TRENDS – 50 YEARS AND A WAKE UP – ENDING THE MASS INCARCERATION CRISIS IN AMERICA, The Sentencing Project, by Ashley Nellis, Ph.D., Co-Director of Research at The Sentencing Project, January 2023. https://www.sentencingproject.org/reports/mass-incarceration-trends/

TESTIMONY to the HOUSE COMMITTEE on Judiciary and Hawaiian Affairs

HB1336 HD1 Relating to Criminal Justice Reform

Tuesday, February 28, 2023 at 2:00 PM
House Conference Room 325 via Videoconference

Submitted in **STRONG OPPOSITION** by Jamie Detwiler, President
Hawaii Federation of Republican Women

Chairman Tarnas, Vice Chair Takayama, and Committee Members:

I strongly oppose HB1336 HD 1 for the following reasons:

1. The **rule of law** means general rules of law that bind **all** people and are promulgated and enforced by a system of courts and law enforcement, **not by mere discretionary authority**. In order to secure equal rights to **all** citizens, government must apply law fairly and equally through this legal process.

   Bill 1336 portrays the criminal as a victim. By lessening the consequences of their criminal action from an "arrest" to a "citation", the bill gives criminals the power to re-offend and victimize law abiding citizens. No consequence, no behavior change.

2. Hawaii State Constitution Article 1. Section 5. Due process and equal protection, No person shall be deprived of life, liberty, or property without **due process of law**, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex, or ancestry.

   I support due process and equal protection under the law for **everyone**, including alleged criminal offenders. However, the current laws including a prescribed bail system is in place to deter future criminal behavior.

   Bill 1336 states that given Hawaii's high cost of living, many arrestees cannot afford to post bail and that arrests are highly disruptive to a person's life. The majority of Hawaii citizens are law-abiding hard-working people living paycheck to paycheck but they are NOT committing crimes. Crimes of theft, burglary, criminal property damage, assault, and much more do not have any excuses. We must ALL follow the rule of law.

3. The **"real" victims**. As a licensed social worker with over 30 years of experience in healthcare and community services, I have worked with victims of crimes and their family members.

   January 2023

   - 77-year old woman assaulted in her home in Mililani during an attempted robbery. Upon encountering the home intruder, he assaulted **Mrs. Omura** and pushed her down the stairs. She suffered a cervical fracture, orbital fracture, and

an arm fracture. She was hospitalized for her injuries. Takson Krstoth was arrested onsite. He has a criminal history including conviction of murder in 2011 and the Hawaii Supreme Court vacated the decision and released him in 2021.

Bill 1336 states, “arrests are highly disruptive to a person’s (alleged criminal) life”. What about the trauma and disruption in Mrs. Omura and her family’s life. Her family members are concerned that Mr. Krstoth may be released.

February 2023

- 37-year mother (**Mrs. Taliulu**) run over and dragged 15 feet by the vehicle driven by Desmond Kekahuna who had an active warrant for his arrest at the time of this incident. Mrs. Taliulu (married mother of 5 children) suffered multiple critical injuries including compound fractures of both legs. Kekahuna and Taliulu had no relationship. On the day of the incident, Mr. Kekahuna was arrested for 2 counts of 2nd degree attempted murder, 2nd degree assault of a police officer, resisting arrest, and criminal contempt of court.

- 16-year-old McKinley High School student, **Sara Yara** was killed with a vehicle driven by Mitchel Miyashiro while she was in a marked crosswalk on her way to school. Mr. Miyashiro has a history of 164 citations including multiple incidents of driving without a driver’s license. He eventually turned himself in and was released pending a future court date.

  164 **“citations”** did **NOT** deter Mr. Miyashiro from re-offending. This time, he killed an innocent teenager and devasted her family members who are understandably grieving and mourning the loss of their beloved daughter, granddaughter, and sister.

I strongly urge you to vote NO on HB1336 HD1.

Thank you for the opportunity to testify.

Jamie Detwiler, LSW, MSW
President, Hawaii Federation of Republican Women

ACLU Hawai'i

Committees:	House Committee on Judiciary & Hawaiian Affairs
Hearing Date/Time:	Tuesday, February 28, 2023, 2:00 P.M.
Place:	Via videoconference Conference Room 325 State Capitol 415 South Beretania Street
Re:	*Testimony of the ACLU of Hawai'i in Support of H.B. 1336 H.D. 1 Relating to Criminal Justice Reform*

Dear Chair Tarnas, Vice Chair Takayama and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i) writes in **support of H.B. 1336 H.D. 1**, which, among other things, (1) modifies the circumstances under which law enforcement officials issue citations in lieu of arrests, (2) establishes a rebuttable presumption that a defendant is entitled to pretrial release unless the prosecution proves otherwise by a preponderance of the evidence, and (3) removes punitive drug use screenings from the parole and probation processes.

Part I

The ACLU of Hawai'i supports the general goals of Part I, but expresses concern about the language in current form. Specifically, the original version of this bill *required* law enforcement to issue—rather than have them merely *consider* issuing—citations in lieu of arrest. But the H.D. 1 removes that mandatory language altogether. That amendment is concerning.

Custodial arrests can have a dramatic negative impact on individuals, families, and communities. Law enforcement should make such arrests only where absolutely necessary. Notably, the ACLU of Hawai'i has represented (and is still representing) multiple clients who were severely traumatized by hasty custodial arrests made by police officers under circumstances that did not actually justify the use of such an extreme measure.[1] Disrupting the existing norm of automatically detaining and restraining people—even those who are suspected of committing a crime—will help deescalate tension in the community and, ultimately, make us all safer. Thus, the ACLU of Hawai'i respectfully requests that Section 4 of the bill be modified to either (1) retain the "shall" language from the original draft or (2) include a presumption that law enforcement consider issuing a citation first before effecting a custodial arrest.[2]

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[1] *See, e.g.*, https://www.civilbeat.org/2020/10/lawsuit-hpd-officer-unlawfully-detained-sons-high-school-classmate (describing lawsuit regarding HPD officer falsely arresting and handcuffing a 15-year-old boy); https://www.acluhi.org/en/press-releases/oahu-family-files-federal-civil-rights-lawsuit-against-city-and-county-honolulu-and (describing how the 15-year-old boy and his parents "suffered severe emotional trauma and distress" from the false arrest).

[2] Separately, the addition of the second enumerated clause under subsection (b) (*i.e.*, the clause beginning with "The person poses a significant danger…") appears to be erroneous. That enumerated list appears to include factors that

Part II

The ACLU of Hawai‘i also supports Part II, but expresses concern about certain amendments made to the H.D. 1. Everyone should be treated equally under the law. How much money you have should not determine whether you find yourself stuck in a jail cell. But unfortunately, our current pretrial system does precisely that. We have a cash bail system that is a particularly destructive form of wealth-based detention.[3] This system perpetuates cycles of poverty, ironically *increases* the likelihood of future criminal legal system involvement, and harms not just the detained individuals but also their families and communities. Critically, this system disproportionately harms Native Hawaiians, Pacific Islanders, and communities of color.

Part II of this measure would take significant steps to remedy the system's problems. The measure creates a presumption in favor of pretrial release, and simultaneously squarely puts the burden on the prosecution to prove that such release is not justified. In doing so, it reverses the current practice of automatically detaining people pretrial—thus breathing life into both the presumption of innocence and the principle that "[i]n our society, liberty is the norm, and detention prior to trial . . . is the carefully limited exception."[4]

However, several amendments to § 804-3 are concerning:

- The original version *replaced* "flee" with "willfully abscond." The H.D. 1 *adds* "willfully abscond" as another ground (on top of "flee"). "Flee" is too vague and does not clarify whether a person acted with intent. The bill's original language should be retained.
- The original version imposed on the prosecution a "clear and convincing" burden of proof. The H.D. 1 lowers the burden to a "preponderance" standard. Given the liberty interests at stake, the bill should retain the "clear and convincing" standard.

Part III

At this time, the ACLU of Hawai‘i supports the general objectives of Part III. All actors in the criminal legal system can agree that reducing recidivism is an important goal. But instead of focusing on punishing and incarcerating people for substance use, we should be reinvesting in treatment and reentry options for them. Part III takes steps in the right direction.

For the above reasons, the ACLU of Hawai‘i requests that the Committee support this measure with the proposed amendments. Thank you for the opportunity to testify.

Sincerely,

Jongwook "Wookie" Kim
Legal Director

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favor issuing a citation in lieu of arrest. But if a person "poses a significant danger to a specific or reasonably identifiable" member of the community," that fact would presumably weight *against* issuing a citation in lieu of arrest.

[3] *See, e.g.*, https://www.acluhi.org/en/aclu-hawaii-bail-report-2018 (describing harmful impacts of Hawai‘i's pretrial system).

[4] *United States v. Salerno*, 481 U.S. 739 (1987).

ACLU of Hawai‘i
wkim@acluhawaii.org

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

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HB-1336-HD-1
Submitted on: 2/27/2023 9:04:58 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ilima DeCosta	Ho'opono Na Mea Ola	Support	Written Testimony Only

Comments:

Mahalo for the opportunity to testify in **strong support** of HB 1336, HD1, which would offer a range of reforms that would advance pretrial fairness and place limits on pretrial incarceration. This bill importantly prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person testing positive for drug use. This bill would also reduce the number of arrests made in criminal cases. As the bill's finding notes, "an arrest can significantly jeopardize [an] arrestee's housing and employment and set into motion a chain of economic and logistical hardships for the arrestee's family, especially when the arrestee is the main source of household income and has multiple dependents."

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)***.

The criminal legal system has disproportionately impacted Native Hawaiians since the establishment of the Republic of Hawai'i in the late 19th Century. Native Hawaiians are more likely to get a prison sentence, and for longer periods of time, than other groups. Native Hawaiians comprise the highest percentage of those incarcerated in out-of-state and women's prisons. Native Hawaiians are sentenced to longer probation terms than other groups. Native Hawaiians also bear a disproportionate burden of the punitive response to drug use, with sentencing structures, police practices, and prosecutorial practices contributing to that disproportionality.

As noted in a 2020 report from the Pew Charitable Trusts, Hawai'i has the highest average term of probation in the nation at just under five years. Statewide probation reform that substantially reduces terms is another tangible means of repairing the harm of structural racism that is manifest in the operation of the state's criminal legal system.

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

The high individual, familial, and governmental costs associated with consigning persons with behavioral health problems to protracted involvement in the criminal legal system are readily apparent to those familiar with assessing punitive responses to drug use at the state, national, and international levels.

The APHA vigorously endorses a public health response to drug use and misuse, including the decriminalization of personal drug possession and use. It urges state governments to eliminate "criminal penalties and collateral sanctions for personal drug use and possession offenses and to avoid unduly harsh administrative penalties, such as civil asset forfeiture…"

Thank you for the opportunity to testify in support of this measure.

HAWAIʻI ALLIANCE *for* PROGRESSIVE ACTION

House Committee on Judiciary & Hawaiian Affairs

Hawai'i Alliance for Progressive Action (HAPA) <u>Supports</u>: HB1336 HD1

Tuesday, February 28, 2023 2p.m. Conference Room 325

Aloha Chair Tarnas, Vice Chair Takayama and Members of the Committee,

HAPA supports HB1336 HD1 which works to create a system based on pretrial fairness.

> *Part I: Requires officers to issue citations in lieu of making certain arrests. Provides for a 48-hour grace period after a missed initial court appearance. Part II: Establishes a rebuttable presumption that a defendant is entitled to pretrial release. Requires the prosecution to prove by clear and convincing evidence that release of a defendant would be inappropriate, based on certain specified criteria. Requires that bail be set in an amount that the defendant can afford. Prohibits the denial of pretrial release based solely upon certain factors, such as testing positive for drug use. Requires automatic issuance of protective orders in assaultive cases. Requires the prosecution, when seeking to revoke pretrial release, to prove by clear and convincing evidence that the defendant intentionally violated a reasonable condition of release, and requires the court to enter certain findings into the record. Part III: Provides that a request that the defendant be ordered to undergo a substance abuse assessment may be made any time before trial. Prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person having tested positive for drug use.*

Our pretrial system is broken. We need a complete overhaul of the way we think of criminal justice, and we should begin with pretrial reform. This bill makes a number of important changes to our pretrial system.

This bill, for some offenses, requires police to issue citations instead of arrests; it creates a presumption of innocence until proven guilty, as is every person's civil right; and it removes punitive drug use screenings from parole and probation processes.

Being arrested and incarcerated has detrimental effects on individuals, families, and communities; especially for Native Hawaiians and Pacific Islanders who are overrepresented in the criminal legal system. We must divest from punishment and reinvest in community solutions.

Please support HB1336 HD1. Mahalo for your consideration,

Anne Frederick
Executive Director

HB-1336-HD-1
Submitted on: 2/27/2023 11:47:19 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Kitchens	Stolen Stuff Hawaii	Oppose	Written Testimony Only

Comments:

Dear Chair Tarnas, Vice Chair Takayama and Committee Members,

I am the creator of Stolen Stuff Hawaii, an anti-crime Facebook & Instagram group comprising over 200,000 Hawaii-based members and I strongly oppose HB1336 HD1. It is essentially a bail reform bill that seeks to do the same and more than the overwhelmingly opposed HB1567 of 2022, which was vetoed by Governor Ige. Over 9,000 Hawaii citizens signed a petition against that bill and HB1336 is arguably worse in concept.

Although we understand that the intent of HB1336 HD1 is to address the overcrowding in our jails, reduce expenditures, as well as lessen the impact of monetary bail on disadvantaged populations, this bill will have an incredibly negative effect on our community. It will increase further crime by removing needed accountability from within our current judicial system. It will release offenders on their own recognizance with only a citation, thereby allowing them to further victimize our neighborhoods and workplaces within hours of their arrest. Having run Stolen Stuff Hawaii for over 8 years, I deal with victims daily and the #1 issue is accountability for the criminals who have victimized them as well as their ability to continuously re-offend (without arrest or conviction).

First, HB1336 HD1 Relating to Criminal Pretrial Reform should be opposed because it wrongfully ignores and releases perpetrators of a great amount of misdemeanor and, most worriedly, class C felony level offenses (punishable by a maximum of 5 years in prison and/or a $10,000 fine) that will result in a massive blow to the victims of such crimes. Although considered non-violent, these crimes are devastating to the victims and the release will allow further opportunities for criminals to do considerable harm to others in a continuous revolving door. We already see and experience that with our current system...this will only make it worse.

These misdemeanors and class C felonies may include (in addition to others not listed):

Burglary in the Second Degree (708-811) (not a dwelling but a business)
Theft in the third degree (708-832) ($250 to $750 in value)
Theft in the second degree (708-831) ($750 to $20,000 in value)
Unauthorized Control of a Propelled Vehicle (708-836)
Unauthorized Control of a Propelled Vehicle 2nd (ACT 006 [21])
Unauthorized Entry into Motor Vehicle in the First Degree (708-836.5)
Aggravated Harassment by Stalking (711-1106.4 and 711-1106.5)

Arson in the Third and Fourth Degree (708-8253 and 708-8254)
Violation of Privacy in the First and Second Degree (711-1110.9 and 711-1111)
Promoting Gambling in the First and Second Degree (712-1221 and 712-1222)
Promoting pornography (712-1214)
Habitual solicitation of prostitution12-1209.5)
Negligent Injury in the First and Second Degree (707-705 and 707-706)
Unlawful Imprisonment in the Second Degree (707-722)
Unauthorized Possession of Confidential Personal Information (708-839.8)
Identity Theft (708-839.7)
Fraudulent Use of a Credit Card (708-8100)

Secondly, HB1336 HD1 Relating to Criminal Pretrial Reform should be opposed because of the current increase in crime. Our islands thrive on tourism and our visitors are continually targeted. As of late, the news is overwhelmed with reports of everything from violence to property theft against both locals and tourists alike. The word is out: HAWAII IS NOT SAFE. This is reflected by tourists who have become victims here in our islands.

Also, as reported by the 2020 FBI Uniform Crime Reporting, Hawaii is ranked the 12th highest state in Property Crime: 2,411.4 property crimes per 100k people. Due to the pandemic, we released thousands of inmates from OCCC resulting in a backlog of cases and a severe lack of accountability for criminals, which consequently, has emboldened these offenders to commit more brazen crimes.

In an attempt to follow in the footsteps of mainland cities and states who are choosing to be more lenient on crime, we are placing Hawaii on a path to suffer the same increase in violence and property theft that has resulted in the verifiable closure of businesses and unflinching victimization of their communities. When there is no accountability, there is nothing but apathy from criminals.

Last month, on Oahu, over 600 plus crimes were reported to HPD and were primarily Larceny with Vehicle Break-in's as the second highest crime report. The previous month was 700 plus crimes reported. This is an absolute result of the polices chosen during and the effects of the pandemic as well as the lack of accountability for criminals who have been released who are then free to continue to commit crimes...most of which...they are never apprehended for.

Third, with a severe undermining of local law enforcement, the revolving door of crime creates an immense frustration that is tangible to our police officers. This bill will arguably result in further loss of morale as their efforts to combat crime will be waylaid by repeated arrests of the same individuals over and over again—with no immediate accountability other than a piece of paper.

HB1336 HD1 needlessly complicates an already tedious process and places more untenable requirements on both the Prosecutor's Office as well as law enforcement, thereby increasing their work and caseload. Both are already understaffed and overwhelmed with current demands and this bill increases their requirements without offering additional monetary support or budget increase.

Fourth, HB1336 HD1 should be opposed because it will greatly affect our small businesses. Recent testimony from the Retail Merchants of Hawaii illustrated that Offenders are caught and then released, and as a result, the merchants are facing an upward increase in theft. There also seems to be organized crime that target their stores as they return over and over to steal just within the limits of 3rd and 2nd degree theft. This is a rampant problem on the mainland that is now here and is only getting worse.

Fifth, our judges already exercise enormous compassion while considering releasing individuals on their own recognizance. It's highly likely that most pre-trial defendants being held in jail have issues necessitating their continued confinement. Judges should always be afforded the discretion privy to them as part of the judicial branch.

Finally, this bill is also needlessly complicated and should have been broken up into additional bills, such as Drug Screening portions which would be better off if pushed through separately.

For the sake of our community, I ask that you please oppose HB1336 HD1. If need be, I will create another petition to garner more support for opposing this bill and I'm quite sure we'll be able to drum up a considerable amount of protest, just like last year. I don't believe anyone wants to be part of that firestorem of community backlash.

Criminals make a conscious choice to do wrong...it is a moral failing on their part, not the victim's and to release them with zero accountability would only embolden them further. With no accountability, there is no change. This bill will simply make crime worse.

Mahalo,

Michael Kitchens
Administrator,
Stolen Stuff Hawaii

AMERICAN BAIL COALITION

Hawaii HB 1336: OPPOSE
info@ambailcoalition.org
www.AmBailCoalition.org

HI: House Bill 1336 – OPPOSE

February 27, 2023

House Bill 1336: Relating to Criminal Justice Reform
Testimony in Opposition
Committee On Judiciary & Hawaiian Affairs

Dear Chair Tarnas and Members of the Committee:

I write in opposition to House Bill 1336, as amended, legislation concerning bail and arrest reform.

After working on this issue for more than a decade, I can say with confidence that this legislation will have a devastating impact on public safety in Hawaii and create future pressures to eliminate the settled right to bail by sufficient sureties in favor of expanded risk-based preventative detention.

While last year we made the argument that Governor Ige should veto H.B. 1567 – the dangerous, unclear, and unconstitutional bail reform legislation, we can say beyond doubt that this proposed legislation in H.B. 1336 is far worse for both community safety and protecting the constitutional rights of the accused.

I. The legislation over-rules the settled right to bail by sufficient sureties in Hawaii, a settled, fundamental individual right, and will create a system very similar to New York, which has been widely criticized as having increased pretrial crime.

This legislation creates what nationally we describe as the right to an affordable bail. That is not the law—if you don't post bail today, you don't get out of jail. This legislation says you do get out—on an amount *you will post*, most likely zero since we no longer consider the influence of third-party sureties under this legislation.

While this legislation does not delete the Hawaii fundamental statutory right to bail by sufficient sureties, certainly the new addition of subsection (f) to § 804-3 requirement of setting bail in "an amount that the person is able to afford" is inconsistent with the existing right to bail by sufficient sureties and over-rules it in effect in all crimes.

The right to bail by sufficient sureties is a right where a *court is required to set a monetary bail* for all whom detention by denying bail is not sought (which is limited currently to dangerous crimes and includes various other procedural and substantive requirements). The defendant's right to bail by sufficient sureties is one where the defendant has a right to set a specific amount of bail that is not "excessive."

This right of bail by sufficient sureties, however, is also one of the **People of the State of Hawaii** to request that the sureties are *sufficient* in order to guarantee the appearance of the defendant in court, and no higher. By constitution, judges can only relieve the requirement of bail when the court is "reasonably satisfied that the defendant or witness will appear when directed." In fact, the California Supreme Court in 1878 held that the right to bail by sufficient sureties cannot include a right to an affordable bail that is controlling,[1] and thus, subsection (f) must over-rule the Hawaii statutory right to bail by sufficient sureties.

In over-ruling the Hawaii statutory sufficient sureties clause as subsection (f) to § 804-3 does, this makes Hawaii essentially a no-money bail state, limiting the eligibility-net of pretrial incarceration solely to the preventative detention exemptions of "serious crimes," and only when the prosecutor is able to bring the proof necessary along with the necessary procedural safeguards outlined clearly in *U.S. v. Salerno*.[2]

Only in the categories of "serious crimes" will someone remain in jail in Hawaii under this legislation, and then only if the prosecutor is able to seek and prove detention.[3] No bail can serve to detain under subsection (f) because all of those for whom detention is sought must be released on a bail *that they absolutely can post*, nearly always zero since the legislation specifically prohibits consideration of third-party provided surety bail, which I estimate to be upwards of 75% of all bail posted.

This legislation is also very similar to the legislation in New York that limited the ability of judges to impose bail in certain cases (in this case all non "serious crimes") which then either served to detain if not posted or was posted as security in order to guarantee the person's appearance in Court. By all accounts, that law has not been a success, with Governor Kathy Hochul having recently announced a *third* roll back to the law, which can be described as a continuing attempt by the legislature to encroach on judicial discretion to set bail on case-by-case basis. The results of that law have been, along with other reforms, a disaster in terms of rolling back a generation of success in reducing index crime in a period of a few years.[4]

In other jurisdictions, such as Yolo County, California, where these so-called zero bail for certain crimes experiments have been tried, the result has been increases in pretrial crime by those who are not required to post bail.[5]

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[1] *Ex parte Duncan* (1879) 54 Cal. 75.
[2] 481 U.S. 739 (1987).
[3] Thus, anyone who commits "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" may face pretrial detention. Any and all other charges must be released on an affordable bail and may not be detained if they are unable to post that bail.
[4] https://www.manhattan-institute.org/press/new-report-analyzes-the-effects-of-new-yorks-2019-bail-reform
[5] https://yoloda.org/wp-content/uploads/2023/02/Zero-Bail-vs-Posted-Bail-Study-2023-FINAL.pdf (In this study, individuals released on zero bail were subsequently rearrested for a total of 163% more crimes than individuals released on bail. The average recidivism rate for those released on zero bail was 78% over 18 months, while the average recidivism rate for those released on bail was only 46%. Thus, arrested individuals released on zero bail reoffended at an average rate that was 70% higher than arrestees who posted bail. Additional highlights/averages:

II. Eliminating the Right to Bail by Sufficient Sureties will create perverse incentives to increase preventative detention, denying bail altogether, which policies do not increase public safety and are civil rights disasters.

"End money bail" in New Jersey in order to remedy the civil rights atrocity of pretrial incarceration racial disparities and the use of money bail which is fundamentally unfair to poor—those were the reasons why New Jersey eliminated monetary bail and went to a system of risk-based preventative detention.

Over the intervening period of five years, the intended "limited" power of preventative detention has expanded to prosecutors filing for preventative detention in 47% of all indictable crimes and achieving an overall detention rate of 20% in all such cases filed. In addition, 92% of defendants are supervised by pretrial agencies pending trial – all at a cost of roughly $500 million. To add insult to injury—the jail population today is almost exactly where it was five years ago when the reforms began, and the racial disparities in the incarcerated population have remained exactly as they were before.

To strike the right to bail by sufficient sureties in Hawaii via creating a right to an affordable bail in effect would put pressure to expand the legislative definition of "serious crime" to a whole lot more crimes. Instead, the right to bail by sufficient sureties creates a much better balance and is actually a more expansive right to bail for defendants than the federal constitution or Hawaii constitution's prohibition of mere excessive bail insofar as judges are required to set an amount under *Stack v. Boyle*[6] that is reasonably calculated to ensure the appearance of the defendant and no higher.

Where policymakers get it wrong is by failing to recognize the balance that sufficient sureties create among the defendant's absolute right to have a personal surety post a bail for him versus the right of the people to ask that such sureties are "sufficient" to guarantee that defendant's appearance. Calls then become for policies of expanding preventative detention, which is what we can expect in Hawaii if this legislation becomes law.

Repeat defendants who are not charged with a "serious crime" this time, who may have a record of failing to appear a mile long and who have numerous prior convictions of serious crimes who are a threat to the community will absolutely be able to take advantage of this law. No serious crime, no motion for preventative detention, then how much money you have with you at the time, usually zero, will be the bail. **But it won't matter—no charge of a "serious crime" equals no possibility of pretrial detention, period.**

• More new felonies - Individuals released on zero bail committed new felonies 90% more often than those who posted bail. • More new misdemeanors - Individuals released on zero bail committed new misdemeanors 123% more often than those who posted bail. • More multiple arrests - Individuals released on zero bail were rearrested more than once in eighteen months 148% more often than those released on bail. • More new violent offenses - Individuals released on zero bail committed new violent offenses 200% more often than those who posted bail).

[6] 342 U.S. 1 (1951).

Then, as in New Mexico, we'll hear that the preventative detention eligibility is too limited. We need to now expand the ability of prosecutors to detain people by denying bail. **This is circular logic at its worst—systems of preventative detention over time always over-detain because the pressure is not to seek appropriate security for release but to create a culture of denying bail.** In fact, the federal system's promise of reducing pretrial detention from 24% detained pending trial using this mechanism of preventative detention resulted not in a decrease of the pretrial population but resulted in a situation where the federal courts detain now 75% of all defendants. Turns out the right to bail by sufficient sureties achieved a lower detention rate than the alleged fairer power of preventative detention.

Thus, when the balance that the right to bail by sufficient sureties creates is deleted in favor of the right to an affordable bail and risk-based preventative detention, calls for detention will inevitably increase. Preventative detention, as Justice Thurgood Marshall once said of the federal system, is a short cut we take to harm the guilty that in fact only harms the innocent and therefore ourselves. Such policies, he correctly predicted, would go forth without authority and come back without respect.[7] Today criminal defendants will benefit from this law, but tomorrow their liberties will be trammeled when the right to bail by sufficient sureties is lost and calls for expanded preventative detention gains momentum.

III. H.B. 1336 creates a presumption of appearance in all crimes that is contrary to the state constitution.

The Hawaii state constitution specifically permits judges to dispense with the need to impose bail "if reasonably satisfied that the defendant or witness will appear when directed." This legislation purports to restrict the power of judges to dispense with bail by creating an affirmative presumption of appearance and by requiring prosecutors to also overcome a presumption of recognizance or supervised release.

First, the state constitution is clear that the standard in question is only one of appearance—if the judge is satisfied that the defendant is going to appear, the judge may dispense with bail. Finding against a presumption of supervised release, i.e., non-monetary conditions, will guarantee appearance, is not required. This is important for the other reason that most non-monetary conditions are imposed to protect public safety while at liberty not to guarantee appearance. For example, a person that is required to have a GPS monitor to monitor compliance with a protection order has nothing to do with appearance, and yet a judge would have to find that GPS monitoring doesn't work before imposing bail. That is contrary to the state constitution, which requires reasonable satisfaction that the defendant will appear.

Second, the presumption that someone will appear, which must be overcome by the prosecutor, is inconsistent with the state constitution. Here, the prosecutor is required to disprove the presumption that the defendant "will appear." In other words, to prove that the defendant "will not appear." That is inconsistent with the fundamental and flexible constitutional question of whether the judge is "reasonably satisfied that the defendant will appear," not the specific legal finding that the defendant "will not appear." We think this standard is inconsistent with the constitution in that it requires the

[7] 481 U.S. at 767.

prosecutor to prove more than is required for a judge to impose bail, i.e., that the judge is not otherwise be "reasonably satisfied" that the defendant will appear rather than a preponderance of the evidence that the defendant will not appear. We think it will be very difficult for a prosecutor, as a matter of fact, to prove a defendant specifically will not appear in a particular case, as opposed to arguing different levels of risk as prosecutors do today. These are not yes and no questions and turn it into a yes or no question will make it much more difficult for prosecutors to overcome and thus bail be imposed.

IV. The 48-hour no arrest warrant grace period gives fleeing felons a head start—the courts can already handle the issue of people who fail to appear in court due to excusable reasons.

Everyone has an affirmative duty to appear in court when commanded to, whether it be a civil case, a criminal case, a bankruptcy case, or any other kind of court proceeding. The organized functioning of our democracy depends on it. When someone fails to appear, they may be excused from that duty by the court. But until such excuse is properly made, the court should correctly presume the worst because presuming otherwise only protects fleeing felons and gives them a 48-hour head start.

As the courts previously pointed out, judges in Hawaii already handle this issue by attempting to get ahold of the defendant at the time the defendant fails to appear. This is done typically by asking their lawyer. Judges already have the inherent power to delay the issuance of a warrant when circumstances dictate. In addition, the judges already have a process in place to get the defendant back on track when the defendant voluntarily appears without then having to post another bond or be re-arrested.

Here, the legislation says that courts "may" give a 48-hour grace period, but there is no standard as to when this right should be afforded or denied based on any other considerations. There is no statutory discretion for less of a grace period either, and no limitations on judicial discretion as to when to give the grace period and when not. This is certainly ripe for litigation.

Further, when someone is going to flee from justice, they usually do it right after being released from custody or immediately in advance of a court hearing (in most cases the first hearing or sentencing). This legislation also limits the offering of the grace period to only the first appearance, without explanation. Unfortunately, the only effect of this grace period is to give absconders, those actually fleeing from justice, a head start. Bail agents, personal sureties, and the police, all of whom may have stopped the defendant, won't know that the defendant failed to show up and took off if a warrant is not issued until two days later. This is a major problem.

On the other hand, for those who are not going to abscond, they already have a judicial process in place to get themselves back on track, and judges, if say they find out that someone is in the hospital during the remainder of that court date, can simply reschedule. They are under no duty to immediately issue a warrant under existing law.

Thus, we only envision that those fleeing from justice will benefit from the 48-hour no warrant rule. Anyone who accidentally misses court already has a process to avoid re-arrest or the issuance of a warrant in the first place.

V. H.B. 1336 regarding issuance of citations by law enforcement has a drafting error and potentially unconstitutionally introduces the question of future dangerousness into custodial decisions made by police officers.

Today, the law asks two basic questions to law enforcement in order for them to have the ability to issue a citation rather than arrest someone for a crime: (1) do you think they will show up; and (2) will you be called back to this location today if you issue a citation and not arrest. That is it. This legislation strikes the second requirement, and then adds the concept of officers' predictions of future dangerousness of defendants as an exception: "The person poses a significant danger to a specific or reasonably identifiable person or persons, based upon an articulable risk to a specific person or the community, as evidenced by the circumstances of the offense or by the person's record of prior convictions."

First, the state constitution requires that appearance is the only question when it comes to the imposition of bail or release on own recognizance. Thus, this standard allows officers to arrest people rather than give a citation based on predictions of future dangerousness, which may not then serve as grounds for the imposition of bail and thus the potential pretrial incarceration of that person if they fail to post bail. There is no way this provision can be squared with the state constitution's provisions on bail.

Regarding preventative detention, the exception to bail, this provision of not issuing a citation due to predictions of future dangerousness is inconsistent with current statute because it allows arrests and not issuance of a citation based on future dangerousness in more crimes (i.e., not limited to "serious crimes") than the law prescribes as ultimately eligible for detention. This could be read in effect as a general preventative detention statute (at least as long as it takes to have a hearing) by disallowing citations if someone is a future danger to the community.

Thus, this provision cannot be read squarely with the right to bail by sufficient sureties and relieving a defendant of posting bail based solely on questions of appearance nor can it be read squarely with the existing limits on preventative detention in Hawaii. It's also ripe for litigation because everyone arrested can say that they were not a future danger, or that the police failed to properly prove that at the time.

Finally, the section appears to be a drafting error—it appears to permit the issuance of citations when someone *is a risk to the community* rather than what appears to be the intent, which is to *disallow a citation when someone is a risk*. Either way, this is a bad provision to put into law.

VI. H.B. 1336 limits the ability to deny bail in serious crimes by requiring proof of "significant" and serious risk and "specific and articulable harm" to specific persons rather than current law which only requires proof that the person is a serious risk "to a person or the community."

This section will make it more difficult for prosecutors to achieve the denial of bail in "serious crimes" when they seek to deny bail.

This standard of specific and articulable harm to specific person generally will in practice limit preventative detention to cases where the person will revictimize the same person, versus where the

person say does drive by shootings and thus is not a risk to a specific person but is a general risk to the community.

There is no reason presented that the current statute as to preventative detention over-detains due to over-use of simple community harm versus harm to a specific person. The only impact of this provision would be to over-rule a judge who concluded that the person, charged with a serious crime, should not be offered the possibility of posting bail and instead be detained pending trial.

This section also makes it more likely that persons who intimidate or threaten witnesses will not face preventative detention by denying bail because there is a new scienter requirement added, which a prosecutor must prove, which is that by intimidating or threating witnesses the person did it with the specific intent to obstruct justice. Contrast this with current law, which allows detention if there is a serious risk of witness or victim intimidation regardless of why there was victim or witness intimidation.

VII. H.B. 1336 disallows judges to deny release or impose bail when a person has repeatedly had bail revoked in the past, in conflict with the state constitution.

The best predictor of appearance in court is prior record of appearing. The best predictor of failures is prior failures. Here, the legislation says "that denial of release on bail, recognizance, or supervised release shall not be based solely upon the defendant having … "a prior revocation of release on bail, recognizance, or supervised release, regardless of whether in a prior criminal case or in the instant case."

One, the constitution presumes wide judicial discretion to arrive at reasonable satisfaction of appearance in court. To disallow prior "revocation" of bail, which arguably is more serious than a simple failure to appear where a bond is then reinstated, we think is a constitutional bridge too far. National data for a generation would support that a single prior failure is alone reasonable evidence of failing to appear, and certainly the more failures the higher probably of a failure in the future. Thus, it may be in any particular set of facts enough for a judge to "reasonably conclude" that the defendant will not appear based solely based solely on prior revocations of release on bail or supervised release.

Certainly, the Hawaii constitution would permit a judge to conclude that a person who had a ten prior revocations of bail is not going to reasonably appear. This legislation would not permit consideration of such failures as the sole basis to conclude the defendant will not reasonably appear. Thus, we think this provision is facially unconstitutional.

VIII. Conclusion

This legislation is so inconsistent with the settled provisions governing bail in Hawaii that it will upend the system without a clear idea of how the system is to respond.

Only those charged with "serious crimes" will ever face detention pending trial. As we have seen in other jurisdictions, not only are distinctions made solely based on the charge not evidence-based, but it is the number one way that serious and repeat offenders are able to take advantage of changes that are

made in the name of protecting the innocent. That is because they just happen to be at sky high risk but commit a non-serious crime today, and thus the system labels them as low risk when they are high risk. Defendants are always presumed innocent of the crimes they are charged with today—but they are not presumed innocent of the charges for which they have been previously convicted.

These failures in policy will over time contribute to calls to increase preventative detention policies, which policies have shown to actually be more mass incarcerating with little public safety benefits. The vicious cycle need not happen—let judges handle this as they always have.

The right to bail by sufficient sureties indeed depends on the decisions of judges in individual cases as to what security is required. This legislation unfortunately represents a step toward a model of risk-based preventative detention, which won't be bothered with things like considering financial resources or anything else—and we could easily see a system over time like in New Jersey where prosecutors file for detention in 47% of all cases.

This legislation also moves Hawaii into the business of basing arrest and pretrial detention on considerations of future dangerousness instead of based on appearance in court, which policies have been shown to be a driver of mass incarceration via *sub rosa* preventative detention and the evisceration of the presumption of innocence.

Helping the indigent navigate the system better is a difficult and often expensive proposition. But it can be done. Instead, what is done here in the name of helping the indigent is only going to harm disenfranchised communities who are already at disproportionate risk of becoming victims of crimes.

Respectfully submitted,

DocuSigned by:
Jeffrey Clayton
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Jeffrey J. Clayton, M.S., J.D.
Executive Director
American Bail Coalition
jeff@ambailcoalition.org

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair

Committees Members: Rep. Ganaden, Rep. Ilagan, Rep. Holt, Rep. Kong, Rep. Hashimoto Rep. Mizuno, Rep. Ichiyama Rep. Souza

Please note that I stand in strong opposition to this bill HB1336.

The jest of this bill appears to view these individuals as victims which they are not. Regardless of the crime they are being accused of, they knowingly and willingly chose to carry them out.

They were very well aware that they were breaking the law, giving no thought to the trauma and hardship their actions would put upon the victims and their families.

Right off the bat on page 1 … *The legislature also finds that arrests are highly disruptive to a person's life. Despite the fundamental principle of the presumption of innocence on which the justice system is built, arrests cause embarrassment and, in some cases, trauma when they occur in the presence of family members, neighbors, or coworkers or are publicized in news media*
Further, an arrest can significantly jeopardize the arrestee's housing and employment and set into motion a chain of economic and logistical hardships for the arrestee's family, especially when the arrestee is the main source of household income and has multiple dependents … **These are actions and laws they chose to break.**

According to one supporter of this bill: … Custodial arrests can have a dramatic negative impact on individuals, families, and communities…. **And what about the victims?**

To those who support this bill, I hope they are involved in helping to rehabilitate these individuals and are reaching out to the victims as well.

Your Committee received testimony in opposition to this measure from organizations who are in the know, who deal with this on a day to day basis, from the Judiciary, √ Hawaii Paroling Authority, √ County of Hawai'i Office of the Prosecuting Attorney, √ Department of the Prosecuting Attorney for the City and County of Honolulu, √ Department of the Prosecuting Attorney for the County of Maui, √ Stolen Stuff Hawaii, √ State of Hawaii Organization of Police Officers, √ Hawaii Federation of Republican Women, and six individuals.

I urge you to take into account what they have shared, stop this bill now and look for prudent alternatives.

Respectfully
Rita Kama-Kimura

HB-1336-HD-1
Submitted on: 2/24/2023 4:18:47 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Stupied Communist Control nothing ever gets done. The Crooks always get away . END THIS CRAP NOW!!!!!

HB-1336-HD-1
Submitted on: 2/24/2023 2:05:46 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
John Deutzman	Individual	Oppose	Written Testimony Only

Comments:

Honorable House Members,

I'm puzzled by the ongoing crusade for criminal justice reform despite resounding public backlash about it last year to the point it was vetoed. Criminal justice reform is already built into every step of the process in Hawaii which assures multiple compassionate filters before someone winds up behind bars.

Regarding cash bail:. The only purpose of bail per the Hawaii Constitution is to make sure people return to court:

Article 1 Section 12

"*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***."**

Straying from the above is unconstitutional. The constitution properly gives our judges discretion in this matter.

The fairness you strive for already exists among our judges. Only the worst of the worst are held. The notion that some poor guy is locked up awaiting trial on his first offense is complete nonsense. It simply doesn't happen.

In fact, when it comes to holding people to bail judges routinely release people who have never been to court voluntarily, the failure to appear rate in my neigborhood for those released on their own recognizance exccedes 70% creating a montrous cycle of catch and release with many defendants

Additionally, the obsession with so called "violent crimes" is misguided as many non-violent crimes can be dangerous. Burglary, auto theft, shoplifting and all forms of theft can be very dangerous but not violent. There seems to be a crusade implying "non-violent" crimes are ok, which is ridiculous .

In 1983 the Supreme Court weighed in on the confusion between violence and danger.

Jones v. United States, 463 U.S. 354 (1983)

Id. at 363-66 (emphasis added, citations and footnotes omitted). In a footnote, the Supreme Court emphasized that "dangerousness" should not be equated with "violence":

To describe the theft of watches and jewelry as `non-dangerous' is to confuse danger with violence. Larceny is usually less violent than murder or assault, but in terms of public policy the purpose of the statute is the same as to both." (footnote omitted). It also may be noted that crimes of theft frequently may result in violence from the efforts of the criminal to escape the victim to protect property or the police to apprehend the fleeing criminal.

Fortunately Hawaii does not have a major problem with violent crime but our communities are being destroyed by non-violent crimes which this bill would essesnitally dicriminalize by default.

Here in Waikiki we suffer a "death by a thousand cuts" with innocent victims being targeted by harassment, theft, misdemeanor assault all so called "low-level" crimes. We are finally turning the corner as police, prosecutors and judges are focusing on the repeat offenders and delivering more consequences. As a two time victim of frightening harassments I can assure you there is nothing "petty " about the experience.

The notion that writing citiations for crimes that are currenlty arrestable is absurd, dangerous and will destroy many communities including Waikiki.

Mahalo,

John Deutzman

Waikiki

HB-1336-HD-1
Submitted on: 2/25/2023 10:40:43 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Daniel Meredith	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

As a resident and employee of the City & County of Honolulu, I urge the lawmakers to vote in opposition of this bill (HB 1336).

In it's entirety, I believe that this bill is a mockery to the majority of the law-abiding citizens that live in Hawaii. You will essentially be giving power back to the criminals by allowing them more leniency. Absolutely absurd.

What ever happened to accountability? If someone does wrong, why are they not held accountable? I understand mistakes, people learn from them. But when a criminal has a history of not showing up for court, failing drug tests while on probation/parole, walking away from treatment centers, or committing the same or similar crime multiple times, when is it enough to put them behind bars? When do the law-abiding citizens get restitution or justice for the crimes that affect them?

I understand the overpopulation of prisons/jails on Oahu, but that is not an excuse to let criminals that commit petty crimes or property crimes back on the streets. Hold them accountable for their actions.

In most cases, the underlying problem is drug use. This bill clearly sidesteps that. "Prohibits the denial of pretrial release based solely upon certain factors, such as testing positive for drug use," or "Prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person having tested positive for drug use."

Why prohibit these punishments? A criminal awaiting trial can be released from custody or their probation/parole cannot be revoked if they test positive for drug use. Once again, no accountability.

Mandating drug treatment does not work for repeat offenders. Some may argue that incarceration also does not work. But it's better than having the criminals on the streets terrorizing the community of law-abiding citizens of Honolulu.

Please, vote to oppose this bill and hold the criminals accountable for their actions.

TESTIMONY to the HOUSE COMMITTEE on Judiciary & Hawaiian Affairs

HB1336 H.D.1 Relating to Criminal Justice Reform

Wednesday, February 28, 2023 2:00 pm
House Conference Room 325 via Videoconference

Submitted in **STRONG OPPOSITION** by: Mary Smart, Mililani, HI

Chairman Tarnas and Vice Chair Takayama and Committee Members:

I strongly oppose HB1336 H.D. 1 for several reasons:

a. Professionals working in the criminal justice system have given numerous testimonies in opposition to this bill. I agree with them HB 1336 (HD1) is an ill conceived and dangerous bill.
b. Crime is disruptive to everyone's life. It is appropriate that the suspected criminal experience the difficulty that their bad behavior has caused. Solution: don't break the law and you won't be inconvenienced.
c. Section 805-A. There should never be a "grace period". It is human behavior to assume that the end of the "grace period" is the actual time/date that is required to appear. The disruption to the courts, other people who are inconvenienced by the no-show, and the extra taxpayer expense for the delay are unacceptable. There are very few good excuses for missing a court date. Do not make this a routine acceptable practice under any circumstance.
d. When discussing issuing a citation instead of arrest the word police is changed to "law enforcement" - an ambiguous terminology. Keep police officer or define who is a "law enforcement officer". This is a very large expansion of arrest/citation authority that is unacceptable.
e. If a crime is committed, especially a felony, there should be an arrest, not a citation so that a detailed background check of the suspect can be conducted before there is any thought of releasing him/her back into society. In 2022 we had the incident of a suspect being released who then murdered a woman near the Kapolei police station. Crime is increasing in our Hawaii communities because our criminal justice system is soft on crime creating an unsafe atmosphere for our community.
f. Equal treatment under the law is imperative in our country. You must not base enforcement of the law on how much money the criminal has or does not have in the bank. Anyone who commits a crime and has a history of criminal activity should have the same bail as any other person who committed a comparable crime and has a similar criminal background. A person without funds has less to lose by not showing up, and therefore it is much more important that they post the appropriate amount of bail. In the case of repeat offenders, if they don't care about continually breaking the law, they won't feel overly obliged to make a court date. They need incentives i.e. swift punishment for non-compliance.

g. The police officer should not decide at the time of the offense who poses a danger and who does not. He should just enforce the law equally to all individuals. Since it would be a subjective opinion, it avails the incident to discrimination, threats, or bribes.
h. It does not save the taxpayer funds to release a dangerous person who continues to commit crimes that result in injury, loss of property, loss of life, etc. The taxpayer expects the criminal justice system to protect their safety, not protect the "feelings" of suspects and their families. If someone is unjustly arrested, some restitution should be provided, but until the background checks are concluded and the likelihood of criminal conduct is determined, the safety of the public should be the number one priority. If there is a need for more correctional facilities, build them. Don't endanger the public for your failure to construct needed facilities. The social costs of crime far exceed the cost of more jails/prisons/correctional facilities. They shouldn't be costly luxury accommodations. Rudy Giulani became the Mayor of New York City in the 1990's when crime was rampant. He reduced crime and increased safety by the "broken window" policy. All crimes where punished, even minor ones. Crime went down as a result. It is well known that crime will increase when our criminal justice system goes soft on crime.
i. You must continue drug testing. People on drugs are more likely to commit crimes and have violent responses to life's challenges.

Do Not pass H.B. 1336 H.D. 1. Vote NO.

HB-1336-HD-1
Submitted on: 2/27/2023 11:17:03 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Beverly Heiser	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chairperson and Committee Members,

I STRONGLY OPPOSE HB1336.

This bill is similar to the 2022 version of HB1567 that was vetoed by Governor Ige. Mayor Blangiardi, the State of Hawaii Organization of Police Officers, Retail Merchants of Hawaii, Prosecuting Attorney Steve Alm, and county prosecuting attorneys, also voiced their objection.

HB1336 has good intent to reduce prison space, expenses, and offers consideration for the disadvantaged, but will have a negative effect on the community, tourism, and businesses already struggling because of the rise in crime. Who ends up paying for the victims' pain and losses? Many businesses and individuals are already struggling to make ends meet.

Everyone should be held accountable regardless of their socioeconomic status. The lack of accountability and allowing release with a citation encourages the repeat of criminal behavior.

Non-violent misdemeanors and Class C felonies include many types of serious crimes that have a tendency to get repeated over and over again. Lack of accountability and consequences will often embolden offenders to eventually commit more serious and violent crimes.

HB1336 presents a danger to public safety and evidenced by mainland cities and states who are "soft on crime", does not work.

Please OPPOSE HB1336.

HB-1336-HD-1
Submitted on: 2/27/2023 11:58:15 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kelli Buenconsejo	Individual	Oppose	Written Testimony Only

Comments:

I am strongly opposed to this bill. Those who commit any type of felony should receive jail time. Our laws are so lenient that repeat offenders are being released to offend multiple times. Obviously releasing them is not working

HB-1336-HD-1
Submitted on: 2/27/2023 12:50:57 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kim Koyanagi	Individual	Oppose	Written Testimony Only

Comments:

I'm am strongly opposed to this proposed HB. Crime in Hawaii has gotten WAY worse where criminals have way more rights than law abiding citizens. This is absurd. In addition, who is going to chase these people to pay a citation...they are into crime, what makes one think they will pay any citations! In the long run, this will cost the state more trying to chase these criminals. in addition, the HOPE program does not work. Look at the most wanted in crime stoppers. Majority of them are failed HOPE individuals.

make Hawaii/community safe again by not passing this bill

HB-1336-HD-1
Submitted on: 2/27/2023 1:59:02 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keke Manera	Individual	Oppose	Written Testimony Only

Comments:

I do not support this.

HB-1336-HD-1
Submitted on: 2/24/2023 4:35:22 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Strong support

HB-1336-HD-1
Submitted on: 2/25/2023 11:35:13 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Thaddeus Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas, Vice Chair Takayama, and Committee Members,

As a deeply concerned citizen and public health professional, I am writing in **unequivocal support of HB1336 HD1.**

This bill, for some offenses, requires police to issue citations instead of arrests and pretrial release until proven guilty, and removes punitive drug use screenings from parole and probation processes.

Incarceration has been shown to have long-lasting, deleterious impact on both the public health and economic well-being of communities. (https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/incarceration). As such, being arrested and incarcerated has detrimental effects on individuals, families, and communities; especially for Native Hawaiians and Pacific Islanders who are overrepresented in the criminal legal system.

For the sake of our state's health and economy, we must divest from punishment and reinvest in community solutions. Please support HB1336 HD1.

With thanks and aloha,

Thaddeus Pham (he/him)

HB-1336-HD-1
Submitted on: 2/25/2023 2:16:06 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Esther Geil	Individual	Support	Written Testimony Only

Comments:

Please pass this bill! We need to stop imprisoning non-dangerous people at tax-payers expense!! Especially before trial!! Especially just because they are poor!! We need to be smart and reduce both the current and future prison populations, since we know that imprisoning people is likely in and of itself to lead to bad outcomes for them and for us in the future. We can do better, and this bill is a step in the right direction, so I beg you to pass it. Some relevant reasons are: ·

· Issuing citations for certain arrests is an important criminal justice reform

· This bill can help reduce the jail population which is at crisis levels - harming all tax-paying citizens, now and in the future, as well the the individuals whose lives are damaged by it. It does not help our community that by being stuck in jail (or induced to plead guilty even when innocent, so that they can avoid losing their employment, their housing, and their families) we harm both our community and the individuals involved.

· Research is clear that even a few days in jail can have lifelong negative effects on an individual, their family, and the community

- We know that prison is not the most successful method of interacting with individuals contending with a substance use or mental health issue

HB-1336-HD-1
Submitted on: 2/25/2023 5:12:04 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Our pretrial system is broken. We need a complete overhaul of the way we think of criminal justice, and we should behin with pretrial reform. This bill makes a number of important changes to our pretrial system.

This bill, for some offenses, requires police to issue citations instead of arrests; it creates a presumption of innocence until proven guilty, as is every person's civil right; and it removes punitive drug use screenings from parole and probation processes.

Being arrested and incarcerated has detrimental effects on individuals, families, and communities; especially for Native Hawaiians and Pacific Islanders who are over-represented in the criminal legal system. We must divest from punishment and reinvest in community solutions.

Please support HB1336 HD1.

HB-1336-HD-1
Submitted on: 2/27/2023 8:02:09 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nanea Lo	Individual	Support	Written Testimony Only

Comments:

Hello,

My name is Nanea Lo. I'm born and raised in the Hawaiian Kingdom a Kanaka Maoli.

I’m writing in SUPPORT of HB1336 HD1.

me ke aloha ‘āina,
Nanea Lo, Mō‘ili‘ili

HB-1336-HD-1
Submitted on: 2/27/2023 10:03:20 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Support	Written Testimony Only

Comments:

Aloha,

I am writing in strong support of HB1336 HD1 which authorizes officers to issue citations in lieu of making certain arrests, authorizes a forty-eight hour grace period after a missed initial court appearance, establishes a rebuttable presumption that a defendant is entitled to pretrial release, requires the prosecution to prove that release would be inappropriate, requires that bail be set to an affordable amount, prohibits denial of pretrial release based solely on drug use, etc. HB1336 HD1 also prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely on the basis of a positive drug test.

We know that pretrial detention can be devastating to an individual's ability to maintain housing, employment, and custody of children. Without employment, the individual may be unable to support their family and may lose many other critical essentials to remaining a financially independent member of the community. The impact on the family as well as the community is damaging and destabilizing.

Given this understanding, rather than generalizing the worst possible outcome for every offender, it seems like it would be most prudent and fair to allow prosecutors to prove that a person must be detained. Also, it would be ideal if those opposed to the bill would suggest provisions to make the bill address their concerns, rather than damning the entire bill.

Please pass HB1336 HD1. Mahalo for this opportunity to testify.

Diana Bethel

Honolulu

HB-1336-HD-1
Submitted on: 2/27/2023 10:22:00 AM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Support

HB-1336-HD-1
Submitted on: 2/27/2023 2:30:36 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Paul	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas, Vice Chair Takayama, & Committee Members,

My name is Michael Paul, I am a tobacco treatment counselor in Honolulu, and I strongly support HB 1336. This bill offers an array of reforms that increase the fairness of pretrial and would limit incarceration during pretrial.

This bill prohibits the arrest of a probationer or a parolee, or the revocation of probation or parole, solely due to the person testing positive for drug use reducing the number of arrests made in criminal cases. Per the bill, "an arrest can significantly jeopardize [an] arrestee's housing and employment and set into motion a chain of economic and logistical hardships for the arrestee's family, especially when the arrestee is the main source of household income and has multiple dependents."

The individual, familial, and governmental costs associated with consigning persons with behavioral health problems to protracted involvement in the criminal legal system are apparent to those familiar with assessing punitive responses to drug use at the state, national, and international levels.

I strongly believe 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. Hawaiʻi should instead increase its capacity to provide low-threshold, evidence-based care, and medical treatment upon request and apart from the framework of the criminal legal system.

Substance use is largely a health issue. Treating it as merely a criminal issue does not advance public health or welfare, instead it exacerbates the negative effects that substance use can have on individuals, their families, and their communities at large.

Mahalo,

-Michael Paul

HB-1336-HD-1
Submitted on: 2/27/2023 2:52:20 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Donna P. Van Osdol	Individual	Oppose	Written Testimony Only

Comments:

Dear Chairman Tarnas and Members of the Committee:

I am in opposition to HB1336, HD1 because the bill does several things:

1. It makes it much more difficult to prosecute a criminal, many of whom are repeat offenders;

2. It lowers the standards of our judicial system and favors a criminal over the victim;

3. With it being more difficult to prosecute a criminal, it is highly likely we will see more attacks against the average citizen no matter what time of day it is, unfortunately;

4. Most importantly, the date this bill goes into effect will be June 30, 3000. What a waste of taxpayers money and time to have this bill go into effect so far into the future.

For the reasons above, I strongly oppose HB1336, HD1.

Donna Van Osdol, Waipi'o Acres

HB-1336-HD-1
Submitted on: 2/27/2023 3:04:56 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Emily Sarasa	Individual	Support	Written Testimony Only

Comments:

Dear Chair Tarnas, Vice Chair Takayama, and members of the Committee,

I am testifying **in support of** H.B. 1336. This bill acknowledges that arrests for minor offenses cause more harm than good to our entire community. As the bill's preamble explains, individuals arrested for minor offenses may have their lives disrupted needlessly. If they are caretakers, they are unable to care for their children or family members. An arrest may unfairly jeopardize their employment, housing, food security, and overall life stability. Pre-trial detention often harms individuals and entire communities without benefiting public safety.

I am also a law student at Richardson and I had the opportunity to interview some individuals incarcerated in Saguaro Correctional Center over the summer. The state has imprisoned about 1000 people thousands of miles away because many of our prisons and jails are over capacity here. H.B. 1336 will alleviate overcrowding in local prisons and jails, and it has the potential to bring people in Saguaro home.

I respectfully request that the Committee supports this measure. Thank you for this opportunity to testify.

Mahalo,

Emily Sarasa

esarasa@Hawaii.edu

HB-1336-HD-1
Submitted on: 2/27/2023 7:15:23 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jaymee Barboza	Individual	Oppose	Written Testimony Only

Comments:

This bill is extremely dangerous to the community. It's allowing dangerous people to cause more crime and more destruction. If you really want to make Hawaii better it is to not pass this bill. Think about all of the businesses that will be hit because of this or homes that these criminals will burglarize.

HB-1336-HD-1
Submitted on: 2/27/2023 7:59:04 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael I Rice	Individual	Oppose	Written Testimony Only

Comments:

I stand in STRONG OPPOSITION to this bill. We have enough trouble keeping people locked up already, now you want cops to just let them go and make them pinky promise to show up to court? NO! Enough is enough! We need to keep criminals in jail and prosecute them for the crimes they commit. It's bad enough already that most criminals don't even get charged for their crimes, much less punished. If things keep up like this, it's going to reach a boiling point where people will take matters into their own hands with much more frequency, mark my words.

HB-1336-HD-1
Submitted on: 2/27/2023 7:26:12 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Janelle Garcia	Individual	Oppose	Written Testimony Only

Comments:

I believe people who commit these crimes shall be held accountable and serve their time.

HB-1336-HD-1
Submitted on: 2/27/2023 9:23:55 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mona Kidd	Individual	Oppose	Written Testimony Only

Comments:

We need to increase punishment, not decrease punishment. We are sending a poor representation of justice when criminals continue to violate laws over and over and are released to continue their crime spree. We as citizens are the ones that suffer with increased insurance rates, increased costs and time and effort spent remediating this. If not jail, they need to be immediately put to community service and pay retribution.

HB-1336-HD-1
Submitted on: 2/27/2023 9:39:29 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica Tamaribuchi	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose HB1336 HD 1. Cities across the country, primarily in states like California, New York, Michigan and Illinois, where very similar policies are being implemented have been a complete failure. This proposal would more than likely allow criminals to reoffend as there are no consequences or accountability for their actions. Not being able to afford bail just because Hawaii's high cost of living should not be a reason to lower bail or to have no bail at all. Also, it may be true that processing arrests require more resources from understaffed police departments; however, again, this should not be a reason to issue citations in lieu of arrests. There have been numerous examples where offenders have reoffended due to a weak justice system and this proposal will only add to that. One tragic incident that comes to mind, is the recent death of 16-year-old Sara Yara who was killed by Mitchel Miyashiro who struck her with his vehicle while she was in a marked crosswalk. Another victim was seriously injured in that same incident. Apparently, 164 citations did NOT prevent Mr. Miyashiro from committing a serious crime that ended in death. For these reasons, I strongly urge you to vote NO on HB1336 HD 1.

I appreciate the opportunity to testify.

Jessica Tamaribuchi

Kailua-Kona

HB-1336-HD-1
Submitted on: 2/27/2023 11:57:59 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Garner Shimizu	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this bill, and wonder why you would think this would serve the public's interests?

i feel sure that this will turn many voters against you?

thank you!

HB-1336-HD-1
Submitted on: 2/28/2023 7:22:17 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Benjamin Rowe	Individual	Oppose	Written Testimony Only

Comments:

Aloha.
my name is Benjamin Rowe.

I oppose HB1336. This revision is more detrimental to law an order than the previous bill that Rep Matayoshi drafted and then pulled support on.

The premise itself handicaps law enforcement and the judicial process. Many Law enforcement officers that we connect with agree that this type of legislation is counter productive to their efforts and makes their job more difficult

when asking law enforcement friends and family about this I was directed to watch a documentary called "Seattle is dying " I urge all of the members who are eligible to vote on this measure to watch this series. It is based on actualities as a result of similar legislation in Washington State

It should shock you as to what the results of these type of good hearted poorly thought out bills will produce in society

The best solution to the crimes and criminal behavior are mental health treatment and substance abuse treatment. I work With the Kline Welsh behavior rehabilitation people better known as Sand Island Treatment Center.

tgrough years of interaction and working with this group and their clients I have a deep inside look and understanding of substance abuse issues and how they coincide with criminal behavior and domestic instability and chaos as well as homelessness and all of the societal lowes that are associated with substance abuse AND THE SUCESS PROPER TREATMENT CAN PRODUCE.

I urge you to wrap this bill and watch the documentary and get involved with SITC and the counselors and directors. This program is head and shoulders above other Hawaii programs and have a sucess rate that is far better than others nationally. The structure and program are

designed to really address the reprogramming of addicts and as they work with the court system and have the ability to positively utilize the jail system for the benefit of clients and the general public

please do your due diligence on the bills you are working on that have such a profound impact on the safety and welfare of good upstanding citizens

Mahalo

Ben Rowe

HB-1336-HD-1
Submitted on: 2/28/2023 8:23:25 PM
Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Erik Meade	Individual	Support	Written Testimony Only

Comments:

Aloha, my name is Erik Meade I am a student at the University of Hawai‘i at Mānoa William S. Richardson School of Law. I am testifying is support of HB 1336 relating to criminal justice reform.

Cash bail systems disproportionately affect low-income individuals, who may not have the financial means to pay their bail and therefore must remain incarcerated until their trial. This can lead to significant negative consequences, including loss of employment, housing, and social ties, all of which can make it harder for individuals to reintegrate into society after their release.

Additionally, non-violent crimes often do not pose a significant risk to public safety or flight risk, and therefore there is little justification for requiring a cash bail. Releasing non-violent offenders on their own recognizance or with non-monetary conditions, such as regular check-ins with a probation officer or electronic monitoring, can be an effective way to ensure their appearance in court while avoiding unnecessary pretrial detention.

Furthermore, there is evidence to suggest that cash bail systems do not improve public safety or increase the likelihood of defendants appearing in court. In fact, they may have the opposite effect, as individuals who cannot afford bail may be more likely to plead guilty, even if they are innocent, in order to avoid spending time in jail.

Overall, eliminating cash bail for non-violent crimes can help reduce inequality in the criminal justice system, promote fair and just pretrial detention practices, and ensure that individuals are not punished simply because they cannot afford to pay their way out of jail.

Thank-you for this opportunity to testify.