

STAND. COM. REP. NO. 760

Honolulu, Hawaii
FEB 14, 2023

RE: H.B. No. 1336
H.D. 1

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

Sir:

Your Committee on Corrections, Military & Veterans, to which was referred H.B. No. 1336 entitled:

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

begs leave to report as follows:

The purpose of this measure is to:

- (1) Require officers to issue citations in lieu of making certain arrests;
- (2) Provide for a forty-eight hour grace period after a missed initial court appearance;
- (3) Establish a rebuttable presumption that a defendant is entitled to pretrial release;
- (4) Require the prosecution to prove by clear and convincing evidence that release of a defendant would be inappropriate, based on certain specified criteria;
- (5) Require that bail be set in an amount that the defendant can afford;

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- (6) Prohibit the denial of pretrial release based solely upon certain factors, such as testing positive for drug use;
- (7) Require the automatic issuance of protective orders in assaultive cases;
- (8) Require 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;
- (9) Require the court to enter certain findings into the record with respect to a detention decision;
- (10) Allow a defendant to be ordered to undergo a substance abuse assessment at any time before trial; and
- (11) Prohibit 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.

Your Committee received testimony in support of this measure from the Hawaii Correctional System Oversight Commission, Office of the Public Defender, American Civil Liberties Union of Hawai'i, Hawai'i Association of Criminal Defense Lawyers, Kauai Women's Caucus, Hawai'i Health & Harm Reduction Center, Trinity United Methodist Church, and numerous individuals. Your Committee received testimony in opposition to this measure 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. Your Committee received comments on this measure from the Department of Public Safety.

Your Committee finds that arrests are commonly made at the initiation of a criminal case, but sometimes occur needlessly when the issuance of a citation to appear in court would have sufficed. Additionally, 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.



Your Committee further finds that pretrial incarceration is the primary driver of severe overcrowding in community correctional centers, which becomes a health and safety issue for defendants in custody as well as staff who work in correctional facilities. This measure, among other things, introduces meaningful reforms that promote greater fairness and equity in the criminal courts.

Your Committee has amended this measure by:

- (1) Authorizing, rather than automatically requiring, that a forty-eight hour grace period be granted to a person after a missed initial court appearance;
- (2) Authorizing, rather than requiring, officers to issue citations in lieu of making certain arrests;
- (3) Deleting language that specified various offenses and circumstances in which law enforcement officers would have been required to issue a citation in lieu of arrest;
- (4) Clarifying the conditions for the issuance of a warrant after summons;
- (5) Inserting findings related to pretrial drug testing;
- (6) Deleting language that would have prohibited from inclusion in a pretrial bail report certain types of information;
- (7) Clarifying the conditions in which a person who is charged with a criminal offense may be denied bail;
- (8) Reinstating language that provides a rebuttable presumption when there is a serious risk that a person charged with a criminal offense punishable by imprisonment for life with possibility of parole will flee or not appear as directed by the court;
- (9) Clarifying that, with respect to a revocation of release on recognizance or supervised release, the burden of proof shall be upon the prosecution to establish, by a preponderance of the evidence at the defendant's initial



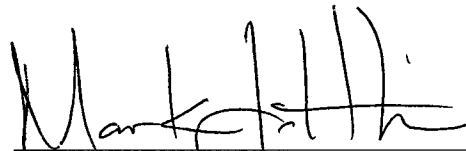
appearance or bail hearing, whichever occurs sooner, based upon representations made by an officer of the court that the defendant is not entitled to release;

- (10) Clarifying conditions in which bail may be denied, including removing language that would have placed the burden of proof on the prosecution;
- (11) Clarifying provisions related to the automatic issuance of no-contact orders, rather than protective orders, in assaultive cases, under certain circumstances;
- (12) Clarifying instances when the court may enter an order requiring a defendant to satisfy certain conditions to ensure the safety of any other person, persons, or community;
- (13) Clarifying provisions related to sanctions for violation of conditions of release on bail, recognizance, or supervised release, including requiring the court, in certain cases when revoking a defendant's release, to enter a finding that no conditions can be imposed that would ensure the defendant's appearance and the safety of the public and that the revocation is therefore necessary as an action of last resort;
- (14) Changing the effective date to June 30, 3000, to encourage further discussion; and
- (15) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

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



Respectfully submitted on
behalf of the members of the
Committee on Corrections,
Military & Veterans,



MARK J. HASHEM, Chair



