

JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
HAWAII PAROLING AUTHORITY
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No. _____

TESTIMONY ON HOUSE BILL 1336
RELATING TO CRIMINAL JUSTICE REFORM

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

House Committee on Corrections, Military & Veterans
Representative Mark J. Hashem, Chair
Representative Cory M. Chun, Vice Chair

Friday, February 3, 2023 – 9:00 a.m.
Conference Room 430

Chair Hashem, Vice Chair Chun, and Members of the Committee:

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

The majority of parolees are acknowledged substance abusers (addicts) who have completed drug programs prior to incarceration and during their prison term as well as after release. Sobriety is a lifelong challenge. The reason for regular drug testing is imperative. 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 and parole violation 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 terms and conditions of parole are firm guidelines that promote pro-social behavior to enhance successful re-integration back into the community. The parole population consists of low risk to high risk offenders (intensive supervision) 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.



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

TO: The Honorable Mark J. Hashem, Chair
The Honorable Cory M. Chun, Vice Chair
House Committee on Corrections, Military & Veterans

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 1336, Relating to Criminal Justice Reform
Hearing: Friday, February 3, 2023; 9:00 am
State Capitol, Room 430

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (the Commission) **supports the intent** of House Bill 1336, Relating to Criminal Justice Reform, which intends to reduce the jail population by requiring law enforcement to issue citations in lieu of arrest in certain instances. This also establishes rebuttal presumption that a defendant is entitled to pretrial release under certain specified criteria. Furthermore, bail must 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.



The Judiciary, State of Hawai'i

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

House Committee on Corrections, Military & Veterans
Representative Mark J. Hashem, Chair
Representative Cory M. Chun, Vice-Chair

Friday, February 3, 2023 at 9:00 a.m.
Via Videoconference

WRITTEN TESTIMONY ONLY

by

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

Melanie M. May
Deputy Chief Judge
District Court of the First Circuit

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

Purpose: 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.

Judiciary's Position:

The Judiciary opposes this measure, which would establish and codify processes in direct contradiction to the provisions of Act 179 (2019) and negatively impact public safety. 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. This bill does not do so, would significantly and negatively impact the orderly operations of the courts, and would permit defendants in criminal cases to directly and without consequence violate court orders at will.

A. Permitting Defendants to Appear Anytime Within 48 Hours of their Court Hearing is Unsafe, 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. This section of the bill presents a risk to public safety and would be severely disruptive to daily court operations.

First, this proposed legislation permits defendants, who may pose a threat to public safety, to remain in the community for 48 hours without any repercussions, thereby jeopardizing public safety. During the 48-hour period, the court would have no authority to issue an arrest warrant for a defendant’s nonappearance. The purpose of issuing arrest warrants is to deter nonappearance. Giving defendants the freedom to not appear for up to 48-hours without any consequences eliminates this deterrence. Moreover, the court must have the power to issue warrants for defendants out on bail, especially those who are violent, to reduce the risk of danger to the public. The proposed bill subverts both intents.

Second, 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 essentially requires courts, prosecutors, and defense counsel to be on standby at every courthouse. There are insufficient resources to do so.

The concern is exponentially greater in 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 Molokai District Court convenes on the second and fourth Tuesday each month, with arraignment and plea held on those days only.

Finally, courts do not issue warrants for failure to appear lightly. The court will consider whether the defendant had actual notice of the hearing, and (assuming the “initial appearance” referenced in Section 3 refers to the defendant’s arraignment and plea in circuit court) as a matter of practice in the Circuit Court of the First Circuit, defense counsel may request that a warrant be taken under advisement while counsel attempts to secure the defendant’s presence. 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 and prepared for the proceeding. The proposed bill subverts the orderly operations of the Court.

B. Requiring Law Enforcement Officers to Make Instantaneous Legal Determinations Generally Made by a Court is Impractical and Jeopardizes Public Safety

Section 4 of Part I prohibits certain law enforcement officers from arresting a person and requires them to issue a citation for felony offenses, misdemeanor offenses, petty misdemeanor offenses, and violations except in limited circumstances. This provision requires a law enforcement officer to make very specific findings with respect to either the person’s history of failing to appear in court, or that “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,” or they must be in contact with a prosecutor at this early encounter with the person.

Further, Section 5, prevents the district court from actually issuing a warrant after a citation or summons is issued, even if the Court makes findings upon review of the case when making the judicial determination of probable cause that 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, until that person has already failed to appear for over 48 hours.

These sections of the measure also present risks to public safety.

To illustrate the gravity of the offenses involved, the felony offenses for which law enforcement may be required to issue a citation include:

- Terroristic Threatening in the First Degree
- Burglary in the second degree
- Unauthorized entry into a dwelling in the second degree
- Unauthorized control of a propelled vehicle
- Theft in the second degree
- Theft of copper
- Unauthorized entry into a motor vehicle in the first degree
- Identity theft in the third degree
- Unauthorized possession of confidential personal information
- Forgery in the second degree
- Fraudulent use of a credit card
- Credit card theft
- Arson in the third degree
- Violation of privacy in the first degree

These types of charges may not meet the criteria for a finding that the “person poses a significant danger to a specified or reasonably identifiable person or persons, based upon an articulable risk,” yet could still be a danger to the public in general or have a significantly high risk for recidivism, especially in cases where they are repeat offenders pending other similar charges.

Finally, the bill permits a law enforcement officer to arrest a person where the “prosecution has requested in writing that the person be arrested by a law enforcement officer.” This provision is incongruous in that at such an early state in the initiation of a case, where a law enforcement officer is in the position to make a warrantless arrest, there is no prosecutor involved. A prosecutor first becomes involved in the proceeding only after an arrest has been made and a judicial determination of probable cause to have made the warrantless arrest

is made by a judge. Therefore, it is highly unlikely that any such written request would ever have the opportunity to be made at the time of the officer's initial encounter.

C. The Restrictions on the Content of the Pretrial Bail Report Will Jeopardize Public Safety

Part II, Section 7 of the bill purports to remove “information that tend[s] to lead to bias against a defendant” from the pretrial bail report. With regard to the provision that bail reports may not contain 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 properly evaluated and reviewed. 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 another, this bill would preclude the court from obtaining this information that is vital to assessing a defendant's risk of recidivism.

The provision that bail reports may not contain the geographic location of the defendant's prior arrests or convictions precludes courts from evaluating whether a geographical restriction may be appropriate. Notably, this provision is contrary to the Honolulu Prosecutor's “Weed and Seed” and “Safe and Sound” programs.¹ For example, if a Defendant's prior convictions are concentrated in the Waikiki area and involve crimes against tourists, the court cannot adequately tailor the defendant's conditions of release to minimize that risk of danger by requiring a geographical restriction.

Thus, the bill's provisions to restrict the content of pretrial bail reports will severely hinder the ability of the court to have all the necessary information to make the determinations necessary to protect public safety and determine matters of bail.

D. The Proposed Bill 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 are considered at arraignment. If necessary, further bail hearings are requested and take place after arraignment. If a bail report is not required until after the arraignment, then a number of defendants will be unable to address bail at the earliest opportunity. Furthermore, as written, the bill prohibits 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 will in turn negatively affect for public safety, treatment

¹ The Judiciary does not endorse these programs but acknowledges the current statutory provisions permit geographical restrictions.

providers, and the adult client services branch because the vital information that may be contained in the pretrial bail reports will not be provided to them.

E. 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 hearing² and, in combination with the current section 804-3 and section 804-9, as amended on January 1, 2020,³ sets forth the determinations that must be made by the court relative to defendant’s release.

Part II, Section 9 of the bill, deletes from consideration in section 804-3 the “serious risk that the person will engage in illegal activity.” Removing a defendant’s risk of recidivism from the court’s consideration may require that a defendant who has multiple pending charges for unauthorized control of a propelled vehicle, and is again arrested for allegedly stealing a stranger’s vehicle will be released on his or her own recognizance or supervised release. This amendment jeopardizes public safety.

Amendments to subsections (b) and (c) of section 804-3 further jeopardize public safety. Currently, the Court considers whether there “is a serious risk that the person poses a **danger to any person or the community.**” The proposed bill adds the additional requirement that there

² 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.

³ 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.

“is a serious risk that 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.” Under this new calculus, a defendant who is on probation for a robbery charge and is arrested for a burglary charge, will be released because there is no significant danger to a **specific or reasonably identifiable person or persons, based upon an articulable risk to a specific person.**

The proposed bill also creates a rebuttable presumption in subsection (c) that all defendants are entitled to release on recognizance or supervised release and only permits defendants to be held if the prosecution shows by clear and convincing evidence that release on recognizance or supervised release “would be inappropriate based upon the criteria in subsection (b) (the criteria that applies to those charged with “serious crimes.”) However, subsection (d) then states that if the court finds based on clear and convincing evidence, “that no condition or combination of conditions will reasonably ensure the appearance of defendant or the safety of any other person or persons” then bail may be denied. These provisions are inconsistent.

With respect to subsection (e), first, it is unclear from the bill when the court has authority to set 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 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 10 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. Again, 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.

In short, defendants who pose a serious risk of danger to the community are often not charged with “serious crimes.” There are many multiple felony offenders that would likely not be held in custody under this bill. Abolishing the court’s discretion to detain such defendants endangers community safety. Among the most salient factors to assess the risk a defendant poses to the community are the defendant’s current charges and the defendant’s criminal history. The court should also take into account the risk that the defendant will engage in illegal activity. The current statute allows for such consideration. The bill, as proposed, eliminates these important factors.

F. The Provisions in Sections 14 and 15 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.

G. The Provisions of Sections 17 and 18 of Part III will have Negative Effects on the Implementation of Probation and Treatment Courts

While currently probationers are generally not arrested and incarcerated for a single positive drug test, arrest and/or a jail sanction are important tools 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.

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 Corrections, Military & Veterans**

February 3, 2023

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

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Office of the Public Defender (“OPD”) strongly supports H.B. No. 1336 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.

Specifically, the OPD supports (1) the mandatory issuance of citations for certain felonies, misdemeanors, petty misdemeanors, and violations; (2) prohibiting the revocation of release on bail, on own recognizance, or supervised release solely because the defendant has tested positive for drug use; prohibiting parole from being revoked or a parolee being arrested or retaken solely because the parolee has tested positive for drug use; prohibiting a probationer from having their probation revoked or arrested for a probation violation solely because the probationer has tested positive for drug use; (3) allowing a 48-hour grace period for a missed initial court appearance and failure to respond to penal summons; and (4) requiring bail be set in an amount that the defendant is able to afford.

Mandatory issuance of citations

Most significantly, H.B. No. 1336 requires law enforcement to issue a citation in situations where a warrantless arrest could otherwise be affected for certain felonies, misdemeanors, petty misdemeanors, and violations when the individual (1) does not have a history of failing to appear in court and (2) the individual does not pose a significant risk to a specific or reasonably identifiable person or persons, based upon an articulable risk to a specific person or the community, and (3) the prosecution has not made a special request that a particular individual be arrested. Rather than arresting the individual, law enforcement would be obligated 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

Recent studies show that time in jail, even if brief, has minimal impact on reducing crime, yet entails significant costs. The legislature has recently received many recommendations, testimonies, and studies relating to the devastating impact of incarceration and jail time on individuals, their families, and our communities. *See* Costs of Detention, Hawai'i Criminal Pretrial Reform, Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i (Dec. 2018), citing various studies, pages 24-26. In reaching this conclusion, the Task Force quoted the Vera Institute of Justice (2017):

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.

Id. at page 25.

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

¹ National Institute of Corrections, “The Hidden Costs of Pretrial Detention” (2018) at 4, 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).

(or multiple days and nights if the arrest is on the 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.

Prohibiting revocation based on positive drug test

Defendants who are found to have violated probation and parole, are frequently sanctioned with jail and 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.² H.B. No. 1336 protects defendants released on bail, own recognizance, and supervised release, inmates on parole, and defendants on probation, from being revoked, retaken, 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.

² Vera Institute of Justice: “The Perils of Probation: How Supervision Contributes to Jail Populations” (2021) <https://www.vera.org/downloads/publications/the-perils-of-probation.pdf>

(<https://nida.nih.gov/publications/drugfacts/understanding-drug-use-addiction>)

The proposed 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, or when the Hawai‘i Paroling Authority orders it as a term of parole, is simply unrealistic. The amendments to HRS §804-7.2, §353-66, 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 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 the 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 (e) 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.³ 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 Hawai'i Criminal Pretrial Reform 134 Task Force Report chaired by Judge (now U.S. Magistrate) Rom A. Trader 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."⁴ 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 an attorney assigned to represent indigent clients, many of whom are in jail because they cannot afford to make bail, I have 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 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.

³ Vera Institute of Justice: "Justice Denied, The Harmful and Lasting Effects of Pretrial Incarceration" (2019) <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

⁴ Recommendations of the Criminal Pretrial Task Force to the Thirtieth Legislature of the State of Hawai'i "HCR 134" (December 2018), https://19of32x2y133s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR134-Task-Force-on-Pretrial-Reform_Final-Report_12.14.18.pdf.

JOSH B. GREEN, M.D.
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No. _____

TESTIMONY ON HOUSE BILL 1336
RELATING TO CRIMINAL JUSTICE REFORM

By
Tommy Johnson, Director

House Committee on Corrections, Military, and Veterans
Representative Mark J. Hashem, Chair
Cory M. Chun, Vice Chair

Thursday, February 3, 2023; 9:00 a.m.
Via Video Conference

Chair Hashem, Vice Chair Chun, and Members of the Committee:

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

The Department's Intake Service Centers provide pretrial bail reports to the courts that aim to be objective, utilizing a research-based, validated risk tool that provides a comprehensive assessment of the risks of recidivism and non-appearance. Part II, Section 7 proposes an amendment to Chapter 353, Hawaii Revised Statutes, that pretrial bail reports do not contain prior arrest information in the defendant's criminal history that did not result in a conviction.

As required by Section 353-10, Hawaii Revised Statutes, pretrial bail reports shall include a copy of the executed pretrial risk assessment delineating the scored items. One of the scored items is the age of the defendant at first arrest.

While the Intake Service Centers understand that there are a variety of reasons why a charge may not become a conviction, the scored item was found by the University of Cincinnati to be a predictor of risk when developing the instrument.

PSD also offers comments regarding Part II, Section 11, which proposes to amend Section 804-7.2, Hawaii Revised Statutes, limiting issuance of a warrant for violation of conditions of release on bail, recognizance, or supervised release solely because a defendant has tested positive for drug use.

The research-based, validated risk tool utilized by the Intake Service Centers also scores illegal drug use in the last six (6) months, indicating that a defendant poses a risk for recidivism and non-appearance.

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, 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.

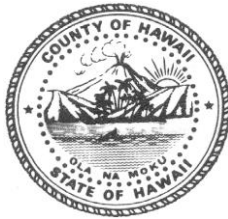
Limiting revocation of pretrial release solely based on current illegal drug use, implies that illicit substance use is condoned and has the potential to restrict the ability to effectively manage defendants in the community, especially when treatment cannot be presented as an option.

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

Thank you for the opportunity to provide comments on HB 1336.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION OF HOUSE BILL NO. 1336

A BILL FOR AN ACT RELATING TO
CRIMINAL JUSTICE REFORM

COMMITTEE ON
CORRECTIONS, MILITARY & VETERANS
Representative Mark J. Hashem, Chair
Representative Cory M. Chun, Vice Chair

Friday, February 3, 2023 at 9:00 a.m.
Via Videoconference
State Capitol Conference Room 016
415 South Beretania Street

Honorable Chair Hashem, Vice Chair Chun, and Members of the Committee on Corrections, Military, and Veterans. The County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in strong opposition of House Bill No. 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.

Of particular concern is that House Bill No. 1336 is overbroad and provides for a presumption of release and mandates the issuance of a "citation without arrest" for a wide-range of offenses, including but not limited to the following: unauthorized control of propelled vehicle; unauthorized entry into a motor vehicle; burglary in the second degree; theft of credit card; identity theft; criminal trespass; negligent homicide; open lewdness; possession of a childlike sex doll; promoting pornography for minors; unlawful imprisonment; violation of an injunction against harassment; impersonating a law enforcement officer; resisting arrest; interference with reporting an emergency or crime; possession with the intent to distribute controlled substances in, on, or near schools, school buses, and public parks; and other offenses. Presumption of release mandates like these further decrease the public's trust and confidence in our criminal justice system.

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.

House Bill No. 1336 also 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.

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. On December 31, 2014, there were a total of 5,558 inmates in custody on Hawai'i State charges. In comparison, on January 30, 2023, there were only 4,143 inmates, a difference of 1,415 fewer incarcerated persons today than in 2014. During this same time period, the operational capacities of our State correctional facilities has remained the same despite population growth and the ongoing wear and tear on our aging facilities. Hawai'i needs to revisit discussions on the construction of new correctional facilities across the State with in-house social services, mental health, substance abuse, and restorative justice programs.

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 House Bill No. 1336. Thank you for the opportunity to testify on this matter.

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

February 3, 2023

RE: H.B. 1336; 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 **strong opposition** to H.B. 1336.

The Department appreciates the intent to improve upon current procedures, and 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). That said, H.B. 1336 does not present such a system, but simply attempts to reconsider certain portions of H.B. 1552 (2019) that were previously removed, leading up to the passage of that bill as Act 179 (2019). We agree with the various committees from the 2019 Legislative Session, who removed the problematic portions of H.B. 1552 (2019), that are now contained in H.B. 1336.

Pg. 4, Ln. 7:

The Department is deeply concerned that H.B. 1336 would create a broad range of offenses for which a citation would have to be issued (all class C felonies, misdemeanors and petty misdemeanors)—removing any discretion (as currently exists) for law enforcement officers to arrest a suspected offender—with only a very limited list of offenses that someone could actually be arrested for (i.e. murder; all class A or B felonies; domestic violence; violating a TRO or order for protection; physical or sexual assault; OVUII; and offenses involving mandatory imprisonment). There were also exceptions for arrest if the person has a history of failing to appear in court, or if they pose a “significant danger” to a specific person (or possibly to the community; there appears to be a comma missing on page 5, line 21, after “person”).

By creating such a drastic requirement for citations-in-lieu-of-arrest, this language fails to account for a number of concerning charges for which arrest should at least be an option or consideration. This includes but is not limited to:

- Burglary in the Second Degree (§708-811)
- Aggravated Harassment by Stalking (§711-1106.4 and §711-1106.5)
- Negligent [aka vehicular] Homicide (§707-703)
- Unauthorized Entry in a Dwelling in the Second Degree (§708-812.6)
- Arson in the Third and Fourth Degree (§708-8253 and §708-8254)
- Promoting Pornography for Minors (§712-1215)
- Solicitation of a Minor for Prostitution (§712-1209.1)
- Violation of Privacy in the First and Second Degree (§711-1110.9 and §711-1111)
- Promoting Gambling in the First and Second Degree (§712-1221 and §712-1222)
- Promoting Pornography (§712-1214)
- Habitual Solicitation of Prostitution (§712-1209.5)
- Promoting a Dangerous Drug in the Third Degree (§712-1243)
- Unlawful Imprisonment in the Second Degree (§707-722)
- Unauthorized Possession of Confidential Personal Information (§708-839.8)
- Identity Theft (§708-839.7)

In addition, this bill fails to outline a court procedure or mechanism for initiating a case as it relates to individuals who are only issued a citation for a felony offense.

Pg. 9, Ln. 18-19:

The Department is also concerned about the proposal to remove prior arrests (that did not result in a conviction) from pretrial bail reports, as this would leave our courts with insufficient information upon which to determine bail. For example, if a defendant was arrested multiple times for misdemeanor Abuse of a Family or Household Member (§709-906, “AFHM”), but was not formally charged or convicted—and this could be for a number of reasons, including the victim being uncooperative in prosecution or failing to show up at court to testify—they could potentially be arrested and charged with a felony AFHM charge, and the court would never even know about the prior arrests for AFHM, even if it involved the same victims. In the First Circuit, criminal contempt of court arrests or bench warrants are often “set aside,” “no-actioned” or “dismissed” when the person is finally brought back before the court, or pursuant to plea agreement, so there is no way those charges would lead to a conviction. These and other types of arrests are critical information when a court is assessing a defendant’s risk of “absconding.”

Also, removing any geographic information from prior arrests or convictions, would take away much of the basis upon which geographical restrictions

Allowing judges to have the most accurate information regarding a defendant’s prior history, and allowing them to apply their judicial discretion in their decision-making on bail is essential to ensuring fairness, victim safety, and overall public safety.

Pg. 15, Ln. 18:

As currently written, this section creates a “rebuttable presumption” that everyone pending criminal charges shall be released, unless the prosecution proves by clear and convincing evidence that:

- The charge is for a serious offense; AND

- There is serious risk that the defendant will: (1) “willfully abscond,” (2) obstruct or attempt to obstruct justice “with the purpose of obstructing or attempt to obstruct justice”; or (3) poses a “significant” danger to an “identifiable” person (or possibly to the community...there appears to be a comma missing on p. 14, ln. 17, after “person”); AND
- The risk(s) cannot be mitigated by “any set of release conditions imposed by the court.”

Thus, even if someone met all of the serious risk criteria—serious risk of fleeing, intimidating witnesses, and poses a significant danger to a specific person or to the community—that person could still be released back into the community under H.B. 1336.

Unless the current charge is for a serious offense (with no consideration of prior offenses), and the prosecutor can prove that it is not possible for those risks to be mitigated by “release conditions,” the person would be released.

It should be noted that H.B. 1336 uses the criteria that currently determine when courts can deny bail altogether (i.e. keep someone in jail until trial, with no option for release; typically reserved only for some murders and other such egregious crimes)—which is already an extremely high standard—and makes it even *more difficult than that* to hold *anyone* in custody pending trial. As noted above, even if a person poses all of the serious risks contemplated, if there is a “serious risk that the person will flee,” if they were recently convicted of a violent felony, or if the person was already on probation or parole at the time of the new offense (*see* p. 15, lns. 11-18)—or all of those things—that person could be released back into the community under H.B. 1336.

Moreover, in order for the prosecution to (even attempt to) prove these things, it appears that evidentiary hearings would be required, which would likely trigger a huge influx of contested hearings. Such an influx 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.

Evidentiary hearings would also mean an increased likelihood of re-traumatization for victims, who would be forced to testify yet another time, about their victimization. For example, a victim of Sex Assault in the Third degree would first be subpoenaed to testify regarding the sexual assault in a preliminary hearing and/or grand jury, for charging purposes. Then, as proposed in H.B. 1336, this same sex assault victim would next be required to testify in a bail hearing, knowing that if their testimony is “insufficient” or otherwise “fails” to meet the standard, then the perpetrator would be released and back into the community almost immediately. After the bail hearing, the victim would then be subpoenaed for court (at minimum) a third time for trial, to recount and re-live their sexual assault on the witness stand, subject to cross-examination, and face-to-face with the perpetrator. This minimum of three appearances could also amount to a lot more, if any of the proceedings are ever continued. The added time away from work or family, added stress, and potential re-traumatization, would likely lead to reduced participation by victims who already often feel overwhelmed by the system that is ostensibly put in place to provide protection.

Pg. 16, Ln. 15:

Although subsection-(e) 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.

Part III (Pg. 23, ln. 15):

This section appears to create a blanket prohibition against arresting or revocation the probation/parole of a defendant, probationer, or parolee, for a positive drug test/screen. This amendment would effectively eliminate the discretion of probation and parole officers, as well as the courts who work closely with these individuals and have background information that is important to the rehabilitative process. This section also fails to specify the specific definition of “drug”, and does it account for repeated violations of positive drug test/screens and its effect upon a defendant’s probation or parole.

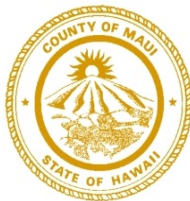
While the Department understands the Legislature’s desire to lower the number of pretrial detainees, we urge the committee to maintain the current safeguards that are used to assess a pretrial detainee, beyond whether they will appear for court hearings. In particular, the Department believes it is extremely important that the courts be allowed to consider each defendant’s circumstances and background on a case-by-case basis, with wide discretion to consider the person’s potential dangerousness, obstruction of justice, witness tampering and other illegal activity, when determining if and how to release an individual back into the community.

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

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Acting Prosecuting Attorney

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First Deputy Prosecuting Attorney



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TESTIMONY
ON
HB 1336 RELATING TO
CRIMINAL JUSTICE REFORM

TO: Honorable Mark J. Hashem, Chair
Honorable Cory M. Chun, Vice Chair
House Committee on Corrections, Military & Veterans

FROM: Department of the Prosecuting Attorney, County of Maui

DATE: February 2, 2023

SUBJECT: **OPPOSITION TO HB 1336, CRIMINAL JUSTICE REFORM**

Thank you for the opportunity to testify in **OPPOSITION** to HB 1336 and request that it be deferred. Although we appreciate the legislature's efforts to address the issue of criminal justice reform, the bill in its current form would have significant negative impacts on public safety that outweigh any benefits gained. We oppose this measure for the following reasons:

1. We share the concerns of the Department of the Prosecuting Attorney, City and County of Honolulu. We are particularly concerned with the negative impacts on public safety that would result from amendments such as: 1) the requirement that an offender be issued a citation instead of being arrested for such serious offenses as Burglary, Aggravated Harassment by Stalking, Terroristic Threatening and Identity Theft; 2) the presumption that a defendant shall be released on recognizance or to supervised release, as well as the substantially increased requirements for the State to rebut the presumption, and 3) the removal of the court's ability to consider a defendant's prior arrests in determining appropriate bail amounts or revoke an offender's probation status for drug use. For example, requiring the police to issue a citation and court summons to an offender caught in the act of burglarizing a family-owned restaurant or following an ex-spouse to and from work for weeks is both absurd and dangerous.

2. We are also concerned that the effects of this measure upon existing pre-arraignment and pre-trial procedures do not appear to have been fully considered. For example, we are unaware of any existing court procedures for initiating prosecution of a defendant charged with a

felony solely by way of citation. Even something as basic as whether the county police departments currently have citation books that can properly address a felony citation, or whether they will be able to print new books and develop new procedures prior to the effective date of the bill, is unclear.

Moreover, it would be extremely time- and resource-consuming to hold all the evidentiary hearings necessary to prove by clear and convincing evidence that a defendant is a serious risk to “wilfully abscond”, “obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror with the purpose of obstructing or attempting to obstruct justice”, or “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” and that the risk cannot be mitigated by any set of release conditions imposed by the court. We believe that input from the Judiciary is crucial to determine whether these amendments can be properly implemented as drafted.

For these reasons, the Department of the Prosecuting Attorney, County of Maui opposes the passage of HB 1336 and requests that it be deferred. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

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

HB-1336

Submitted on: 2/1/2023 11:46:15 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

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

Comments:

Dear Chair Hashem, Vice Chair Chun 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. 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 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 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 prostitution (712-1209.5)
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 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.

Just this past week, 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 week was 700 plus crimes reported. This is an absolute result of the policies 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 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 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. 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



Committees: House Committee on Corrections, Military & Veterans

Hearing Date/Time: Friday, February 3, 2023, 9:00 A.M.

Place: Via videoconference
Conference Room 430
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: *Testimony of the ACLU of Hawai'i in Support of H.B. 1336 Relating to Criminal Justice Reform*

Dear Chair Hashem, Vice Chair Chun and members of the Committee:

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

At this time, the ACLU of Hawai'i supports the general objectives of Part I. Custodial arrests can have a dramatic negative impact on individuals, families, and communities. Law enforcement should make such arrests only where absolutely necessary. Part I of this measure accomplishes that, by requiring law enforcement to issue—rather than having law enforcement merely *consider* issuing—citations in lieu of arrest for certain crimes. 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 law enforcement 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.

The ACLU of Hawai'i also supports Part II. 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

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).

that is a particularly destructive form of wealth-based detention.² 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 also squarely puts the burden on the prosecution to prove, by clear and convincing evidence, 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.”³

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. Thank you for the opportunity to testify.

Sincerely,



Jongwook “Wookie” Kim
Legal Director
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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² See, e.g., <https://www.acluhi.org/en/aclu-hawaii-bail-report-2018> (describing harmful impacts of Hawai‘i’s pretrial system).

³ *United States v. Salerno*, 481 U.S. 739 (1987).

Hawai'i Association of Criminal Defense Lawyers

February 2, 2023

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

Chair Mark J. Hashem
Vice Chair Cory M. Chun
Honorable Committee Members

The Hawai'i Association of Criminal Defense Lawyers (HACDL) is a local organization of lawyers practicing in state and federal courts. HACDL members include public defenders and private counsel who represent the criminally accused.

HACDL fully supports HB 1336. This bill will end the frequent and unnecessary arrests that waste time and resources of law enforcement, prosecutors, and the courts. It will also prevent expensive pretrial incarceration for people charged with non-serious, non-violent crimes.

Our members see bench warrants being issued daily. Most people do not *intentionally* miss their court dates. It is akin to missing a dentist or doctor appointment. When unforeseen circumstances do occur, many people in the criminal justice system lack the means to contact their lawyers, get transportation, and mobilize quickly to make their court dates.

When the court does issue a bench warrant, it must be forwarded to the police and sheriff departments, who are tasked with serving the warrant by arresting the person. They take that person to jail and hold them there until they appear in custody before the judge, which drains more resources for the court, prosecutor's offices, and public defenders.

While waiting to clear up the matter, the arrested person has been removed from the community. Jobs, homes, cars, and families are at risk. A person suddenly arrested and locked up in jail can get fired,

can't pay rent, and lose their housing—all because they missed an appearance at Court for a non-serious, non-violent charge.

A 48-hour grace period allows the defense counsel to make contact with their clients and get them to court at the next available opportunity, without draining public resources and disrupting an individual's life. This bill allows for many exceptions and safeguards and will still provide safety to the public.

HACDL hopes this much-needed bill becomes law.

LATE

HB-1336

Submitted on: 2/2/2023 9:48:19 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
laurel brier	Kauai women's caucus	Support	Written Testimony Only

Comments:

- **Money bail sets off a series of life-altering consequences that cost people their jobs, homes, and conceivably the community**
- **It's an injustice to those who do not have monetary resources – regardless of guilt, innocence, or legality of the arrest.**
- **Our justice system should aim to keep people out of prison. Current laws and practices fail to do so.**
- **Before trial all are presumed innocent. People should not sit in jail because awaiting trial because they can not afford their bail.**



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

February 2, 2023

LATE

VIA ONLINE

The Honorable Mark J. Hashem
Chair
The Honorable Cory M. Chun
Vice-Chair
Senate Committee on Corrections, Military & Veterans
Hawaii State Capitol, Rooms 424, 304
415 South Beretania Street
Honolulu, HI 96813

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

Dear Chair Hashem, Vice-Chair Chun, 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. This bill seeks to mandate citations in lieu of making arrests with limited exceptions, create a 48-hour grace period prohibiting the arrest of individuals who missed their initial court appearance and overhaul pretrial release procedures.

In particular, the bill seeks to exclude certain information from pretrial bail reports, establishes a rebuttable presumption that a defendant is *entitled to release* and requires prosecutors to prove, by clear and convincing evidence, that release of a defendant would be inappropriate based on certain specified criteria. The bill also requires that any bail set by the court be in an amount that the defendant can afford 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 clear and convincing evidence, that the defendant *intentionally* 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 other non-financial condition or combination of 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.

The Honorable Mark J. Hashem, Chair
The Honorable Cory M. Chun, Vice-Chair
Senate Committee on Corrections, Military & Veterans
Re: HB 1336 - Relating to Criminal Justice Reform
February 2, 2023
SHOPO Testimony Page 2

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, mandates the issuance of a citation and prohibits an arrest for a wide-range of offenses, including but not limited to the following: unauthorized control of propelled vehicle; unauthorized entry into a motor vehicle; burglary in the second degree; theft of credit card; identity theft; criminal trespass; negligent homicide; open lewdness; possession of a childlike sex doll; promoting pornography for minors; unlawful imprisonment; violation of an injunction against harassment; impersonating a law enforcement officer; resisting arrest; interference with reporting an emergency or crime; possession with the intent to distribute controlled substances in, on, or near schools, school buses, and public parks; and other offenses.

The bill also unreasonably burdens our 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 clear and convincing evidence that the defendant's condition violation was intentional. This bill also precludes certain relevant information from being included in a defendant's pretrial bail report. 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.

The Honorable Mark J. Hashem, Chair
The Honorable Cory M. Chun, Vice-Chair
Senate Committee on Corrections, Military & Veterans
Re: HB 1336 - Relating to Criminal Justice Reform
February 2, 2023
SHOPO Testimony Page 3

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.

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 by the prosecutors. 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



LATE

TESTIMONY IN SUPPORT OF HB 1336

TO: Chair Hashem, Vice-Chair Chun, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 3, 2023 (9:00 AM)

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** HB 1336, 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 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.

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

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i 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.

LATE

HB-1336

Submitted on: 2/2/2023 6:59:32 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Amy Wake	Trinity United Methodist Church	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Amy Wake and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Rev. Amy Chieko Wake

320 Hao St

Honolulu, HI 96821

LATE

HB-1336

Submitted on: 2/2/2023 9:41:44 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jamie Detwiler	Hawaii Federation of Republican Women	Oppose	Written Testimony Only

Comments:

I strongly oppose HB 1336.

This bill is detrimental to the public safety of the people of Hawaii and will impact future generations to come.

Thank you for the opportunity to testify.

Respectfully,

Jamie Detwiler, President, Hawaii Federation of Republican Women

HB-1336

Submitted on: 2/1/2023 12:39:40 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael I Rice	Individual	Oppose	Remotely Via Zoom

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

Submitted on: 2/1/2023 4:09:50 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jim Cooper	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Jim Cooper and I am testifying in strong support of HB1336.

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.

The current system has detrimental effects 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 and keep our loved ones at home where they belong.

Mahalo

HB-1336

Submitted on: 2/1/2023 4:21:10 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
stephanie kawaauhau	Individual	Support	Written Testimony Only

Comments:

I am in support of this bill HB 1336

HB-1336

Submitted on: 2/1/2023 4:39:50 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Samuel M Mitchell	Individual	Support	Written Testimony Only

Comments:

Bill 13336 will require that people be issued citations instead of arrested in certain cases and that bail be set only in amounts that people are able to afford. I think that everyone should support that.

HB-1336

Submitted on: 2/1/2023 6:22:33 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Julianna Davis	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Julianna Davis and I am testifying in strong support of HB1336. 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. 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 and keep our loved ones at home where they belong.

Mahalo for your time.

Julianna Davis

HB-1336

Submitted on: 2/1/2023 7:11:32 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lorraine Robinson	Individual	Support	Written Testimony Only

Comments:

- Money bail sets off a series of life-altering consequences that cost people their jobs, homes, and even families and harm whole communities.
- People unable to pay bail are locked up in jail and may lose their jobs, homes, and families, all because they do not have enough money to make bail – regardless of guilt, innocence, or legality of the arrest.
- Our justice system should aim to keep people out of prison. Current laws and practices fail to do so.
- Before trial all are presumed innocent. People should not sit in jail because awaiting trial because they can not afford their bail.

HB-1336

Submitted on: 2/1/2023 7:35:48 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Randy Gonce	Individual	Support	Written Testimony Only

Comments:

Aloha Members,

I am writing in **strong support** of this measure. The cruelty of our criminal justice system that impacts poor people more harshly cannot be overstated. This is one small step to creating a more just system. Please support this important measure

-Randy Gonce

HB-1336

Submitted on: 2/1/2023 7:49:49 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
tlaloc tokuda	Individual	Support	Written Testimony Only

Comments:

Aloha CMV Chair, Vice & Committee,

I support HB1336 because the bill is trying to go outside of the box. Our Justice System is unjust and does not work. its racist, disadvantages the poor, of color, indigenous, kanaka...

Our police force is a carryover of the plantation system and does NOT WORK, This bill is a great bill because it deals with certain crimes lice a citation and does not make the bail difficult to raise. This bill will KEEP people out of the criminal (UN)justice system. This is the most important issue. Thank you for the persons who wrote this bill, a breath of fresh air!

This bill will move us ford and stop penalizing kanakas and people of color!

Please pass this bill!

Mahalo

tlaloc tokuda

Kailua Kona, HI 96740

HB-1336

Submitted on: 2/1/2023 7:50:31 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dave Kisor	Individual	Support	Written Testimony Only

Comments:

Affordable justice. What a concept! Without bail money, you are flushed down a legal toilet and you get to rot in the cesspool until the pumper comes to flush you into the court room. If you can't afford bail, there's a high probability you can't afford a lawyer. Many are treated as if they are already guilty until proven guiltier. You are presumed to be proven innocent before being found guilty? Now there's a fairy tale for you! Kindly support HB 1336. Mahalo

HB-1336

Submitted on: 2/1/2023 8:02:03 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Cassandra Chee	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

I am writing in SUPPORT of HB 1336. Our goal should aim to keep people out of ever entering prisons or jails as much as possible. Our jails are already overcrowded. We do not need to arrest more people when a citation could be issue instead. No one should be punished and forced to be caged just because they can not afford to pay their bail. This not only derails the lives of innocent people awaiting trial but also their families. Please vote yes to pass HB 1336.

Mahalo,

Cassandra Chee
Chinatown

HB-1336

Submitted on: 2/1/2023 8:04:37 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

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

Comments:

Hello Chair Hashem and Vice Chair Chun,

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

I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

me ke aloha 'āina,

Nanea Lo, Mō'ili'ili

HB-1336

Submitted on: 2/1/2023 8:32:31 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Donovan Sun	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Donovan Sun and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Donovan Sun

HB-1336

Submitted on: 2/1/2023 8:39:46 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

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

Comments:

Aloha Chair Hashem and Vice Chair Chun,

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

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.

With thanks and aloha,

Thaddeus Pham (he/him)

HB-1336

Submitted on: 2/1/2023 8:48:15 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Boyd Ready	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Boyd Ready, and I am testify in strong opposition to HB1336.

The community solution for criminal action is arrest, detention, release on good behavior only, and then trying crimes in court with the opportunity to confront witnesses and be judged by a jury of fellow citizens.

Bail should not be excessive, but should provide a disincentive to missing a court hearing. But Illicit drug use should disqualify individuals from remaining free on pre-trial release as it is, by law, bad behavior. That's one obviously bad thing about this bill.

The problem is unacceptable delays in bringing cases to trial, over-reliance on negotiated pleas, and lack of local magistrates to hear and promptly adjudicate cases of petty crime. The courts are too few, too complex, too far away, and too slow.

Please vote down HB1336 in committee and consider law that makes justice prompt, local, and community based. Letting people out without bail is not the answer.

Mahalo for the opportunity to testify,

Boyd Ready

Haleiwa

HB-1336

Submitted on: 2/1/2023 10:29:53 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Greg Puppione	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Greg, and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Greg Puppione

HB-1336

Submitted on: 2/1/2023 10:34:32 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Alan B Burdick	Individual	Support	Written Testimony Only

Comments:

HB 1336 is a very ambitious and comprehensive attempt to resolve the many vexing problems of pretrial detention. I STRONGLY SUPPORT the intent and purpose of this bill, and believe the details are carefully and appropriately thought through.

I recognize the awful, and indeed unconstitutional overcrowding conditions in the Hilo Correctional facility. This must stop! I fear conditions in other counties are not much better.

I recognize that people who deal professionally with the criminal law system (I am very reluctant to call it "the criminal justice system") - they may well have important critiques and/or amendments to offer. Let that process begin, and we'll see if we can come up with a truly valuable bill that the Governor can sign.

HB-1336

Submitted on: 2/2/2023 12:01:40 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Vanessa Khachik	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Vanessa Khachik and I am testifying in strong support of HB1336.

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. People who are placed in jail are unable to work and may lose their jobs, be put in unnecessary debt, lose custody of their children, etc. If people are assumed to be innocent until proven guilty, why are we treating them as if they were guilty without a corresponding verdict.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Vanessa Khachik

HB-1336

Submitted on: 2/2/2023 12:55:53 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

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 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.

HB-1336

Submitted on: 2/2/2023 6:44:35 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Chuck Taylor	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Chuck Taylor and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Chuck Taylor

HB-1336

Submitted on: 2/2/2023 7:01:03 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Aubrey Aea	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB1336. The revolving door of crime that is currently happening in Hawai'i at this time is incredibly frustrating for victims, police officers, small business owners, residents, and tourists. This bill will exacerbate that as well as further erode the morale of efforts of the community to make this a better place. The efforts of this complex bill will not deter nor provide more accountability for those who choose to break the law.

Aloha Chair Hashem and Vice Chair Chun,

My name is Ming Tanigawa-Lau and I am testifying in **strong support of HB1336**.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Ming

HB-1336

Submitted on: 2/2/2023 7:27:06 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Carla Allison	Individual	Support	Written Testimony Only

Comments:

My name is Carla Allison and I **strongly support of HB1336** because this bill requires police to issue citations instead of arrests, provides for pretrial release until proven guilty and removes punitive drug use screenings from parole and probation processes. Our justice system should presume innocence instead of guilt, stop punishing people who cannot afford bail and aim to keep people out of prison. Current laws and practices fail to do so. It is time that we divest from punishment and reinvest in community solutions. Please support HB1336. Thank you.

HB-1336

Submitted on: 2/2/2023 7:57:37 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

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.

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 will often embolden offenders to eventually commit more serious and violent crimes.

HB1336 seeks an easy and least expensive way to solve a complex problem, and evidenced by mainland cities and states who are “soft on crime”, does not work.

Please oppose HB1336.

HB-1336

Submitted on: 2/2/2023 8:28:37 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Grace Chinen	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Grace Chinen and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Grace Chinen

LATE

HB-1336

Submitted on: 2/2/2023 9:07:16 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

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

Comments:

Dear Chair Hasem, Vice Chair Chun, 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. Individuals arrested for minor offenses, as the bill's preamble explains, may have their entire lives disrupted needlessly. If they are caretakers, they are unable to care for their children or family members. An arrest may needlessly jeopardize their housing, food security, and overall life stability. It harms the individual and burdens our public benefits system, without benefiting public safety.

I am also a law student at Richardson and I had the opportunity to interview some residents incarcerated in Saguaro Correctional Center over the summer. The state has imprisoned about 1000 individuals thousands of miles away because many of our prisons and jails are over capacity here. This bill 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

Submitted on: 2/2/2023 9:10:51 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

LATE

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

Comments:

This bill contains some positive steps toward helping Hawaii more effectively solve the problem we are currently experiencing with respect to our outlandish and unsupportable prison expense, by addressing a few of the processes that have led to and continue to contribute to this unreasonable rise in prison population, which is causing harm to both individuals and the state. Please pass this fair and useful bill.

LATE

HB-1336

Submitted on: 2/2/2023 11:35:49 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Maya Chinen	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Maya and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Maya Chinen

TALKING POINTS

- **Money bail sets off a series of life-altering consequences that cost people their jobs, homes, and even families and harm whole communities.**
- **People unable to pay bail are locked up in jail and may lose their jobs, homes, and families, all because they do not have enough money to make bail – regardless of guilt, innocence, or legality of the arrest.**

- **Our justice system should aim to keep people out of prison. Current laws and practices fail to do so.**
- **Before trial all are presumed innocent. People should not sit in jail awaiting trial because they can not afford their bail.**

LATE

HB-1336

Submitted on: 2/2/2023 2:09:35 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Tadia Rice	Individual	Support	Written Testimony Only

Comments:

I fully support prison reform and HB1336 helps create change to what is a broken system.

LATE

HB-1336

Submitted on: 2/2/2023 2:47:03 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Marilyn Mick	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 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.

REPRESENTATIVE MARK J. HASHEM, CHAIR
HOUSE COMMITTEE ON CORRECTIONS, MILITARY, & VETERANS

HB 1336

Date of Hearing: Friday, February 3, 2023

Time: 9:00 a.m.

Place: Conference Room 430

State Capitol

415 South Beretania Street

Testimony in Opposition

Dear Representative Hashem,

I am a resident of House District 30 and submit this brief testimony in opposition to HB 1336. I intend to testify in person since I found out about this bill on February 2, 2023. I will submit a more robust opposition once this matter is before the House Committee on Judiciary and Hawaiian Affairs.

House Bill 1336 is a repeat of the bail reform efforts that failed to get past the governor in 2022, though this version is more pernicious. This bill removes the ability of law enforcement to assess a crime on the ground and choose whether to arrest the perpetrators or not. It requires the law enforcement officer to instead give the perpetrator a citation, regardless of the facts surrounding the crime.

This would require officers to cite and release individuals caught in the act of burglary, criminal trespass at a home or school, unauthorized entry of a motor vehicle, and more, provided they do not physically harm anyone.

The justification is, at least in part, to avoid the embarrassment and hardships caused by the arrest. This approach completely abandons the victim. It ignores the hardships of a victim living check-to-check, forcing a choice to buy food or replace stolen or damaged property. It ignores the embarrassment of having clothes, shoes, computer, etc. stolen while needing to attend school or work without those things.

The requirement to cite over arrest for a broad spectrum of offenses places the burdens of crime on the victims while ignoring their plight. I will not address my objections to the bail reform portion here.

I respectfully ask that the committee remove the citation requirement. Additionally, that the committee delate bail reform until we have the infrastructure to help the mentally ill and drug addicted population.

Regards,
Eric A. Irwin

LATE

HB-1336

Submitted on: 2/2/2023 9:43:08 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Kristen Young	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Kristen and I am testifying in strong support of HB1336 which, 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.

Before trial, all are presumed innocent. People should not have to sit in jail awaiting trial simply because they cannot afford their bail. A justice system should work to keep people OUT of prison.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Kristen

LATE

HB-1336

Submitted on: 2/3/2023 6:26:07 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

I am testifying in strong support of HB1336.

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.

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.

HB-1336

Submitted on: 2/3/2023 8:12:19 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mary Smart	Individual	Oppose	Written Testimony Only

Comments:

Violence and crime are increasing in our communities. The measures in this bill will only exacerbate the likeliness of more crimes by the same individual over and over. It is the job of government to keep law abiding citizens safe. This bill does the exact opposite.

Do not pass HB1336.

HB-1336

Submitted on: 2/3/2023 8:24:27 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mele Stokesberry	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Mele Stokesberry and I am testifying in strong support of HB1336.

This bill, for some offenses, requires police to issue citations instead of arrests and pretrial release until proven guilty.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

HB-1336

Submitted on: 2/3/2023 8:57:02 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Tjoeng	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem, Vice Chair Chun, and members of the committee--

My name is Rachel Tjoeng and I am testifying in strong support of HB1336. This bill requires police to issue citations instead of arrests for some offenses. Being incarcerated disproportionately affects Native Hawaiians and Pacific Islanders. We know from experiences during covid, that overcrowded prisons contribute to spread of disease so this also becomes a public health issue. We need less people in prison, especially when they are awaiting trial for minor, non-dangerous offenses.

Please support HB1336 and keep loved ones at home with their families and within their communities.

Mahalo,

Rachel Tjoeng

HB-1336

Submitted on: 2/3/2023 8:59:44 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Tiana	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Hashem and Vice Chair Chun,

My name is Tiana and I am testifying in strong support of HB1336.

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.

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 and keep our loved ones at home where they belong.

Mahalo for the opportunity to testify,

Tiana Williams