



#### **HB464**

# RELATING TO BAIL House Committee on Public Safety

February 9, 2016 10:00 a.m. Room 312

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees <u>SUPPORT WITH AMENDMENTS</u> HB462. OHA supports the intent of this measure to alleviate the substandard conditions and overcrowding in Hawai'i's jails, by reducing the high number of inmates held in pretrial detention simply because they cannot afford to post their bail for low-level offenses. However, OHA requests that the bill be amended, to <u>delete</u> Section 1 as regressive and counterproductive to the measure's goals .

The cash bail system is intended to secure defendants' appearance in court; however, as currently implemented, it frequently acts as a punishment upon the poor even prior to a conviction for any crime. This system subverts the intent stated in HRS 804-9 not to render the bail "privilege useless to the poor." Accordingly, our current cash bail practices invert the common law principle that those accused of crimes are "innocent until proven guilty," by punishing alleged offenders with imprisonment until they are proven innocent.

The detention of unconvicted defendants who pose no threat to public safety may also exacerbate the challenges faced by those in poverty. While wealthier defendants can buy their pretrial freedom, poorer defendants must languish in jail, frequently for periods exceeding the sentence carried by their charges and at great cost to taxpayers. Even short jail stays for indigent defendants can disrupt their lives and families resulting in job loss, eviction, loss of custody of their children, and worsened poverty. Moreover, those who are able to pay private bonds can spend years in debt to bondsmen regardless of whether they are convicted for the crime originally charged. Faced with these consequences, poor defendants may frequently offer guilty pleas at arraignment, notwithstanding potential fines and the permanent collateral consequences of criminal conviction records, in exchange for immediate freedom.

By allowing certain alleged misdemeanants to be released from pretrial detention without cash bail, HB464 seeks to mitigate the punitive and long-term consequences of the cash bail system on poor defendants. OHA notes that this measure would allow defendants' risk of flight or public safety threat to be considered in continuing their detention, based on validated risk assessments already in use. OHA also notes that there are alternatives to cash bail or continued detention to ensure court appearances, including release conditions, electronic monitoring, supervised release, or even simple court date reminder alerts. These cost-effective alternatives can save substantial state resources on detentions for mostly nominal bail amounts, without undermining the criminal justice process. For example, since

eliminating cash bail altogether in the 1990s, Washington D.C. has utilized alternatives to pretrial detention for all but its highest risk defendants, and have found that very few fail to appear, or end up re-arrested on new charges. Accordingly, OHA supports the amendments to the cash bail system found in Section 2 of this measure.

However, OHA notes that Section 1 of this bill would unnecessarily impose substantial criminal liability on low-level defendants who are released and subsequently convicted of any crime whatsoever. By escalating any crime committed by a defendant awaiting trial on bail to a class C felony, Section 1 may exacerbate the prison overcrowding and potentially unjust punitive consequences this measure seeks to mitigate. Notably, many poor misdemeanant defendants may be unsheltered, and battle substance abuse issues; these individuals would be automatically subject to felony liability for minor offenses, such as trespassing and loitering, committed during their pre-trial release. As such, this provision would have the potential to create a new volume of felons from those accused of mere misdemeanors. Accordingly, OHA urges the Committee to delete Section1 of this measure.

Accordingly, OHA urges the Committee to **PASS WITH AMENDMENTS** HB464. Mahalo for the opportunity to testify on this measure.

#### DEPARTMENT OF THE PROSECUTING ATTORNEY

# CITY AND COUNTY OF HONOLULU

KEITH M. KANESHIRO PROSECUTING ATTORNEY

ALII PLACE 1060 RICHARDS STREET • HONOLULU, HAWAII 96813 PHONE: (808) 547-7400 • FAX: (808) 547-7515

CHRISTOHPHER D.W. YOUNG FIRST DEPUTY PROSECUTING ATTORNEY



# THE HONORABLE GREGG TAKAYAMA, CHAIR HOUSE COMMITTEE ON PUBLIC SAFETY

Twenty-Ninth State Legislature Regular Session of 2017 State of Hawai'i

February 9, 2017

# RE: H.B. 464; RELATING TO BAIL.

Chair Takayama, Vice-Chair Lo Presti, and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu (Department) submits the following testimony in opposition to H.B. 464.

The purpose of H.B. 464 is to allow all defendants who have been charged with a misdemeanor, petty misdemeanor or violation to be released on recognizance while creating the penalty of a class C felony for a defendant who commits a new offense while released and awaiting trial.

Bail is set in most if not all cases to ensure that the defendant returns for all court proceedings related to their case after being released. By removing the requirement of bail or a surety in all non-felony cases, H.B. 464 proposes a system, which removes any incentive or obligation for a defendant to return to court. Implementation of H.B. 464 would create the opposite effect of decreasing inmate population of pre-trial detainees of non-felony offenses. In fact, H.B. 464 would in effect create more felons while simultaneously increasing the number of pre-trial detainees. The amendments proposed in section 2 could create the unintended consequence of potentially releasing defendants without bail, who have been charged with violent offenses including but not limited to abuse of family or household members (§709-906, H.R.S.), sex assault in the third or fourth degree (§707-732 and §707-733, H.R.S.) or assault in the third degree (§707-712, H.R.S.).

The creation of a class C felony for the commission of a new offense while released would not provide the proper safeguards as it intends. There are a high number of violators, petty misdemeanants and misdemeanants who re-commit another criminal offense while pending

trial. One common example would be the offense of driving without a valid driver's license (DWOL - (§286-102, H.R.S.). Currently, DWOL is a petty misdemeanor for a first or second offense in a five year period while a third or subsequent offense within a five year period is classified as a misdemeanor. In these types of cases, it is not uncommon to have a defendant pick up multiple DWOL charges while awaiting arraignment or trial for the initial DWOL charge. H.B. 464 would transform these common non-violent petty misdemeanor offenses into a class C felony offense which could necessitate a higher bail amount leading to a rise in pre-trial detainees.

For all of the reasons stated above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 464. Thank you for the opportunity to testify on this matter.

#### POLICE DEPARTMENT

# CITY AND COUNTY OF HONOLULU

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

KIRK CALDWELL MAYOR



LOUIS M. KEALOHA CHIEF

CARY OKIMOTO JERRY INOUYE DEPUTY CHIEFS

OUR REFERENCE ST-DA

February 9, 2017

The Honorable Gregg Takayama, Chair and Members Committee on Public Safety House of Representatives Hawaii State Capitol 415 South Beretania Street, Room 312 Honolulu, Hawaii 96813

Dear Chair Takayama and Members:

SUBJECT: House Bill No. 464, Relating to Bail

I am Stason Tanaka, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 464, Relating to Bail.

We believe this legislation will improve compliance among persons charged with a criminal offense and have been released on bail without having been required to surrender any cash and other types of securities to attend trial. This would deter them from committing additional crimes while awaiting trial.

The HPD urges you to support House Bill No. 464, Relating to Bail.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

Cary Okimoto

Acting Chief of Police

Stason Tanaka, Captain

Criminal Investigation Division



Committee: Committee on Public Safety

Hearing Date/Time: Thursday, February 9, 2017, 10:00 a.m.

Place: Conference Room 312

Re: Testimony of the ACLU of Hawai'i with comments concerning H.B. 464,

Relating to Bail for Misdemeanants

Dear Chair Takayama, Vice Chair LoPresti, and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes concerning H.B. 464, which on one hand, provides for no-cash bail for persons charged with a misdemeanor, petty misdemeanor, or violation, but on the other, also makes it a class C felony for a person to commit "a new criminal offense" while released on no-cash bail.

The ACLU of Hawai'i wants to support H.B. 464 as no-cash bail is a positive step towards addressing overcrowding at Hawaii's correctional facilities and safely reducing the pretrial incarcerated population, which currently is 20 percent of the total incarcerated population and over 50 percent of the incarcerated population at the Oahu Community Correctional Center. That being said, while a move towards a no-cash bail system for small offenses is a positive step in addressing the unconstitutional conditions at Hawaii's jails and prisons, the adoption of a two-strike system for turning small offenses into felonies would be **a giant leap backwards**.

For example, under Section 1 of H.B. 464, a homeless person charged with violating the City and County of Honolulu's sit-lie ban, a petty misdemeanor with penalties of up to 30 days in prison and a \$1,000 fine, would face a class C felony charge, punishable by up to five years in prison and a \$10,000 fine, for merely falling asleep on a sidewalk in Chinatown after being released on no-cash bail. Similarly, a person charged with a violation of the open container ordinance for having a beer at the beach, a violation with penalties of up to 30 days in prison and a \$1,000 fine, would be charged with a class C felony for having another beer at the beach after being released on no-cash bail. Likewise, a protestor charged with failure to disperse, a misdemeanor punishable with up to one year in prison and \$2,000 fine, would face a class C felony charge for protesting and failing to disperse while released on no-cash bail. These are just a few examples.

<sup>&</sup>lt;sup>1</sup> Revised Ordinances of Honolulu ("*ROH*") § 29-15A.2; Hawai'i Revised Statutes ("*HRS*") §§ 706-640, 706-663.

<sup>&</sup>lt;sup>2</sup> HRS §§ 706-640, 706-660.

<sup>&</sup>lt;sup>3</sup> ROH §§ 40-1.1.-1.3.

<sup>&</sup>lt;sup>4</sup> HRS § 711-1102.

Chair Takayama and Members of the Committee February 9, 2017 Page 2 of 2

The costs to the State of Hawai'i for having more felons are not only the costs of incarcerating an individual for up to 5 years—which is approximately \$140,123.50 = \$76.78 per day x 365 day x 5 year on the mainland and  $$255,500.00 = $140 \times 365$  days x 5 years in Hawai'i<sup>5</sup>—but also the permanent social costs of branding an individual a "felon," thus, making it less likely that he or she will be able to obtain stable employment, have a home, maintain a family, and most importantly, rehabilitate post-incarceration.

We understand and share the concerns of people reoffending while released on bail. However, any serious offense committed during that period is most likely already a class C felony. Consequently, Section 1 of H.B. 464 will likely increase the incarcerated population without deterring any serious offenses.

For these reasons, the ACLU of Hawai'i cannot support, and would strongly oppose, H.B. 464 as currently written. If H.B. 464, however, was amended to eliminate Section 1, then the ACLU of Hawai'i would be a strong supporter of the bill as it would be an important step in addressing overcrowding and overincarceration in Hawai'i, just as many other states have been doing with positive results on the mainland.

Thank you for the opportunity to testify.

Sincerely,

Mateo Caballero Legal Director ACLU of Hawai'i

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

<sup>&</sup>lt;sup>5</sup> Marisa Yamane, *The cost to house a prisoner in Hawaii may surprise you*, KHON 2 (June 28, 2016), *available at* <a href="http://khon2.com/2016/06/28/the-cost-to-house-a-prisoner-in-hawaii-may-surprise-you/">http://khon2.com/2016/06/28/the-cost-to-house-a-prisoner-in-hawaii-may-surprise-you/</a>.

<sup>&</sup>lt;sup>6</sup> See, e.g., The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* (2010), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs\_assets/2010/collateralcosts1pdf.pdf.



# House Public Safety Committee Chair Gregg Takayama, Vice Chair Matthew LoPresti

02/09/2017 at 10:00 AM in Room 312 HB464 –Relating to Bail

# TESTIMONY – COMMENTS Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Takayama, Vice Chair LoPresti, and members of the House Public Safety Committee:

**Common Cause Hawaii offers comments** on HB464 which provides that for misdemeanors, petty misdemeanors, or violations, no financial or property surety be required for bail. It also provides that a person who commits a criminal offense while on bail for which no surety was required is guilty of a felony.

Part of the mission of Common Cause is to promote equal rights for all. In light of that, Common Cause Hawaii (CCHI) has been concerned with the unequal treatment of people arrested for misdemeanors. Those who can pay bail, are typically released until their trial date, while those who cannot are held in jail for days, weeks, or even months awaiting trial. Not only is this very costly to the state, but it amounts to punishment for arrestees who, not having been judged guilty, are still considered innocent under the Constitution of the United States.

In light of this, CCHI supports the portion of HB464 that would bring greater equality of treatment into our justice system by abolishing bail and releasing arrestees charged with misdemeanors, regardless of their ability to pay.

However, we oppose the first part of this bill that would make people guilty of a felony if they committed another crime while awaiting trial. Obviously, if an individual committed a felony at this point, they would be charged with a felony. But we do not see the logic of adding a second felony charge nor of considering two misdemeanors as equal to a felony when that would not otherwise be the case. Instead, we would suggest that, depending on the seriousness of the infractions, persons charged with a second misdemeanor while awaiting trial be held in custody until their trials.

We urge that you delete or modify the first section of this bill while retaining the second section pertaining to abolishing bail and permitting release of people charged with misdemeanors pending their trials. With those changes, we would support this bill.

Thank you for the opportunity to offer comments on HB464.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 4:14 AM

**To:** pbstestimony

**Cc:** blawaiianlvr@icloud.com

**Subject:** Submitted testimony for HB464 on Feb 9, 2017 10:00AM

# **HB464**

Submitted on: 2/6/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted By	Organization	<b>Testifier Position</b>	Present at Hearing	
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes	

Comments: We SUPPORT this bill with reservations.

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.



**HB** 464 Bail: Provides that no financial or property surety shall be required for bail in a case in which no felony is alleged. Provides that a person who commits a criminal offense while on bail for which no financial or property surety was required shall be guilty of a class C felony.

#### HOUSE COMMITTEE ON PUBLIC SAFETY:

	Representati	ive Gregg	Takayama,	Chair;	Representative	e Matthew	LoPresti,	Vice	Chair
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☐ Thursday, Feb. 9th, 2017: 10:00 a.m.

☐ Conference Room 312

# HSAC Recommends changes to HB464 before we could support this bill.

ALOHA CHAIR TAKAYAMA; VICE CHAIR LoPRESTI; AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of over 30 non-profit alcohol and drug treatment and prevention agencies.

Many people who lack bail money have substance use disorders or severe mental health challenges, which can lead to being late, missing court dates or even more misdemeanors. Given that one of the definitions of addiction is that they continue using despite adverse consequences, HSAC recommends an assessment be required and remove any reference to Class C Felony when actually a felony charge has not been committed.

A Class C Felony for non-compliance for a typical misdemeanor population that has substance abuse problems is counter-productive to removing non-violent offenders out of prison.

#### Recommended changes:

SECTION 1. Chapter 804, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

(b) Any person who violates this section with a misdemeanor shall be required to obtain a mental health and substance use disorder assessment."

We appreciate the opportunity to provide testimony and are available for questions.

# COMMUNITY ALLIANCE ON PRISONS

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

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



#### COMMITTEE ON PUBLIC SAFETY

Rep. Gregg Takayama, Chair Rep. Matt LoPresti, Vice Chair Thursday, February 2, 2017 11:00 am Room 312

### **COMMENTS ON HB 464 - BAIL**

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

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for two decades. This testimony is respectfully offered on behalf of the approximately 6,000 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,400 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

The ongoing OCCC JAIL FAIL because of BAIL FAIL has prompted this bail bill. Community Alliance on Prisons offers comments after reviewing the bill.

We understand Section 1 of the bill to say that if bail is eliminated for a person and that person commits a crime while awaiting trial, that person would be charged with a Class C felony.

We don't understand how the legislature can say a new crime would automatically be a Class C felony.

To expand on the example offered by Chair Luke of a person who steals a \$1.99 energy drink. S/he is released with no bail money due. While awaiting trial, s/he steals a sandwich...that would be a Class C felony?

Shouldn't the court decide the sanction for the new "crime"? And shouldn't the sanction be in proportion to the crime? The bill doesn't specify the types of offenses that would be included.

If this bill eliminated Section 1 and only contained Sections 2 and 3, Community Alliance on Prisons could support it, however, we cannot support the bill as it is now.

Mahalo for this opportunity to testify.

**From:** mailinglist@capitol.hawaii.gov **Sent:** Monday, February 6, 2017 8:27 PM

**To:** pbstestimony

**Cc:** barbarapolk@hawaiiantel.net

**Subject:** Submitted testimony for HB464 on Feb 9, 2017 10:00AM

#### **HB464**

Submitted on: 2/6/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted	By Or	ganization	<b>Testifier Position</b>	Present at Hearing
Barbara Po	olk I	ndividual	Comments Only	No

Comments: I strongly support the portion of this bill that would not require deposit of cash or other property as bail for persons charged with a misdemeanor offense. Current bail requirements of this type discriminate against people in poverty and result in jailing people who cannot pay bail. Eliminating cash (etc.) bail would also help reduce our jailed population. However, I oppose the part of this bill that would create a new felony charge for persons who commit another crime while awaiting trial. The bill does not make any distinction as to what type of crime would result in being charged with a felony, and thus is an over-reaction. More appropriate would be to revoke bail for a person who commits another misdemeanor. We do not need, given our current prison population, to define new felonies and continue to fill our prisons with people who do not pose a danger to society. I urge you to delete Section I of this bill and pass Section II.

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

From: mailinglist@capitol.hawaii.gov

Sent: Wednesday, February 8, 2017 10:05 AM

**To:** pbstestimony

**Cc:** cashirota808@gmail.com

Subject:Submitted testimony for HB464 on Feb 9, 2017 10:00AMAttachments:ABA Journal Court Systems Rethink the Use of Bail.docx

# <u>HB464</u>

Submitted on: 2/8/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted By	Organization	Testifier Position Present at He		rganization Testifier Position Present at	
Carrie Ann Shirota	Individual	Oppose	No		

Comments: Dear Chair, Vice Chair and Members of the Committee: Hawai`i continues to be an outlier when it comes to criminal justice reform. Although Hawai`i was selected as a Justice Reinvestment Iniative site, our three branches of government have not fully implemented the JRI recommendations that would reduce the incarcerated population in Hawai`i. This proposed bill goes against evidence based research recommending comprehensive BAIL REFORM. The American Bar Association, criminal justice think tanks such as the Vera Institute and even Harvard Law School support comprehensive BAIL REFORM. (Please see attached articles from the ABA and New Jersey, outlining their efforts of bail reform). Our current bail system unfairly targets poor people. It is outdated, does little to ensure public safety, and benefits the BAIL INDUSTRY. Who foots the bill for our current BAIL SYSTEM? Taxpayers. Data in Hawai`i shows that the implosion in our incarcerated population, is in large part, comprised of our PRE-TRIAL POPULATION. As you know, persons under this legal status, have been accused, but NOT CONVICTED of any crimes. This bill strengthens, rather than reforms, the BAIL SYSTEM. Please reconsider this bill, as drafted, and instead, allow for COMPREHENSIVE BAIL REFORM. Mahalo

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

From: mailinglist@capitol.hawaii.gov

**Sent:** Wednesday, February 8, 2017 11:21 AM

**To:** pbstestimony

**Cc:** rkailianu57@gmail.com

**Subject:** \*Submitted testimony for HB464 on Feb 9, 2017 10:00AM\*

# **HB464**

Submitted on: 2/8/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted By	Organization	Testifier Position Present at He	
Rachel L. Kailianu	Individual	Support	Yes

#### Comments:

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

# lopresti1 - Randy

From: mailinglist@capitol.hawaii.gov

**Sent:** Wednesday, February 8, 2017 4:41 PM

**To:** pbstestimony

Cc: lady.flach@gmail.com

**Subject:** Submitted testimony for HB464 on Feb 9, 2017 10:00AM

# **HB464**

Submitted on: 2/8/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted By	Organization	<b>Testifier Position</b>	Present at Hearing
Teri Heede	Individual	Oppose	No

Comments: If this bill eliminated Section 1 and only contained Sections 2 and 3, I could support the bill.

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

# lopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 9, 2017 2:52 AM

**To:** pbstestimony

**Cc:** blawaiianlvr@icloud.com

**Subject:** \*Submitted testimony for HB464 on Feb 9, 2017 10:00Al



# **HB464**

Submitted on: 2/9/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted By	Organization	<b>Testifier Position</b>	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

#### Comments:

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

From: mailinglist@capitol.hawaii.gov

**Sent:** Wednesday, February 8, 2017 10:30 PM

**To:** pbstestimony

**Cc:** rkailianu57@gmail.com

**Subject:** \*Submitted testimony for HB464 on Feb 9, 2017 10:00AM\*



### **HB464**

Submitted on: 2/8/2017

Testimony for PBS on Feb 9, 2017 10:00AM in Conference Room 312

Submitted By		Organization	Testifier Position Present at He	
Rachel L. Kailianu		Individual	Support	Yes

#### Comments:

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.