DAVID Y. IG
GOVERNO

LATE

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON HOUSE BILL 2221
RELATING TO PRETRIAL RELEASE
by
Nolan P. Espinda, Director
Department of Public Safety

House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018; 10:00 a.m.
State Capitol, Conference Room 312

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

The Department of Public Safety (PSD) appreciates the intent of Senate Bill (SB) 2860, which would require the courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Under the bill, the Judiciary would also be required to establish a statewide court appearance reminder system, as well as, requirements for any pretrial risk assessment tool used by the Judiciary.

PSD respectfully declines to comment on the measure and suggests, instead, that these matters be considered following receipt of the report of the HCR 134 Task Force in January 2019.

Thank you for the opportunity to testify.

The Judiciary, State of Hawai'i

Testimony to the House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018 10:00 AM
State Capitol, Conference Room 229

By
The Honorable Rom A. Trader
Chair
Criminal Pretrial Task Force

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2221, Relating to the Pretrial Release.

Purpose: Requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Requires the Judiciary to establish statewide court appearance reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 2221 and respectfully suggests that the Committee defer consideration of criminal pretrial procedures until receiving the report of the Criminal Pretrial Task Force (HCR 134 Task Force) no later than twenty days prior to the 2019 Regular Session of the Legislature.

The HCR 134 Task Force was convened in August 2017 pursuant to 2017 House Concurrent Resolution Number 134, House Draft 1, Requesting the Judiciary to Convene a Task Force to Examine and Make Recommendations Regarding Criminal Pretrial Practices and Procedures to Maximize Public Safety, Maximize Court Appearances, and Maximize Pretrial Release of the Accused and Presumed Innocent (HCR 134). (Attachment A) The Judiciary supported HCR 134, noting that "[p]articularly in recent years, a growing number of states and localities have reconsidered criminal pretrial release practices and have undergone reforms to increase—indeed, maximize—public safety, court appearances, and pretrial release."

Chief Justice Mark E. Recktenwald appointed the current Criminal Pretrial Task Force (HCR134 Task Force), comprised of 31 members representing County and State agencies involved in criminal pretrial procedures. A list of Task Force members and affiliations is also attached.

As directed in HCR 134, the HCR 134 Task Force is scheduled to submit its report of findings and recommendations, including any proposed legislation, to the Legislative Reference Bureau no later than August 1, 2018, with the report to be finalized for submission to the Legislature prior to the 2019 Regular Session.

Chaired by First Circuit Judge Rom A. Trader, the Task Force has begun study and deliberations to address issues named in HCR 134: (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and (2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals.

Following presentations on national and state pretrial procedures and a public comment session, Judge Trader appointed six subcommittees, with a mix of stakeholders on each subcommittee. Subcommittees are currently conducting further study in their respective subject areas:

1. Arrest/Booking Subcommittee
2. Jail Screening and Intake Assessment Subcommittee
3. Prosecutorial Decision-Making & Discretion Subcommittee
4. Initial Appearance / Defense Counsel Subcommittee
5. Pretrial Services - Risk Assessment / Supervision Subcommittee (Pretrial Services Operations)
6. Judicial Release & Detention Decision-Making Subcommittee

The Judiciary and the HCR 134 Task Force will reserve comments on proposed changes to current pretrial procedures until after the Task Force Report is submitted in December 2018.

In the event this bill moves forward, the Judiciary respectfully requests a delayed effective date to allow the Judiciary additional time to make modifications to the Judiciary's Information Management System (JIMS) to satisfy the basic requirements of this bill which are currently not available, and to determine the funding for vendor services necessary for these changes.

Thank you for the opportunity to testify on this measure.

HCR134 Task Force Members:

Judge Rom A. Trader, Circuit Court, First Circuit, Chair
Judge Shirley Kawamura, Circuit Court, First Circuit, Recorder
William C. Bagasol, Supervising Deputy, Office of the Public Defender
Myles S. Breiner, Hawai‘i Association of Criminal Defense Lawyers - Honolulu
Michael Champion, M.D., State Department of Health
Craig A. De Costa, Hawai‘i Association of Criminal Defense Lawyers - Kaua‘i
Chief Tivoli S. Faaumu, Maui County Police Department
Chief Paul K. Ferreira, Hawai‘i County Police Department
Janice Futa, Office of the Prosecuting Attorney, City & County of Honolulu
Judge Colette Y. Garibaldi, Circuit Court, Admin. Judge, Criminal Division, First Circuit
Wendy Hudson, Hawai‘i Association of Criminal Defense Lawyers - Maui
John D. Kim, Maui County Prosecuting Attorney
Justin Kollar, Prosecuting Attorney, County of Kaua‘i
Milton Kotsubo, Public Member
Judge Rhonda I. L. Loo, Circuit Court, Second Circuit
Kamaile Maldonaldo, Office of Hawaiian Affairs
Brook Mamizuka, Intake Administrator, Adult Client Services Branch, First Circuit
Deputy Chief John McCarthy, Honolulu Police Department
Judge Greg K. Nakamura, Circuit Court / Chief Judge, Third Circuit
Senator Clarence K. Nishihara, State Senate, Public Safety Committee Chair
Representative Scott Y. Nishimoto, House of Representatives, Judiciary Comm. Chair
Shelley D. Nobriga, Intake Service Center, PSD
Lester Oshiro, Chief Court Administrator, Third Circuit
Chief Darryl D. Perry, Kaua‘i County Police Dept.
Michelle M.L. Puu, Deputy Attorney General, Dept. of the Attorney General
Deputy Chief Victor Ramos, Maui County Police Department
Mitchell D. Roth, Prosecuting Attorney, County of Hawai‘i
Judge Michael K. Soong, District Court, Fifth Circuit
Kari Yamashiro, Deputy Chief Court Administrator, Fifth Circuit
Marsha Yamada, Deputy Chief Court Administrator, Second Circuit
Michael S. Zola, Hawai‘i Association of Criminal Defense Lawyers - Hawai‘i Island

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

H.C.R. NO. 134 H.D. 1

HOUSE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING CRIMINAL PRETRIAL PRACTICES AND PROCEDURES TO MAXIMIZE PUBLIC SAFETY, MAXIMIZE COURT APPEARANCES, AND MAXIMIZE PRETRIAL RELEASE OF THE ACCUSED AND PRESUMED INNOCENT.

WHEREAS, the United States Supreme Court declared in *United States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our society, liberty is the norm, and detention prior to or without trial is the carefully limited exception"; and

WHEREAS, Article I, section 12, of the Hawaii State Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed", and further provides, "The court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment"; and

WHEREAS, section 804-9, Hawaii Revised Statutes, provides that "[t]he amount of bail rests in the discretion of the justice or judge or the officers named in section 804-5; but 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. In all cases, the officer letting to bail should consider the punishment to be inflicted on conviction, and the pecuniary circumstances of the party accused"; and

WHEREAS, House Concurrent Resolution No. 85 (2016) requested that the Chief Justice establish a task force to study effective incarceration policies; and

WHEREAS, the Chief Justice has established the task force, which issued an interim report in December 2016, in which it

Attachment A

proclaimed, "Hawaii must chart a new course and transition from a punitive to a rehabilitative correctional model"; and

WHEREAS, the task force has referenced a Vera Institute of Justice conclusion that "just a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter - making jail a gateway to deeper and more lasting involvement in the criminal justice system at considerable costs to the people involved and to society at large"; and

WHEREAS, the American Bar Association Criminal Justice Section Standards for Criminal Justice: Pretrial Release sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person", and financial conditions "should not be employed to respond to concerns for public safety", nor should financial conditions result "in the pretrial detention of the defendant solely due to an inability to pay"; and

WHEREAS, the American Council of Chief Defenders Policy Statement on Fair and Effective Pretrial Justice Practices (June 4, 2011) explains standards that "require public defenders to present judicial officers with the facts and legal criteria to support release, and where release is not obtained, to pursue modification of the conditions of release"; and

WHEREAS, the National District Attorneys Association's National Prosecution Standards, Third Edition, with Revised Commentary, provides that "[a] prosecutor should not seek a bail amount or other release conditions that are greater than necessary to ensure the safety of others and the community and to ensure the appearance of the defendant at trial" and "[t]hese provisions recognize a respect for the presumption of innocence and therefore state a clear preference for release of defendants pending trial"; and

WHEREAS, research suggests that pretrial services should include adequate and timely pretrial assessments of the accused that are focused on assessing risk of not appearing and risk to

public safety, and that the criminal justice system include viable options of appropriate supervision for different types and levels of risks; and

WHEREAS, in recent years, several other states have undertaken significant reforms to their criminal pretrial practices and procedures, including Alaska, Arizona, Colorado, Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah; and

WHEREAS, the Hawaii State Bar Association, through its Judicial Administration Committee, conducted a Criminal Law Forum in September 2016, during which it thoroughly discussed criminal pretrial issues among a diverse group of judges, prosecutors, and criminal defense attorneys, and featured speakers from the Honolulu Police Department, Intake Service Center of the Department of Public Safety, National Institute of Corrections, United States Pretrial Services Office of the District of Hawaii, and Arizona Administrative Office of the Courts; and

WHEREAS, the Judicial Administration Committee recommended establishment of a criminal pretrial task force to examine and make recommendations regarding criminal pretrial practices and procedures; and

WHEREAS, an examination of potential revisions to criminal pretrial practices, procedures, and laws would improve public safety while protecting state and federal constitutional principles regarding the presumption of innocence, liberty, and right to non-excessive bail, and lower costs throughout the criminal justice system; and

WHEREAS, the task force will make recommendations regarding the future of a jail facility on Oahu and best practices for pretrial release, and any such recommendations should be considered by or coordinated with the Criminal Pretrial Task Force; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017, the Senate concurring, that the Judiciary is requested to convene a Criminal Pretrial Task Force to:

(1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and

(2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals; and

BE IT FURTHER RESOLVED that the task force be comprised of members that represent the various perspectives of public officials with significant roles in the criminal pretrial system and include:

(1) The Chief Justice or the Chief Justice's designee, who shall serve as the chairperson of the task force;

(2) A judicial officer representative of each Circuit Court;

(3) A member of the House of Representatives, appointed by the Speaker of the House of Representatives;

(4) A member of the Senate, appointed by the President of the Senate;

(5) A court administrator representative of each Circuit Court;

(6) A representative of the Department of the Attorney General;

(7) A representative from one of the various Intake Services Center of the Department of Public Safety;

(8) A representative of the Prosecuting Attorney's Office of each county;

(9) A representative of the Office of the Public Defender for the State of Hawaii;

(10) Four representatives appointed by the Hawaii Association of Criminal Defense Lawyers, including one representative from each county;

(11) A representative of each county police department;

(12) A representative of the Department of Health;

(13) The Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, or the Chairperson's designee; and

(14) A member of the public who has knowledge and expertise with the criminal pretrial system appointed by the Director of Public Safety; and

BE IT FURTHER RESOLVED that no member be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the task force; and

BE IT FURTHER RESOLVED that the Judiciary and the Department of Public Safety are requested to provide administrative support to the task force; and

BE IT FURTHER RESOLVED that the task force, with the assistance of the Legislative Reference Bureau, is requested to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2019; and

BE IT FURTHER RESOLVED that, upon request of the task force, the Legislative Reference Bureau is requested to assist in the preparation of the report; provided that the task force submits a draft, including any other information and materials deemed necessary by the Bureau, to the Bureau no later than August 1, 2018, for the preparation of the report; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chief Justice of the Hawaii Supreme Court, Attorney General, Public Defender of the State of Hawaii, Director of Health, Director of Public Safety, Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, Chief of Police of each county police department,

Prosecuting Attorney of each county, and the Hawaii Association of Criminal Defense Lawyers.

HB-2221
Submitted on: 1/30/2018 7:37:15 AM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Maui Police Department	Oppose	No

Comments:

Allow time for HCR 134 Task Members to prpvode their assessment so the data can be reviewed.

HB-2221
Submitted on: 1/31/2018 9:52:26 AM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Oppose	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES HB 2221, Relating to Pretrial Release. The Department believes that this measure is premature because the task force formed pursuant to HCR 134 is still working on its report, which is due twenty days prior to the 2019 regular session. The findings and recommendations of the task force should be considered prior to taking any action on the issue of pretrial relase. Accordingly, the Department requests that this measure be HELD.

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

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY

655 KĪLAUEA AVENUE
HILO, HAWAIʻI 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAIʻI UNIT
81-980 HALEKIʻI ST, SUITE 150
KEALAKEKUA , HAWAIʻI 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION OF HOUSE BILL 2221

RELATING TO PRETRIAL RELEASE

COMMITTEE ON PUBLIC SAFETY
Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair

Thursday January 25, 2018, 10:00 A.M..
State Capitol, Conference Room 312

Honorable Chair Takayama, Vice-Chair Gates and Members of the Committee on Public Safety. The Office of the Prosecuting Attorney, County of Hawai‘i submits the following testimony in Strong Opposition of House Bill No. 2221.

The purpose of H.B. 2221 is to reduce the amount of people incarcerated prior to trial by requiring courts to order persons charged with a criminal offense to be release on personal recognizance or on the execution of an unsecured bond.

When compared with the rest of the nation, Hawaii has one of the lowest, if not the lowest, pretrial populations per capita in the country. This Bill addresses a symptom of the problem, but fails to address the problem itself, which is a lack of judicial resources and defendant continuances which together delay trials.

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 criminal cases, S.B 2221 proposes a system, which removes any incentive or obligation for a defendant to return to court as well as fails to take into account the risk and danger to the community.

The 2017 Legislature passed House Concurrent Resolution 134 which tasked the Judiciary to convene a task force to “examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures.” The task force was comprised of numerous stakeholders. It was further resolved that this task force was to submit a report of its findings and recommendations, including any proposed legislation no later than twenty days prior to the convening of the Regular Session of 2019. To date, this task force has met once a month since August of 2017, and anticipates to do so until August of 2018, at which time a report of their findings will be submitted. Implementation of H.B. 2221 is premature as the Task Force has not completed its report.

For the above stated reasons, the Office of the Prosecuting Attorney, County of Hawai‘i Opposes the passage of House Bill No. 2221. Thank you for the opportunity to testify on this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

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

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i

February 1, 2018

RE: H.B. 2221; RELATING TO PRETRIAL RELEASE.

Chair Takayama, Vice-Chair Gates, 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 of H.B. 2221.

The purpose of this bill is to reduce the community correctional centers population by releasing defendants awaiting trial for felony, misdemeanor and petty misdemeanor offenses. In addition, it seeks to establish procedures for any pretrial risk assessment tools and to create a statewide court appearance reminder system for criminal cases.

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 criminal cases, H.B. 2221 proposes a system, which removes any incentive or obligation for a defendant to return to court as well as fails to take into account the risks and dangers to the community. The passage of H.B. 2221 would create the unintended consequence of potentially releasing defendants charged with serious and violent offenses including but not limited to murder in the first and second degree (§707-701 and §707-701.5, H.R.S.), manslaughter (§707-702, H.R.S.), sex assault (§707-730, §707-731, §707-732 and §707-733, H.R.S.), and abuse of a family or household member (§709-906, H.R.S.).

In addition, with the passage of House Concurrent Resolution 134 during the 2017 Legislative Session, the proposed amendments established in H.B. 2221 are premature. H.C.R. 134 tasked the Judiciary to convene a task force to "examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures." The task force was comprised of numerous stakeholders including but not limited to a member from the House and

Senate, Department of the Attorney General, Department of the Judiciary, Prosecuting Attorney's from each county, Public Defender's Office, representatives from the Association of the Criminal Defense Lawyers, Department of Health and the Honolulu Police Department. It was further resolved that this task force was to submit a report of its findings and recommendations, including any proposed legislation no later than twenty days prior to the convening of the Regular Session of 2019. To date, this task force has met once a month since August of 2017, and anticipates to do so until August of 2018, at which time a report of their findings will be submitted. Due to H.C.R. 134, our Department believes that implementation of H.B. 2221 is premature and that it be necessary to await the report completed by the task force.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 2221. Thank you for the opportunity to testify on this matter.

ACLU Hawai'i

Committee:	Committee on Public Safety
Hearing Date/Time:	Thursday, February 1, 2018, 10:00 a.m.
Place:	Conference Room 312
Re:	*Testimony of the ACLU of Hawai'i with comments concerning H.B. 2221, Relating to Pretrial Release*

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

The American Civil Liberties Union of Hawai'i writes to **support with amendments** H.B. 2221, which addresses fundamental, constitutional flaws with the current bail system in Hawai'i. H.B. 2221: 1) enacts a statutory presumption that individuals charged with a bailable offense be released on their own recognizance or unsecured bond unless the court makes the determination explained in a written order that the individual is unlikely to appear at trial; 2) requires the implementation of a court appearance reminder system; 3) prohibits the use of bail schedules and the ordering of substance abuse treatment or testing for those who have not been charged with a drug-related crime; and 4) establishes minimum standards for any adoption and use of pretrial risk assessment tools.

Pretrial incarceration is one of the major drivers of overcrowding in Hawaii's jails. Currently, around 1,100 men and women in Hawai'i – around half of the individuals jailed in Hawaii's correctional facilities – have not been convicted of any crime and are merely awaiting trial, most often because they cannot afford the amount of bail set in their case.[1]

To better understand why so many people, who are innocent in the eyes of the law, are being jailed pretrial in Hawaii's jails, the ACLU of Hawai'i recently conducted an in-depth study of the state's bail setting practices. Our study reviewed all cases filed between January and June 2017 (about 2,000 cases) on the circuit court's electronic filing system, e*court Kokua. The findings were unsurprising, but still shocking.

Our research revealed that circuit courts heavily rely on the use of money bail to secure court appearances instead of individualizing the process. The ACLU of Hawai'i found that circuit courts set financial conditions to release in 88% of the cases in our study, meaning that other forms of bail such as release on recognizance or supervised release were rarely assigned even if these options were more appropriate for arrestees. Moreover, the courts assigned bail at amounts without regard to an individual's financial circumstances but rather solely based on the crime charged. Indeed, the average bail amount on Oahu for a single class C felony was over $20,000. This is despite the lack of any serious inquiry into someone's ability to pay or specific risks of flight or danger to the community. Given these large amounts, it was not a surprise when we

[1] State of Hawai'i Dep't of Pub. Safety, End of Month Population Report (Dec. 31, 2017).

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

learned that only 44% of arrestees had been able to post bail at the time of our study. By enacting a statutory presumption of release on recognizance or unsecured bond, while also placing the burden on the State to show the court with clear and convincing evidence why more conditions, non-financial or financial, are necessary, courts will be required to further honor an individual's due process rights by treating liberty as the norm, and detention the exception as required by the U.S. and Hawai'i constitutions.[2] Additionally, by requiring courts to document in writing the reasons for additional conditions of release, we will be ensuring that courts are not treating bail hearings as perfunctory routines, but rather as a carefully considered and individualized process.

The ACLU of Hawaii's recommended changes extend these same statutory and due process protections to not only those who pose a flight risk but also to those who may be a threat to public safety. At the same time, our recommendations maintain the court's discretion to deny bail when deemed appropriate based on individualized and specific risks.

Our findings also showed that courts fail to individualize the bail setting process as required by the U.S. Constitution and Hawai'i Revised Statutes. This is because courts routinely fix bail based on the charge-based amounts as set by the guidelines adopted by the circuit courts, or by setting blanket and inappropriate conditions of release. The Supreme Court of Hawai'i has found the use of bail schedules to be an abuse of judicial discretion and beyond the scope of legislative authority.[3] Nevertheless, courts rely heavily on them. For example, we found that on Oahu, judges set bail at either $11,000 or $15,000 for 125 arrestees charged with a single class C felony out of 243. That is over 51% of the time. By placing a statutory ban on bail schedules, H.B. 2221 would preserve judicial discretion in the bail setting process while also honoring the language of Section 804-9, which requires considering one's ability to pay and not rendering the right to bail "useless to the poor."[4] Additionally, by limiting the assignment of substance abuse testing and treatment to only those who have been charged with a drug-related crime and who are deemed in

---

[2] *US v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."). *See also Huihui v. Shimoda*, 62 Haw. 527, 532 (holding that not allowing individualized inquiries violates the due process clause of the Fourteenth Amendment of the U.S. Constitution and Art. 1 § 12 of the Hawai'i Constitution).

[3] *Pelekai v. White*, 75 Haw. 357, 367 (1993) ("In striking down the sentencing guidelines [in *State v. Nunes*, 72 Haw. 521, 824 (1992)], we held that where the legislature vested the trial courts with discretion to impose a sentence, rigidly adhering to sentencing guidelines promulgated without legislative authority was an abuse of discretion. . . . Like the trial judge in *Nunes*, the trial judge in the instant case had the discretion to reset bail. . . . By rigidly following the Bail Schedule, the trial judge substituted the Bail Schedule for the discretion vested in her [in HRS § 804-5], and in doing so, abused her discretion.")

[4] Haw. Rev. Stat. § 804-9 ("The amount of bail . . . 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. In all cases, the officer letting to bail should consider the punishment to be inflicted on conviction, and the pecuniary circumstances of the party accused.").

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

need of such treatment, the courts can ensure that the assignment of bail is further individualized and only as restrictive as reasonably necessary to ensure court appearance and public safety.

Finally, H.B. 2221 addresses some of the deep concerns the ACLU of Hawai'i has with the current risk assessment process in bail determinations. Risk assessment tools are often imperfect measurements of risk, and even the most well-crafted tools can raise serious due process and equal protection concerns if not properly or consistently implemented. The ACLU of Hawai'i cautions the courts against using risk assessment tools at all during bail determinations. If, however, a tool is to be used, the ACLU of Hawai'i believes that the standards established in H.B. 2221 for risk assessment tools can aid in lessening the problematic effects these tools can have on the bail setting process. For example, by requiring the entire completed risk assessment tool to be provided in Intake Services' bail report, the parties can have a better understanding of the arrestee's circumstances, leading to a more individualized bail setting process that addresses an individual's specific risks.

For these reasons, the ACLU of Hawai'i supports H.B. 2221, with our proposed amendments.[5] Hawaii's pretrial system is ripe for reform. With the passage of H.B. 2221 and our proposed amendments, the state of Hawai'i can begin to address overcrowding in its jails while also making it a more individualized system that is in line with constitutional and fairness principles. This can be done without compromising public safety, just as many other states have been doing with positive results on the mainland.[6]

Thank you for the opportunity to testify.

Sincerely,

Ainsley C. Dowling

Ainsley Dowling
Legal Fellow
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 over 50 years.

---

[5] *See* Appendix. Included in the Appendix are only those sections of the bill for which the ACLU of Hawai'i would like to amend, with changes highlighted in yellow. If a section of the bill is not included in the Appendix, it means that the ACLU of Hawai'i supports the section as written.

[6] *See* Pretrial Justice Inst., *Where Pretrial Improvements are Happening* (October 2017).

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Appendix

Recommended changes:

SECTION 2. Chapter 601, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§601- Risk Assessment.** (a) Any risk assessment tool used by the judiciary in determining whether to release a person pursuant to chapter 804, shall:

(1) Be locally validated and regularly revalidated to assess the tool's appropriateness for Hawaii and to evaluate its impact on racial and ethnic disparities;

(2) Have minimal or no impact on racial and ethnic disparities;

(3) Be transparent about the data collected and scoring system;

(4) Not replaced individualized determinations of release;

(5) Clearly and unequivocally define the risk factors and assessment terms used to ensure consistent evaluation and, if possible, distinguish between willful and non-willful failures to appear and between arrests for acts that pose a danger to the community and those that do not;

(6) Separate all risk factors and assessments;

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

(7) Provide statistical analysis for comparisons between similarly situated persons;

(8) If possible, avoid using a person's likelihood of future arrest as a basis for establishing dangerousness; and

(9) Be subject to independent and community review, including review by researchers and stakeholders who do not have proprietary interests in the tool's success.

SECTION 4. Section 804-3, Hawaii Revised Statutes, is amended to read as follows:

Section 804-3 Pretrial release; bailable offenses.

(a) For purposes of this section, "serious crime" means murder or attempted murder in the first degree, murder or attempted murder in the second degree, or a class A or class B felony, except forgery in the first degree and failing to render aid under section 291c-12, and "bail" includes release on one's own recognizance, supervised release, conditional release, and unsecured bonds.

(b) Any person charged with a criminal offense shall be ordered released by a court of competent jurisdiction on the person's personal recognizance or on the execution of an unsecured bond, unless, upon motion by the State, the court

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

determines by clear and convincing evidence that unconditional release will not reasonably assure the appearance of the person when required or the safety of any other person or community, provided that bail may be denied where the charge is for a serious crime, and:

(1) There is serious risk that the person will flee;

(2) There is a serious risk that the person will obstruct or attempt to obstruct justice or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;

(3) There is a serious risk that the person poses a danger to any person or the community; or

(4) There is a serious risk that the person will engage in illegal activity.

The State shall bear the burden of proof of establishing that release will not reasonably assure the appearance of the person when required or the safety of any other person or community. The court shall issue a written order documenting its reasons for denying any person's release under this subsection.

(c) If, after a hearing the court finds that the release described in subsection (b) will not reasonably assure the

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

appearance of the person when required or the safety of any other person or community, the court may order the release of the person subject to any of the conditions authorized under section 804-7.1.

(d) If, after a hearing the court finds that the release described in subsection (b) or (c) will not reasonably assure the appearance of the person when required or the safety of another person or community, the person shall be bailable by sufficient sureties.

(e) If, after a hearing the court finds that no condition or combination of conditions will reasonably assure the appearance of the person when required or that release will not reasonably assure the safety of any other person or community, bail may be denied pursuant to subsection (b). ~~For purposes of this subsection, "bail" includes release on one's own recognizance, supervised release, an conditional release.~~

(f) Defendants charged with a bailable offense may appeal the court's pretrial bail decisions. The appeal shall be heard in an expedited manner. The defendant's assigned bail by the court shall remain pending the disposition of the appeal.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

SECTION 5. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

Section 804-7.1 Conditions of release on bail, recognizance, or supervised release.

(b) Upon the defendant's release on bail, recognizance, or supervised release, [~~however,~~] the court may enter an order:

(1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;

(2) Prohibiting the defendant from going to certain described geographical areas or premises;

(3) Prohibiting the defendant from possessing any dangerous weapons, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;

(4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;

(5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an education or vocational institution;

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

(6) Requiring the defendant to comply with a specified curfew;

(7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;

(8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;

(9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community;

(10) Requiring the defendant receive court notifications from Intake Services by either phone-call, text message, or mail reminding the defendant of upcoming court dates; or

(11) Imposing any combination of conditions listed above[~~.~~];

provided that any condition(s) be imposed at no cost to the defendant and provided that no defendant shall be required to

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

submit to substance abuse testing or treatment as a condition for release unless the court finds that such testing and treatment is necessary and the defendant is charged with a crime involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, methamphetamine trafficking as provided in section 712-1240.7, or involving possession or use of drug paraphernalia under section 329-43.5; provided further that the court shall order the least restrictive condition or combination of conditions that the court determines will reasonably assure the appearance of the defendant when required or the safety of any other person or community.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

HB-2221
Submitted on: 1/29/2018 5:42:03 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	No

Comments:

This is a significant proposal that could go a long way towards reforming our penal system in Hawaii. While the issue extends beyond those individuals with mental illness our focus is on that and unfortunately they do comprise a fairly high percentage of the pretrial inmates.Many of these individuals are arrested for relatively minor offenses and are held as pretrial detainees simply because they cannot post bond.While they are incarcerated their mental health can deteriorate. In reality they pose little risk of flight which is what the purpose of bail was intended to be. It makes no sense and serves no purpose to house these individuals for months on end while they are awaiting trial. If they are ultimately convicted and sentenced then so be it.However, in the meantime it is a waste of resources to the state to keep them there and it is an infringement on their liberty to be held simply because they are to poor to have the resources needed for the bail. Our facility at OCCC is particularly overcrowded and it would be a smart move for the state to seriously consider if it makes any financial sense to clog up the prison with individuals who do not a pose a risk of not appearing for Court or any danger to the community.

ADA HAWAI'I
AMERICANS FOR DEMOCRATIC ACTION

OFFICERS

John Bickel, President
Alan Burdick, Vice President
Marsha Schweitzer, Treasurer
Karin Gill, Secretary

DIRECTORS

Guy Archer
Julieet Begley
Gloria Borland
Chuck Huxel
Jan Lubin
Jenny Nomura
Stephen O'Harrow
Doug Pyle
Cameron Sato
George Simson

MAILING ADDRESS

PO. Box 23404
Honolulu
Hawai'i 96823

January 30 , 2018

TO: Honorable Chair Takayama and Members of Public Safety Committee

RE: HB 2221 Relating to Pretrial Release

Support for hearing on Feb 1

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 2221 as it requires courts to release a person charged with a crime without monetary bail except for certain riskier circumstances. Pretrial felons compose more than a third of OCCC population. We could save a lot of money by releasing many of these who are often not a flight risk.

Thank you for your favorable consideration.

Sincerely,

John Bickel
President

the Drug Policy Forum of hawai'i

Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: House Committee on Public Safety
FROM: Carl Bergquist, Executive Director
HEARING DATE: 1 February 2018, 10AM
RE: HB2221, Relating to Pretrial Release, **SUPPORT**

Dear Chair Takayama, Vice Chair Gates, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to reform Hawaii's bail system. As we work together to reduce our prison population by reforming our laws, e.g. drug paraphernalia reform as enacted in 2017 and investing in pre-arrest diversion programs like LEAD (Law Enforcement Assisted Diversion) and efforts like the Community Outreach Court, it is crucial that we make fundamental reforms to the bail system. With our cash bail system, posting bail is out of the reach for many who are in no way, shape or form threats to public safety. In fact, keeping such offenders detained awaiting trial will cost society not just due to the daily $160 bed expense, but also due to the impact on families when a job is lost and housing or a vehicle is lost. This reform is also essential due to its obvious impact on plans to build a new prison here on Oahu.

We are very open to many of the amendments proposed by the ACLU of Hawai'i, the Community Alliance on Prisons and others. In addition, we would like to flag the proposed drug tests as onerous and overbroad (section 5 – revising HRS §804-7.1 to require drug tests as a condition for anyone being released on bail pursuant to the changes in this bill *if charged* with a drug offense). Reducing court mandated drug testing is good, but singling out drug users for possible testing has proven no more effective than requiring it for any other class of offender. A March 2017 paper by law professors Megan Stevenson and Sandra Mayson highlights that not a single randomly controlled study has shown that drug testing leads to a greater propensity to appear in court for a scheduled hearing.

It is particularly curious to see drug paraphernalia, which the legislature just decriminalized and cannabis ("marijuana",) a petty misdemeanor, listed here. We would suggest stripping this language, and further amending §804-7.1 to only allow drug testing in exceptional circumstances. **Thank you for the opportunity to testify**.

P.O. Box 83, Honolulu, HI 96810-0083 Phone: 808-518-3213 Email: info@dpfhi.org
Website: www.dpfhi.org

eliminating racism
empowering women
ywca
O'ahu

Fernhurst YWCA
1566 Wilder Avenue
Honolulu, Hawai'i 96822
808.941.2231

Kokokahi YWCA
45-035 Kāne'ohe Bay Drive
Kāne'ohe, Hawai'i 96744
808.247.2124

Laniākea YWCA
1040 Richards Street
Honolulu, Hawai'i 96813
808.538.7061

ywcaoahu.org

To: Hawaii State House Committee on Public Safety

Hearing Date/Time: Thursday, February 1, 2018, 10:00AM
Hawaii State Capitol, Rm. 312

Position Statement Supporting House Bill 2221

Thank you Chair Takayama, Vice Chair Gates, and committee members,

The YWCA O'ahu **supports House Bill 2221**, which would make progressive reforms to our pretrial system.

Women are a much smaller percentage of our pretrial population but the current system creates a disparate impact on them. Due to the wage gap and the likelihood of caring for children, women are less financially able to afford high bail amounts. The median income for a woman in jail prior to incarceration was just $11,071[1]. Spending even two days in jail has negative impacts on a person's life by reducing their economic viability and potentially causing eviction and loss of employment[2].

The recommendations proposed in HB 2221 make meaningful steps to correct our pretrial system and improve our communities. While we wait for the findings of the Pretrial Taskforce, HB 2221 gives concrete actions that can be taken now. For these reasons, the YWCA O'ahu **respectfully requests that this committee report favorably on House Bill 2221.**

Thank you for the opportunity to testify and for your consideration on this matter.

Kathleen Algire
Director, Public Policy and Advocacy
YWCA O'ahu

[1] Prison Policy Institute, *Detaining the poor*, 2016. https://www.prisonpolicy.org/reports/incomejails.html
[2] Vera Institute of Justice, *Incarceration's front door: The misuse of jails in America.* 2015. https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america

DOMESTIC VIOLENCE ACTION CENTER

TO: Chair Takayama
Vice Chair Gates
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Comments in Relation to HB2221, Relating to PreTrial Release

Aloha. This is a very important Bill for victims of domestic violence. The community and agents of law enforcement, and criminal justice system often underestimate the risk and the danger faced by victims of domestic violence. We are grateful that domestic violence is included as a crime of violence that prevents release on recognizance (or an unsecured bond). This testimony is to underscore the importance of the system's commitment to effective assessment and reliable implementation of efforts to keep perpetrators of domestic violence away from those they have most access to and the singular intention to harming again.

For the many cases that are pled down to harassment (?) and assault in the third degree, the defendants fall outside the category of defendants who have been arrested or convicted for abuse of family or household members (as defined in 709-906). For all those abusers who are not arrested, or have a warning citation issued to them, they are not any less of a threat or a danger to their partners. We cannot overstate the imperative for law enforcement and criminal justice system to understand that amendments to statute like this, potentially impacts their work addressing domestic violence. The lack of an arrest, or the plea bargains arrived at by the prosecutor's office place victims at continual risk of more harm, injury and terror.

There are countless women whose safety may be preserved as a result of this legislation. These are not perceived or imagined threats to survivor's safety. At the Domestic Violence Action Center we see countless examples of system ineffectiveness that terrorizes and injures the agency's clients and many other victims of intimate partner violence.

This testimony is provided to your committee to respectfully consider the broadest approach to supporting victim's needs for effective system response to their complex and potentially fatal abuse.

Thank you for this opportunity to testify.

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
LEGAL HELPLINE: (808) 531-3771
TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200
WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG
EMAIL: DVAC@STOPTHEVIOLENCE.ORG

DOMESTIC VIOLENCE ACTION CENTER
ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198
LEGAL HELPLINE: (808) 531-3771
TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200
WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG
EMAIL: DVAC@STOPTHEVIOLENCE.ORG

Michael J. Kitchens
Creator & Administrator
Stolen Stuff Hawaii
91-1013 Kaiheenalu Street
Ewa Beach, HI 96706
(808) 782-7432
mikek@stolenstuffhawaii.com

January 29, 2018

Dear Mr.Chairman & Respected Committee Members,

My name is Michael Kitchens, Creator and Administrator of Stolen Stuff Hawaii (SSH). SSH is Hawaii's largest anti-crime Facebook group with over 104,000 plus vetted members and growing. The majority of our members reside on Oahu, meaning we have just under 10% of the population in our group. Our reach and influence are substantial, with members located throughout the State of Hawaii in all counties and districts. We have thousands of victims in our group who have had their peace of mind and sense of security stolen by repeat offenders.

We strongly oppose HB2221.

It is worded too broadly and does not specifically prevent the release of repeat, habitual property crime offenders. Hawaii has some of the worst property crime in the nation and the majority of property crime is considered non-violent in nature. Non-violent crimes are those crimes that do not involve the use of any force or injury to another person. The seriousness of a non-violent crime is usually measured in terms of economic damage or loss to the victim. Most non-violent crimes involve some sort of property crime such as larceny or theft.

However, just because these offenders are non-violent does not mean that they are not a danger to our community. Property crimes committed by repeat offenders are the #1 offense in our group and cause incredible trauma to those who have been victimized. Allowing them release because they are not a flight risk or because they are not considered a "danger" is a slap in the face to our members.

In a recent poll by our fully vetted, Hawaii-based members, the vote was 391 for keeping bail as is vs 43 for pre-trial risk assessment and growing. As you can see, this is a pretty clear majority.

(https://www.facebook.com/groups/stolenstuffhawaii/permalink/2027497710846231/).

We want harder, tougher laws against criminals. We want less crime in our communities. We strongly oppose this bill as well as the other similar versions being pushed in the legislature of which there are several. We advise our legislators to let other states such as New Jersey provide complete statistical

evidence on the pros and cons of on bail reformation before attempting to introduce this to our state and wreak unknown results.

Mahalo,

Michael J. Kitchens
Creator/Administrator
Stolen Stuff Hawaii
https://www.facebook.com/groups/stolenstuffhawaii/

Michael J. Kitchens

HB-2221
Submitted on: 1/29/2018 7:41:36 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brendon Heal		Oppose	No

Comments:

Legislators,

"non violent" until they become violent? Has everyone already forgot about Telma Boinville who was brutally murdered by "non violent" burglars and drug addicts? Doesn't people that get arrested get a hearing and charges, if there is actual evidence of a crime being committed, before their bail is set? That's the reason people are released "pending further investigation", there is not enough evidence to support charges! So NO, there is no constitutional RIGHT being violated by requiring someone bail to be released before trial!

Paying bail is collateral for incentive to appear in court. If they are then found not guilty then it may be returned. Judges have a job. They can set bail high, low, what ever.... Do we really need ANOTHER bureaucracy to hold a judges hand and tell him that a suspect is or is not a risk to society? Do we need one more drain on our pocketbooks, through taxation, to coddle the thieving dregs of society?

OPPOSE this bill and any bill that puts CRIMINALS ahead of citizens!

Thank you
Brendon Heal
VOTER
Ewa Beach, Hawaii

HB-2221
Submitted on: 1/29/2018 8:00:18 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darrell Tanaka	individual	Oppose	No

Comments:

you not supposed to help the criminals...you supposed to protect the innocent.

HB-2221
Submitted on: 1/29/2018 11:15:03 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Aubrey Aea		Oppose	No

Comments:

There is no statistical evidence that this has been successful in other states. We need to be tougher on criminals and this allows for further victimization to happen from repeat offenders.

HB-2221
Submitted on: 1/30/2018 12:00:21 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jason Pierce		Oppose	No

Comments:

The recent increase in crime on Oahu should direct the legislature to set more firm guidelines, not more lenient ones. If it is someone's first offense, then it is reasonable to release them on their own recognizance. If the suspect is a multiple offender, he/she should not be released into the public until their trial. We are continuing to see too many crimes, in the news and posted to social media, committed by suspects who are awaiting trial for a prior offense.

HB-2221
Submitted on: 1/30/2018 3:15:35 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Cates		Oppose	No

Comments:

The most committed crime in Hawaii is property crime; it affects everyone. As a victim of an attempted burglary in the 1st degree back in 2011, I can honestly say that I am still affected by that crime today. I was at home during the day when I found a man trying to climb into my window. Over six years later, I am still afraid to take a shower when home alone. If I am awoken by a noise in the middle of the night, I am struck with immediate panic and anxiety and cannot go back to sleep. Whenever I leave the house for more than an hour, I hide all of our electronics (iPads, laptops, cameras) before I leave. I hid all of my jewelry years ago (except my wedding ring) and it's such a pain to get to it, I just don't wear it anymore.

Just because these criminals did not commit a "violent crime", their victims still have to deal with the trauma of their actions. Do not further victimize the public by passing this bill.

Thank you,

Lisa Cates

HB-2221
Submitted on: 1/30/2018 10:04:47 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Cadiente		Oppose	No

Comments:

LATE

HB-2221
Submitted on: 1/31/2018 3:10:56 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Perruso		Support	No

Comments:

The pretrial population makes up over 40% of the pre-trial population, and we desperately need bail reform to reduce the jail population and overcrowding in Hawaii. Bail reform would allow release decisions to be made on the basis of flight risk to appears in court, NOT on whether a person is rich or poor.

LATE

Aloha Chair Takayama, Vice Chair Gates, and members of the Committee on Public Safety,

The Young Progressives Demanding Action – Hawai‘i strongly supports HB 2221. Bail reform is one of the best ways to quickly and effectively reduce the pretrial incarcerated population. Eliminating cash bail is humane, logical and brings our state policy into accordance with the Constitution, while maintaining that some arrestees may be flight risks. Creating a standarized risk-assessment tool for the judiciary to determine this risk is good policy, and establishing a statewide court appearance reminder system is especially good policy.

Mahalo,

Will Caron
Social Justice Action Committee Chair
Young Progressives Demanding Action – Hawai‘i

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018

ON THE FOLLOWING MEASURE:
H.B. NO. 2221, RELATING TO PRETRIAL RELEASE.

LATE

BEFORE THE:
HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, February 1, 2018 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Landon M.M. Murata, Deputy Attorney General

Chair Takayama and Members of the Committee:

The Department of the Attorney General ("Department") opposes this bill. The bill appears to be an attempt to repeal the portions of our current bail statutes that exist to fulfill the dual purpose of assuring the appearance of persons charged with criminal offenses and to assure the safety of our community. The Department's opposition to this bill centers on the following legal and policy issues.

From a legal standpoint, there does not appear to be any identifiable problem with the current bail statutes. The problem, if any, could more accurately be described to be with (1) the timeliness, availability, and reliability of information available to the courts in making decisions on bail, and (2) the bail amounts being set. The bill does not appear to actually address these issues, creates inconsistencies in the law that could cause confusion, and hampers the court's ability to assure the appearance of persons and the safety of our community.

From a policy standpoint, this bill reflects a radical shift in the current law regarding bail. Even under our current bail statutes, people routinely fail to appear for court. Worse, the commission of new crimes by a criminal defendant while released on bail is not unheard of. Just this past year, House Concurrent Resolution No. 134 requested that the Judiciary convene a Criminal Pretrial Task Force to "[e]xamine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedure to increase public safety while maximizing pretrial release" and to "identify

and define best practices metrics to measure the relative effectiveness of the criminal pretrial system". The draft report of the task force is not due to the Legislative Reference Bureau until August 1, 2018, and the report to the Legislature is not due until twenty days prior to the convening of the Regular Session of 2019. The Department suggests that such a radical change to the current law regarding bail should not be entertained without the assistance of the report of the task force convened pursuant to a request from the Legislature.

Thank you for the opportunity to testify on this bill.

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. Cedric Gates, Vice Chair
Thursday, February 1, 2018
10:00 am
Room 312

LATE

OPPOSE HB 2388 – HPA ADMINISTRATIVE REVIEWS

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

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the approximately 5,500 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 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 2388 clarifies circumstances under which the Hawaii Paroling Authority may grant early discharges. Provides the paroling authority with discretion when considering pardons for paroled prisoners and clarifies early discharge consideration of paroled prisoners is an administrative action, not an in-person hearing before the authority.

Community Alliance on Prisons supports the parole board considering early discharges for those individuals deemed to be reliable and trustworthy. We believe, however, that any individual whose case is being considered has the right to appear in person before the board.

Furthermore, Community Alliance on Prisons respectfully asks that

- the individual be given the right to appear before the board in person, if able, or
- the individual, if unable, can have someone appear and advocate on their behalf, or
- the individual/advocate can file a written consent for an administrative review instead

Since this bill seeks to extinguish due process rights AND it codifies the fact that HPA has been violating the law for years, Community Alliance on Prisons opposes this measure.

Community Alliance on Prisons continues to be concerned about the ineffectiveness and far-reaching impacts that mandatory minimums have played in Hawai`i's "justice" system. We understand that this is not in the "wheelhouse" of the Hawai`i Paroling Authority, however, the impacts of mandatory minimums affect them, as the impacts of mass incarceration continue to ripple throughout our communities as evidenced by lines 10-12 on Page 1 of the bill that reads: "*unless the inmate is serving any portion of a court- ordered mandatory minimum sentence or the inmate or paroled prisoner owes restitution.*"

A 2016 PEW poll found that an overwhelming number of Americans, 79%, approve of eliminating all mandatory minimums for drug cases and giving judges flexibility based on the individual cases. Again, a majority of Democrats and Republicans agree on this issue. The vast majority of poll respondents – 85 percent – also support allowing people in prison to earn time off their sentences through programs intended to reduce the chances of recidivism[1].

Regarding restitution, Community Alliance on Prisons supports making the victims of crime whole and restitution is an important part of that, however, it is not the only thing that victims need. While the spotlight is on restitution, the state does little to nothing to help prepare people who are exiting incarceration. The accumulation of fees and fines that burden a person who is exiting incarceration with no money and few resources can be overwhelming. Just finding housing and employment is daunting; having a huge number of financial obligations makes reentry seem impossible for those with no family support. This situation impacts the prospect of restitution getting paid.

The majority of parole violators are in for technical violations, NOT NEW CRIMES. From 2013-2017 .3% of parolees committed new crimes - 4 new crimes committed among 1,297 parole revocations in 4 years[2].

As of December 31, 2017, the department reported[3] that there were 542 parole violators incarcerated statewide, almost exclusively for technical violations of their parole. Parole violators comprise 11% of the total statewide population. What an incredible waste of money when most people could be better served by community-based programs that directly address their pathways to incarceration. Why do we continue doing the same thing and expect different results? Isn't that the definition of insanity?

You will never do anything in this world without courage.
It is the greatest quality of the mind next to honor.
Aristotle

[1] Real Clear Politics, by James Arkin, RCP Staff, February 11, 2016.
https://www.realclearpolitics.com/articles/2016/02/11/poll_majority_supports_prison_and_justice_reforms_129635.html

[2] Hawai`i Paroling Authority Annual Reports

[3] Department of Public Safety Population Report – December 31, 2017

LATE

HB-2221
Submitted on: 1/31/2018 10:49:03 PM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melinda Buck		Oppose	No

Comments:

LATE

HB-2221
Submitted on: 2/1/2018 12:03:11 AM
Testimony for PBS on 2/1/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tyler Jones		Support	No

Comments:

The current system is extremely unfair to low income residents. Plain and simple. This bill will help to equlize the field.

Tyler Jones

808.927.7508

HAWAI'I JUSTICE COALITION

LATE

COMMITTEE ON PUBLIC SAFETY
Rep. Gregg Takayama, Chair
Rep. Cedric Gates, Vice Chair
Thursday, February 1, 2018
10:00 am
Room 312

RE: SUPPORT – HB 2221 Pretrial Release

Dear Chair Takayama, Vice Chair Gates and Members of the Committee:

Hawai`i Justice Coalition is a grassroots education and advocacy coalition comprised of organizations and individuals united in our work to reduce the number of people incarcerated in Hawai`i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services. We believe that comprehensive criminal justice reform makes fiscal sense, and builds safe and healthy communities.

When analyzing proposed criminal justice legislation, we implore policy makers to evaluate each bill from a systems thinking approach with two overarching principles in mind:

- **Criminal justice policies, NOT crime rates, are the prime drivers of changes in jail and prison population.**
- **Other states have proven that it is possible to substantially reduce the incarcerated population, and save money, without compromising public safety.**

Based on data generated by the Council of State Government's Justice Center as part of the Justice Reinvestment Initiative in Hawai'i, the Department of Public Safety, and more recently outlined in HCR 85 Task Force's Interim Report, **pretrial incarceration is one of the major drivers of overcrowding in Hawaii's jails.**

Currently, around 1,100 men and women in Hawai'i – around half of the individuals jailed in Hawaii's correctional facilities – have not been convicted of any crime. These men and women are merely awaiting trial, most often because they are too poor to post bail, thereby thwarting the coveted principle in our legal system that a person is innocent until proven guilty.

Despite a lack of evidence that financial release options improves pretrial outcomes, we continue to relay on a bail system that creates two criminal justice systems: one for those with money, and one for those without. *See, Bail Fail: Why the U.S. should end the practice of using money for bail*, Justice Policy Institute, September 2012. And, if we look further at the demographics of "who" is locked up, study after study confirms that Native Hawaiians are overrepresented at EVERY stage of the criminal justice system. In effect, we are relying on money as a proxy for risk and race/ancestry in the pretrial process.

We support SB 2860 as it aims to directly address one of the prime drivers in the pretrial population by the doing the following:

- Enacts a statutory presumption that individuals charged with a bailable offense be released on their own recognizance or unsecured bond unless the court makes the determination explained in a written order that the individual is unlikely to appear at trial;
- Requires the implementation of a court appearance reminder system;
- Prohibits the use of bail schedules and the ordering of substance abuse treatment or testing for those who have not been charged with a drug-related crime; and
- Establishes minimum standards for any adoption and use of pretrial risk assessment tools

We concur with the amendments suggested by the ACLU of Hawai'i - as they have conducted the seminal research on this issue in Hawai'i to date.

In closing, the ACLU Report, previous Justice Reinvestment reports, and undisputed overcrowding in all our jails presents a compelling case to enact changes to improve our bail system - NOW. For these reasons, we support HB 2221 with amendments.

Sincerely,

Carrie Ann Shirota, JD
Hawai'i Justice Coalition
www.hi.justice.org
cashirota808@gmail.com

PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

LATE

Hawaii Criminal Pre-trial Taskforce Public Meeting
October 13, 2017

To whom it may concern:

My name is Beth Chapman. I Chair the Board of Directors and I am the President of the Professional Bail Agents of the United States (PBUS). I also have the good pleasure of serving as the acting president of the Hawaii Bail Agents Association. My husband Duane, "Dog" Chapman and I, were the stars of our first show, "Dog the Bounty Hunter," which ran for eight seasons on A&E. We also had a show "Dog and Beth: On the Hunt," on CMT for four seasons. PBUS is a national association which represents bail agents' interests before the business community, citizens and government entities. I have been in the bail bond business for nearly 30 years and have been operating in the state of Hawaii for 17 years while my husband has been in the business for over 40 years and nearly 30 of those in Hawaii. We chose to raise our family here and conduct our business here because we love Hawaii and its people.

I appreciate the opportunity to bring the combined experience of thousands of bail bond agents to the table in this conversation as the state of Hawaii considers reform in this area. We, as an industry, have worked in hand with the judicial system in the United States since the inception of our country. Cash or guaranteed surety bail is the most cost effective, efficient, and performance effective tool to ensure the appearance of the defendant to court and good behavior while awaiting trial. It is also the only system which is user funded and does not require the taxpayer to foot the bill for mistakes and ill choices of those who break the law. With that being said, I would like to highlight a few policy considerations and practices which I and the bail bond industry feel are of the utmost importance to the balance of public safety and the rights of the accused.

Cost and Performance of Non-Monetary Release

States which have implemented bail reform after following similar taskforce meetings like what Hawaii is currently engaging have enacted policies which have been a detriment to the safety needs of the public and have shifted the cost burden to the taxpayers.

Proponents of a "risk assessment" and a system which requires the "least restrictive means of release" continue to point to the system in Washington D.C as the pinnacle of pre-trial release programs. They laud it as a successful system which should be mimicked. The numbers, however, simply do not justify the hype. Washington D.C. has a little over 700,000 citizens and the cost of running their "free" pre-trial system is a whopping $65 million dollars a year. However, the numbers get even worse when you consider the number of defendants processed by D.C. They, much like HPD, process between 16,000 and 20,000 defendants which puts the cost, per defendant, between 3,250 and 4,062. That is the cost to detain, process, or release and supervise just one defendant. Remember, right now that cost is being borne completely by the offender and bail industry not by the taxpayer. But when you remove cash or surety bail the total cost shifts to the taxpayer.

PBUS Office: 801 N. Magnolia Avenue, Suite 418, Orlando, FL 32803
800-883-7287 Toll Free * 202-783-4120 * 202-783-4125 FAX * E-mail: info@pbus.com * Web: www.pbus.com

The initial projections pitched to the New Jersey legislature put the cost of the new system at around 20 million; however, current projections have now approached 300 million. We in Hawaii know all to well the pain of following false projections as we are currently suffering with the light rail boondoggle. We must take precautions from every other state that has dealt with bail reform and know that the cost projections have always missed the mark. We cannot invite another boondoggle onto the shoulders of the good people of Hawaii.

Even if we were to put the cost aside and just look at the results in what matters the most, namely the safety of the citizens, Washington D.C. fails tremendously. The crime rate in D.C. is at the top 3% in the nation. Only 3% of other cities in the nation are more dangerous than Washington D.C. In D.C., 1 in 79 people will become the victim of a violent crime and 1 in 21 will become the victim of a property crime. Again, proponents point to what they consider the success of Washington D.C. because they don't have very many people in jail awaiting trial. However, with those terrible crime statistics maybe there should be more criminals in jail.

This trend is not isolated only to D.C., New Jersey just implemented a policy which requires "least restrictive release" a "risk assessment" and one which removed judicial discretion completely and the results have been disastrous. Crime rates have skyrocketed and more people are being victimized as a result. It has even prompted members of law enforcement to proclaim publicly that "we can't protect you anymore".

Detective Joe Indano of South Plainfield, New Jersey voiced his frustration and stated, "Nobody's afraid to commit crimes anymore. They're not afraid of being arrested, because they know at the end of the day, they're going to be released. Its catch and release. You're chasing around the same people over and over again. They're being released and going back and offending and now you have more people as victims."

However, the frustration doesn't just stop at law enforcement. Lawmakers are discovering that they were sold a bill of goods and even those who advocated for the reform are now speaking up against other states following New Jersey's example. New Jersey Assemblyman Bob Andrzejczak (D) even went so far as to send a letter, which I have attached, to California Speaker of the House Rendon urging him to reconsider passing similar reforms in California. He said in that letter that since the law went into effect in January it has been an "absolute disaster" and that "This law is victimizing law abiding citizens everyday".

In New Mexico, the Supreme Court decided to implement similar bail reforms without the legislature and it has caused havoc in that state. The move has prompted a coalition of citizens, bail industry members, and lawmakers to file a lawsuit against the state's Supreme Court. It has also prompted New Mexico Senator Bill Sharer to call for the resignation of Chief Justice Daniels.

This argument about bail reform has not only been fought in the legislative chambers across the country but also in the court room. Already the 5th circuit, 9th circuit, and 11th circuit have taken challenges by bail reformers against the current system and currently the 11th has ruled against the presumption of free bail. Arguments have been heard in the 9th and 5th. It is important to note that the 5th circuit justices' arguments in the O'Donnell v. Harris County case seem to suggest that the scope of the relief by the lower court (non-monetary release of all misdemeanor defendants) went too far and that removal of judicial discretion is a dangerous slippery slope.

Presumption of Innocence Pre-Trial

The conversation revolving around bail has become centered on the rights of the offender and preferring the offender over the law abiding citizen. Proponents would have you believe that there are countless individuals "languishing" in jail because they cannot afford bail. However, bearing extraordinary circumstances; a vast majority of people in jail are there because they broke the law. They have also broken the trust of society and justice must be served. The constitution guarantees that the accused is innocent until proven guilty. The criminal justice system guarantees that society will have its opportunity to bring the charges against a defendant and the defendant will have his day in court. It is the responsibility of the state to balance the rights of the accused with the necessity of societal justice. This does not imply an

PBUS Office: 801 N. Magnolia Avenue, Suite 418, Orlando, FL 32803
800-883-7287 Toll Free * 202-783-4120 * 202-783-4125 FAX * E-mail: info@pbus.com * Web: www.pbus.com

implicit trust in the offender and that his or her presumption of innocence extends to pre-trial release, in fact it should be regarded oppositely and has been held in many courts that way.

As the Alliance of California Judges stated in their May 9, 2017 opposition letter to SB10:

> "The bills inject the concept of the presumption of innocence into a context in which it simply doesn't belong. The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence 'has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.' (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)"

Bail bonding adds a layer of personal accountability in the form of monetary interest by the accused, their friends and family, or a bondsman willing to put up a portion of his business so the offender may be released. In short, if someone has a personal financial stake in the accused, they will do everything to ensure they stay out of trouble and show up for court. And, in the event they miss court those with financial interest will do anything to help find them so as to avoid losing that financial interest. It is a system which has worked effectively for over 200 years in this country and one with a high success rate most topping 90% return rates. Most pre-trial programs see a return rate of a dismal 50%-75%. In Hawaii, when the legislature allowed emergency release we saw failure to appear rates of upwards of 50%. That compares with 3%-7% in most bail bond companies.

Rights of the Victim Frequently Disregarded

Some of the most egregious results of bail reform policies across the country have been the victimization of law abiding citizens and the preference of the criminal over the victim in many cases. Often, the needs of the offender and attention to their situation have taken the precedence to that of the victim. It has been said in places like D.C. and New Jersey that the offender is released from jail even before their victim is released from the hospital. Other victims who suffer property crimes at the hands of offenders who commit multiple crimes are victimized more frequently under non-monetary release policies.

Catherine Keller, a victim of serial home invasion criminal Dawud Ward in New Jersey expressed her frustration and said, "I was totally disgusted that he just kept on being released and two days later he is doing to someone else's house and he is doing the same thing. The system is broken."

Victim's rights would take a back seat in the initial bond setting hearing as well. Most of these policies require a hearing within 24-48 hours in an evidentiary setting to determine if non-monetary release should be exempted in favor of detention or monetary release. This is done because the laws require the "least restrictive release" and remove judicial discretion in favor of what becomes a "probable cause hearing" to require something more restrictive. The laws require the state to prove that the offender is a threat which would result in them calling testimony from witnesses in the initial bond setting hearing. This is a fine point that is always missed in the initial discussions of bail reform but one which re-victimizes the truly innocent. Could you imagine the trauma of suffering at the hands of a criminal then being required to re-live that trauma again within 24-48 hours just to prove that your assailant truly is a threat?

That is the reality for victims when you remove judicial discretion.

Risk Assessment verses Judicial Discretion

What has occurred recently is those who see the criminal as the victim of circumstance, rather than society as the victim of crime, now want society to foot the bill for the mistakes of the criminal. They want society to blindly trust that everyone arrested can be trusted to be released from jail for free and with no accountability. Unfortunately, we know that

PBUS Office: 801 N. Magnolia Avenue, Suite 418, Orlando, FL 32803
800-883-7287 Toll Free * 202-783-4120 * 202-783-4125 FAX * E-mail: info@pbus.com * Web: www.pbus.com

rarely do you catch someone the first time they commit a crime. So, even though we may be looking at a "first time" offender in the eyes of the legal system, it is most likely that we will never know of the other crimes they have committed but were never caught. It is unwise and dangerous to release someone charged with a crime, without any accountability, and simply trust in a hope and a prayer that they won't reoffend while they are out.

Of course, we cannot possibly know who will reoffend or who will ultimately fail to appear, so the wisest move is to treat every offender with the least amount of trust and work our way up from there. However, the proponents of bail reform laud the "risk assessment" as the only tool to truly evaluate the risk of an offender. Generally these assessments are comprised of 7-13 questions combined with statistical information to try to ascertain the risk level of an individual. But, no matter how scientific they try to make it sound, at the end of the day it remains a guess. The safety of the public and the assurance of justice ride on an educated guess from an antiquated computer program. The mistrust of the "risk assessment" tool led Nevada Governor Sandoval to veto their bail reform bill stating that "there is no evidence that risk assessments work". Even in New Jersey, the Attorney General who was one of the main proponents of their reform admitted that the risk assessment tool they are using from the Arnold Foundation was flawed.

The risk assessment tools are a great tool to have at the disposal of the judges when setting bail but should never be the determining factor. I think it should be fair to point out that the Arnold Foundation, Governor Chris Christie, and Attorney General Chris Porrino are all being sued in New Jersey for the flawed implementation of the risk assessment tool which led to the death of Christian Rogers. This is both a depravation of constitutional rights and a products liability case. Christian's alleged killer was released under the bail reform policy and three days later gunned down Christian while he was walking home. This was without provocation, in cold blood, and in the middle of the day. A look at the rap sheet of the alleged shooter, Jules Black, will show that this man was a risk. He was arrested on gun related charges and, in the least, should have been out only on secured bond with some kind of supervision.

Personal responsibility has taken a backseat in these discussions and it is being replaced with guilt on society that we are keeping the down trodden suppressed by jailing criminals and holding them accountable to face their consequences. There is no doubt that there are some special circumstances where an individual has suffered inappropriately under the current system. But, those situations should be looked at individually and fine tuning of the law should be implemented to fix those problems. To take a few examples and superimpose massive, dangerous reform to an effective system and have a "broad brush" approach will only further remove personal responsibility of the offender and transfer the costs and danger of the criminal to law abiding citizens. Protecting the welfare of law abiding citizens should be good enough reason for anyone to tread very lightly in instituting these massive and dangerous reforms.

The private bail industry has a long and historic partnership in the criminal justice system. The purpose of bail is to ensure the appearance of the defendant in Court. Private bail has done this for generations in the United States with an astounding record of reliability and accountability at no cost to the taxpayer. Bail agents not only have a financial interest in making sure a defendant appears in Court, but they also have a fiduciary commitment to the Courts, taxpayers, and victims of crime. The Hawaii Bail Agents Association and the PBUS respectfully requests that you take the time to review the ramifications of these types of policies and include industry experts which have tremendous experience in the discussion. We ask that common sense rules and parameters be put in place that will protect public safety and use taxpayer dollars in the most efficient and effective manner. Please take a moment to watch a brief video regarding pretrial release (https://youtu.be/9-tCa3GKrQ8).

PBUS Office: 801 N. Magnolia Avenue, Suite 418, Orlando, FL 32803
800-883-7287 Toll Free * 202-783-4120 * 202-783-4125 FAX * E-mail: info@pbus.com * Web: www.pbus.com

PROFESSIONAL BAIL AGENTS OF THE UNITED STATES

Non-Monetary Release Recommendations-

Although we support the commercial bail industry and feel monetary bail is the best option for the criminal justice system, we understand the need for certain occasions when non-monetary or "own recognizance" bonds are necessary or preferred. At no time do we as an industry feel that judicial discretion be removed from the equation totally.

The commercial bail industry stands by the below core principles for own recognizance (OR) and non-monetary release:

- Eligible- Non-monetary release as a first option for violation of traffic laws, and look at what traffic laws can be completely de-criminalized
- Eligible- Non-monetary release as a first consideration for first time offenders with no criminal history
- Eligible- Non-monetary release as a first consideration on individuals with no failures to appear (FTA)
- Not Eligible- Non-monetary option for an individual currently out on a bond for a felony or misdemeanor
- Not Eligible- Non-monetary option for someone convicted of a felony in the past 3 years or misdemeanor in the past 1 year
- Not Eligible- Non-monetary release option for someone with multiple cases or in multiple counties
- Not Eligible- Any release on crimes where there is a victim should be guaranteed and supervised
- Not Eligible- Any defendant who has previously failed to appear on an OR bond on a criminal charge shall only be released with secured bail and would not be eligible for another OR bond for at least one year
- Not Eligible- Any defendant currently released on a secured bond for a felony offense would not be eligible for non-monetary release
- Not Eligible- Any defendant currently on a non-monetary bond would not be eligible for a second non-monetary bond in any county
- Not Eligible- Any defendant who has been charged with a sexual assault on a child/minor causing great bodily harm would not be eligible for non-monetary release
- Not Eligible- Any defendant who has been convicted of a charge of escape in the last five years would not be eligible for non-monetary release
- Most importantly, a policy should be created that stops unlimited non-monetary release for any defendant

PBUS Office: 801 N. Magnolia Avenue, Suite 418, Orlando, FL 32803
800-883-7287 Toll Free * 202-783-4120 * 202-783-4125 FAX * E-mail: info@pbus.com * Web: www.pbus.com

JEFF VAN DREW
SENATOR
FIRST LEGISLATIVE DISTRICT
SenVanDrew@njleg.org

BOB ANDRZEJCZAK
ASSEMBLYMAN
FIRST LEGISLATIVE DISTRICT
AsmAndrzejczak@njleg.org

BRUCE LAND
ASSEMBLYMAN
FIRST LEGISLATIVE DISTRICT
AsmLand@njleg.org

July 3, 2017

Dear Speaker Rendon,

I am a democratic member of the New Jersey Assembly representing Legislative District 1. Prior to joining the Assembly, I served in the Iraq War as a sergeant in the Army's 25th Infantry Division until my discharge following an injury which led to the amputation of my left leg from a grenade explosion in 2009. As a result, I was awarded the Purple Heart and Bronze Star; my recovery was featured on a 2009 episode of The Oprah Winfrey Show.

As you may know, New Jersey passed and has implemented a bail reform policy similar to California's SB10 which you are considering. I supported the legislation when presented to our Assembly and advocated for its passage. The law went into effect this past January and it has been an absolute disaster. The public safety needs of citizens in New Jersey has suffered far greater than could have been imagined. The costs to the state have increased exponentially and, even worse, the constitutional rights of many of the accused are being infringed.

We were told that there would be no danger to citizens because the dangerous criminals would not be released and on "low level" criminals would be eligible. The reality is that dangerous and career criminals are released daily within hours of arrest. We should never have considered free bail to those who commit crimes where a citizen has been victimized. We may only catch a criminal once out of a multitude of crimes in which they commit. They are simply not afraid of committing crimes against citizens and as a result our crime rate has increased at least 13% since January. This law is victimizing law abiding citizens every day.

We were also misled as to the cost of implementation and continuation of this policy. It has become apparent to us now that the cost of incarcerating those held awaiting trial were greatly exaggerated. Additionally, we have transferred the cost of "free" bail to the taxpayer rather than the offender. The bail system supported many functions of the court and the cost of re-arresting multiple offenders and bail jumpers was borne by the offenders themselves rather than the taxpayers. Now we are making taxpayers pay to release criminals back into their neighborhoods and with no accountability. The state does not have the resources to properly monitor these people out on bail so we don't. This is a powder keg and our citizens are suffering because of it.

211 SOUTH MAIN STREET
SCHOOLHOUSE OFFICE PARK, SUITE 104
CAPE MAY COURT HOUSE, NJ 08210
PHONE: (609) 465-0700 • FAX: (609) 465-4578

1117 EAST LANDIS AVENUE, UNIT C
VINELAND, NJ 08360
PHONE: (856) 696-7109

219 N. HIGH STREET, SUITE B
MILLVILLE, NJ 08332
PHONE: (856) 765-0891 • FAX: (856) 765-0897

Not only are our citizens suffering but now even the accused are being denied their constitutional right to pre-trial release as a result of the new laws. The eighth amendment to the Constitution of the United States guarantees an accused the right to "reasonable bail". However, in New Jersey, many are being denied that right. This is not just happening to dangerous criminals it is happening to low level offenders as well. The risk assessment system is simply not working. In January, a convicted child predator was arrested for attempting to lure a 12 year old girl to his house for "sexual things". The risk assemsment determined he was not a threat and was released. The police chief of Little Egg Harbor was so distressed by this that he appealed the release all the way to our supreme court and was denied. The man was released back into the same neighborhood where the "would be" victim resides. The only recourse for law enforcement was to post on Facebook a warning to the community.

I am not "in the bag" of any industry or special interest. I fully thought this was the right thing to do because of the arguments we heard. I am writing to you because I have experienced this first hand and it has been a disaster. I am trying to rectify a problem in New Jersey that we caused and hopefully encourage you not to make the same mistake. Please listen to the experts on this issue and look at the examples before you because the safety and financial interests of your citizens are at stake. Thank you for your time.

Sincerely,

Bob Andrzejczak
Assemblyman, First Legislative District

CDAA
CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

921 11th Street, Suite 300
Sacramento, CA 95814
916.443.2017
www.cdaa.org

April 11, 2017

The Honorable Rob Bonta
California State Assembly
State Capitol
Sacramento, CA 95814

RE: AB 42 – Oppose

Dear Assemblyman Bonta:

On behalf of the California District Attorneys Association (CDAA), I regret to inform you that we are opposed to your measure, AB 42. This bill would dismantle California's longstanding bail system, replacing it with a costly and cumbersome alternative that we believe will have a negative impact on public safety. While we agree that California's bail system should be reviewed and opportunities for thoughtful improvement identified, this bill simply goes too far, too fast.

As you know, Chief Justice Tani Cantil-Sakauye has put together a Pretrial Detention Reform Work Group to study current pretrial detention practices and provide recommendations for potential reforms. This work group is expected to report back to the Chief Justice with recommendations by December 2017. In light of that timeline, we believe that any legislative efforts to repeal and replace the current bail system are premature.

California's current pretrial release procedures help to ensure that dangerous defendants are not released to commit new crimes and harm victims and witnesses before trial. Under these procedures, the court already has wide discretion to release a defendant on his or her own recognizance, or to reduce bail for defendants that do not pose such risks. Whatever the deficiencies in the current system, it hardly seems prudent to take it apart and start from scratch.

AB 42 focuses on the costs of incarceration and hardships to the defendant caused by pretrial detention, but wholesale pretrial release has many other costs. When a defendant fails to appear, there is no bail agent with motivation to go find the defendant. The police have no additional resources to find and arrest defendants who fail to appear – and even those who are apprehended after failing to appear are only be subject to a maximum five-day flash incarceration, following a civil contempt hearing.

There are also tremendous logistical problems with the proposed pretrial release scheme. Under the bill, when Friday is a court holiday, a Wednesday arrestee must be charged by Thursday. So, when someone is arrested on Wednesday at

CDAA
CALIFORNIA
DISTRICT
ATTORNEYS
ASSOCIATION

921 11th Street, Suite 300
Sacramento, CA 95814
916.443.2017
www.cdaa.org

11:00 p.m., the police must complete reports, present them to the district attorney on Thursday, and expect the district attorney to make a careful charging decision in time for an afternoon court arraignment. This compressed timeline will undoubtedly result in the release of dangerous individuals.

Even when given a full two days before arraignment, AB 42 makes it extremely onerous to achieve pretrial detention for dangerous defendants. The district attorney must file a written motion at arraignment, containing myriad required allegations, and be expected to prove those allegations in a contested hearing – all of this within 48 hours of the arrest. The existing bail schedule system allows judges to exercise discretion to raise or lower bail for violent felons, in a sensible period of time.

Changing the pretrial release system to address actual injustices is a laudable goal. However, these changes should be careful and measured, particularly for offenses greater than misdemeanors and low-level felonies.

I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

Sean Hoffman
Director of Legislation

Alliance of California Judges

May 9, 2017

The Honorable Rob Bonta
Member of the State Assembly
State Capitol, Room 2148
Sacramento, CA 95814

Re: Assembly Bill 42

Dear Assemblymember Bonta:

As President of the Alliance of California Judges, a group of more than 500 judges and retired judges from across the state, I write to express our strong opposition to Assembly Bill 42 and Senate Bill 10, bills that would radically alter the current bail system.

Our member judges make thousands of rulings on bail issues every day. We recognize that not everyone has the ability to post bail pending trial. We address that concern by adjusting bail amounts and releasing defendants on their own recognizance or on pretrial release under appropriate circumstances. We know that our current bail system needs further reform. But the proposals contained in these bills are simply too drastic, and the effects on public safety and court congestion could be catastrophic.

We note at the outset that these bills run counter to the letter and the spirit of the California Constitution as amended by Proposition 8, the Victim's Bill of Rights, which passed with 83 percent of the popular vote in 1982. Prop 8, which the Legislature voted, with only one dissenting vote, to put on the ballot, added the following language to Article I, § 12:

> "In fixing the amount of bail, the court shall take into **consideration the seriousness of the offense charged, the previous criminal record of the defendant**, and the probability of his or her appearing at the trial or hearing of the case." [Emphasis added.]

If that constitutional mandate weren't clear enough, the voters passed Proposition 9, "Marsy's Law," in 2008. Prop 9 added the following language regarding bail to Article I, § 28 of the Constitution:

> "In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous

> criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. **Public safety and the safety of the victim shall be the primary considerations.**
>
> "A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail." [Emphasis added.]

The proposed bills strip judges of the authority to set bail in the majority of cases, and they substitute a different set of priorities for judges to follow in those cases for which they could still set bail. This new vision for bail cannot be reconciled with the Victim's Bill of Rights and Marsy's Law in our state constitution.

We highlight just a few of the other serious concerns we have with these two bills:

- **The bills would heighten the risk to public safety.** Those arrested for selling drugs, committing identity theft, vandalizing homes and businesses, stealing huge sums of money, or burglarizing dozens of businesses would all presumptively be granted pretrial release—without having to appear before a judge, post bail or submit to any conditions upon release. These bills also inexplicably exclude residential burglary from the list of crimes for which arrestees are not to be considered for release without judicial authorization.

- **These proposals would create more congestion in our busiest courts.** Under the proposed legislation, judges in most cases could set bail or impose pretrial release conditions such as electronic monitoring only after a hearing. We can expect that prosecutors will be requesting lots of these hearings. Our arraignment courts—already the busiest courts in the entire judicial system—would become completely clogged with bail hearings.

- **The bills completely upend the way in which we handle arrest warrants, to the detriment of the court system and the arrestees themselves.** By eliminating the judge's ability to set a bail amount when issuing a warrant, the proposed legislation virtually ensures that wanted suspects will not be brought to justice in a timely manner, if at all. Moreover, those arrested on warrants could not be released until a judge makes an individualized ruling that considers the arrestee's ability to pay. Arrestees who might otherwise simply pay their bail and be released from custody will instead languish until their cases can be heard.

• **The bills place an undue—and wholly unrealistic—burden on the prosecution.** The bills would require in some cases that the prosecuting agency be prepared for a contested hearing with live witness testimony in less than 24 hours, at risk of a dangerous felon being set free. The bills also create a presumption of release pending trial that law enforcement will seldom be able to rebut within the timelines contemplated by the bill, even when the court is faced with a violent criminal facing serious felony charges.

• **The bills inject the concept of the presumption of innocence into a context in which it simply doesn't belong.** The proposed legislation would require judges to consider the presumption of innocence in making pretrial release decisions. This provision makes no sense. While the presumption of innocence is at the heart of our criminal justice system, it's a concept that applies at trial, not in the context of rulings on bail. Both the United States and California Supreme Courts have long maintained that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." (Bell v. Wolfish (1979) 441 U.S. 520, 533; see also In re York (1995) 9 Cal.4th 1133, 1148.)

AB 42 and SB 10 are well-intended attempts to address the fact that the bail system affects persons of differing income levels differently. But nearly every county now has a pretrial services division in place to screen defendants and recommend their release on appropriate conditions, without bail, when doing so does not pose a serious danger to the public or a significant risk of non-appearance. A bill mandating a pretrial release program in every county, and perhaps providing some limited funding for that purpose, would be a sensible response to the problem. These twin bills go way too far, and their effect would be a near shutdown of the court system and a serious risk to public safety. We urge that these proposals be reconsidered and substantially amended.

Sincerely.

Hon. Steve White
President

cc: ACJ Board of Directors

KLAAS KiDS
foundation

July 17, 2017

The Honorable Robert M. Hertzberg
California State Senate
State Capitol
Sacramento, CA 95814

RE: Senate Bill 10 (Oppose)

Dear Senator Hertzberg,

On behalf of the KlaasKids Foundation staff, volunteers and crime victims throughout California, I strongly oppose Senate Bill 10. Beyond its obvious threat to public safety and its fiscal ambiguity, it is a clear violation of the Victim's Bill of Rights, and Marsy's Law. In the final analysis it kneecaps California's community of victims.

In 1982, California voters overwhelmingly approved of Proposition 8, otherwise known as the Victim's Bill of Rights. The nation's first ever Victim's Bill of Rights clearly states that, "In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial of hearing of the case." However, SB 10, as written, only contains information about the current offense and, with exceptions, will allow, "Recommendations on conditions of release for the person immediately upon booking."

Proposition 9 (Marsy's Law) provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. SB 10 fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Furthermore, the speed at which defendants are rushed back onto the streets makes it impossible to facilitate the rights afforded victims under Marsy's Law.

SB 10 will make it very difficult for crime victims to come forward knowing that their assailant will be back on the streets within hours of being arrested. Without a monetary incentive to appear at court dates, many victims will never receive justice.

The KlaasKids Foundation vehemently opposes SB 10. We acknowledge that California's bail system is in need of repair, but do not believe that Senate Bill 10 is the answer. It is ill conceived, and completely disregards public safety and the needs of crime victims. SB 10 follows the current trend in criminal justice legislation by focusing on the needs of defendants and criminals at the expense of crime victims.

Sincerely,

Marc Klaas

Marc Klaas
President, KlaasKids Foundation

P.O. Box 925
Sausalito, CA 94966
415.331.6867
info@klaaskids.org

klaaskids.org

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683

555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of the Governor

May 26, 2017

The Honorable Jason Frierson
Speaker of the Nevada State Assembly
The Nevada Legislature
401 South Carson Street
Carson City, NV 89701

RE: Assembly Bill 136 of the 79th Legislative Session

Dear Speaker Frierson:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 136 ("AB 136"), which is entitled:

> AN ACT relating to criminal procedure; revising provisions governing factors to be considered by the court in deciding whether to release a person without bail; prohibiting a court from relying on a bail schedule in setting the amount of bail after a personal appearance by a defendant; and providing other matters properly related thereto.

AB136, while commendable in some respects, would incorporate a new and unproven method for determining whether a criminal defendant should be released from custody without posting bail. No conclusive evidence has been presented showing that the risk assessment methods proposed by AB136 are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail. Decisions made by judges during the bail phase of a criminal prosecution are of the utmost importance. It is not clear that the provisions of AB136 will enhance the ability of Nevada's judges to make these determinations in a manner that balances the interests of justice and public safety.

///

///

///

For these reasons I veto AB136 and return it without my signature or approval.

Sincere regards,

BRIAN SANDOVAL
Governor

Enclosure

cc: *The Honorable Mark Hutchison, President of the Senate (without enclosure)*
The Honorable Aaron Ford, Senate Majority Leader (without enclosure)
The Honorable Barbara Cegavske, Nevada Secretary of State (without enclosure)
Claire J. Clift, Secretary of the Senate (without enclosure)
Susan Furlong, Chief Clerk of the Assembly (without enclosure)
Brenda Erdoes, Esq., Legislative Counsel (without enclosure)

CRIME VICTIMS UNITED
OF CALIFORNIA

May 23, 2017

The Honorable Ricardo Lara
Chair, Senate Appropriations Committee
State Capitol, Room 5050
Sacramento, CA 95814

RE: SB 10 (Hertzberg) – Oppose

Dear Chairman Lara:

On behalf of Crime Victims United of California (CVUC), I must respectfully oppose SB 10 (Hertzberg) related to bail and pretrial release.

CVUC will be the first to tell you that the current bail and pretrial system in California are not perfect. As a matter of fact, CVUC has serious concerns with the current system and its failures to adequately provide for victims' rights provided under Proposition 9. However, CVUC nonetheless strongly supports the use of monetary bail as a means of accountability, as a backstop to ensure offenders' appearance at hearings and as a deterrent to further victimization. CVUC is open to changes to the current bail and pretrial release system and is willing to work with stakeholders to improve the system and address system concerns that have been highlighted in recent years. Notwithstanding the concerns and deficiencies with the current system as they relate to victims, as an overarching perspective CVUC is highly concerned about the increasing interest in relying almost exclusively on pretrial release in our criminal justice system. Of the utmost importance as part of any reform is it must ensure victim and overall public safety are the primary considerations and the defendant's appearance at court proceedings. We are concerned that the SB 10 and other proposals under consideration fail to sufficiently ensure these critical priorities are addressed. To argue that the new proposed framework is better for victims than the current system is and victims should therefore be less concerned fails to consider that both the current and proposed systems are flawed when it comes to victims – it shouldn't be a matter of leveraging one over another. They both need to be revised. Victims are made such based on another's actions against them – not of their own will. This is lost in the current debate in favor of considerations for the offenders' who victimized them in the first place.

First and foremost, SB 10 fails to explicitly provide for the rights afforded victims under Proposition 9, Marsy's Law. More specifically, Proposition 9 provided the constitutional right of victims to be notified and informed before any pretrial disposition of the case and to be heard upon the request of the victim at any delinquency proceeding involving a post-arrest release decision. Despite voters' approval of these rights under Proposition 9 in 2008, SB 10 fails to account for these constitutional rights. And although we appreciate that under SB 10 a person charged with a serious or violent felony or domestic violence must go before a judge before being released, the bill fails to explicitly account for the right of the victim to be notified or to be heard as part of such an appearance. Further, as discussed in greater detail below, the 48 (or less)

timeframe under which to notify and allow a victim to be heard is wholly insufficient to meaningfully account for these rights.

With regard to the risk assessment tool contemplated under the bill, CVUC is highly concerned it will not sufficiently assess the risk to the victim or public safety posed by an offender for a number of reasons. First, there is currently no tool that we are aware of that incorporates as factors things such as serious injuries inflicted, multiple victims, a victim's impact statement, an offender's use of a weapon, or an offender's prior criminal history. Further, the current framework laid out in SB 10 is inconsistent under Penal Code Section 1275(a)(1) and 1318.3(b)(6) where under 1318.3(b)(6) states that undue weight should not be given to factors such as the offender's criminal history. This is unacceptable as an offender's criminal history is a critical consideration in determining his risk to the victim and overall public safety. Further, in hindering the ability to consider an offender's prior history the bill in turn hinders the ability to consider the prior criminal impact on the victim. The bill should not diminish the importance of this factor, and the associated victim impacts, from being considered and any tool utilized must prioritize consideration of an offender's criminal history and associated victimization to ensure an accurate assessment of the risk to the victim and public are undertaken.

Also problematic, the short amount of time associated with the risk assessment being conducted will inevitably negate the ability to conduct a meaningful assessment to ensure victim and public safety. Additionally, the short time frame will lead to violation of the victim's rights under Proposition 9 as there will not be sufficient time to include the victim in the proceedings, ensure their perspectives and concerns are entered into the record, and more. As an example, for an offender who is arrested on a Wednesday evening where Friday is a court holiday the offender would be brought to court on Thursday leaving less than 24 hours to ensure the victim is notified, much less able to participate in such a short timeframe. Other statutes relating to victim notification where victims have the opportunity and right to be notified and/or heard, particularly in situations of offender release from custody, are 15 or more days (as an example, Penal Code 646.92). Ultimately, to the extent that the assessment is not complete or available during such a short time frame, the bill provides that the offender shall be released – entirely contrary to the suggestion that the bill takes into account the risk to the victim and public safety. The absence of a robust assessment whatsoever will inevitably lead to serious harm for many victims and the overall public going forward. This approach in no way ensures victim and public safety is protected and is a seriously flawed loophole.

Relative to "non-violent" offenses, SB 10 provides that an offender shall be released without any hearing or appearance before a judge. It should be noted that the term "non-violent" is a misnomer as it includes offenses that are serious and potentially violent including crimes such as stalking; violation of a protective or restraining order; criminal threats; solicitation of a serious crime; conspiracy to commit a violent crime; and more. While a violation of a protective or restraining order may not be a violent offense, it could certainly be a precursor to one that would not be considered under this construct. It would essentially allow these offenders who push the limits of the framework to bypass the fact that the bill purportedly attempts to protect domestic violence victims through a hearing or appearance before a judge, but for actual injury being inflicted the victim would be violated and continue to fear for her safety without any assurance that such violations would not be more sufficiently considered in such pretrial release actions for the protection of the victim, which is supposed to be the primary consideration.

Relative to the factors a judge must consider when determining the seriousness of the offense, the factors do not include the vulnerability of the victim; whether multiple victims were impacted; prior offenses involving a victim or multiple victims; prior DUIs; and more. Ultimately, a judge would be required to make a pre-trial release decision within 48 hours, impacting victims' rights as previously noted under Proposition 9.

On the issue of fiscal impacts, SB 10 would result in significant costs that are not provided for within the measure. Given the short time frames to conduct risk assessments, review the associated reports and hold hearings/appearances, the framework under SB 10 will require significant staff increases to conduct the risk assessments and review the reports 24 hours a day. Additionally, the bill does not contain any funding or incentive to ensure offenders appear or for intervention when they do not.

According to the 2015 Board of State & Community Corrections (BSCC) Jail Profile Survey, the Average Daly Population (ADP) for all county jails in California is 75,965 with capacity of all facilities being capped at 75,987 (2012 PPIC Report). The Report also highlights that there is an average of 279,102 felony warrants in the system and an average of 1,431,846 misdemeanor warrants in the system – total warrants being at approximately 1,710,948.

Based on these numbers as reported by the BSCC and with a cost per FTA as compared with the Washington, DC Pretrial Program, the costs associated with the elimination of the money bail system and implementation of the SB 10 framework in every county in the state would be over $3 billion. Recall, the Washington, DC Pretrial System costs $65 million for a population of 660,000. Clearly California is a different animal on a number of fronts as compared with DC. And yet these numbers do not even take into account the roughly 300,000 offenders who are currently out on bail at any given time. How will California seek to manage that additional caseload and ensure victim and public safety is protected? Also of note, these costs do not take into account the likelihood based on current experience that many offenders will reoffend resulting in additional criminal justice costs – not to mention additional victim and public safety impacts.

CVUC appreciates your consideration of these concerns associated with the current version of SB 10. If you have any questions regarding CVUC's opposition to this bill, please contact CVUC's Legislative Advocate, Dawn Koepke with McHugh, Koepke & Associates, at (916) 930-1993. Thank you!

Sincerely,

Harriet Salarno

Harriet Salarno
Chair

Cc: The Honorable Bob Hertzberg, Author
Members, Senate Appropriations Committee
Sean Naidu, Consultant, Senate Appropriations Committee
Eric Csizmar, Consultant, Senate Republican Office of Policy

JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

June 30, 2017

Hon. Reginald B. Jones-Sawyer, Sr., Chair
Assembly Public Safety Committee
State Capitol, Room 2117
Sacramento, California 95814

Subject: Senate Bill 10 (Hertzberg), as amended March 27, 2017 – Letter of Concern
Hearing: Assembly Public Safety Committee – July 11, 2017

Dear Assembly Member Jones-Sawyer:

The Judicial Council has a number of significant concerns about SB 10, as amended March 27, 2017. SB 10 would enact major bail/pretrial release reform. While there are some areas of conceptual agreement the Judicial Council continues to have substantial concerns about many elements of the bill including the impact on judicial discretion and independence; the creation of unrealistic or unspecified timelines; the imposition of unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information in making decisions, and the creation of an overly burdensome and complicated system. While expressing these concerns about SB 10, the Judicial Council acknowledges that SB 10 is a work in progress. We have been in communication with the author's office and the sponsors and we understand that the author is considering amendments.

Areas of Conceptual Agreement

While the Judicial Council has a substantial number of very significant concerns about SB 10 in its current form, in concept, the council agrees with the following:

- Providing for pretrial release, with or without conditions as appropriate, for all eligible defendants, and providing for preventive detention for defendants who pose a high risk to public safety or of fleeing the jurisdiction.

- Exploring the implications of moving from a pretrial release and detention system that is implemented primarily through the setting of money bail to a system that focuses on evidence-based risk assessment that considers the risk to public safety and victims with the risk of fleeing the jurisdiction and failure to appear, and is implemented through setting conditions of release, and preventive detention for cases in which no combination of conditions of release will be sufficient to address the risk.

- Providing pretrial services in a manner that: 1) closely coordinates with the courts; 2) delivers risk assessment information, criminal history, and other data relevant to judges' determinations of conditions of release for defendants; 3) includes monitoring and supervision of defendants released pretrial, where appropriate; and 4) is funded at a level to adequately and properly address the costs of such services.

- Use of a validated risk assessment instrument that does not give undue weight to factors that correlate with race, ethnicity, and class to obtain a risk level or score.

- Respect for the constitutional principle of judicial discretion and responsibility for pretrial release and detention decisions, and with aiding judges in their decision-making responsibility by providing risk assessment and other relevant information gathered by pretrial services.

- Improving upon the current system of pretrial detention/release to enable judges to make appropriate decisions as quickly as possible when there is adequate information on which to base such a decision, and so long as there are new and sufficient resources for the system.

Areas of Concern

Judicial discretion and independence

The Judicial Council is concerned that SB 10 would infringe on judicial discretion and independence for the following reasons:

- *Balance of system interests*: The council is concerned that SB 10 does not establish a reasonable or realistic balance between the interest in releasing all defendants who can be safely released pretrial, and a concern for public safety (including safety of victims) and the administration of justice (fleeing jurisdiction/failure to appear). Judges have

constitutional and statutory responsibility for implementing the law in ways that ensure appropriate consideration for protecting the rights of the accused, protecting the public and victim(s), and providing for the fair and efficient administration of justice. In that regard, the council is concerned that SB 10 would require the pre-arraignment release *by the pretrial services agency* of any person charged with a misdemeanor (unless the defendant is already on pretrial release), without providing an opportunity for a judge to determine whether the defendant (who may be charged with a serious misdemeanor, including domestic violence) is a risk to public safety or the safety of the victim(s), or is likely to flee. SB 10 also does not account for those defendants who fail to appear and are cited and released rather than booked.

- *Matters appropriate for Rules of Court*: The bill has a number of detailed requirements for judicial decision-making that are more appropriately addressed in Rules of Court rather than statutes, so they can be more easily revised and updated. For example, the council believes that it is more appropriate for Rules of Court to address certain factors courts must consider in making their determination, such as what the court must consider in making a release decision, what constitutes "substantial hardship" in determining ability to pay, and factors for determining whether the defendant's release would result in great bodily harm to others.

- *Information provided to the court*: The bill appears to significantly limit information provided to the judge at pre-arraignment as a basis for the release determination. As currently drafted the bill would only require information about the current offense, the law enforcement list of charges, and a risk assessment result. The bill, however, does not allow other important information to be provided to the judge such as criminal history, probable cause documentation or other background related to the risk assessment.

- *Balance between judicial authority and pretrial services authority*: Substantial burdens are imposed on judges to justify any departure from recommendations of the pretrial services agency, including requiring courts, if the release decision is inconsistent with the recommendations of the pretrial services agency, to include a statement of reasons. The bill also requires the court to annually report the rate of judicial concurrence with recommended conditions of release without requiring the provision of additional data regarding the decisions made, the conditions actually imposed initially and through the course of the case, etc. Reporting solely the rate of concurrence implies that judges are discouraged from exercising any discretion that departs from the pretrial services recommendations.

- *Judicial determination of risk*: SB 10 would allow the court to impose preventive detention only for those defendants who are charged with a violent or serious crime. The

council is concerned that this makes the bill ineffective and unfair because the determination is charge-based rather than risk-based and appears to not allow the judge to take criminal history or other factors into account. Further, the council believes that courts should have the option of imposing preventive detention for those defendants who, whatever their current charge, score in the highest risk levels and for whom no condition or combination of conditions can provide for safe pretrial release.

- *Release on bail*: The bill provides for release on bail in a manner that places judges in the untenable position of being required to release on bail defendants who are at high risk of failure to appear (FTA) or of danger to public safety. This structure undermines the legislation's goal of judicious use of preventive detention to protect public safety while releasing defendants who are appropriate for pretrial release. For example, the proposed bill would prohibit release on bail *except* when no condition or combination of conditions can assure safe pretrial release. It requires the court to set monetary bail at the least restrictive level necessary and to consider ability to pay without substantial hardship. This arrangement affords "high risk" defendants the opportunity to be released on bail *despite* their risk level, unless they have been charged with a violent or serious offense. Further, the bill appears to limit the court's ability to consider the appropriateness of preventive detention in cases where the defendant has a history of violent offenses but has a current offense for which preventive detention is not statutorily permitted.

- *Violations of release*: The proposed approach for addressing violations of pretrial release is unrealistic and impinges on judicial discretion because the sole option for addressing violations of pretrial release is through contempt of court proceedings, which is not an adequate solution. Contempt is a complex and extended process for courts to impose and implicates Penal Code section 1382 rights. Penal Code section 1382 requires the court, unless good cause is shown to the contrary, to order an action dismissed in specified cases.

Timelines/Resources

The Judicial Council is concerned that the bill would impose unrealistic (and unspecified) timelines on courts. The bill would require informed decision-making on timelines that are unrealistic for courts and criminal justice partners. For example, the bill would: (a) require pretrial services agencies to gather and courts to process a significant amount of information regarding a defendant on very tight timelines; (b) require judges to issue findings of fact and a statement of the reasons for imposing each condition that are specific to the person in each case where conditions are imposed; and (c) require up to five pre-arraignment hearings on very tight timelines. Currently, many of the timelines in SB 10 are yet undefined, to be filled in through later amendments. The council is also concerned that the limitations on hearings are unclear, so it seems they could be as extensive (and time consuming) as a preliminary hearing with

presentation of witnesses, cross-examination, and submission of other evidence. Because the proposed system is so complex, it is unclear whether there is a need for these multiple hearings in order to accomplish the legislation's stated purposes.

Pretrial Services agencies: unrealistic responsibilities and expectations

The Judicial Council is concerned that the bill would impose unrealistic responsibilities and expectations on the pretrial services agencies that courts would rely on for information when making decisions, as follows:

- *Courts' interest in effective pretrial services agencies*: The proposed system requires pretrial services agencies to undertake a variety of tasks that are integral to efficient and effective decision-making by courts. Courts have a vested interest in the effectiveness of agencies with such significant responsibilities that are intertwined with those of the court. In many counties, such agencies either do not currently exist or are relatively small. For a pretrial release and detention system to function, courts must have confidence that pretrial services agencies—whether a separate agency or a unit of an existing agency—are right-sized and well-run so that courts can rely on the agencies' assessments, recommendations, and ability to monitor and supervise defendants granted pretrial release.

- *Risk assessment instrument*: Portions of the bill that define the use of a risk assessment tool by pretrial services raise questions regarding validity, reliability and access. More specifically, the bill would mandate certain criteria for the tool and prohibit other criteria. This approach would undermine the fundamental requirement that the factors in an evidence-based tool, and the algorithm used to weight the factors, have been validated to be predictive of risk for a particular population. Further, the council is concerned that *only* the PSA-Court instrument developed by the Laura & John Arnold Foundation currently appears to meet the requirements of SB 10.

Burdensome and complicated system

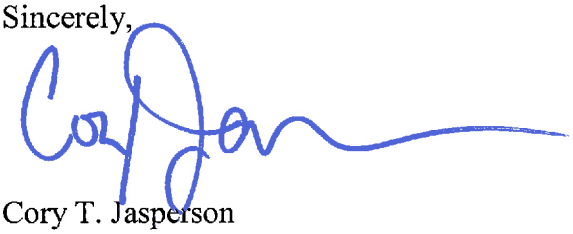
Finally, the Judicial Council is concerned that SB 10 would create a non-linear and highly complex system. More specifically, the council is concerned that the operational impact on courts would be profound and, without adequate funding, unachievable. The council is also concerned that SB 10 would attempt to graft at least four different release and detention elements onto the current statutory structure for the bail system: risk-based release; unsecured bonds; ability-to-pay determinations; and preventive detention. Further, in many counties, a significant portion of the pretrial population is ineligible for release due to probation or parole holds, immigration (ICE) holds, holds for multiple failures to appear, or other legal circumstances that prevent their release. The council believes that it would be inefficient to use resources to assess defendants, process paperwork, hold hearings, etc. for defendants who will not be eligible for

release due to circumstances that arise from legal issues unrelated to the current charge. Finally, the council believes that any significant revision to the current pretrial detention and release system should be phased-in with at least a two year "sunrise" so that courts and justice system partners are able to put the necessary structures, processes and training into place, and help to ensure that the revised system will be functional and a genuine improvement.

In closing, the Judicial Council has several substantial concerns about SB 10 in its current form and looks forward to working with the author's office and your committee to address these concerns.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,



Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/yc-s
cc: Members, Assembly Public Safety Committee
Hon. Bob Hertzberg, Member of the Senate
Hon. Travis Allen, Member of the Senate
Hon. Joel Anderson, Member of the Senate
Hon. Toni G. Atkins, Member of the Senate
Hon. Jim Beall, Member of the Senate
Hon. Steven Bradford, Member of the Senate
Hon. Ricardo Lara, Member of the Senate
Hon. Holly J. Mitchell, Member of the Senate
Hon. William W. Monning, Member of the Senate
Hon. Bob Wieckowski, Member of the Senate
Hon. Scott D. Wiener, Member of the Senate
Hon. Rob Bonta, Principal coauthor, Member of the Assembly
Ms. Mica Doctoroff, Legislative Advocate, American Civil Liberties Union of California
Ms. Sandy Uribe, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

LATE

THE SENATE
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

Testimony to the Committee on Public Safety

Rep. Gregg Takayama, Chair

Rep. Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018
10:00 AM
Conference Room 312
State Capitol

Testimony Opposing HB 2221 Relating to Pretrial Release

My name is James Waldron Lindblad, and I am here to participate in the legislative process and to offer my opposition to HB2221. I have worked in both government pretrial release and as a private bail agent since 1973. I recommend the HB2221 be held for the following reasons.

I think the HCR134 Task Force is presently studying the key concepts of this bill and will report to the legislature. Until such time as the HCR134 report is received by the legislature we have in the meantime a high functioning pretrial release process in Hawaii that is among the best in the nation.

The introduction to HB2221 erroneously states 41% of the jail population OCCC system, are held on pretrial matters. This may or may not be true because the words pretrial do not mean bailable. According to the HCR85 Draft Report, there are 476 probationers classified as pretrial who cannot bail out and there are 234 Hope detainees whose bail is set at cash

550 Halekauwila Street # 303, Honolulu, Hawaii 96813 * Phone: 808 522-1960 * Fax: 808 522-1972

only that may be termed pretrial but that are not bailable and should not be counted in the 41%. The HCR85 Task Force members corrected their draft report to better reflect accuracy of the statistics or numbers of persons at OCCC that were actually not able to or who were unwilling to pay bail and I expect the HCR134 Task Force will do the same and will compile accurate statistics to better assist our legislators.

In order to propose meaningful bail reform, we must first honestly and correctly diagnose the makeup of the current prison population. We must also discuss public safety issues and costs.

HB2221 attempts to legislate judicial decision making and could make decision making more difficult for judges and would not improve public safety or reduce prison population. In fact, I think that judges who are directed or left with or only 2 choices, to release or detain will many times choose detention, to be cautious, thus increasing the number of persons in jail and not reducing the pretrial jail numbers. We know this to be true already because of places like Washington DC., Oregon, New Jersey, Chicago and Kentucky where legislators were told release or detain models will improve fairness, improve public safety and would reduce prison populations the opposite has occurred and positive results have not proven true anywhere in the US today. Jails in all of the places where the ACLU release or detain models are adopted have the same crowding or worse and unintended consequences of higher high crime rates. The cost of these release or detain pretrial programs are between $3200 and $4000 per release as documented in Washington DC., and there are also the number of failure to appear bench warrants to factor into these costs. In Hawaii HPD arrests about 20,000 people annually which is the same number of arrests as Washington DC., and Washington DC spends about $65M annually for their pretrial program.

We all want fewer persons in prison and we all want to improve fairness and provide equal justice. That is why I am here participating in the legislative process. I have made several attempts to meet with ACLU staff regarding pretrial matters to share my forty plus years of front line experience in both pretrial release and in bail bond release. Seeing first hand the decisions our judges are faced would benefit all persons interested in improving our prisons.

I believe HR134 Task Force Members will investigate the pretrial process in Hawaii and report back that we have a high functioning pretrial process that already includes provisions for release or detain, own recognizance release and bail by cash or sufficient surety and our

Hawaii Intake Service Center tools are also high functioning and among the best in the nation as Hawaii has been a leader in pretrial release practices since at least 1980.

Until such time as the legislature has full information and a full HCR 134 report, I recommending holding this bill and any other bills directing judges how to judge or directing courts on how to do their jobs regarding pretrial release. We have a high functioning court and a high functioning pretrial release process but we need a new jail and and we need better training for persons working in and around corrections but we do not need to tell judges how to judge pretrial matters. Judges already know how to do this.

Further summary.

1) We know the 41% is as stated in Section 1 of is not an accurate statistic. This is because there are, 234 HOPE and 476 persons included in the words "pretrial" who are not bailable and who cannot bail out that are counted in theses pretrial numbers presented in Section 1. Mr. Merce corrected these numbers in his HCR85 report to the legislature. 2) We know 40/40 drunk drivers bailed out on $500 each over January 22, 2018, weekend and none were sent to OCCC., versus in New York, the Times article referenced in Section 1., states only 15% of the New York defendants could bail out when bail was $500 or less. See how Hawaii differs already. 3) In Hawaii, the judges go to HPD on the weekend already and let people out on most misdemeanors and even bench warrants for failure to appear. 4) We have at our Hawaii Intake Service Center a pretrial bail report tool/questionnaire that is among the best ever created. 5) If the state wants to send a text message on court dates they should do so for everyone. 5) Hawaii has a high functioning pretrial release process that is among the best in the nation.

I favor texting all defendants court date info even though at my office we do that already. Two reminders are better.

We can also agree most misdemeanor arrests can be let out on citation release but with limits such as suggested in testimony from Beth Chapman where certain crimes are excluded and if a person misses too many court dates they become eligible for release without surety or bail.

Please hold HB2221.

Sincerely,

James Waldron Lindblad

808-780-8887.
James.Lindblad@gmail.com
REV 1- Oppose HB2221

****Mark Twain** (among others), who attributed it to the British Prime Minister Benjamin Disraeli: "There are three kinds of lies: lies, damned lies, and **statistics**."