



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

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State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

By
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Bill No. and Title: House Bill No. 1436, House Draft 1 Relating to 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 a statewide court reminder system.
(HB1436, HD1)

Judiciary’s Position:

The Judiciary respectfully opposes this bill.

A. Release on Personal Recognizance or Unsecured Bond

The Judiciary notes several concerns with the aspects of this measure that relate to unsecured bonds.

1. The Proposed Bill Mandates the Release of Potentially Dangerous Defendants

The proposed bill requires the release of a defendant on recognizance or unsecured bond unless the release “will not reasonably assure the appearance of the person when required.” In effect, H.B. 1436, House Draft 1 would summarily release all pretrial detainees, regardless of the



nature of the offense, only upon the finding that the defendant will appear at future court hearings. The language proposed does not take into account the danger the defendant may pose to the victim or the community at large. It does not take into account a defendant's risk of recidivism. The goals of pretrial release are to maximize (1) release, (2) court appearance and (3) community safety. Only two of three goals are protected here. This provision hinders judicial discretion and endangers the safety of our community.

2. The Proposed Bill is Inconsistent with H.B. 1289/S.B. 1421, H.B. 175, and the Recommendations of the Criminal Pretrial Practices Task Force

Pursuant to House Concurrent Resolution No. 134, H. D. 1 Regular Session of 2017, Chief Justice Mark E. Recktenwald established the Criminal Pretrial Procedures Task Force to examine and recommend legislation to reform Hawai'i's criminal pretrial system. The Task Force embarked on its yearlong journey in August 2017. It began with an in-depth study of the history of bail and American bail reform. The Task Force members researched the legal framework underlying current practices, which are firmly rooted in our most basic constitutional principles of presumption of innocence, due process, equal protection, the right to counsel, the right to confrontation, and the notion that liberty is the norm and detention is the very limited exception. Members invited national experts, delved into the latest research and evidence-based principles, and took steps to learn from other jurisdictions where pretrial reforms are well underway. In addition, members reviewed previous studies conducted in the State of Hawai'i, engaged with community experts, heard the views of local stakeholders, and visited cellblocks, jails, Intake Service Center offices and arraignment courts in an effort to investigate and present an unbridled view of othe criminal pretrial process.

The Task Force submitted its final report to the legislature in December 2018. The twenty-five recommendations set forth in the report seek to improve Hawai'i's current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants' release and court appearance, and keeping the community safe. An omnibus bill package was also introduced this legislative session to implement the Task Force's recommendations. If passed, the omnibus bill will alleviate the concerns underlying this bill.

3. Unsecured Bonds Are Not Necessary.

Unsecured bonds are not necessary. Many references have been made to the federal pretrial system, which utilizes unsecured bonds. However, it should be noted that the vast majority of defendants released on unsecured bonds in the federal system are also supervised by federal pretrial services. Thus, federal defendants face a possible financial obligation in addition to pretrial monitoring. In state court, defendants eligible for supervised release are already released without any financial obligation. Non-financial release alternatives are already utilized. Defendants can be released on their own recognizance, on supervised release to the Department



of Public Safety's Intake Service Center, on supervised release to a sponsor (often a family member or friend with a stable residence), or on supervised release to a treatment program. There is no need to saddle indigent defendants with an additional obligation of unsecured bonds.

4. The Proposed Bill Lacks Specification and Appropriation for Implementation of Unsecured Bonds.

The proposed bill authorizes a defendant's release on unsecured bond, but does not set forth any procedures with respect to implementation. An agency must be designated and funded to draft, implement and monitor the status of any unsecured bond. In the event that the defendant released on unsecured bond does not appear in court, there is no specified procedure or appropriation for the enforcement and collection of the bond.

B. Statewide Court Reminder System

Next, House Bill 1436, House Draft1 requires the Judiciary to establish a statewide court reminder system. The Judiciary appreciates the intent of this provision, however, administrative efforts are currently underway that do not require legislation. For example, the Judiciary recently launched a pilot electronic reminder system for criminal cases on the neighbor islands, and extended it to First Circuit District Court on February 1, 2019. This system allows defendants to receive text reminders before their next scheduled court date.

In sum, the Judiciary appreciates the intent of this measure to the extent that some of the provisions are consistent with the recommendations of the Task Force, but must oppose it for the reasons set forth above.

Thank you for the opportunity to testify on this measure.