

Aloha Friends & Allies,

People who are legally innocent and awaiting trial should not be deprived of their liberty simply because they are unable to afford cash bail. Yet, our current criminal legal system does just that – it lets the size of a person’s wallet determine whether they can return home or stay locked up in jail even though they are merely accused, not convicted of a crime.

This session, lawmakers had the chance to pass a strong bail reform bill, [HB 2017](#), that would have brought justice to thousands of families and impacted folks across our islands. Unfortunately, that bill did not progress and a weaker reform bill—[HB 1567 HD1 SD1 CD1](#)—was recently passed by the state legislature.

HB 1567 was originally intended to end cash bail for low level, nonviolent offenses and nonviolent class C felonies, with **eighteen (18) carved out exceptions**. Notably, the **original draft** included class C felony possession of drugs in the third degree as eligible for release, **unless an exemption** applied. This inclusion is important because possession of drugs comprises the highest number of cases pending in all Circuit Courts in Hawai’i in fiscal year 2020-21.

However, the final version of the bill that passed has **twenty (20)** carved out exceptions and categorically excludes people charged with Class C drug possession. In effect, **this bill prohibits release on recognizance for MOST of the crimes people are frequently charged with and detained for pretrial.**

In “principle,” this bill represents only a modest step in the right direction towards reform. In reality, the bill falls far short of eliminating a for-profit cash bail system that discriminates against the poor. Despite this, local news media and opponents of criminal legal reform have shared harmful and false information about the bill and its impact on our safety. We’re here to set the record straight:

MYTH: Cash bail keeps us safe.

FACT: Research shows that “[money bail has no correlation with public safety.](#)”

MYTH: Cash bail reforms cause “[crime waves.](#)”

FACT: In every jurisdiction across the US where cash bail reforms have been implemented, the results were the same – [releasing people pretrial did not negatively impact public safety.](#)

MYTH: Cash bail reform is a “win for criminals.”

FACT: Cash bail reform is a win for *everyone*. When society is more just and fair, we all benefit.

MYTH: HB1567 ties the hands of Judges.

FACT: Judges still retain full discretion to make pretrial decisions based on the individual facts of each case. The catch-all provision in the bill allows the Courts to

detain a person and set cash bail if they pose a risk of danger to another person or the community or a risk of recidivism.

MYTH: HB 1567 is a “get out of jail free card” and will release criminals into our streets.

FACT: Given the twenty carved-out exemptions ([see list of offenses](#)), the bill will likely result in nominal releases of those awaiting trial. People released are still required to return for their court hearings and are legally innocent unless proven guilty for any alleged offenses.

Despite this weaker version of bail reform, ***the ACLU of Hawai'i will not give up.*** We celebrate the efforts of community advocates and organizers who worked tirelessly this session to push for a more humane and just pretrial system.

We will continue to advocate a fair criminal legal system that eliminates the for-profit cash bail industry, significantly reduces pretrial detention, and combats bias and systemic racism. We will champion strong due process protections, diversion and decriminalization, and procedural reforms that uphold constitutional principles of fairness, and allow people to attend their families, their jobs and their cases while they await trial.

By decreasing Hawaii's jail population, we will save taxpayer money that can be invested into community-based supports and alternatives that **are** proven to enhance public safety.

We hope you will advocate with us for real bail reform, and building healthy, safe and just communities.

Mahalo,

Carrie Ann Shirota
ACLU of Hawai'i Policy Director

Attachment A. List of Offenses and Circumstances Exempt under HB 1567 HD1 SD1 CD1

Specifically, under HB 1567, a person arrested and charged with the following offense(s) will **not** be automatically released on their own recognizance:

- 1) Assault;
- 2) Terroristic threatening;
- 3) Sexual assault;
- 4) Abuse of family or household members;
- 5) Violation of a temporary restraining order;
- 6) Violation of an order for protection;
- 7) Violation of a restraining order or injunction;
- 8) Operating a vehicle under the influence of an intoxicant;
- 9) Negligent homicide;
- 10) Crimes involving a minor;
- 11) Unauthorized entry into a dwelling;
- 12) Promoting a dangerous drug in the third degree;
- 13) Habitual property crime; or
- 14) Any other crime of violence; or

One or more of the following apply:

- 15) The defendant has a history of non-appearance in the last-twenty-four months;
- 16) The defendant has at least one prior conviction for a misdemeanor crime of violence or felony crime of violence within the last eight years;
- 17) The defendant was pending trial or sentencing at the time of arrest;
- 18) The defendant was on probation, parole or conditional release at the time of arrest;
- 19) The defendant is also concurrently charged with a violent petty misdemeanor, a violent misdemeanor, or any felony offense arising from the same or separate incident; or
- 20) The defendant presents a risk of danger to any other person or to the community, or a risk of recidivism.**