



## OHA-5

Unsecured Bail: Creating a More Fair, Just, and Efficient Pre-trial Bail System

**OHA-5 would reduce the severe and disproportionate consequences of cash bail on poor defendants and communities, save a significant amount of taxpayer dollars, and provide relief to the overcrowding of our detention facilities, by allowing judges to offer “unsecured bail” as an additional alternative bail option.**

**NOTE: OHA-5 does not affect judges’ discretion to set or deny bail as necessary to ensure a defendants appearance or to further public safety.**

### WHAT IS BAIL?

The bail system is meant to allow for the release of accused individuals, while ensuring that defendants appear in court to answer the charges filed against them. In granting bail, Hawai‘i judges may release defendants 1) based on their own recognizance, 2) via conditional or supervised release, or 3) by a cash or security deposit (“cash bail”) that may be forfeited if a defendant fails to appear at trial. Cash bail, which is used to hold defendants financially accountable if they fail to appear, is the most commonly used option.

Unfortunately, the overreliance on cash-secured bail -- which releases defendants based on their ability to pay, moreso than on whether a defendant is an actual flight risk or poses a risk to public safety -- has turned our bail system into one that punishes the poor, without a trial or conviction. Unlike the wealthy, poor defendants may be forced to choose between securing their freedom, and having enough money to pay their rent, or otherwise purchase basic necessities and support their families. **Poor defendants who have little choice but to remain in jail for the weeks or months prior to trial risk losing their jobs, or even custody of their children; for these individuals, cash bail effectively becomes a punishment without a trial.**

Notably, the unnecessary detention of individuals too poor to post bail may cost a substantial amount of taxpayer dollars, and further exacerbate the overcrowding in our detention facilities.

### WHY UNSECURED BAIL?

Unlike traditional cash bail, “unsecured bail” allows defendants to secure their release by signing a promissory note for their full or partial bail amount, which is enforced only if they fail to appear at trial; thus, defendants would not be required to surrender cash up-front. **Unsecured bail can thereby reduce the disparate impacts and severe consequences of the cash bail system on the poor, while still holding defendants financially accountable if they fail to appear.**



## WHAT ABOUT DEFENDANTS WHO POSE A FLIGHT RISK OR RISK TO PUBLIC SAFETY?

Research shows that unsecured bail is **just as effective** at ensuring defendants' court appearance and maintaining public safety as cash-secured bail; moreover, unsecured bail is **far more efficient** than cash bail at freeing up jail space.<sup>1</sup>

Further, if the release of a defendant may pose a risk to public safety, judges may still deny bail, rather than only granting bail to those who can afford it.

### OHA-5'S UNSECURED BAIL OPTION

OHA-5 would:

- **Allow judges the option to offer unsecured bail**, to defendants who 1) would face financial hardship in paying their set bail amounts or securing bonds through bail bondsmen, and 2) whose jobs, housing, health, or family stability might be threatened if they were to remain incarcerated pending trial.
- **Provide judges flexibility** in offering unsecured bail for the entire cash bail amount, or only a portion of the amount, based on a defendant's and their co-signors' financial and personal circumstances, pre-trial risk assessment factors, the offense charged and potential sentence carried, and any other factors the court finds relevant.
- **Hold defendants released on unsecured bail financially accountable**, by facilitating the collection of unsecured bail amounts from defendants and their co-signors if the defendant actually fails to appear at trial.

These provisions would **reduce the severe consequences of cash bail on poor defendants and communities**. For poor defendants, OHA-5 would allow them to focus their limited financial resources on their financial stability, health, and the well-being of their families, instead of requiring such resources to be surrendered as bail for weeks or even years, while they go through their trial proceedings. Moreover, allowing defendants to be released on unsecured bail would **save significant taxpayer dollars**, and **provide relief to the rampant overcrowding in our detention facilities** – without affecting trial appearance rates or public safety.

---

<sup>1</sup> See, e.g., MICHAEL R. JONES, UNSECURED BONDS: THE AS EFFECTIVE AND MOST EFFICIENT PRETRIAL RELEASE OPTION 10-11, 14-15 (2013).