

# PRISON POLICY INITIATIVE

**FEBRUARY 19, 2025**

**To:** Reimagining Public Safety Coalition of Hawai'i

**From:** Sarah Staudt, Policy and Advocacy Director at Prison Policy Initiative

**RE:** O'ahu Community Correctional Center jail expansion plans and population forecast report

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## Introduction

In December 2024, Hawai'i-based advocacy groups that are part of the Reimagining Public Safety Coalition, including the ACLU of Hawaii, contacted the Prison Policy Initiative to ask for our advice on upcoming plans to build a new correctional facility to replace the current O'ahu Community Correctional Center (OCCC). In particular, these groups asked Prison Policy Initiative to review the Population Forecast Final Report<sup>1</sup> (the "Forecast Report") prepared by Pulitzer Bogard and ahl.75 in August 2021, based on our experience reviewing and evaluating these kinds of reports across the country.

Prison Policy Initiative, founded in 2001, is a non-profit, non-partisan organization producing cutting-edge research to expose the broader harm of mass criminalization. As part of our work, we have developed expertise in reviewing and evaluating the arguments made in jail needs assessments and similar documents produced by municipalities, counties, and states.

We have published a public-facing guide<sup>2</sup> on this topic as well as a guide<sup>3</sup> to questions local decision-makers should ask when considering a larger or new jail. In addition, we have provided public testimony in county and state legislative bodies, and have provided help to non-profit community organizations seeking to better understand jail assessments. We are also experts on academic research regarding the best use of jails and prisons, the ways that jails and prisons can harm communities, and how communities can reduce reliance on jails and prisons while maintaining public safety.

This memo has four sections. First, we examine the background research that shows that overuse of pretrial incarceration is hurting the safety and well-being of Hawai'i residents. Second, we examine racial disparities within Hawaii's criminal legal system and corrections system, and the ways in which continued heavy use of incarceration in Hawaii's jails will perpetuate those problems. Third, we look at the ways that new jail construction may increase these harms, as well as make existing overstaffing problems worse. Lastly, we look at avenues to reduce Hawaii's jail populations, many of which are drawn directly from the Forecast Report itself. This report will also address the issue of implementation, and the lack of sustained commitment to put legislative and other reforms in place.

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<sup>1</sup> Pulitzer Bogard and Associates and ahl.75, O'ahu Community Correctional Center Population Forecast Final Report, August 2, 2021, available at: <https://dcr.hawaii.gov/wp-content/uploads/2021/08/OCCC-Forecast-Report-FINAL-August-2021.pdf>

<sup>2</sup> Prison Policy Initiative, "A how-to guide: Critically reviewing a jail assessment calling for a bigger jail" <https://www.prisonpolicy.org/trainings/jailassessments.html>

<sup>3</sup> Prison Policy Initiative, "Does our county really need a bigger jail?" <https://www.prisonpolicy.org/reports/jailexpansion.html>.

# Pretrial incarceration is overused in Hawai'i, causing harm to the public

The data presented in the Forecast Report gives insight into the way Hawai'i is currently using its jail. A growing body of research shows that using jails to incarcerate people pretrial not only undermines the presumption of innocence, but also causes lasting harms to public safety and public health. People incarcerated at OCCC are overwhelmingly there for low-level, non-violent charges, including technical violations of probation conditions, and there are a wealth of opportunities to decrease Hawaii's jail population to the point where new jail construction may not be necessary.

## Pretrial incarceration harms public safety

Conventional wisdom in the United States is that locking people up after they are accused of crimes makes us all safer. But this is simply not the case. Although obviously in the short run people who are in custody are not committing crimes outside the jail walls, most people who spend time in jail return quite quickly to their communities, and when they do, their lives have often been massively destabilized by even just a day or two in jail<sup>4</sup>. This

destabilization in housing, employment, and family life in turn leads to higher rates of rearrest in the future. When communities jail people pretrial in the name of public safety, they shoot themselves in the foot: instead of reducing arrest rates, they likely increase them in the future. Meanwhile, efforts to decrease jail populations and reduce or eliminate the use of money bail have been shown to have no negative effects on crime rates, court appearance rates, or pretrial re-arrest rates.<sup>5</sup>

**When communities jail people pretrial in the name of public safety, they shoot themselves in the foot: instead of reducing arrest rates, they likely increase them in the future.**

“Tough on Crime” arguments rest on the idea that putting people in jail will decrease crime, but the evidence suggests the opposite. One study showed that people incarcerated for misdemeanors were 13.7% more likely to be re-arrested on new charges within 30 days of their release and 9.7% more likely to be re-arrested on new charges within 18 months.<sup>6</sup> Another study showed that imposing a money bond – which often leads to pretrial detention – was

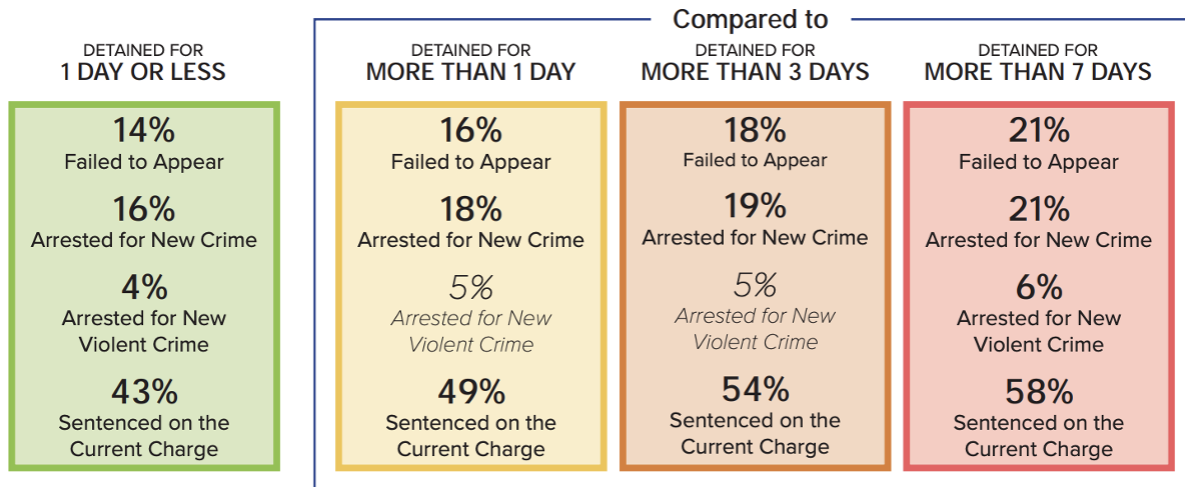
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<sup>4</sup> It is also important to note that violent crime still continues behind jail walls. There were at least four homicides in Hawai'i correctional facilities between 2020 and 2023. <https://www.civilbeat.org/2023/07/occc-inmate-death-may-be-the-4th-murder-in-a-hawaii-correctional-facility-since-2020/>

<sup>5</sup> For a collection of studies of pretrial reform and its effects on crime rates and other measures, see Sarah Staudt, Prison Policy Initiative, “Releasing people pretrial doesn't harm public safety”, July 6, 2023, <https://www.prisonpolicy.org/blog/2023/07/06/bail-reform/>.

<sup>6</sup> Heaton et. al

associated with a 6-9% increase in re-arrest.<sup>7</sup> The longer people are detained - whether for 1, 3, or more days - the more intense these effects are.<sup>8</sup>



Source: Advancing Pretrial Policy and Research, “Research Brief: The Benefits of Early Release from Pretrial Detention”

In OCCC, average length of stay for people other than those sentenced for felonies was 52 days in 2023.<sup>9</sup> Even people charged with pretrial *misdemeanors* in Hawai‘i have an average length of stay of 11 days in 2023. In 2014, the Center for State Government’s Justice Center noted that Hawaii’s length of stay in jails was almost 5 times longer than its peer counties, and Honolulu had the longest pretrial average length of stay of any of the 39 counties studied<sup>10</sup>. These problems have persisted; as the Forecast Report notes, “In a typical large jail, we would expect the median length of stay for pretrial misdemeanants to be 2 days or less”. Averaged together, this creates an overall average length of stay for pretrial detainees of approximately 35 days. In comparison, a study by John Jay College’s Data Collaborative for Justice examined average length of stay in three cities - Durham, North Carolina, Louisville, Kentucky, and St.

<sup>7</sup> Gupta, Arpit, et al. “The Heavy Costs of High Bail: Evidence from Judge Randomization.” *The Journal of Legal Studies*, vol. 45, no. 2, 2016, pp. 471–505. JSTOR, <https://www.jstor.org/stable/26458538>.

<sup>8</sup> Advancing Pretrial Policy and Research, “Research Brief: The Benefits of Early Release from Pretrial Detention”, available at <https://cdn.filestackcontent.com/security=policy:eyJleHBpcnkiOjQwNzg3NjQwMDAsImNhbGwiOlsicGljaylslNjYyWQiLCJ3cmI0ZSIsIndyaXRIVXJslwiwcm3RvcmluLCJjb252ZXJ0liwcmVtb3ZlIiwicnVuV29ya2Zsb3ciX00=.signature:9df63ee50143fbd862145c8fb4ed2fcc17d068183103740b1212c4c9bc858f63/NPfbpQtCQz yQFam13VLU>.

<sup>9</sup> State of Hawai‘i Department of Public Safety, FY 2023 annual report, pg 166. <https://dcr.hawaii.gov/wp-content/uploads/2023/11/PSD-ANNUAL-REPORT-2023.pdf>

<sup>10</sup> Center for State Governments Justice Center, “Justice Reinvestment in Hawai‘i”. August 2014, available at: <https://csgjusticecenter.org/wp-content/uploads/2020/02/JR-in-HI-Analyses-and-Policy-Options.pdf>

Louis, Missouri in 2019 and found average lengths of stay of 18.4 days, 30.4 days, and 23.3 days, respectively.<sup>11</sup>

Research shows us that this means that many people detained at OCCC will have substantially worse outcomes than those who spend no or less time in jail. If detained more than 7 days, they are 50% more likely to fail to appear than people who are detained for a day or less, 40% more likely to be arrested for a new crime, and 50% more likely to be arrested for a new violent crime.

## Pretrial incarceration undermines the presumption of innocence

Pretrial incarceration undermines the presumption of innocence. Like all incarceration, jail is inherently a punishment, and should as much as possible be reserved for people who have been convicted of a crime. The U.S. Supreme Court has noted that “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>12</sup>

The impact on the presumption of innocence is more than theoretical. A study in Houston found that people incarcerated pretrial are 25% more likely to plead guilty, 43% more likely to be sentenced to jail, and receive sentences that are more than twice as long on average.<sup>13</sup> Jail is coercive because pleas may give people the ability to go home more quickly, at the expense of pleading guilty to something they did not do. These concerns about fairness are particularly acute given that large numbers of people in Hawaii's jail are pretrial. In the most recent population reports (January 31, 2025), 68.8% of people in OCCC are pretrial.<sup>14</sup>

## Pretrial incarceration harms community wellbeing, as measured by housing, employment, and family stability

We know that community instability in the form of unemployment, poverty, housing instability, and family instability are major contributors to crime in the long run. Research shows that jailing people increases this instability.

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<sup>11</sup>Close, Melanie, Lu, Olive, Tomascak, Shannon, Chauhan, Preeti and Bond, Erica, *Understanding Trends in Jail Populations, 2014 to 2019: A Multi-Site Analysis*, December 2021, Data Collaborative for Justice at John Jay College, available at: [https://datacollaborativeforjustice.org/wp-content/uploads/2021/12/2021\\_12\\_12\\_DCJ-Cross-site-FINAL.pdf](https://datacollaborativeforjustice.org/wp-content/uploads/2021/12/2021_12_12_DCJ-Cross-site-FINAL.pdf)

<sup>12</sup> *US v. Salerno*, 481 U.S. 739 (1987)

<sup>13</sup> Heaton, Paul, Mayson, Sandra, and Stevenson, Megan “The Downstream Consequences of Misdemeanor Pretrial Detention”, *Stanford Law Review*, Vol. 69 Issue 3, 2017. Available at: <https://www.stanfordlawreview.org/print/article/the-downstream-consequences-of-misdemeanor-pretrial-detention/>

<sup>14</sup> Department of Public Safety End of Month Population Report, January 31, 2025, available at: <https://dcr.hawaii.gov/wp-content/uploads/2025/02/Pop-Reports-EOM-2025-01-31.pdf>

Studies from around the country have documented the effects of even short stays in jail. Pretrial incarceration has detrimental effects on housing, employment, and family stability. A 2018 study<sup>15</sup> conducted by researchers at University of Missouri Kansas City found that:

- 38% of people detained pretrial for fewer than 3 days and 76% of people detained for more than 3 days reported that they lost their job, had to change jobs, or faced consequences at work because of their incarceration.
- 32% of people incarcerated for fewer than 3 days and 41% of people incarcerated for more than 3 days reported a negative impact on their children who were under 18.
- 30% of people incarcerated for fewer than 3 days and 37% of people incarcerated pretrial for more than 3 days reported negative impacts on their housing.

A 2022 study in New York City<sup>16</sup> found that:

- Detention increased the likelihood of employment issues (work conditions worsening, missing shifts, etc.) by 33%, and increased the likelihood of job loss by 74%.
- People who were detained were 41% more likely to report difficulties caring for their minor children, and 22% reported that they missed at least one important family event due to their justice involvement.
- People detained pretrial were over 4 times more likely to become homeless than those who were not detained.

In Hawai'i, a massive proportion of people booked into jail were already homeless. According to Department of Public Safety Intake Center data, 38% of all people in jails in Hawai'i are homeless.<sup>17</sup> In comparison, 4% of people in Harris County jail (Houston) are listed as homeless,<sup>18</sup> and in Atlanta, Georgia, an analysis by Prison Policy Initiative found that about 13% of people booked into the city jail were homeless.<sup>19</sup>

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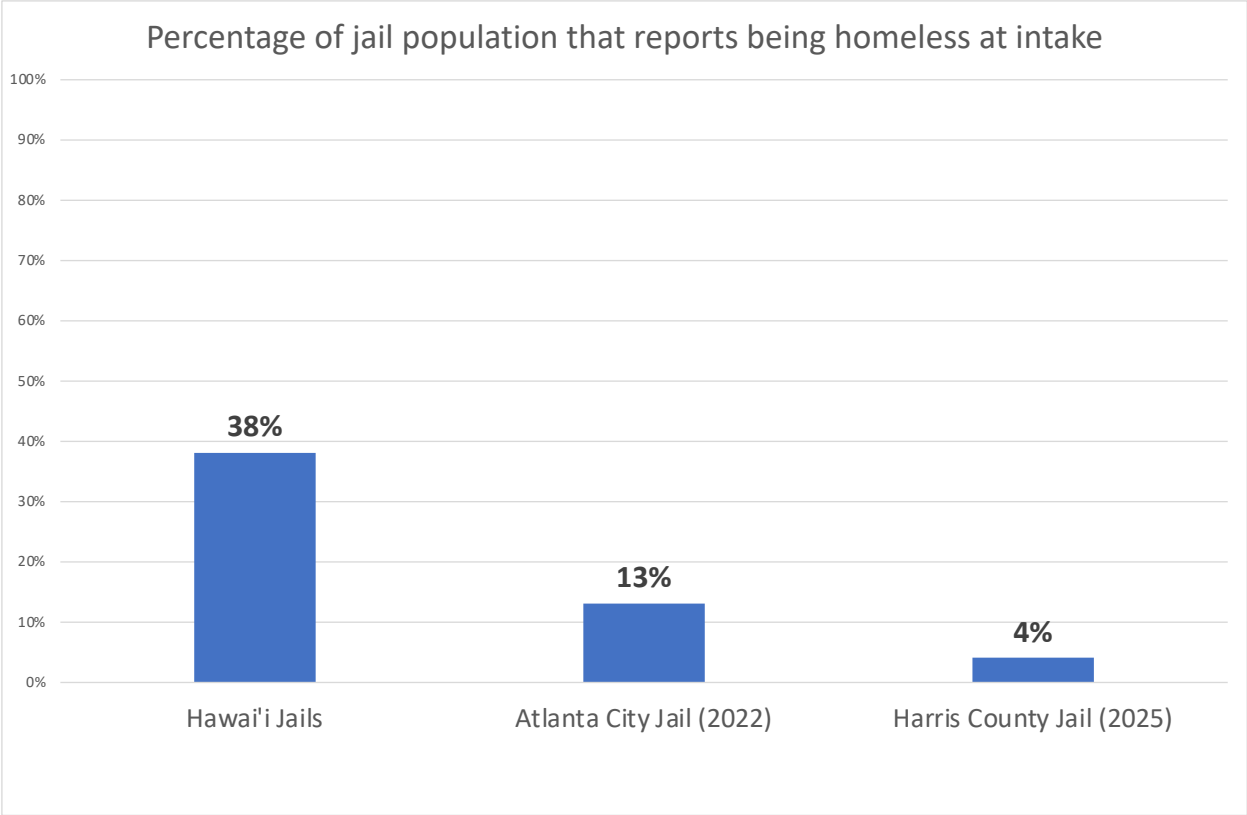
<sup>15</sup> Holsinger, Alexander, Holsinger, Kristi, "Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes" Federal Probation, September 2018, available at: [https://www.uscourts.gov/sites/default/files/82\\_2\\_6\\_0.pdf](https://www.uscourts.gov/sites/default/files/82_2_6_0.pdf).

<sup>16</sup> Bergin, Tiffany, Ropac, René, and Randolph, Imani. "The Initial Collateral Consequences of Pretrial Detention. 2022. Available at: <https://www.nycja.org/publications/the-initial-collateral-consequences-of-pretrial-detention>

<sup>17</sup> Shiota, Carrie Ann, Miller, Jamee, and Chinn, Liam "Green Has Historic Opportunity to Built Community Safety". Honolulu Civil Beat, July 8, 2024, available at: <https://www.civilbeat.org/2024/07/green-has-historic-opportunity-to-build-community-safety/>

<sup>18</sup>Harris County Texas Jail Population dashboard, available at: <https://charts.hctx.net/jailpop/App/JailPopCurrent>. Accessed February 5, 2025.

<sup>19</sup>Harrell, Luci, and Nam-Sonenstein, Brian, Prison Policy Initiative, *Unhoused and under arrest: How Atlanta polices poverty*, June 8, 2023, available at <https://www.prisonpolicy.org/blog/2023/06/08/atlanta-poverty/>



Many more people likely have unstable housing situations, like staying with friends or relatives. Given jail’s destabilizing effect on people’s housing situations, we can expect that stays in jail are substantially increasing the number of people who end up homeless after release. People end up worse off when they leave jail than they were going into custody across many different facets of their lives; in the long run, this means that more people become dependent on government services for help, and more children experience poverty and instability that will shape their lives forever.

Pretrial Detention also harms public safety and community wellbeing by taking away valuable public dollars from community investments in anti-crime and anti-violence programs that work. In Denver, investments as small as \$8.6 million decreased chronic houselessness and in turn, decreased police contacts by 34% and arrests by 40%.<sup>20</sup> Just using Denver’s program as an example, an investment of \$8.6 million would represent less than 1% of the quoted cost to build a new jail.

Pretrial detention harms public health

<sup>20</sup>Gillespite, Sarah, Hanson, Devlin, “Denver Supportive Housing Social Impact Bond Initiative: Final Outcome Payments”, The Urban Institute, July 2021, available at: [https://www.urban.org/sites/default/files/publication/104500/denver-supportive-housing-social-impact-bond-initiative-final-outcome-payments\\_1.pdf](https://www.urban.org/sites/default/files/publication/104500/denver-supportive-housing-social-impact-bond-initiative-final-outcome-payments_1.pdf)

Jails do not “stabilize” people with substance use disorder and mental illness. In fact, jails are extremely dangerous places for people with mental health and substance use disorders. The short lengths of stay at the jail make clear that true treatment is not occurring behind bars. Instead, people are being taken away from any systems of care they do have in the community – like existing treatment providers, family, and friends – and being isolated in an environment that is not conducive to recovery. As an example, someone arrested and incarcerated for 1-2 days may lose access to their mental health or substance use disorder medication, leaving them worse off than they were when they went into the jail.

Research confirms that people released from incarceration are up to 40 times more likely to overdose than the general population in the two weeks following their release.<sup>21</sup> People released from

## **Jails are simply not safe places for vulnerable people.**

incarceration are 18 times more likely to commit suicide than those without a history of incarceration.<sup>22</sup> Suicide is the single leading cause of death for people in jails.<sup>23</sup> A person is more than twice as likely to die in jail from suicide when compared to similarly situated people who are not in custody. Half of people who died by suicide in jails between 2000 and 2018 had been in custody for less than 9 days, showing that even short stays in jail can be incredibly dangerous. Jails are simply not safe places for vulnerable people.<sup>24</sup> The problem is getting worse; from 2001 to 2019, the number of suicides increased 13% in local jails.<sup>25</sup>

Not only does pretrial detention harm the health of people who are incarcerated, it also harms the larger community. A recent study showed that higher rates of county jail incarceration correlated with higher death rates in the community, especially for Black people and women<sup>26</sup>. This is likely because there are long-term health effects not only from experiencing incarceration, but also from experiencing family and community members being jailed.

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<sup>21</sup> Shabbar I. Ranapurwala, Meghan E. Shanahan, Apostolos A. Alexandridis, Scott K. Proescholdbell, Rebecca B. Naumann, Daniel Edwards Jr, and Stephen W. Marshall, 2018: available at: <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2018.304514>

“Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015” American Journal of Public Health 108, 1207–1213, <https://doi.org/10.2105/AJPH.2018.304514>.

<sup>22</sup> Haglund A, Tidemalm D, Jokinen J, Långström N, Lichtenstein P, Fazel S, Runeson B. “Suicide after release from prison: a population-based cohort study from Sweden”. J Clin Psychiatry. 2014 Oct;75(10):1047-53. doi: 10.4088/JCP.13m08967.

<sup>23</sup> Wang, Leah, “Rise in jail deaths is especially troubling as jail populations become more rural and more female”, Prison Policy Initiative, June 2021, available at: [https://www.prisonpolicy.org/blog/2021/06/23/jail\\_mortality/](https://www.prisonpolicy.org/blog/2021/06/23/jail_mortality/)

<sup>24</sup> Jones, Alexi “The “services” offered by jails don’t make them safe places for vulnerable people”, Prison Policy Initiative, March 19, 2020, available at: <https://www.prisonpolicy.org/blog/2020/03/19/covid19-jailservices/>

<sup>25</sup> Bureau of Justice Statistics, Suicide in Local Jails and State and Federal Prisons, 2000–2019 – Statistical Tables, October 2021, available at <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/sljf0019st.pdf>

<sup>26</sup> Widra, Emily, Prison Policy Initiative, *New research finds higher county jail rates have deadly consequences for entire communities*, January 30, 2025, [https://www.prisonpolicy.org/blog/2025/01/30/county\\_mortality\\_jails/](https://www.prisonpolicy.org/blog/2025/01/30/county_mortality_jails/).



In Hawai'i, as in other communities, deaths in corrections facilities are disturbingly common. There were four suicides in Hawaii's correctional facilities in 2024, the highest number in a single year since 2020, and between 2020 and 2024, a dozen people incarcerated in Hawai'i facilities have committed suicide.<sup>27</sup> Licensed psychologists have been leaving employment with Hawaii's correctional system at an alarming rate, creating serious treatment shortages. In response to this mental health crisis, the director of the Department of Corrections and Rehabilitation noted "A lot of the folks that we have don't belong in our custody. Their needs can be better met in the community."<sup>28</sup>

## Jail expansion would exacerbate existing racial disparities in Hawaii's criminal legal system

Hawaii's criminal legal system disproportionately affects Native Hawaiians and other non-white minority groups. Building a new jail would cost almost a billion dollars that could otherwise be invested in housing, mental health care, and substance abuse treatment. All those areas are also plagued by glaring racial disparities. There is a major opportunity cost to building a new OCCC – not only does it risk entrenching existing harmful criminal legal system practices, but it also costs money that is desperately needed to improve the lives of Native Hawaiians and others in the community.

**There is a major opportunity cost to building a new OCCC – not only does it risk entrenching existing harmful criminal legal system practices, but it also costs money that is desperately needed to improve the lives of Native Hawaiians and others in the community.**

In 2020, OCCC's population was 34.1% Native Hawaiian, 7.8% Samoan, for a total Native Hawaiian and Pacific Islander percentage of 41.9%, compared to just 10.3% of Hawaii's total population.<sup>29</sup> Only about 2% of Hawaii's population is Black, but 6.3% of OCCC's population was Black in 2020.

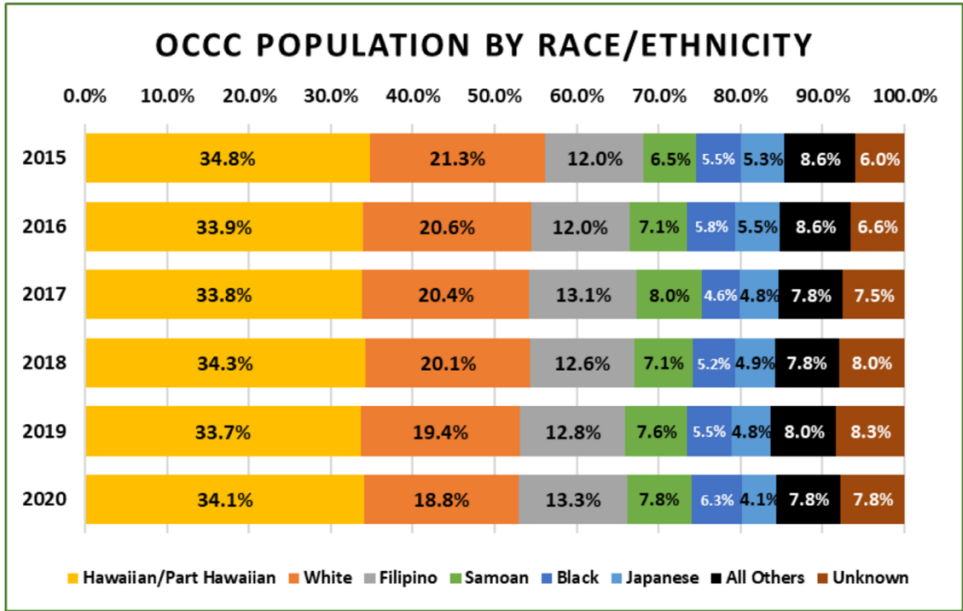
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<sup>27</sup>Dayton, Kevin, "The Mental Health Crisis In Hawaii's Prisons: 'The Suicides Keep Coming'", Honolulu Civil Beat, November 29, 2024, available at: <https://www.civilbeat.org/2024/11/the-mental-health-crisis-in-hawaiis-prisons-the-suicides-keep-coming/>. The total count of suicides may be incomplete, since the state does not announce a cause of death for inmates who die in the system.

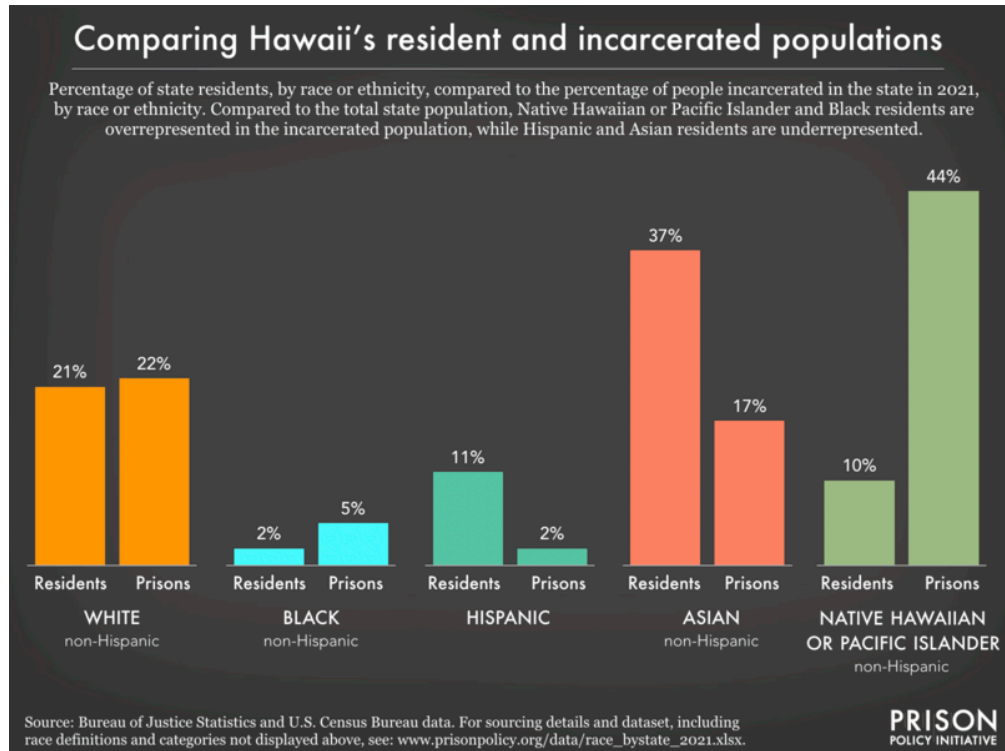
<sup>28</sup>Dayton, "Kevin, Hawaii's Prison System Confronts 'A Huge Mental Health Crisis'" Honolulu Civil Beat, October 9, 2024, available at: <https://www.civilbeat.org/2024/10/hawaiis-prison-system-confronts-a-huge-mental-health-crisis/>

<sup>29</sup> Forecast Report pg 9; United States Census Bureau QuickFacts, available at: <https://www.census.gov/quickfacts/fact/table/HI/POP060210>

Figure 1: OCCC Assigned Inmates By Race



In the larger Hawai'i jail and prison population, Native Hawaiians are overrepresented by a factor of 4, and Black Hawai'i residents are also overrepresented.



This overrepresentation means that the harms caused by jailing – increased convictions and recidivism, worsened health outcomes, and worsened health and employment outcomes – fall disproportionately on non-white Hawaiians.

Hawai'i residents experiencing houselessness are also disproportionately non-white.<sup>30</sup> Native Hawaiians experience higher rates of depression, suicide, and anxiety than other ethnic groups,<sup>31</sup> and are also overrepresented in the population of people seeking substance use treatment.<sup>32</sup> Increased investment in housing, mental health treatment, and substance use treatment would have outsized impacts on Native Hawaiian populations. Jail construction hurts Native Hawaiian populations twice over, by entrenching existing criminal legal system practices and by taking away money from needed services.

## Building a new jail is unlikely to decrease the harms caused by pretrial incarceration, and is likely to make existing staffing problems worse

There is simply no evidence that building newer jail facilities decreases the harms caused by pretrial incarceration. There are, of course, harms that come from poor conditions inside jails – but there is no evidence that newer facilities fix those harms. For example, as explained below, when new facilities are built without a change in the personnel delivering services inside, existing harms persist. Moreover, many of the harms caused by jailing are a result of the very fact of being removed from family and community, regardless of the conditions inside. For example, increased conviction rates are often attributed to the inability of people in jail to fully participate in their own defense, and the pressure caused by incarceration to plead guilty. Similarly, job loss and housing are unaffected by the newness of a jail facility – the mere fact of being removed from work is what causes people to lose their jobs and housing.

In other communities, building newer facilities has failed to bring promised changes to mental and physical health care. In Broome County, New York, a \$6.8 million jail expansion in 2015 was promised to fix the county's persistently high rates of jail deaths. But more incarcerated people died in the five years after the jail expansion than in the five years before<sup>33</sup>. This is likely because the jail failed to change its medical provider, which had been chastised on multiple occasions by the state of New York for "egregious lapses in medical care"<sup>34</sup>. Building a new jail

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<sup>30</sup> Bridging the Gap CoC Homeless Point-in-Time Count, January 22, 2023, [https://www.hawaiihealthmatters.org/content/sites/hawaii/PIT\\_2023.pdf](https://www.hawaiihealthmatters.org/content/sites/hawaii/PIT_2023.pdf)

<sup>31</sup> Jara, Catherine Phan, Ngoc, "Understanding Hawaiian Identity and Well-being to Improve Mental Health Outcomes for Hawaiian Young Adults", *Hawai'i Journal of Health and Social Welfare*, May 2024, available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC11070781/>

<sup>32</sup> Office of Hawaiian Affairs, "2010-2018 STRATEGIC RESULTS: Substance Abuse Indicator Sheet 2012" <https://www.oha.org/wp-content/uploads/2015/01/Health-IndicatorSheets-SubstanceAbuse2012-final.pdf>

<sup>33</sup> Borrelli, Anthony "Broome County jail deaths put spotlight on inmate medical care", *Binghamton Press and Sun-Bulletin*, March 4, 2020 <https://www.pressconnects.com/story/news/local/2020/03/03/broome-county-jail-inmates-dead-after-lack-medical-health-care-ny-new-york/4857588002/>

<sup>34</sup> New York State Commission of Correction, "The Worst Offenders: Report: the Most Problematic Local Correctional Facilities of New York State", February 2018, available at: <https://scoc.ny.gov/system/files/documents/2023/09/problematic-jails-report-2-2018.pdf>

that had *space* that was focused on physical and mental health care did little to solve the problem, because it was the *people* providing the care who needed to be changed.

While capacity arguments are often used to justify jail expansion, the truth is counties cannot build their way out of capacity issues without addressing the policies that created them in the first place. Examples from other states suggest that when more beds are built for a jail, they tend to be filled – and

**Counties cannot build their way out of capacity issues without addressing the policies that created them in the first place.**

often, the appetite for larger jails is not sated by larger facilities. Take the example of Lubbock County, Texas, which spent \$ 94.5 million in taxpayer bonds building a new 1,512-bed jail, which opened in 2010<sup>35</sup>. This jail was intended to meet capacity needs well into the future, but because no changes were made to pretrial practices, jail population growth persisted, as did the continued need to rent space in other counties to incarcerate people<sup>36</sup>. Recently, less than 15 years after the opening of their new jail, Lubbock’s sheriff is again proposing a 996-bed expansion projected to cost another \$464 million<sup>37</sup>.

Other new jails have had the opposite problem: because counties did not sufficiently budget for the staffing needed for new, bigger jails, those jails (or portions of them) have sat empty and unused, costing taxpayers millions and doing little to ease overcrowding. Thurston County, Washington, built what officials described as the “Taj Mahal design of Jail, Law and Justice Centers” in 2010. But that jail sat empty for 6 years, costing taxpayers roughly \$430,000 annually, largely because the county did not budget for the additional staff needed to run it<sup>38</sup>. Just three years later, the county found itself needing to build its way out of the problem: because it could not sufficiently staff the whole jail, it was forced to spend \$19-\$25 million on a 40-bed “flex unit”<sup>39</sup>.

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<sup>35</sup>Carver, Logan, “A decade in the works, Lubbock County Jail ready to open”, Lubbock Avalanche-Journal, July 10, 2010, available at: <https://www.lubbockonline.com/story/news/local/2010/07/11/decade-works-lubbock-county-jail-ready-open/15269307007/>

<sup>36</sup>Faulkenberry, Natalie, “Lubbock County Commissioners approve funds to move inmates to other counties due to overcrowding”, KCBD NewsChannel, July 24, 2023, available at: <https://www.kcbd.com/2023/07/24/lubbock-county-commissioners-approve-funds-move-inmates-other-counties-due-overcrowding/>

<sup>37</sup>Mendoza, Kamryn, “Sheriff proposes \$464 million expansion on Lubbock County jail with overcrowding worsening”, Everything Lubbock, October 26, 2023, available at: <https://www.everythinglubbock.com/news/local-news/sheriff-proposes-464-million-expansion-on-lubbock-county-jail-with-overcrowding-worsening/>

<sup>38</sup>Cohen, Lindsay “New, \$45 million Tumwater jail sitting empty”, SeattlePI, October 3, 2010, available at: <https://www.seattlepi.com/local/article/New-45-million-Tumwater-jail-sitting-empty-891004.php>

<sup>39</sup>Gentzler, Sara, “Thurston County plans estimated \$19 million jail expansion, The Daily World, November 15, 2019. <https://www.thedailyworld.com/news/thurston-county-plans-estimated-19-million-jail-expansion/>

Hawai'i is already experiencing a major staffing shortage in its jails and prisons. In 2022, 92 positions were vacant at OCCC out of a total of 413 – a 23% vacancy rate<sup>40</sup>. Unfortunately, correctional staffing concerns are difficult to address with methods that Hawai'i and other communities have proposed, like increased pay and benefits. Correctional officer shortages are a nationwide problem, a trend that has persisted despite annual wage growth. Corrections officers generally make more money than other people in much more dangerous jobs, like construction workers and EMTs – yet staffing issues persist nationwide. Nor does the building of new facilities, which have been promised to improve working conditions, actually result in improvements to staffing. Marion County, Indiana, built a \$570 million campus for courts and a new jail, claiming it would help resolve staff shortages, but the new facility failed to fix the problem.<sup>41</sup>

In Hawai'i, a recent survey of correctional staff reveals many of the same concerns that fuel the shortage of corrections officers nationwide. Notably, the physical condition of the building is a part, but not perhaps the most salient part, of corrections officers complaints. The executive summary of the Hawai'i Correctional System Oversight Commission's report on the survey notes that “many staff cited unsuitable work conditions marked by mandatory overtime, insufficient staff, and inadequate wellness resources”<sup>42</sup>. Building a larger facility will exacerbate, not fix, insufficient staffing and mandatory overtime issues, and wellness resources can be provided to staff regardless of whether a new facility is built.

The current plan for the jail ignores straightforward measures that could be used to reduce Hawaii's jail population, many of which are cited in the Forecast Report.

The Forecast Report should be commended for considering the possible impact of diversion programs for some lower-level charges and probation violations. However, still more could be done than what is cited in the report to reduce Hawaii's jail population and divert more people to community-based services.

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<sup>40</sup> Dayton, Kevin, “Staffing Shortages At The Oahu Jail Are Raising Alarms About Safety And OT Costs”, Honolulu Civil Beat, June 13, 2022, available at: <https://www.civilbeat.org/2022/06/staffing-shortages-at-the-oahu-jail-are-raising-alarms-about-safety-and-ot-costs/>

<sup>41</sup>Wilkerson, Rachael, “MCSO: ‘We are critically understaffed, don't have nearly what we need’” WRTV Indianapolis, August 8, 2023, available at: <https://www.wrtv.com/news/local-news/mcso-we-are-critically-understaffed-dont-have-nearly-what-we-need>

<sup>42</sup> Hawai'i Correctional System Oversight Commission, “Correctional Staff Survey, Findings, and Recommendations”. January 2025, available at: <https://hcsoc.hawaii.gov/wp-content/uploads/2025/01/Correctional-Staff-Survey-Findings-and-Recomendations-FINAL-1.pdf>.

The Forecast Report provides an alternative forecast that notes that if relatively conservative estimates of possible diversion for misdemeanors, low level non-violent felonies, and probation violations are taken into account, the total bed need by 2032 would be 1,087 beds. The trend predicted by the Forecast Report would suggest that that bed need would continue to *decline*, not grow, over time. Notably, this means that within the next two decades, it is perfectly possible that the total jail population would dip below OCCC’s current operational capacity. The forecasts here include “peaking” and “classification” factors, which act as “cushions” to “safely and effectively operate a facility at between 85% and 90% of its maximum bed capacity”.<sup>43</sup> Thus, projected bed counts should not be understood as projected *population* counts – bed counts are generally between 10%-15% higher than the expected average daily population.

The current plan for the number of beds in the new OCCC facility, which the Department of Corrections and Rehabilitation lists on its FAQ page as about 1,295 beds, ignores this alternative estimate from the Forecast Model, which means it the current plan assumes that there will be *no* changes to Hawaii’s criminal legal system that will decrease the jail population.<sup>44</sup> The Department confirms that this is its view in another FAQ section: “DCR does not control justice reform nor the assignment of occupants to our facilities. While we support reform, we have to make decisions based on known, factual information today. We have to move forward on this project today due to the current conditions of OCCC now.” While it may be true that DCR does not control reform, in the political environment in Hawai’i, where there have been multiple substantial changes to the pretrial system proposed and passed in the legislature in the last few years, it is shortsighted and unrealistic to assume that the status quo will remain in place.

This is especially true because there are areas of untapped diversion potential that affect a large portion of the people currently incarcerated. There are four main groups that the Forecast Report contemplates as good targets for diversion: people with technical violations of probation, people charged with pretrial misdemeanors classified as community or minimum security, people charged with pretrial felonies classified as community or minimum security, and sentenced felon probationers classified as community or minimum security. Taken together, these categories accounted for about 32% of OCCC’s population in 2020.

## Hawai’i could decarcerate by implementing reforms to how it deals with technical violations of probation

Numerically, the most obvious target for substantial decarceration of OCCC is addressing the people incarcerated for probation violations. As the Forecast Report notes, “to be clear, these are individuals whose most serious charge is a probation violation...making it all but a certainty that it is safe to conclude that they are detained due to a technical violation.”<sup>45</sup> In January 2025,

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<sup>43</sup> Forecast Report, pg 36.

<sup>44</sup>Hawai’i Department of Corrections and Rehabilitation, “FAQ”, available at: <https://newoahujail.hawaii.gov/faqs/>

<sup>45</sup> Forecast Report pg 17.

21% of OCCC’s population, almost 200 people, were there for technical violations.<sup>46</sup> This is a huge percentage in comparison to other municipalities that publish breakdowns of their jail populations. In Harris County, Texas, about 4% of the jail population is there for a probation technical violation.<sup>47</sup> In Louisville, Kentucky, 4% of the jail population are listed as “probation and parole”.<sup>48</sup> The much lower percentages of technical probation violators in other prisons shows ample opportunity for Hawai’i to decrease this portion of its jail population.

**The much lower percentages of technical probation violators in other prisons shows ample opportunity for Hawai’i to decrease this portion of its jail population.**

Technical violations are not new crimes; rather, they are violations of rules like missing appointments, testing positive for drugs, or not informing probation officers of a change of address. Hawai’i has some of the longest probation terms in the country. People are on probation in Hawai’i for an average of five years, compared to a national average of just two years.<sup>49</sup> The length of probation terms in Hawai’i increased 92% between 2000 and 2018. These long terms of probation provide more opportunities for technical violations to derail individuals’ progress. Longer terms of probation are not correlated with lower rates of recidivism.<sup>50</sup>

Hawai’i could reduce the number of technical violations that end up in its jails by making it easier for people who are compliant on probation to end their terms early. Fewer than 1,000 probation terms were terminated early in fiscal year 2022-2023, likely because the process for early termination requires obtaining a lawyer and having the sentencing judge discretionarily grant early termination.<sup>51</sup>

Hawai’i could also implement diversion opportunities for technical violations. These reforms could include capping incarceration terms for technical violations and imposing intermediate sanctions in the community in lieu of jail, including drug treatment and other supportive services. 46% of people incarcerated for probation violations in 2020 were at the “community” and an

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<sup>46</sup> Department of Public Safety Weekly Population Report, January 20, 2025, available at: <https://dcr.hawaii.gov/wp-content/uploads/2025/01/Pop-Reports-Weekly-2025-01-20.pdf>

<sup>47</sup> Harris County, Texas Jail Population Dashboard, available at: <https://charts.hctx.net/jailpop/App/JailPopCurrent>, accessed February 7, 2025.

<sup>48</sup> Louisville Metro Department of Corrections Jail Population Management Dashboard, available at: <https://app.powerbi.com/view?r=eyJrljoiOWY2NjczNjctYjgzNC00Zjg2LTk1MWItNzAzOTBhMGM4ZTRiliwiZCI6IjRmOTg2MTIiLTlwMmQtNDEzZi04Y2NmLTM2MmWQ1NzIxM2JjZCIsImMiOiJF9>, accessed February 7, 2025.

<sup>49</sup> Pew Charitable Trusts, *States Can Shorten Probation and Protect Public Safety*, December 3, 2020, available at: <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety>

<sup>50</sup> Id.

<sup>51</sup> Lowenthal, Ben, “Ben Lowenthal: Many States Are Moving To Shorten Probation Periods. Hawaii Isn’t One Of Them”, Honolulu Civil Beat, February 9, 2024, available at: <https://www.civilbeat.org/2024/02/ben-lowenthal-many-states-are-moving-to-shorten-probation-periods-hawaii-isnt-one-of-them/>

additional 18% were at the “minimum” classification level, showing that the jail’s own classification system suggests that people incarcerated for probation violations could be successful in the community.

In its alternative forecast, the Forecast Report assumes that 80% of people currently incarcerated for technical violations at OCCC could be diverted to non-incarceration alternatives. The authors note that this is “potentially a conservative estimate, knowing that other jurisdictions rarely incarcerate for technical violations”. If Hawai’i were able to match the percentage of its jail population that consisted of people with technical violations to the same levels as other jurisdictions like Houston and Louisville (4%), there would be only 37 people in the jail with technical violations, based on January 2025 numbers, compared to the current 197 people.

The technical violation population should also be carefully examined to see if increased investments in community-based treatment programs could help decrease this population. For example, if many people charged with technical violations are there because they are awaiting placement in a treatment bed after a violation involving the use of drugs, then increasing the availability of treatment beds would have a direct impact on this population. This underscores how important it is to avoid spending unnecessarily large amounts of money on a new jail when smaller investments in community-based services could decrease the jail population more successfully and humanely.

## Hawai’i could decrease the pretrial population of its jails by implementing bail reform

Hawai’i also incarcerates many people on bails they cannot afford, providing a prime target for reducing jail populations overall. As of July 2024, 61.7% of the people detained at OCCC were pretrial detainees,<sup>52</sup> suggesting that efforts so far to reduce Hawaii’s use of unaffordable monetary bail and unnecessary detention of people who could safely reside in the community pending their trial. Despite efforts at reforms, there is still “little, if any, inquiry...made concerning the defendant’s financial circumstances” when bail is set.<sup>53</sup>

The Forecast Report notes that there are still many people in OCCC who are classified as “community” security level of classification, essentially saying that the jail’s own classification system has found that a large number of people incarcerated at OCCC could be safely released in the community. In 2020, 22% of people incarcerated pretrial for felonies and 80% of those incarcerated pretrial for misdemeanors were at a community classification level. Still more are in a “minimum” security classification. This shows that Hawaii’s bail setting system is not serving its intended purpose of incarcerating only those who pose a threat to others – instead, it is sweeping up many people who do not pose a threat to anyone.

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<sup>52</sup> Legislative Findings for HB No 675, 2025, available at: [https://data.capitol.hawaii.gov/sessions/session2025/bills/HB675\\_.HTM](https://data.capitol.hawaii.gov/sessions/session2025/bills/HB675_.HTM)

<sup>53</sup> Id.



There has been a flurry of bills in the last few years in the Hawai'i legislature aimed at reforming Hawaii's bail system and building a new, bigger jail when those reforms might well be implemented within the next decade is shortsighted at best.

Some reforms that would likely decrease the number of people incarcerated on unaffordable bails include.<sup>54</sup>

- **Creating a presumption of release for all arrestees**, allowing incarceration only if the state can prove there is specific, clear, and convincing evidence that the person poses a flight risk or danger to the community. The legislature could create a list of offenses for which release on recognizance without money bail after arrest is required.
- **Eliminate or greatly disfavor the use of monetary bail**. Illinois eliminated monetary bail entirely in 2023, and New Jersey and the District of Columbia have systems that use monetary bail extremely rarely. All three of these locations have seen steady crime rates, appearance rates, and pretrial re-arrest rates before and after reform. s
- **Increase due process protections for bail hearings**, like ensuring they take place promptly after arrest and implementing rights like a right to discovery, a right to testify, the right to proffer evidence, and the right to examination of witnesses. These practices would make bail hearings more in-depth and increase judges' ability to understand the individual circumstances of each defendant and case to set appropriate bail. Conclusion: Hawai'i should focus on decarceration, not construction

With ample opportunities to lower its jail population, Hawai'i is in a strong position to decrease the number of jail beds it needs. Decarceration is the solution that is most likely to promote public health and wellbeing, manage staffing problems, and provide a better justice system for Hawai'i residents.

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<sup>54</sup>ACLU Hawai'i, "As Much Justice as you Can Afford: Hawai'i's Accused Face an Unequal Bail System", January 2018, available at: <https://www.acluhi.org/sites/default/files/2018/01/aclu-of-hawaii-bail-report.pdf>