



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, February 27, 2015, 9:05 a.m.
State Capitol, Conference Room 016

by
Sidney Nakamoto
Adult Client Services Branch Administrator
First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1331, S.D. 1, Relating to Public Safety.

Purpose: Requires pretrial risk assessments, pretrial bail reports, and arraignments to be completed within five working days after an arrest. Obligates the intake service centers to interview lay sponsors within seven days of their identification and allows the court to order defendants released on bail, recognizance, or supervised release to report to lay sponsors for supervision. Prohibits judicial officers from denying bail absent a pretrial risk assessment score that reflects a high risk of flight or commission of a new criminal offense. Prohibits judicial officers from relying on a bail schedule or bail amount that would have been necessary to prevent release of a defendant during jail overcrowding.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 1331, S.D.1, Relating to Public Safety. However, the Judiciary would like to provide comments on Sections 3 and 4 of the bill.

In regard to Section 3, we respectfully suggest that the time for arraignment in Circuit Court for misdemeanor jury demands and felonies originating in District Court should be measured from the District Court's commitment order, as it is now, rather than arrest, as proposed by the bill, because of all the post-arrest contingencies that could affect compliance with the bill's 5-day requirement. Those contingencies include how long after arrest the defendant is held in police



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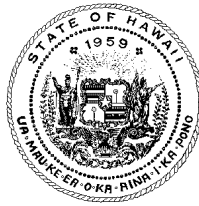
custody, when the defendant first appears in District Court, the need to hold and complete a preliminary hearing in felony cases, the time required to prepare and transmit the District Court record to Circuit Court, and the time required to process and calendar the case for arraignment by Circuit Court staff. Starting the time period at the District Court's commitment order would remove the first three contingencies, leaving for consideration only the need to allow a reasonable amount of time to process the case in District and Circuit Court. The time currently allowed for those purposes under the Hawaii Rules of Penal Procedure is 14 days.

As to Section 4, the Judiciary's primary concern is overreliance on the risk assessment to the practical exclusion of other relevant information that may not be reflected in the risk assessment itself. Bail is a constitutional right and judges therefore consider a request to deny bail very seriously, welcoming the presentation of any evidence relevant to this and, for that matter, any other release determination.

The Judiciary respectfully recommends that the following language be inserted in place of the language proposed in Section 4 of the bill at the end of HRS Section 804-7.1(a): "A pretrial risk assessment score that reflects high risk of flight or commission of a new criminal offense shall be sufficient to satisfy this showing. The absence of such a score shall raise a rebuttable presumption that the defendant's release on bail, recognizance, or supervised release should not be denied."

Lastly, since Section 4 of the bill at least arguably limits the court's authority to deny bail not only under Section 804-7.1, but under Section 804-3 as well, it is suggested that the bill be clarified to expressly subject Section 804-3 to, or exempt it from the risk assessment limitation.

Thank you for the opportunity to provide comment on this bill.



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

TESTIMONY ON SENATE BILL (SB) 1331 SENATE DRAFT (SD) 1
A BILL RELATING TO PUBLIC SAFETY

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, February 27, 2015, 9:05AM
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Committee Members:

Department of Public Safety (PSD) **opposes** SB 1331 SD 1, Relating to Public Safety. This bill as written, specifically Section 2, will reduce time frames of current practices and require additional duties of the Intake Service Centers without additional resources.

PSD adopted the use of the Ohio Risk Assessment Survey-Risk Assessment Tool (ORAS) as part of the Justice Reinvestment Initiative. The purpose of the tool is to assist the pretrial officer in standardizing release recommendations. As with all risk assessment tools, the individual making the assessment should not rely solely on the scores of the instrument when making a recommendation. Seriousness of the instant offense and medical and mental health conditions are factors often used to “override” the assessment score when making a recommendation.

Currently, PSD is fulfilling the statutory mandate of completing the ORAS on defendants within three working days of entering a community correctional center. It should be noted that an arrestee can remain in law enforcement custody up to 48 hours before being officially charged with a crime; therefore, it would be unlikely that this

assessment process could be initiated at arrest. The arrestee will also have the option of posting bail after being charged, voiding the need of an assessment.

It is PSD's position that resources are not available to neither conduct interviews with sponsors during evening and weekend hours nor perform financial investigations on defendants. To accomplish this, an increase in staff would be needed. Additional resources may be needed with the courts, prosecutors, and public defenders in order for the pretrial process to be expedited.

We ask for your support in deferring this measure. Thank you for this opportunity to testify and we welcome any questions you may have.

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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai`i

February 27, 2015

RE: S.B. 1331, H.D. 1; RELATING TO PUBLIC SAFETY.

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in opposition to S.B. 1331, H.D. 1. The purpose of S.B. 1331, H.D. 1, is to increase the rate and expedite the process by which pre-trial detainees are released into the community.

In 2012, the Legislature passed Act 139, which significantly accelerated the bail evaluation process for pre-trial detainees. Although some additional resources were provided to the Intake Service Center when the enhanced process was introduced we know that they have had to struggle valiantly to handle increased responsibilities, however any further increase in the speed of this process poses a grave risk to victims and to public safety in general. We have observed a significant increase in the release on Supervised Release of individuals who have committed serious crimes including sexual assault, felony domestic violence, and even homicide. One of the reasons that the process doesn't go as quickly as some would like is that it is very difficult to find sponsors for these individuals because frequently their family and friends are afraid of them as well as their victims. We have also experienced a significant problem with misrepresentations of individuals proposed as sponsors who either don't reside where they claim they reside, have a significant criminal history of their own, or are not really willing to accept the responsibilities of a sponsor. There have also been an increasing number of revocations of supervised release due to the high risk individuals now being given this type of release.

As in 2012, the Department expresses strong concerns about the availability of treatment programs for pre-trial detainees with serious substance abuse or mental health problems. Individuals who may be acceptable for release if they are admitted into an in-patient program a

are being released out into the streets when there are no openings or when they fail to qualify for a program. We were recently contacted by a felony domestic violence victim who stated that she was contacted indirectly by her abuser to say that despite his request to be released into a drug treatment program there was nothing available and he was released onto the street with no place to stay and no money or job. Apparently even the offender thought this was a ridiculous situation.

And finally we come to sections of SB 1331, H.D. 1, referencing the use of the Ohio Risk Assessment in determining the level of risk posed by pre-trial detainees. While this assessment tool has its benefits, it also has significant shortcomings. For one it is known to be deficient in assessing risk for domestic violence offenders and many jurisdictions utilize additional tools for evaluating this type of offender, thus making any provisions referencing only the Ohio Risk Assessment score as a determinant indicator inappropriate and potentially dangerous. In addition one general shortcoming across the board for the Ohio Risk Assessment is it does not include information about danger posed by an offender to the victim in their instant offense. Thus ISC staff routinely (daily) requests input from our victim advocates regarding victim reports of concerns regarding the offender's risk to their safety. This important information is not included anywhere in the Ohio Risk Assessment thus seriously questioning the legitimacy of any provisions in the bill indexing release decisions to Risk Assessment scores. These are provisions to which we strenuously object.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 1331, H.D. 1,. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
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Diana Gausepohl-White
Victim/Witness Program Director

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**TESTIMONY IN OPPOSITION TO
SB1331 – RELATING TO PUBLIC SAFETY**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary and Labor
February 27, 2015, 9:05 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, OPPOSES SB1331 – Relating to Public Safety. This Bill requires the pretrial release of defendants based on pretrial risk assessment scores that may not adequately reflect the defendant's dangerousness, risk of re-offense, or ability to be safely placed in the community pending trial.

While this Bill is well-intentioned, it subverts the role of the Judge and the Department of Public Safety by forcing them to rely on a risk assessment tool that considers very limited factors. We work every day with the Intake Service Center, the Judiciary, and the Public Defenders in determining how to proceed with in-custody defendants. While the risk assessment tool is a helpful tool in determining whether to hold a defendant in custody, it alone cannot be the sole determining factor. The Intake Service Center, Judge, and attorneys may be aware of information pertaining to the defendant's risk to the community and likelihood to appear for trial that are not reflected in the defendant's risk assessment score. The Bill also places unreasonable time constraints on the Department of Public Safety and will require them to make rushed and incomplete assessments.

Accordingly, we OPPOSE SB1331. We request that your Committee HOLD the Bill.

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

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY AND LABOR

Chair: Sen. Gil Keith Agaran

Vice Chair: Sen. Maile Shimabukuro

Friday, February 27, 2015

9:05 p.m.

Room 016

SUPPORT for SB 1331 SD1 – Pretrial Risk Assessments – Justice Reinvestment

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro 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 for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 1331 SD1 is part of the Justice Reinvestment Initiative, which if fully implemented correctly, will save Hawai'i millions of dollars. As in other jurisdictions that have embraced Justice Reinvestment, the prosecutors have strenuously objected to any reforms that would reduce the imprisoned population.

Community Alliance on Prisons supports this measure that amends Section 353-10, HRS to facilitate the implementation of Justice Reinvestment. We urge the Legislature to continue to push for the implementation of the Justice Reinvestment Initiative that has proven to be effective in reducing incarcerated populations, crime and saving millions of dollars in the jurisdictions where it was truly embraced.

Sadly, Hawai'i's implementation of Justice Reinvestment has been less than lackluster. We can change that, if we truly want a system that corrects behavior rather than one that has succeeded in creating an increasing criminal underclass.

Please support data-driven, cost-effective strategies in the criminal justice arena. Punishment, retaliation, stripes, non-contact visits only succeed in creating a bitter and angry imprisoned population, which helps no one.

Mahalo for this opportunity to testify.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

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DATE: February 27, 2015

TO: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

RE: Testimony in Opposition to Senate Bill 1331, Senate Draft 1
Relating to Public Safety

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center (the SATC), a program of Kapi'olani Medical Center for Women & Children, in opposition to Senate Bill 1331, Senate Draft 1 (S.B. 1331, S.D. 1).

Sexual Assault is a crime that has far-reaching effects on survivors and their loved ones. The impact goes beyond physical injuries to include less obvious emotional and psychological wounds. The release of a perpetrator from custody can further provoke a wide range of emotional responses: devastation, feelings of re-victimization, symptoms of posttraumatic stress disorder, fear for personal safety, and anxiety about the safety of others. Perpetrators of sexual offenses who are granted release from custody also sometimes use their freedom as an opportunity to commit further crimes.

It is therefore crucially important that decisions to grant bail or other release from custody to violent criminals who have already been arrested are made carefully and deliberately, and are based on sound information.

In relevant part, S.B. 1331, S.D. 1 makes a pretrial risk assessment score rendered through application of the Ohio Risk Assessment Survey-Pretrial Assessment Tool (ORAS-PAT) determinative of whether an arrested defendant is entitled to release. Absent a pretrial risk assessment score that reflects high risk of flight or commission of a new criminal offense, the court is mandated to allow the defendant to be released on bail, recognizance, or supervised release.

It is the SATC's strong belief, based on our research of ORAS-PAT, that using the pretrial risk assessment score in this way with regard to defendant sex offenders is not appropriate:

- "Creation and Validation of the Ohio Risk Assessment System, Final Report," the validation report for the ORAS-PAT which evaluated the tool as a predictor of recidivism and risk of flight, specifically cites sex offenders as an example of cases that were underrepresented in the population of defendants it studied. Only a

small number of these offenders were present in the sample. This means that, with respect to sex offenders, the ORAS-PAT tool has not been specifically validated to be an accurate or reliable predictor of recidivism and risk of flight.

- The University of Cincinnati, which created the ORAS-PAT tool under contract for the Ohio Department of Rehabilitation and Correction, specifically provides in training materials for the tool that professional discretion should be used to override the tool's risk assessment scoring with respect to specialized case loads, including sex offenders. The training further advises that users of the tool should consider using other, additional assessments for such specialized populations.

As such, it seems that S.B. 1331, S.D. 1 in its present form mandates release determinations based on of a tool that has not been validated to work with respect to sex offenders, and the creators of the tool specifically caution against using it on its own for that specialized population.

Out of a concern for the safety of survivors of sexual offenses and the people of the State of Hawai'i in general, the SATC respectfully request that the members of this committee please oppose the passage of S.B. 1331, S.D. 1 at this time.