

MAR 10 2017

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND MAKE RECOMMENDATIONS REGARDING CRIMINAL PRETRIAL PRACTICES AND PROCEDURES TO MAXIMIZE PUBLIC SAFETY, MAXIMIZE COURT APPEARANCES, AND MAXIMIZE PRETRIAL RELEASE OF THE ACCUSED AND PRESUMED INNOCENT.

1           WHEREAS, the United States Supreme Court declared in *United*  
2 *States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our  
3 society, liberty is the norm, and detention prior to or without  
4 trial is the carefully limited exception"; and

5  
6           WHEREAS, Article I, section 12, of the Hawaii State  
7 Constitution provides, "Excessive bail shall not be required,  
8 nor excessive fines imposed", and further provides, "The court  
9 may dispense with bail if reasonably satisfied that the  
10 defendant or witness will appear when directed, except for a  
11 defendant charged with an offense punishable by life  
12 imprisonment"; and

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14           WHEREAS, section 804-9, Hawaii Revised Statutes, provides  
15 that "[t]he amount of bail rests in the discretion of the  
16 justice or judge or the officers named in section 804-5; but  
17 should be so determined as not to suffer the wealthy to escape  
18 by the payment of a pecuniary penalty, nor to render the  
19 privilege useless to the poor. In all cases, the officer  
20 letting to bail should consider the punishment to be inflicted  
21 on conviction, and the pecuniary circumstances of the party  
22 accused"; and

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24           WHEREAS, House Concurrent Resolution No. 85 (2016)  
25 requested that the Chief Justice establish a task force to study  
26 effective incarceration policies; and

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28           WHEREAS, the Chief Justice has established the task force,  
29 which issued an interim report in December 2016, in which it



1 proclaimed, "Hawaii must chart a new course and transition from  
2 a punitive to a rehabilitative correctional model"; and  
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4 WHEREAS, the task force has referenced a Vera Institute of  
5 Justice conclusion that "just a few days in jail can increase  
6 the likelihood of a sentence of incarceration and the harshness  
7 of that sentence, reduce economic viability, promote future  
8 criminal behavior, and worsen the health of those who enter -  
9 making jail a gateway to deeper and more lasting involvement in  
10 the criminal justice system at considerable costs to the people  
11 involved and to society at large"; and  
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13 WHEREAS, the American Bar Association Criminal Justice  
14 Section Standards for Criminal Justice: Pretrial Release  
15 sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the  
16 judicial officer should assign the least restrictive  
17 condition(s) of release that will reasonably ensure a  
18 defendant's attendance at court proceedings and protect the  
19 community, victims, witnesses or any other person", and  
20 financial conditions "should not be employed to respond to  
21 concerns for public safety", nor should financial conditions  
22 result "in the pretrial detention of the defendant solely due to  
23 an inability to pay"; and  
24

25 WHEREAS, the American Council of Chief Defenders Policy  
26 Statement on Fair and Effective Pretrial Justice Practices  
27 (June 4, 2011) explains standards that "require public defenders  
28 to present judicial officers with the facts and legal criteria  
29 to support release, and where release is not obtained, to pursue  
30 modification of the conditions of release"; and  
31

32 WHEREAS, the National District Attorneys Association's  
33 National Prosecution Standards, Third Edition, with Revised  
34 Commentary, provides that "[a] prosecutor should not seek a bail  
35 amount or other release conditions that are greater than  
36 necessary to ensure the safety of others and the community and  
37 to ensure the appearance of the defendant at trial" and "[t]hese  
38 provisions recognize a respect for the presumption of innocence  
39 and therefore state a clear preference for release of defendants  
40 pending trial"; and  
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1           WHEREAS, research suggests that pretrial services should  
2 include adequate and timely pretrial assessments of the accused  
3 that are focused on assessing risk of not appearing and risk to  
4 public safety, and that the criminal justice system include  
5 viable options of appropriate supervision for different types  
6 and levels of risks; and  
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8           WHEREAS, in recent years, several other states have  
9 undertaken significant reforms to their criminal pretrial  
10 practices and procedures, including Alaska, Arizona, Colorado,  
11 Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah;  
12 and  
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14           WHEREAS, the Hawaii State Bar Association, through its  
15 Judicial Administration Committee, conducted a Criminal Law  
16 Forum in September 2016, during which it thoroughly discussed  
17 criminal pretrial issues among a diverse group of judges,  
18 prosecutors, and criminal defense attorneys, and featured  
19 speakers from the Honolulu Police Department, Intake Service  
20 Center of the Department of Public Safety, National Institute of  
21 Corrections, United States Pretrial Services Office of the  
22 District of Hawaii, and Arizona Administrative Office of the  
23 Courts; and  
24

25           WHEREAS, the Judicial Administration Committee recommended  
26 establishment of a criminal pretrial task force to examine and  
27 make recommendations regarding criminal pretrial practices and  
28 procedures; and  
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30           WHEREAS, an examination of potential revisions to criminal  
31 pretrial practices, procedures, and laws would improve public  
32 safety while protecting state and federal constitutional  
33 principles regarding the presumption of innocence, liberty, and  
34 right to non-excessive bail, and lower costs throughout the  
35 criminal justice system; and  
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37           WHEREAS, the task force will make recommendations regarding  
38 the future of a jail facility on Oahu and best practices for  
39 pretrial release, and any such recommendations should be  
40 considered by or coordinated with the Criminal Pretrial Task  
41 Force; now, therefore,  
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1 BE IT RESOLVED by the Senate of the Twenty-ninth  
2 Legislature of the State of Hawaii, Regular Session of 2017, the  
3 House of Representatives concurring, that the Judiciary is  
4 requested to convene a Criminal Pretrial Task Force to:

- 5  
6 (1) Examine and, as needed, recommend legislation and  
7 revisions to criminal pretrial practices and  
8 procedures to increase public safety while maximizing  
9 pretrial release of those who do not pose a danger or  
10 a flight risk; and  
11  
12 (2) Identify and define best practices metrics to measure  
13 the relative effectiveness of the criminal pretrial  
14 system, and establish ongoing procedures to take such  
15 measurements at appropriate time intervals; and  
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17 BE IT FURTHER RESOLVED that the task force be comprised of  
18 members that represent the various perspectives of public  
19 officials with significant roles in the criminal pretrial system  
20 and include:

- 21  
22 (1) The Chief Justice or the Chief Justice's designee, who  
23 shall serve as the chairperson of the task force;  
24  
25 (2) A judicial officer representative of each Circuit  
26 Court;  
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28 (3) A member of the House of Representatives, appointed by  
29 the Speaker of the House of Representatives;  
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31 (4) A member of the Senate, appointed by the President of  
32 the Senate;  
33  
34 (5) A court administrator representative of each Circuit  
35 Court;  
36  
37 (6) A representative of the Department of the Attorney  
38 General;  
39  
40 (7) A representative of the Intake Services Center of the  
41 Department of Public Safety;  
42



- 1           (8) A representative of the Prosecuting Attorney's Office
- 2           of each county;
- 3
- 4           (9) A representative of the Office of the Public Defender
- 5           for the State of Hawaii;
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- 7           (10) Four representatives appointed by the Hawaii
- 8           Association of Criminal Defense Lawyers, including one
- 9           representative from each county;
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- 11          (11) A representative of each county police department;
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- 13          (12) A representative of the Department of Health;
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- 15          (13) The Chairperson of the Board of Trustees of the Office
- 16          of Hawaiian Affairs, or the Chairperson's designee;
- 17          and
- 18
- 19          (14) A member of the public who has knowledge and expertise
- 20          with the criminal pretrial system appointed by the
- 21          Director of Public Safety; and
- 22

23           BE IT FURTHER RESOLVED that no member be made subject to

24 chapter 84, Hawaii Revised Statutes, solely because of that

25 member's participation as a member of the task force; and

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27           BE IT FURTHER RESOLVED that the Judiciary and the

28 Department of Public Safety are requested to provide

29 administrative support to the task force; and

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31           BE IT FURTHER RESOLVED that the task force, with the

32 assistance of the Legislative Reference Bureau, is requested to

33 submit a report of its findings and recommendations, including

34 any proposed legislation, to the Legislature no later than

35 twenty days prior to the convening of the Regular Session of

36 2019; and

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38           BE IT FURTHER RESOLVED that, upon request of the task

39 force, the Legislative Reference Bureau is requested to assist

40 in the preparation of the report; provided that the task force

41 submits a draft, including any other information and materials



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1 deemed necessary by the Bureau, to the Bureau no later than  
2 August 1, 2018, for the preparation of the report; and

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4 BE IT FURTHER RESOLVED that certified copies of this  
5 Concurrent Resolution be transmitted to the Chief Justice of the  
6 Hawaii Supreme Court, Attorney General, Public Defender of the  
7 State of Hawaii, Director of Health, Director of Public Safety,  
8 Chairperson of the Board of Trustees of the Office of Hawaiian  
9 Affairs, Chief of Police of each county police department,  
10 Prosecuting Attorney of each county, and the Hawaii Association  
11 of Criminal Defense Lawyers.

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14

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