
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
13

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
23

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
27

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
3

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
12

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



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
7

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
13

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
29

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
36

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; now, therefore,
40

41 BE IT RESOLVED by the Senate of the Twenty-ninth
42 Legislature of the State of Hawaii, Regular Session of 2017, the



1 House of Representatives concurring, that the Judiciary is
2 requested to convene a Criminal Pretrial Task Force to:

- 3
- 4 (1) Examine and, as needed, recommend legislation and
- 5 revisions to criminal pretrial practices and
- 6 procedures to increase public safety while maximizing
- 7 pretrial release of those who do not pose a danger or
- 8 a flight risk; and
- 9
- 10 (2) Identify and define best practices metrics to measure
- 11 the relative effectiveness of the criminal pretrial
- 12 system, and establish ongoing procedures to take such
- 13 measurements at appropriate time intervals; and
- 14

15 BE IT FURTHER RESOLVED that the task force consist of
16 members who represent the various perspectives of public
17 officials with significant roles in the criminal pretrial system
18 and include:

- 19
- 20 (1) The Chief Justice or the Chief Justice's designee, who
- 21 shall serve as the chairperson of the task force;
- 22
- 23 (2) A judicial officer representative of each Circuit
- 24 Court;
- 25
- 26 (3) A member of the House of Representatives, appointed by
- 27 the Speaker of the House of Representatives;
- 28
- 29 (4) A member of the Senate, appointed by the President of
- 30 the Senate;
- 31
- 32 (5) A court administrator representative of each Circuit
- 33 Court;
- 34
- 35 (6) A representative of the Department of the Attorney
- 36 General;
- 37
- 38 (7) A representative of the Intake Services Center of the
- 39 Department of Public Safety;
- 40
- 41 (8) A representative of the Prosecuting Attorney's
- 42 department or office of each county;



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

20 BE IT FURTHER RESOLVED that no member be made subject to
 21 chapter 84, Hawaii Revised Statutes, solely because of that
 22 member's participation as a member of the task force; and
 23

24 BE IT FURTHER RESOLVED that the Judiciary and the
 25 Department of Public Safety are requested to provide
 26 administrative support to the task force; and
 27

28 BE IT FURTHER RESOLVED that the task force, with the
 29 assistance of the Legislative Reference Bureau, is requested to
 30 submit a report of its findings and recommendations, including
 31 any proposed legislation, to the Legislature no later than
 32 twenty days prior to the convening of the Regular Session of
 33 2019; and
 34

35 BE IT FURTHER RESOLVED that, upon request of the task
 36 force, the Legislative Reference Bureau is requested to assist
 37 in the preparation of the report; provided that the task force
 38 submits a draft, including any other information and materials
 39 deemed necessary by the Bureau, to the Bureau no later than
 40 August 1, 2018, for the preparation of the report; and



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

