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TESTIMONY ON HOUSE CONCURRENT RESOLUTION 134,
HOUSE DRAFT 1
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.

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Friday, April 21, 2017; 8:00 a.m.
State Capitol, Conference Room 312

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) appreciates the intent of House Concurrent Resolution (HCR) 134, which requests the Judiciary to convene a task force to study and make recommendations on criminal pretrial practices and procedures to maximize public safety and to maximize the pretrial release of the accused and presumed innocent.

PSD is generally supportive of measures to increase the safety of the public while increasing the efficiency of pretrial processes, including the maximization of the pretrial release of non-dangerous detainees who do not pose a flight risk. The Department also appreciates the inclusion of a representative of the Intake Service Centers to serve on the proposed task force.

Thank you for the opportunity to present this testimony.



The Judiciary, State of Hawai‘i

**Testimony to the Senate Committee on Public Safety,
Intergovernmental, and Military Affairs**

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Friday, April 21, 2017 8:00 AM
State Capitol, Conference Room 312

By

Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Concurrent Resolution No. 134, House Draft 1, Criminal Pretrial Practices; Task Force.

Purpose: House Concurrent Resolution No. 134, House Draft 1, requests that the Judiciary 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.

Judiciary’s Position:

The Judiciary supports House Concurrent Resolution No. 134, House Draft 1.

Particularly in recent years, a growing number of states and localities have reconsidered criminal pretrial release practices and have undergone reforms to increase—indeed, maximize—public safety, court appearances, and pretrial release.

Key stakeholder groups have been supportive of such reforms. Such key groups across the country include state and federal prosecutors, state and federal public defenders, pretrial services agencies, the United States Department of Justice, the Bureau of Justice Assistance, and the American Bar Association. Many of these contend that pretrial custody often makes the public less safe in the long run, and that pretrial custody is far more financially costly than evidence-based appropriate pretrial supervision in the community. Accordingly, state and local officials in all three branches in many parts of the country have pursued reforms to prudently



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shift practices and procedures in ways that maximize three key components of a criminal pretrial justice system: public safety, court appearances, and release where appropriate.

Moreover, in September 2016, the Hawai‘i State Judiciary, along with the Hawai‘i State Bar Association’s Judicial Administration Committee (JAC), held a bench-bar criminal law forum. The forum covered various aspects of pretrial practices for a majority of the day. The Judiciary and JAC secured key speakers from the Arizona Administrative Office of the Courts (Arizona has implemented criminal pretrial reforms) and the National Institute of Corrections. In addition, local involvement included more than two dozen judges and court administrators, prominent criminal defense attorneys, public defenders, prosecutors from all four counties, and representatives of the Honolulu Police Department, the Department of Public Safety’s Intake Service Center, and the United States Pretrial Services Office of the District of Hawai‘i. Following the forum, the JAC issued a criminal law forum report recounting the discussions and recommending that a criminal pretrial task force be established. This report will be published in full in the Hawai‘i Bar Journal in the coming months.

For these reasons, the Judiciary supports HCR No. 134, HD1.

Thank you for the opportunity to testify on this measure.



Committee: Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing Date/Time: Friday, April 21, 2017, 8:00a.m.
Place: Conference Room 312
Re: Testimony of the ACLU of Hawaii in **Support** of HCR 134, H.D.1, 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

Dear Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.C.R. 134, H.D. 1. As the Legislature is aware, many of Hawaii’s prisons are overcrowded, with seven out of Hawaii’s nine correction centers over capacity. The pretrial incarcerated population comprises 20 percent of the total incarcerated population and over 50 percent of the incarcerated population at the Oahu Community Correctional Center. The incarceration of nonviolent, low-level offenders and the pretrial detention of those who cannot afford bail is costing taxpayers millions of dollars each year; this also pushes our current facilities beyond the brink of their capacity, resulting in unconstitutional and unsafe conditions. To address this problem, the State must first look to long-term, comprehensive criminal justice reform prior to developing plans to construct any new correctional facility. A Task Force like the one proposed by H.C.R. 134 is a positive first step.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Friday, April 21, 2017

1:15 pm

Room 229

STRONG SUPPORT - HCR 134 - PRE-TRIAL TASK FORCE

Aloha Chair Nishihara, Vice Chair Wakai 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 in Hawai'i for two decades. This testimony is respectfully offered on behalf of the almost 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety. We are always mindful that more than 1,600 of Hawai'i's imprisoned people 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.

Community Alliance on Prisons supports this measure. The Department of Public Safety's March 31, 2017 Weekly Population Report shows that in OCCC alone, 51% of the population are pre-trial detainees. As of the end of March there were 479 pre-trial felons (we wonder about the class of felony) and 72 pre-trial misdemeanants imprisoned at OCCC. This costs taxpayers more than \$2 million a month and almost \$27 million a year. And this is only one facility!

Pre-trial detainees are innocent until proven guilty and we assert that one's economic circumstances should not be a determinant of risk. Even a few days in jail can disrupt a person's life, family, and livelihood. Surely there are better options for low-level drug lawbreakers than jail. There is a plethora of research on the impacts of pre-trial imprisonment on individuals, families, communities, health, employment, lifetime earnings, etc. Incarceration must be the last resort.

People in local jails are significantly poorer than non-incarcerated people, and even poorer than people in prison, finds a new report¹ by the nonprofit Prison Policy Initiative. The recommendations:

¹ DETAINING THE POOR: HOW MONEY BAIL PERPETUATES AN ENDLESS CYCLE OF POVERTY AND JAIL TIME (2016)

<http://www.prisonpolicy.org/reports/incomejails.html>

1. *Stop locking people up for failure to pay fines and fees*
2. *Eliminate the use of money bail*
3. *Reduce the number of arrests that lead to jail bookings through increased use of citations and diversion programs*
4. *Increase funding of indigent criminal defense*
5. *Eliminate all pay-to-stay programs*
6. *Reduce the high costs of phone calls home from prisons and jails and stop replacing in-person jail visits with expensive video visitation.*

The only way localities can safely reduce the costs incurred by jail incarceration is to limit the number of people who enter and stay in jails. This is no small task. How and why so many people cycle through jails is a result of decisions dispersed among largely autonomous system actors. This means that the power to downsize the jail is largely in the hands of stakeholders outside its walls. So only by widening the lens – looking beyond the jail to the decisions made by police, prosecutors, judges, and community corrections officials – will jurisdictions be able to significantly reduce the size of their jails, save scarce county and municipal resources, and make the necessary community reinvestments to address the health and social service needs that have for too long landed at the doorstep of the jail.²

The proposed task force is huge, however using the model of the Penal Code Review Committee, the work can be broken up into committees and then discussed by the whole group. Another model is one developed by Jeremy Travis, an internationally recognized criminologist and former President of the John Jay College of Criminal Justice in New York City has been working on a project in NYC called, THE MIDEMEANOR JUSTICE PROJECT.³ They broke their work into sections:

- Phase I (MJP-I) sought to conduct research and disseminate information about low-level criminal offenses (misdemeanors, summonses, and violations) in New York State and New York City. With this information, we informed the local dialogue on the enforcement of low-level offenses. To date, the MJP has been successful in providing evidence that has been critical to shaping criminal justice policy reform in New York City.
- Phase II (MJP-II) is to: (1) study and disseminate information on the enforcement of low-level offenses; (2) conduct four quantitative analyses focused on the enforcement of low-level offenses and pretrial detention in New York City; (3) establish a research agenda around low-level enforcement; (4) commission papers in line with the research agenda; and (5) convene national experts to discuss project findings.

Key findings of the report include:

² THE PRICE OF JAILS: MEASURING THE TAXPAYER COST OF LOCAL INCARCERATION (2015)
<http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/The-Price-of-Jails-report.pdf>

³ The Misdemeanor Justice Project, <http://misdemeanorjustice.org/about-us/>

1. The average pretrial length of stay increased significantly, from 40 days to 55 days. The average pretrial length of stay for felony admissions increased from 62 days to 80 days and for misdemeanor admissions from 13 days to 17 days.
2. For pretrial admissions, the charge categories with the largest increases in pretrial length of stay were violent crimes, burglary, and weapon charges. The average pretrial length of stay for violent crimes increased from 89 days to 119 days (a 34.9 percent increase), for burglary increased from 71 to 96 days (a 35.1 percent increase), and for weapon charges increased from 40 to 72 days (a 78.4 percent increase).
3. The average bail amount set for pretrial admissions more than doubled, from approximately \$7,800 to \$16,800. Average bail amounts increased for felony admissions (\$12,600 to \$26,000) and misdemeanor admissions (\$1,500 to \$2,100).
4. For pretrial admissions, the highest proportion of discharges were for bail paid, 30.3 percent in 2000 and 35.4 percent in 2015. Discharges for ROR, the second highest proportion of discharges, accounted for 23.3 percent in 2000 and 21.5 percent in 2015. The average length of stay for these discharge categories increased from 10 days to 14 days and 30 days to 36 days, respectively.
5. Pretrial admissions that resulted in a transfer to state prison had the highest bail amount set and highest average length of stay. Notably, the average bail amount set this category increased from \$22,560 to \$74,253, an almost three-fold increase (229.1 percent); and the average length of stay increased from 170 days to 284 days, a 66.4 percent increase.

The reports and analysis from the Justice Reinvestment Initiative will also help inform the work of the Pre-Trial Task Force.

Detaining individuals accused of non-serious offenses has proven to be a costly and failed experiment. The research is clear that even a few days of imprisonment have a life-long impact on a person. In these tenuous political times, when Hawai'i can no longer count on Federal funding, our resources will be stretched to the max as the state struggles to find the resources to even maintain the status quo for our people in Hawai'i.

Criminal justice reform is happening all around the continental US and around the world. Hawai'i has a unique opportunity to showcase strategies that build safe, healthy and just communities.

Community Alliance on Prisons urges the committee to pass this important measure to reform our pre-trial system.

Mahalo for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 20, 2017 12:51 PM
To: PSMTestimony
Cc: maukalani78@hotmail.com
Subject: Submitted testimony for HCR134 on Apr 21, 2017 08:00AM

HCR134

Submitted on: 4/20/2017

Testimony for PSM on Apr 21, 2017 08:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments: Strongly support this resolution which forms a task force of judges who can help to come up with long-term solutions to the overcrowding at OCCC.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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