



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Public Safety

Representative Gregg Takayama, Chair
Representative Matthew S. LoPresti, Vice Chair

Thursday, March 23, 2017, 10:00 a.m.
State Capitol, Conference Room 312

By

Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

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

Purpose: House Concurrent Resolution No. 134 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.

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



House Concurrent Resolution No. 134, Criminal Pretrial Practices; Task Force.
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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.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
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NOLAN P. ESPINDA
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No. _____

TESTIMONY ON HOUSE CONCURRENT RESOLUTION 134
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

House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Matthew S. LoPresti, Vice Chair

Thursday, March 23, 2017; 10:00 a.m.
State Capitol, Conference Room 312

Chair Takayama, Vice Chair LoPresti, 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 supports 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.

Charlotte A. Carter-Yamauchi
Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
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Written Comments

HCR134

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

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the House Committee on Public Safety

Thursday, March 23, 2017, 10:00 a.m.
Conference Room 312

Chair Takayama and Members of the Committee:

Good morning Chair Takayama and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 134, 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.

The purpose of this measure is to request that the Judiciary convene a Criminal Pretrial Task Force to:

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

- (3) Draft and submit, with the assistance of the Legislative Reference Bureau, a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2019.

The measure also requests that:

- (1) The Judiciary and the Department of Public Safety are requested to provide administrative support to the task force; and
- (2) The Legislative Reference Bureau, upon request of the task force, assist in the preparation of the report; provided that the task force submits a draft, including any other information and materials deemed necessary by the Bureau, to the Bureau no later than August 1, 2018, for the preparation of the report.

The Bureau takes no position on this measure, but submits the following comments for your consideration.

If the measure is not amended to increase the scope of the Bureau's involvement in this project, the Bureau believes that the services requested under this measure are manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY

Rep. Gregg Takayama, Chair
Rep. Matt LoPresti, Vice Chair
Thursday, March 23, 2017
10:00 am
Room 312



SUPPORT - HCR 134 - Task Force re Pre-Trial Detention

Aloha Chair Takayama, Vice Chair LoPresti 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 approximately 1,700 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 is in strong support of this measure. The Department of Public Safety's February 28, 2017 Weekly Population Report shows that there are 883 pre-trial felons and 123 pre-trial misdemeanants incarcerated in Hawai'i state facilities. This costs taxpayers over a \$1 million a week and over \$4 million a month.

RESEARCH

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. Stop locking people up for failure to pay fines and fees
2. Eliminate the use of money bail

¹ DETAINING THE POOR: HOW MONEY BAIL PERPETUATES AN ENDLESS CYCLE OF POVERTY AND JAIL TIME (2016)
<http://www.prisonpolicy.org/reports/incomejails.html>

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

EARNED COMPLIANCE CREDITS

*Since 2012, Missouri has allowed probationers or parolees to shorten their sentences through earned discharge, a correctional practice that encourages good behavior among those under community supervision. Three years of data show that the earned compliance credit policy significantly reduced the state’s supervised population without jeopardizing public safety. More than 36,000 individuals in Missouri shortened their probation and parole sentences by an average of 14 months through the law, with those who were discharged more recently earning reductions of nearly two years. Further, **the availability of earned compliance credits had no effect on recidivism**: Those who earned credits were subsequently convicted of new crimes at the same rate as those discharged from supervision before the policy took effect. Earned compliance credits are one of a variety of policies that states are adopting to improve the performance of their sentencing and corrections systems. This evaluation demonstrates that such rewards can be a valuable tool to manage correctional populations.³*

Community Alliance on Prisons supports the task force as long as the meetings are open and transparent with public input and with reports available for public scrutiny.

Mahalo for this opportunity to testify.

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 MISSOURI POLICY SHORTENS PROBATION AND PAROLE TERMS, PROTECTS PUBLIC SAFETY (2016)
<http://bloximages.newyork1.vip.townnews.com/newspressnow.com/content/tncms/assets/v3/editorial/a/36/a366f4a6-3b5a-586c-9d59-c36264d45434/57ccb36b58b59.pdf.pdf>

Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 18, 2017 4:34 PM
To: pbstestimony
Cc: maukalani78@hotmail.com
Subject: Submitted testimony for HCR134 on Mar 23, 2017 10:00AM

HCR134

Submitted on: 3/18/2017

Testimony for PBS on Mar 23, 2017 10:00AM in Conference Room 312

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

Comments: Creation of this task force will help the Legislature to receive in-depth information and recommendation to receive information not generally available.

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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Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 20, 2017 4:22 PM
To: pbstestimony
Cc: dabitbol@chowproject.org
Subject: *Submitted testimony for HCR134 on Mar 23, 2017 10:00AM*

HCR134

Submitted on: 3/20/2017

Testimony for PBS on Mar 23, 2017 10:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	CHOW Project	Support	No

Comments:

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Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 22, 2017 11:27 AM
To: pbstestimony
Cc: barbarapolk@hawaiiantel.net
Subject: Submitted testimony for HCR134 on Mar 23, 2017 10:00AM

HCR134

Submitted on: 3/22/2017

Testimony for PBS on Mar 23, 2017 10:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments: Aloha chairs--I strongly urge you to pass this resolution, that would convene a task force on pretrial practices. As we consider replacing OCCC, it is important first to look at reducing the numbers of people held there. Apparently up to 50% of those incarcerated are pre-trial defendants, people who are innocent under our constitution. Since felonies with a possible life in prison sentence are rare, it is likely than almost all of these people would be eligible for release prior to trial. It appears to be a violation of the State Constitution to hold them there for failure to pay bail. We have seen the injustice of our system in the release on bail (he or his family could afford it) and permission to leave the state of a young man who helped slaughter numerous rare albatrosses, while a poor person found with an open, but empty, bottle of beer (collected to earn some money)is held in jail pending trial. This task force is necessary to avoid the costs to the state of defending law suits by future pretrial detainees, as well as of building a huge jail that is not needed. I strongly urge you to support HCR 134.

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Iopresti2 - Isabella

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 23, 2017 4:59 AM
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Subject: *Submitted testimony for HCR134 on Mar 23, 2017 10:00AM*

HCR134

Submitted on: 3/23/2017

Testimony for PBS on Mar 23, 2017 10:00AM in Conference Room 312



Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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