



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

Tuesday, April 4, 2017 10:10 AM
State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

By

Rodney A. Maile

Administrative Director of the Courts

Bill No. and Title: Senate Concurrent Resolution No. 126, Senate Draft 1 Criminal Pretrial Practices; Task Force.

Purpose: Senate Concurrent Resolution No. 126, Senate 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 Senate Concurrent Resolution No. 126, Senate 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



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officials in all three branches in many parts of the country have pursued reforms to prudently 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 SCR No. 126, SD1.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
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TESTIMONY ON SENATE CONCURRENT RESOLUTION 126,
SENATE 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 Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Tuesday, April 4, 2017; 10:10 a.m.
State Capitol, Conference Room 016

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

The Department of Public Safety (PSD) **appreciates the intent** of Senate Concurrent Resolution (SCR) 126 Senate Draft (SD) 1, 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 court appearances, 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 and has no objection to the additional inclusion of a staff member of the Legislative Reference Bureau.

Thank you for the opportunity to present this testimony.

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Written Comments

SCR126, SD1

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 Senate Committee on Judiciary and Labor

Tuesday, April 4, 2017, 10:10 a.m.
Conference Room 016

Chair Keith-Agaran and Members of the Committee:

Good morning Chair Keith-Agaran 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 S.C.R. No. 126, S.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.

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) A representative from the Legislative Reference Bureau be a member of the task force;
- (2) The Judiciary and the Department of Public Safety are requested to provide administrative support to the task force; and
- (3) 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.

We note that, generally, staff of the Legislative Reference Bureau are not included in the membership of such entities unless the subject matter of the task force specifically pertains to an issue within the scope of the Bureau's expertise. While we have no objection if it is the will of the Committee, the Bureau does not believe its inclusion within the membership of the task force is necessary.

Otherwise, 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 the opportunity to submit comments.

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COMMITTEE ON JUDICIARY AND LABOR

Sen. Gil Keith-Agaran, Chair

Sen. Karl Rhoads, Vice Chair

Tuesday, April 4, 2017

10:10 am

Room 016

SUPPORT - SCR 126 SD1 -PRE-TRIAL TASK FORCE

Aloha Chair Keith-Agaran, Vice Chair Rhoads 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 supports 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.

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.

According to the Department of Public Safety's February 28, 2017 Population Report, there were 539 **pre-trial** felons and misdemeanants incarcerated at OCCC. This is more than 50% of the OCCC population (1,072). We also wonder about the class of felony for those held on pre-trial felonies.

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. 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

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 welcomed and with reports available for public scrutiny. Mahalo for this opportunity to testify.

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

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>