



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.**

Senate Committee on Judiciary and Labor

April 4, 2017

10:10 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SCR126 SD1. OHA supports the intent of this measure, to address the substandard conditions and overcrowding in Hawai'i's jails by establishing a new Task Force to make recommendations on pretrial procedure. Addressing the high number of inmates held in pretrial detention simply because they cannot afford to post their bail for low-level offenses should remain a priority; however, the work of the proposed Task Force may duplicate the current efforts of the HCR85 (Reg. Sess. 2016) Task Force, which was requested to report their recommendations for incarceration policies at the end of this year.

The cash bail system is intended to secure defendants' appearance in court; however, as currently implemented, it frequently acts as a punishment upon the poor even prior to a conviction for a crime. This system subverts the intent stated in HRS § 804-9 not to render the "[bail] privilege useless to the poor." **In other words, our current cash bail practices invert the common law principle that those accused of crimes are "innocent until proven guilty," by punishing alleged offenders with imprisonment until they are proven innocent.**

The detention of unconvicted defendants who pose no threat to public safety may also exacerbate the challenges faced by those in poverty. While wealthier defendants can buy their pretrial freedom, poorer defendants must languish in jail, frequently for periods exceeding the sentence carried by their charges and at great cost to taxpayers. Even short jail stays for indigent defendants can disrupt their lives and families, resulting in job loss, eviction, loss of custody of their children, and worsened poverty. Moreover, those who are able to pay private bonds can spend years in debt to bondsmen, regardless of whether they are convicted for the crime originally charged. **Faced with these consequences, poor defendants may frequently offer guilty pleas at arraignment, notwithstanding potential fines and the permanent collateral consequences of criminal conviction records, in exchange for immediate freedom.**

Critical examination of current pretrial systems and best practices across the nation may help us reverse course and mitigate the punitive and long-term consequences of the cash bail system on poor defendants. However, if the Task Force proposed by SCR126 SD1 is convened, it is important that they coordinate closely with the HCR85 Task Force formed in 2016 to ensure that their work will not be duplicious.

If the Committee chooses to pass SCR126 SD1, OHA respectfully requests that page 5, lines 13-14 be amended to reflect OHA's administrative structure, to read as follows:

"(13) The Administrator of the Office of Hawaiian Affairs, or the Administrator's designee;"

Mahalo for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

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MARTHA ROSS  
Commissioner

PAMELA FERGUSON-BREY  
Executive Director

**LATE TESTIMONY**

TESTIMONY ON SENATE CONCURRENT RESOLUTION 126 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.

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

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

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Senate Committee on Judiciary and Labor:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify before the Committee today. The Commission supports this resolution with amendment to add representatives from victim advocacy groups to the task force. SCR 126 SD1 creates a task force to make recommendations to maximize the release of pretrial detainees. Ensuring the safety of crime victims and the community at large must be a governing factor as the task force develops recommendations, with special consideration given to ensuring the safety of domestic violence and sexual assault victims. If victim advocates do not have a seat at the table, the legislature will not have confidence that the final recommendations of the task force adequately address the safety concerns of crime victims and survivors, or that the recommendations of the task force also adequately addresses public safety.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available.

In 2011, Governor Abercrombie appointed the Commission to serve as a member of the Justice Reinvestment Initiative (JRI) Working Group. The JRI Working Group was comprised of leading state and local officials who worked with the Council of State Governments Justice Center in partnership with the Pew Center on the States and the United States Department of Justice's Bureau of Justice Assistance, to develop a policy framework to address identified areas of concern within Hawai'i's criminal justice system and to develop data-driven, consensus-based policy options designed to reduce corrections spending and increase public safety. Part of the Commission's role as a member of the JRI Working Group was to engage crime victims, survivors, and victim service providers and advocates in identifying key issues and concerns specific to the JRI initiative. The Working Group's policy framework became the basis for the JRI legislation.

The Hawai'i JRI Act made the needs of crime victims' and offender accountability key parts of the JRI Act – the comprehensive victim service component of the Hawai'i JRI Act has since become a national model and was recognized by the Department of Justice's Office for Victims of Crime.

The Hawai'i JRI Act contains provisions that address the issues and concerns of crime victims because crime victims were represented on the Working Group that developed the JRI legislation.

SCR 126 SD1 seeks to create a task force to make recommendations regarding pretrial practice and procedures in order to maximize the release of pretrial detainees. In developing these recommendations, the safety of the crime victims and the community at large must be a governing factor, with special consideration given to ensuring the safety of domestic violence and sexual assault victims. The advocacy groups for the victims of these crimes have the specialized knowledge and experience necessary to adequately address the safety issues of crime victims and survivors. If victim advocates do not have a seat at the table, the legislature will not have confidence that the final recommendations of the task force adequately address the safety concerns of crime victims and survivors, or that the recommendations of the task force also adequately address public safety.

Thank you for providing the Commission with the opportunity to testify in support of Senate Concurrent Resolution 126 SD1 with amendment to add victim advocacy groups to the task force.