

DAVID Y. IGE
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No. _____

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

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

Thursday, April 13, 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 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.



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, April 13, 2017 10:00 AM
State Capitol, Conference Room 312

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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Task Force
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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
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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MARI MCCAIG
Chair

ABELINA SHAW
Commissioner

MARTHA ROSS
Commissioner

PAMELA FERGUSON-BREY
Executive Director

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

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

Thursday, April 13, 2017; 10:00 AM
State Capitol, Conference Room 312

Chair Takayama, Vice Chair LoPresti and Members of the House Committee on Public Safety:

Thank you for providing the Crime Victim Compensation Commission ("Commission") with the opportunity to testify before you 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 the community and crime victims must be a governing factor as the task force develops recommendations. 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, 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.

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, Crime Victim Financial Restoration Award in April 2013 from United States Attorney General Eric Holder.

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 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 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, or that the recommendations of the task force also adequately addresses 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.



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.

House Committee on Public Safety

April 13, 2017

10:00 a.m.

Room 312

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 to not 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 efforts are not duplicative.

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:

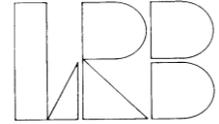
"(13) The Administrator of the Office of Hawaiian Affairs,
or the Administrator's designee;"

Mahalo for the opportunity to testify on this measure.

Charlotte A. Carter-Yamauchi
Director

Shawn K. Nakama
First Assistant

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

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 House Committee on Public Safety

Thursday, April 13, 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 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.



LATE

Committee: Committee on Public Safety
Hearing Date/Time: Thursday, April 13, 2017, 10:00a.m.
Place: Conference Room 312
Re: Testimony of the ACLU of Hawaii in **Support** of SCR 126, 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 Takayama, Vice Chair LoPresti, and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.C.R. 126. 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 S.C.R. 126 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

Rep. Gregg Takayama, Chair

Rep. Matthew LoPresti, Vice Chair

Thursday, April 13, 2017

10:00 am

Room 312

SUPPORT - SCR 126 SD1 -PRE-TRIAL TASK FORCE

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 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 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

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 MIDMEANOR 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.

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

Key findings of the report include:

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.

Iopresti1 - Randy

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 13, 2017 8:28 AM
To: pbstestimony
Cc: blawaiianlvr@icloud.com
Subject: Submitted testimony for SCR126 on Apr 13, 2017 10:00AM

LATE

SCR126

Submitted on: 4/13/2017

Testimony for PBS on Apr 13, 2017 10:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We SUPPORT this resolution.

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: Wednesday, April 12, 2017 3:46 PM
To: pbstestimony
Cc: maukalani78@hotmail.com
Subject: Submitted testimony for SCR126 on Apr 13, 2017 10:00AM

SCR126

Submitted on: 4/12/2017

Testimony for PBS on Apr 13, 2017 10:00AM in Conference Room 312

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

Comments: Aloha Chair Takayama, Vice Chair Lo Presti and Committee Members: I am writing in support of SCR126. The incarceration of young vulnerable individuals provides them training to become criminals. In February of this year, 51 percent of individuals in OCCC were pretrial detainees/innocent until proven guilty. We cannot afford the cost nor the present system of pretrial and bail to continue. Thank you for the opportunity to provide my comments. Aloha, e. ileina funakoshi

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