



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

Tuesday, March 28, 2017 1:20 PM
State Capitol, Conference Room 229

WRITTEN TESTIMONY ONLY

By

Rodney A. Maile
Administrative Director of the Courts

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

Purpose: Senate Concurrent Resolution No. 126 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.

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



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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 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.

Thank you for the opportunity to testify on this measure.

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TESTIMONY ON SENATE CONCURRENT RESOLUTION 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.

by
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Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
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Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) appreciates the intent of Senate Concurrent Resolution (SCR) 126, 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.

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, March 28, 2017

1:20 pm

Room 229

SUPPORT - SCR 126 -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 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 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>



TO: Chair Nishihara
Vice Chair Wakai
Committee on Public Safety

FR: Nanci Kreidman, M.A.

RE: SCR 126

Aloha. We are in support of this Resolution.
And implore the Committee to consider including other community voices in the discussion.
Public safety, most times, does not include crimes and circumstances impacting families who have suffered (or are suffering the harm) of domestic violence.

Far too many defendants are incarcerated with too little support for rehabilitation, healing from trauma and development of personal strategies for re-entry. However, it has been our experience over decades that the same concerns and attention given to
The jeopardy faced by the community when criminals are not sufficiently accountable does not include the realities facing families who have partners or parents charged or convicted of crimes after committing crimes of family violence.

Please give careful consideration to the appointed participants on the Task Force.

Thank you very much.