



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, January 30, 2018 1:15 PM
State Capitol, Conference Room 229

By
The Honorable Rom A. Trader
Chair
Criminal Pretrial Task Force

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2814, Relating to the Release of Misdemeanants.

Purpose: Defines the circumstances for the Director of Public Safety or a designee of the director to release pretrial and sentenced misdemeanants at community correctional centers.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2814 and respectfully suggests that the Committee defer consideration of criminal pretrial procedures until receiving the report of the Criminal Pretrial Task Force (HCR 134 Task Force) no later than twenty days prior to the 2019 Regular Session of the Legislature.

The HCR 134 Task Force was convened in August 2017 pursuant to 2017 House Concurrent Resolution Number 134, House 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 (HCR 134). (Attachment A) The Judiciary supported HCR 134, noting that “[p]articularly 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.”



Senate Bill No. 2814, Relating to the Release of Misdemeanants
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
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Chief Justice Mark E. Recktenwald appointed the current Criminal Pretrial Task Force (HCR134 Task Force), comprised of 31 members representing County and State agencies involved in criminal pretrial procedures. A list of Task Force members and affiliations is also attached.

As directed in HCR 134, the HCR 134 Task Force is scheduled to submit its report of findings and recommendations, including any proposed legislation, to the Legislative Reference Bureau no later than August 1, 2018, with the report to be finalized for submission to the Legislature prior to the 2019 Regular Session.

Chaired by First Circuit Judge Rom A. Trader, the Task Force has begun study and deliberations to address issues named in HCR 134: (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; and (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.

Following presentations on national and state pretrial procedures and a public comment session, Judge Trader appointed six subcommittees, with a mix of stakeholders on each subcommittee. Subcommittees are currently conducting further study in their respective subject areas:

1. Arrest/Booking Subcommittee
2. Jail Screening and Intake Assessment Subcommittee
3. Prosecutorial Decision-Making & Discretion Subcommittee
4. Initial Appearance / Defense Counsel Subcommittee
5. Pretrial Services - Risk Assessment / Supervision Subcommittee (Pretrial Services Operations)
6. Judicial Release & Detention Decision-Making Subcommittee

The Judiciary and the HCR 134 Task Force will reserve comments on proposed changes to current pretrial procedures until after the Task Force Report is submitted in December 2018.

In the event this bill moves forward, the Judiciary respectfully requests a delayed effective date to allow the Judiciary additional time to make modifications to the Judiciary's Information Management System (JIMS) to satisfy the basic requirements of this bill which are currently not available, and to determine the funding for vendor services necessary for these changes.

Thank you for the opportunity to testify on this measure.



HCR134 Task Force Members:

Judge Rom A. Trader, Circuit Court, First Circuit, Chair
Judge Shirley Kawamura, Circuit Court, First Circuit, Recorder
William C. Bagasol, Supervising Deputy, Office of the Public Defender
Myles S. Breiner, Hawai'i Association of Criminal Defense Lawyers - Honolulu
Michael Champion, M.D., State Department of Health
Craig A. De Costa, Hawai'i Association of Criminal Defense Lawyers - Kaua'i
Chief Tivoli S. Faaumu, Maui County Police Department
Chief Paul K. Ferreira, Hawai'i County Police Department
Janice Futa, Office of the Prosecuting Attorney, City & County of Honolulu
Judge Colette Y. Garibaldi, Circuit Court, Admin. Judge, Criminal Division, First Circuit
Wendy Hudson, Hawai'i Association of Criminal Defense Lawyers - Maui
John D. Kim, Maui County Prosecuting Attorney
Justin Kollar, Prosecuting Attorney, County of Kaua'i
Milton Kotsubo, Public Member
Judge Rhonda I. L. Loo, Circuit Court, Second Circuit
Kamaile Maldonado, Office of Hawaiian Affairs
Brook Mamizuka, Intake Administrator, Adult Client Services Branch, First Circuit
Deputy Chief John McCarthy, Honolulu Police Department
Judge Greg K. Nakamura, Circuit Court / Chief Judge, Third Circuit
Senator Clarence K. Nishihara, State Senate, Public Safety Committee Chair
Representative Scott Y. Nishimoto, House of Representatives, Judiciary Comm. Chair
Shelley D. Nobriga, Intake Service Center, PSD
Lester Oshiro, Chief Court Administrator, Third Circuit
Chief Darryl D. Perry, Kaua'i County Police Dept.
Michelle M.L. Puu, Deputy Attorney General, Dept. of the Attorney General
Deputy Chief Victor Ramos, Maui County Police Department
Mitchell D. Roth, Prosecuting Attorney, County of Hawai'i
Judge Michael K. Soong, District Court, Fifth Circuit
Kari Yamashiro, Deputy Chief Court Administrator, Fifth Circuit
Marsha Yamada, Deputy Chief Court Administrator, Second Circuit
Michael S. Zola, Hawai'i Association of Criminal Defense Lawyers - Hawai'i Island

HOUSE CONCURRENT RESOLUTION

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.

1 WHEREAS, the United States Supreme Court declared in *United*
2 *States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our
3 society, liberty is the norm, and detention prior to or without
4 trial is the carefully limited exception"; and
5

6 WHEREAS, Article I, section 12, of the Hawaii State
7 Constitution provides, "Excessive bail shall not be required,
8 nor excessive fines imposed", and further provides, "The court
9 may dispense with bail if reasonably satisfied that the
10 defendant or witness will appear when directed, except for a
11 defendant charged with an offense punishable by life
12 imprisonment"; and
13

14 WHEREAS, section 804-9, Hawaii Revised Statutes, provides
15 that "[t]he amount of bail rests in the discretion of the
16 justice or judge or the officers named in section 804-5; but
17 should be so determined as not to suffer the wealthy to escape
18 by the payment of a pecuniary penalty, nor to render the
19 privilege useless to the poor. In all cases, the officer
20 letting to bail should consider the punishment to be inflicted
21 on conviction, and the pecuniary circumstances of the party
22 accused"; and
23

24 WHEREAS, House Concurrent Resolution No. 85 (2016)
25 requested that the Chief Justice establish a task force to study
26 effective incarceration policies; and
27

28 WHEREAS, the Chief Justice has established the task force,
29 which issued an interim report in December 2016, in which it



1 proclaimed, "Hawaii must chart a new course and transition from
2 a punitive to a rehabilitative correctional model"; and
3

4 WHEREAS, the task force has referenced a Vera Institute of
5 Justice conclusion that "just a few days in jail can increase
6 the likelihood of a sentence of incarceration and the harshness
7 of that sentence, reduce economic viability, promote future
8 criminal behavior, and worsen the health of those who enter -
9 making jail a gateway to deeper and more lasting involvement in
10 the criminal justice system at considerable costs to the people
11 involved and to society at large"; and
12

13 WHEREAS, the American Bar Association Criminal Justice
14 Section Standards for Criminal Justice: Pretrial Release
15 sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the
16 judicial officer should assign the least restrictive
17 condition(s) of release that will reasonably ensure a
18 defendant's attendance at court proceedings and protect the
19 community, victims, witnesses or any other person", and
20 financial conditions "should not be employed to respond to
21 concerns for public safety", nor should financial conditions
22 result "in the pretrial detention of the defendant solely due to
23 an inability to pay"; and
24

25 WHEREAS, the American Council of Chief Defenders Policy
26 Statement on Fair and Effective Pretrial Justice Practices
27 (June 4, 2011) explains standards that "require public defenders
28 to present judicial officers with the facts and legal criteria
29 to support release, and where release is not obtained, to pursue
30 modification of the conditions of release"; and
31

32 WHEREAS, the National District Attorneys Association's
33 National Prosecution Standards, Third Edition, with Revised
34 Commentary, provides that "[a] prosecutor should not seek a bail
35 amount or other release conditions that are greater than
36 necessary to ensure the safety of others and the community and
37 to ensure the appearance of the defendant at trial" and "[t]hese
38 provisions recognize a respect for the presumption of innocence
39 and therefore state a clear preference for release of defendants
40 pending trial"; and
41

42 WHEREAS, research suggests that pretrial services should
43 include adequate and timely pretrial assessments of the accused
44 that are focused on assessing risk of not appearing and risk to



1 public safety, and that the criminal justice system include
2 viable options of appropriate supervision for different types
3 and levels of risks; and
4

5 WHEREAS, in recent years, several other states have
6 undertaken significant reforms to their criminal pretrial
7 practices and procedures, including Alaska, Arizona, Colorado,
8 Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah;
9 and
10

11 WHEREAS, the Hawaii State Bar Association, through its
12 Judicial Administration Committee, conducted a Criminal Law
13 Forum in September 2016, during which it thoroughly discussed
14 criminal pretrial issues among a diverse group of judges,
15 prosecutors, and criminal defense attorneys, and featured
16 speakers from the Honolulu Police Department, Intake Service
17 Center of the Department of Public Safety, National Institute of
18 Corrections, United States Pretrial Services Office of the
19 District of Hawaii, and Arizona Administrative Office of the
20 Courts; and
21

22 WHEREAS, the Judicial Administration Committee recommended
23 establishment of a criminal pretrial task force to examine and
24 make recommendations regarding criminal pretrial practices and
25 procedures; and
26

27 WHEREAS, an examination of potential revisions to criminal
28 pretrial practices, procedures, and laws would improve public
29 safety while protecting state and federal constitutional
30 principles regarding the presumption of innocence, liberty, and
31 right to non-excessive bail, and lower costs throughout the
32 criminal justice system; and
33

34 WHEREAS, the task force will make recommendations regarding
35 the future of a jail facility on Oahu and best practices for
36 pretrial release, and any such recommendations should be
37 considered by or coordinated with the Criminal Pretrial Task
38 Force; now, therefore,
39

40 BE IT RESOLVED by the House of Representatives of the
41 Twenty-ninth Legislature of the State of Hawaii, Regular Session
42 of 2017, the Senate concurring, that the Judiciary is requested
43 to convene a Criminal Pretrial Task Force to:
44



- 1 (1) Examine and, as needed, recommend legislation and
2 revisions to criminal pretrial practices and
3 procedures to increase public safety while maximizing
4 pretrial release of those who do not pose a danger or
5 a flight risk; and
6
- 7 (2) Identify and define best practices metrics to measure
8 the relative effectiveness of the criminal pretrial
9 system, and establish ongoing procedures to take such
10 measurements at appropriate time intervals; and
11

12 BE IT FURTHER RESOLVED that the task force be comprised of
13 members that represent the various perspectives of public
14 officials with significant roles in the criminal pretrial system
15 and include:
16

- 17 (1) The Chief Justice or the Chief Justice's designee, who
18 shall serve as the chairperson of the task force;
19
- 20 (2) A judicial officer representative of each Circuit
21 Court;
22
- 23 (3) A member of the House of Representatives, appointed by
24 the Speaker of the House of Representatives;
25
- 26 (4) A member of the Senate, appointed by the President of
27 the Senate;
28
- 29 (5) A court administrator representative of each Circuit
30 Court;
31
- 32 (6) A representative of the Department of the Attorney
33 General;
34
- 35 (7) A representative from one of the various Intake
36 Services Center of the Department of Public Safety;
37
- 38 (8) A representative of the Prosecuting Attorney's Office
39 of each county;
40
- 41 (9) A representative of the Office of the Public Defender
42 for the State of Hawaii;
43



- 1 (10) Four representatives appointed by the Hawaii
- 2 Association of Criminal Defense Lawyers, including one
- 3 representative from each county;
- 4
- 5 (11) A representative of each county police department;
- 6
- 7 (12) A representative of the Department of Health;
- 8
- 9 (13) The Chairperson of the Board of Trustees of the Office
- 10 of Hawaiian Affairs, or the Chairperson's designee;
- 11 and
- 12
- 13 (14) A member of the public who has knowledge and expertise
- 14 with the criminal pretrial system appointed by the
- 15 Director of Public Safety; and
- 16

17 BE IT FURTHER RESOLVED that no member be made subject to
 18 chapter 84, Hawaii Revised Statutes, solely because of that
 19 member's participation as a member of the task force; and
 20

21 BE IT FURTHER RESOLVED that the Judiciary and the
 22 Department of Public Safety are requested to provide
 23 administrative support to the task force; and
 24

25 BE IT FURTHER RESOLVED that the task force, with the
 26 assistance of the Legislative Reference Bureau, is requested to
 27 submit a report of its findings and recommendations, including
 28 any proposed legislation, to the Legislature no later than
 29 twenty days prior to the convening of the Regular Session of
 30 2019; and
 31

32 BE IT FURTHER RESOLVED that, upon request of the task
 33 force, the Legislative Reference Bureau is requested to assist
 34 in the preparation of the report; provided that the task force
 35 submits a draft, including any other information and materials
 36 deemed necessary by the Bureau, to the Bureau no later than
 37 August 1, 2018, for the preparation of the report; and
 38

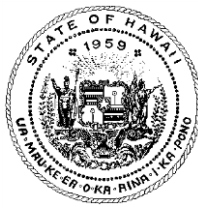
39 BE IT FURTHER RESOLVED that certified copies of this
 40 Concurrent Resolution be transmitted to the Chief Justice of the
 41 Hawaii Supreme Court, Attorney General, Public Defender of the
 42 State of Hawaii, Director of Health, Director of Public Safety,
 43 Chairperson of the Board of Trustees of the Office of Hawaiian
 44 Affairs, Chief of Police of each county police department,



1 Prosecuting Attorney of each county, and the Hawaii Association
2 of Criminal Defense Lawyers.

3
4
5
6





STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

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Deputy Director
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Jodie F. Maesaka-Hirata
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Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 2814
RELATING TO THE RELEASE OF MISDEMEANANTS.

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, January 30, 2018; 1:15 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) **strongly supports** Senate Bill (SB) 2814, which would serve to increase the pool of minimal-risk sentenced misdemeanants who may be potential candidates for release as one means of reducing facilities' overcrowding under Hawaii Revised Statutes Sections 353-36 and 353-37. The measure is part of the Administration's Legislative package.

In its 2018 Report to the Legislature, responsive to Act 217, Session Laws of Hawai'i 2016, the Department recommended the following amendments to the subject statute:

- "1) all petty misdemeanor and misdemeanor offenses should be considered for release by the Director, not just offenses based on HRS 706-663; and
- "2) individuals arrested for a violation of an order of protection or temporary restraining order or those arrested based on title 37, shall be excluded from consideration in light of the victims' and public safety concerns. The reference to arrest excludes offenses wherein law enforcement has closed the matter without referral to

the office of the prosecutor, or the prosecutor's office has declined to charge the individual.”

It should be noted that in implementing Act 217, the Department conducted extensive research and data reviews to develop policy and a misdemeanor screening tool, which was then tested in a pilot project prior to finalization. In 2017, out of a total pool of 161 misdemeanants, only 3 were released, and there were no post release offenses resulting in an arrest or commitment.

PSD believes the suggested amendments would increase the effectiveness of Sections 353-36 and 353-37, with minimal risk to public safety, and respectfully encourages the Committee's support of this measure.

Thank you for the opportunity to present this testimony.



TO: Chair Taniguchi
Vice Chair Rhoads
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Comments in Relation to SB2814 Relating to Release of Misdemeanants

Aloha. This is a very important Bill for victims of domestic violence. The community and agents of law enforcement, and criminal justice system often underestimate the risk and the danger faced by victims of domestic violence. We are grateful that domestic violence is included as a crime of violence that prevents release of sentenced misdemeanants in response to overcrowding at correctional facilities. This testimony is to underscore the importance of the system's commitment to securing effective accountability of perpetrators of domestic violence who are focused on their victims and are likely to harm again.

For the many cases that are pled down to harassment (?) and assault in the third degree, the defendants fall outside the category of defendants who have been arrested or convicted for abuse of family or household members (as defined in 709-906). For all those abusers who are not arrested, or have a warning citation issued to them, they are not any less of a threat or a danger to their partners. We cannot overstate the imperative for law enforcement, criminal justice and public safety system to understand that amendments to statute like this, potentially impacts the safety of victims who have had to work very diligently to cooperate with an otherwise ineffective system. The lack of an arrest, or the plea bargains arrived at by the prosecutor's office place victims at continual risk of more harm, injury and terror.

There are countless women whose safety may be in jeopardy as a result of this legislation. These are not perceived or imagined threats to survivor's safety. At the Domestic Violence Action Center we see countless examples of system ineffectiveness that terrorizes and injures the agency's clients and many other victims of intimate partner violence.

This testimony is provided to your committee to respectfully consider the implications of system adjustments that cease to support victim's needs for effective system response to their complex and potentially fatal abuse.



Thank you for this opportunity to testify.

DOMESTIC VIOLENCE ACTION CENTER

ADDRESS: P.O. BOX 3198, HONOLULU, HI 96801-3198

LEGAL HELPLINE: (808) 531-3771

TOLL-FREE NEIGHBOR ISLAND HELPLINE: (800) 690-6200

WEBSITE: WWW.DOMESTICVIOLENCEACTIONCENTER.ORG

EMAIL: DVAC@STOPTHEVIOLENCE.ORG

TESTIMONY FOR THE LIBERTARIAN PARTY OF HAWAII

c/o 1658 Liholiho St #205

Honolulu, HI 96822

January 28, 2018

RE: SB 2814 to be heard Tuesday January 30, in Room 229, at 1:15 PM

To the members of the Senate Committee on Public Safety

Support intent

The Libertarian Party supports legislative efforts to remove petty and non-dangerous inmates from our prison system. However, this bill should not be considered a stand-alone solution. At the very least amending it to give it greater utility should be considered. Bail reform should be part of the package so that we have fewer petty offenders facing \$5000 or more in bail. The section denying access to this positive outcome to folks who are charged with, or on probation or parole for a serious crime is problematic. Only those who are convicted and serving their original sentence should have been listed here. The many technical and petty violations of probation and parole incorporated into our current system that land someone in jail should be reviewed. Nor are we happy with adding people who have simply been arrested without being convicted of other offenses to the denial list. In short we can do better, but it will take a much more aggressive review of the entire system, including a consideration of removing various statutes that involve the activities of consenting adults.

Aloha



Tracy Ryan
For Harm Reduction Hawaii



Aloha chair nishihara, vice chair wakai, and members of the Committee on Public Safety, Intergovernmental, and Military Affairs,

The Young Progressives Demanding Action – Hawai‘i have substantial reservations over SB 2814, “Relating To The Release Of Misdemeanants.” While we agree that there should be flexibility in allowing the release of a misdemeanant on recognizance to prevent overcrowding, we are concerned that some of the additional language intended to amend HRS 353-36 actually does the opposite by greatly widening the scope of those who cannot be eligible for this form of release.

Firstly, restricting those who have been denied bail or whose bail has been set at more than \$5,000 does not take into consideration the fact that, in our current criminal justice system, bail is often set much higher and more frequently than is genuinely necessary, both as a result of “tough on crime” laws regarding bail and sentencing and as a result of bias or personal philosophy on the part of individual judges. This is not to say that we believe most judges are too harsh, but codifying such a restriction via this bill means that even in cases where either the law or the opinion of the judge *does* result in an overly harsh bail setting, the director will be powerless to make an intelligent decision about early release for a misdemeanant who may be perfectly capable of behaving on his or her own recognizance, but who was denied bail because of either statute or prejudice. In other words, do not legislate a decision that should be at the discretion of an intelligent and engaged director. It's bad policy in general, and it hampers the flexibility needed to deal with our overcrowding situation. Not only that, but it is our hope that other measures this session related to the elimination of cash bail will be taken up and passed, as the very idea of cash bail is backward, antiquated and injurious.

Secondly, the added language: “person has been previously arrested or convicted of any offense, as defined in title 37” is extremely problematic as it literally tramples over presumption of innocence. I may be arrested for any crime, but unless the prosecution proves, beyond reasonable doubt, that I am guilty and I am convicted of that crime in a court of law, my rights cannot be infringed upon (again, why bail and pre-trial detention are actually unconstitutional). This could potentially result in a person

who is being held in pretrial detention for such an offense as is defined in title 37 as “involving injury or threat of injury to the person of another, including but not limited to sexual harassment in the fourth degree, harassment by stalking, violation of an order of protection, or violation of a temporary restraining order” but *who has not been convicted of this crime*, being denied early release on recognizance at the discretion of the director. It is our belief that such person should not end up in pretrial detention at all, unless there is demonstrable risk to public safety or a demonstrable flight risk on the part of the person in question. This language would actually make it even more likely for such a person to spend additional time behind bars at the taxpayers' and their personal expense.

Being held behind bars without a conviction is not only problematic constitutionally, it is incredibly damaging to the individual's life *visa vis* missed work, monetary burdening, familial strain and general disruption. Criminal justice reform means moving our policy in a direction that is aware of this and does everything it can to be deliberate and precise when doling out punishment. Instituting policy that widens the incarcerative net is the opposite of what we need, and it's ironic that such language appears in a bill that ostensibly gives the director more discretion to release nonviolent prisoners as needed.

It is our opinion that the bill could be fixed by addressing our two primary concerns. We would also not mind if the bill was killed entirely, as we feel there are far better reform bills we could be focusing on.

Mahalo,

Will Caron
Social Justice Action Committee Chair
Young Progressives Demanding Action – Hawai‘i

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, January 30, 2018

1:15 pm

Room 229

REQUESTING AMENDMENT - SB 2814 - RELEASE OF MISDEMEANANTS

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 more than two decades. This testimony is respectfully offered on behalf of the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 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 Kanaka Maoli, far, far from their ancestral lands.

SB 2814 is an administration bill that defines the circumstances for the Director of Public Safety or a designee of the director to release pretrial and sentenced misdemeanants at community correctional centers. The justification for this bill is purportedly to expand the criteria for eligible individuals.

Community Alliance on Prisons cannot support the bill as it is written. We are concerned that adding the language "arrested or" to line 14 page 2 of bill does little to increase those eligible for release. We don't see how adding arrestees, who are innocent until proven guilty, helps to increase the number of individuals eligible for release.

Community Alliance on Prisons, therefore, respectfully asks for an amendment to this bill:

Remove "arrested or" from page 2, line 14 of SB 2814

In 2016, HB 2391 CD1, a bill to release certain misdemeanants was enacted into law as Act 217. It was criticized by advocates who saw that the law would not do much to relieve overcrowding. It was jokingly said that the bill would allow only 3 people statewide to be released.

The December 2017 report¹ filed with this legislature confirmed that critique:

Three (3) offenders were released during the review period pursuant to Act 217. Two (2) were released on Kauai and one (1) on Hawaii Island. The demographic information for the three (3) releases includes that they were sentenced misdemeanants, who were released on their own recognizance (ROR). They all scored community custody on the jail classification instrument. They did not have any medical or mental health concerns, and they had secured a residence. The number of bed days saved ranged from two (2) days to twelve (12) days

The post-release records of these 3 individuals cited in this report reveal that we are imprisoning people who pose little to no risk to the public and would probably be better served in community-based programs that directly address their challenges. Here is post-release information:

III. Any information regarding post-release offenses committed or allegedly committed by a misdemeanant.

A review of CJIS for the three (3) individuals released substantiated that they did not have any post release offenses resulting in an arrest or commitment.

IV. Any known incidents of interactions between released misdemeanants and law enforcement agencies due to alleged criminal behavior.

A review of CJIS for the three (3) individuals released substantiated that they did not have any post release offenses that resulted in an arrest or commitment.

If Hawai'i truly wants to improve the quality of justice and create a real criminal justice system,

- We must use incarceration as the LAST resort.
- We have to stop criminalizing behavioral offenses and start building a robust and diverse array of community-based programs that directly address the public health and social justice challenges facing some of our most vulnerable people.
- We must build a justice system that respects OUR community values, that focuses on human dignity and compassion, that believes that people can be redeemed, and that restores and rehabilitates those who have lost their way and those who may never have found it.

¹ DEPARTMENT OF PUBLIC SAFETY REPORT TO THE 2018 LEGISLATURE IN RESPONSE TO HRS 353-36 & 37 ACT 217, SESSION LAWS OF HAWAII'I 2016 RELEASE OF MISDEMEANANTS
<https://dps.hawaii.gov/wp-content/uploads/2017/12/14-Act-217-2016-Release-of-Certain-Misdemeanants.pdf>

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We are fortunate to be guided by the strength and fearlessness of the kupuna who came before us and on whose shoulders we proudly stand. *Our* community values must prevail, not those from other places. We know what to do. Now we must stand together and do it!

We are Hawai`i. We care for and about each other. We can do this.

*"The feelings of one who has been imprisoned, politically or otherwise,
can only be understood by a person who has passed through the ordeal."*

Queen Lili`uokalani
Hawaii's Story by Hawaii's Queen
January 1898

SB-2814

Submitted on: 1/28/2018 10:53:27 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

SB-2814

Submitted on: 1/28/2018 2:46:24 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall		Support	No

Comments:

SB-2814

Submitted on: 1/28/2018 8:32:57 PM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk		Comments	No

Comments:

Chair Nishihara, Vice Chair Wakai, and members of the Senate Committee on Public Safety, INtergovernmental, and Military Arrairs

In general I support the concept of this bill. Anything we can do to reduce unnecessary incarceration is certainly worth doing.

However, I have two concerns about this bill. First, I believe it is inappropriate to use previous arrest as a basis for denying release, since in our judicial system, persons are innocent until proven guilty. To use arrest, rather than conviction, as a basis for denying release is to penalize a person for a crime that they have not been found guilty of. I urge you to remove the word "arrested" from the bill.

Secondly, I do not believe that any special decision by the director or alternate is necessary in the case of pre-trial detainees who have been unable to pay bail of less than \$5000. The courts have already decided, by setting bail, that the person is appropriate to be released prior to trial, since anyone who pays the bail would in fact be released. Therefore, release in these circumstances should be automatic. To do otherwise is to allow the decisions by the Director to supersede decisions by the court.

I urge you to pass the bill, after making the changes suggested above. Thank you for the opportunity to present testimony.

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
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**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai`i**

January 30, 2018

RE: S.B. 2814; RELATING TO THE RELEASE OF MISDEMEANANTS.

Chair Nishihara, Vice Chair Wakai and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in opposition to S.B. 2814.

The purpose of S.B. 2814 is to expand the Department of Public Safety’s (“PSD”) ability to release defendants convicted of, or awaiting trial for, misdemeanor or petty misdemeanor offenses. It appears this bill is intended to reduce overcrowding in PSD’s facilities, and serve as an alternative to incarceration, yet it provides no alternative programs or oversight for those who are released this way.

Ultimately, the Department strongly believes that allowing the Director of PSD to summarily release individuals from custody—whom our courts have specifically ordered to remain in custody—seems directly contrary to the goal of public safety, and undermines the judgement and authority of our courts. As it is, our courts are already very liberal about releasing misdemeanants from custody pending trial, and those who are sentenced to serve additional incarceration, even after their date of sentencing (i.e. more than “credit for time served”), are sentenced that way for very good reason, based on their past criminal history and/or the nature of their specific offense.

As written, the amendments on page 2, lines 12-13, appear to preclude the Director from qualifying anyone whose only “offense that involves injury or threat of injury to another” is the

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present offense/arrest. To further clarify this, the Committee should consider taking the word “previously” out of page 2, line 14.

In addition, it is unclear what effect the amendments on page 1, lines 16-17, would have on implementation of this statute, as Section 706-663 is the sentencing provision for those who are convicted of an offense identified as a petty misdemeanor or misdemeanor.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 2814. Thank you for the opportunity to testify on this matter.

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Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: Senate Committee on Public Safety, Intergovernmental and Military Affairs
FROM: Carl Bergquist, Executive Director
HEARING DATE: 30 January 2018, 1:15 PM
RE: SB2814, RELATING TO THE RELEASE OF MISDEMEANANTS, **OPPOSE**

Dear Chair Nishihara, Vice Chair Wakai, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) opposes this measure to further limit the early release of misdemeanants. The bill amends, in the wrong direction, a program under the auspices of the Department of Public Safety (DPS), a program that may not currently be operating as advertised. In other words, instead of early release to prevent overcrowding in our prisons, this authority is not being exercised much, if at all. This new category of individuals, who would be excluded from a hypothetical early release, include any one "previously" arrested for, i.e. a conviction is no longer required, Title 37 offenses such as threat of injury to another, stalking and sexual harassment in the 4th degree. This is widening the dragnet of non-early release, and perhaps punishing someone acquitted of the offense in question.

We submit that a better course is to not only reform the bail system as proposed in SB2860, but to ensure that this early release authority is actually exercised, and that more, not less, individuals become eligible. [SB2880](#) provides an example of how to do just that. It proposes to reform a current law, promoting dangerous drugs in the third degree, which is currently a class C felony. Instead, a new fourth degree promotion misdemeanor offense. The number of individuals currently housed in pre-trial detention and charged with a violation of §712-1243, and thus currently ineligible for early release, is likely significant. In [a 3/5/2017 Star Advertiser article regarding the drug paraphernalia reform](#), it emerged that some 109 inmates were detained pre-trial with that then class C felony as the lead charge. With the enactment of Act 72 (2017), this will no longer be the case. The next step to reduce the overcrowding is change the even more commonly charged offense, promoting a dangerous drug in the third degree, from a class C felony to a misdemeanor.

Thank you for the opportunity to testify.

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SB-2814

Submitted on: 1/30/2018 5:11:57 PM
Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard K. Minatoya	Maui Department of the Prosecuting Attorney	Oppose	No

Comments:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES SB 2814, Relating to the Release of Misdemeanants. This measure will give the Director of Public Safety the ability to override the carefully contemplated orders issued by the courts. Accordingly, the Department requests that this measure be HELD.

Thank you very much for the opportunity to provide this testimony.

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SB-2814

Submitted on: 1/30/2018 12:24:07 AM
Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans		Comments	No

Comments:

The language is being changed in this bill so that it will NOT expand the opportunities for the Director Of Public Safety to release misdemeanants early. Take out the word "arrested" and increase eligibility for early release! We must immediately begin to ease the overcrowding.

Thank you-

Raelyn Reyno Yeomans