



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. 2860, Relating to the Pretrial Release.

Purpose: Requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Requires the Judiciary to establish statewide court appearance reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2860 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.”

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



DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 2860
RELATING TO PRETRIAL RELEASE.**

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) appreciates the intent of Senate Bill (SB) 2860, which would require the courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Under the bill, the Judiciary would also be required to establish a statewide court appearance reminder system, as well as, requirements for any pretrial risk assessment tool used by the Judiciary.

As the responsibility for all of the bill's requirements rests with the Judiciary, PSD respectfully declines to comment on the measure.

Thank you for the opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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1060 RICHARDS STREET • HONOLULU, HAWAII 96813
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PROSECUTING ATTORNEY

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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. 2860; RELATING TO PRETRIAL RELEASE.

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 of S.B. 2860.

The purpose of this bill is to reduce the community correctional centers population by releasing defendants awaiting trial for felony, misdemeanor and petty misdemeanor offenses. In addition, it seeks to establish procedures for any pretrial risk assessment tools and to create a statewide court appearance reminder system for criminal cases.

Bail is set in most if not all cases to ensure that the defendant returns for all court proceedings related to their case after being released. By removing the requirement of bail or a surety in all criminal cases, S.B. 2860 proposes a system, which removes any incentive or obligation for a defendant to return to court as well as fails to take into account the risks and dangers to the community. The passage of S.B. 2860 would create the unintended consequence of potentially releasing defendants charged with serious and violent offenses including but not limited to murder in the first and second degree (§707-701 and §707-701.5, H.R.S.), manslaughter (§707-702, H.R.S.), sex assault (§707-730, §707-731, §707-732 and §707-733, H.R.S.), and abuse of a family or household member (§709-906, H.R.S.).

In addition, with the passage of House Concurrent Resolution 134 during the 2017 Legislative Session, the proposed amendments established in S.B. 2860 are premature. H.C.R. 134 tasked the Judiciary to convene a task force to “examine and, as needed, recommend

legislation and revisions to criminal pretrial practices and procedures.” The task force was comprised of numerous stakeholders including but not limited to a member from the House and Senate, Department of the Attorney General, Department of the Judiciary, Prosecuting Attorney’s from each county, Public Defender’s Office, representatives from the Association of the Criminal Defense Lawyers, Department of Health and the Honolulu Police Department. It was further resolved that this task force was to submit a report of its findings and recommendations, including any proposed legislation no later than twenty days prior to the convening of the Regular Session of 2019. To date, this task force has met once a month since August of 2017, and anticipates to do so until August of 2018, at which time a report of their findings will be submitted. Due to H.C.R. 134, our Department believes that implementation of S.B. 2860 is premature and that it be necessary to await the report completed by the task force.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 2860. Thank you for the opportunity to testify on this matter.

SB-2860

Submitted on: 1/28/2018 11:04:22 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Martha Nakajima	ACLU People Power	Support	No

Comments:

Pre-trial jail time for persons accused of non-violent offenses is harmful to the accused, the family, and society. The presumption of innocence needs to be strengthened by limiting bail requirements to persons at serious risk of flight or of doing physical harm to the community.



BEFORE THE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND
MILITARY AFFAIRS

Hawaii State Legislature
January 30, 2018

Senate Bill 2860
Relating to Pretrial Release

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

The Ka Lāhui Hawaii Political Action Committee (KPAC) supports SB 2860 which requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial and/or the public safety is at risk.

According to Dr. RaeDeen Keahiolalo-Karasuda, in her doctoral dissertation, *The Colonial Carceral and Prison Politics in Hawai‘i*, Kanaka Maoli make up more than 60% of inmates in Hawai‘i, however, they only make up 24% of Hawai‘i’s population.

There has been numerous studies on the disparate treatment of Kanaka Maoli in the criminal justice system including one by the Native Hawaiian Justice Task force whose creation was mandated by the Legislature, however, their recommendations have yet to be implemented. This bill aligns with the recommendation to take action “to reduce inmates or fix problems within the criminal justice system.”

Senate Bill 2860 is a great first step toward Criminal Justice Reform. Currently the State of Hawai‘i spends \$50,000 a year per inmate. Reform not only saves money but helps save Kanaka Maoli lives, families and communities.

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC

SB-2860

Submitted on: 1/28/2018 1:07:50 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	Yes

Comments:

This is a significant proposal that could go a long way towards reforming our penal system in Hawaii. While the issue extends beyond those individuals with mental illness our focus is on that and unfortunately they do comprise a fairly high percentage of the pretrial inmates. Many of these individuals are arrested for relatively minor offenses and are held as pretrial detainees simply because they cannot post bond. While they are incarcerated their mental health can deteriorate. In reality they pose little risk of flight which is what the purpose of bail was intended to be. It makes no sense and serves no purpose to house these individuals for months on end while they are awaiting trial. If they are ultimately convicted and sentenced then so be it. However, in the meantime it is a waste of resources to the state to keep them there and it is an infringement on their liberty to be held simply because they are too poor to have the resources needed for the bail. Our facility at OCCC is particularly overcrowded and it would be a smart move for the state to seriously consider if it makes any financial sense to clog up the prison with individuals who do not pose a risk of not appearing for Court or any danger to the community.



HAWAII

AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President 23404	Guy Archer	Jan Lubin	Cameron Sato	PO. Box
Alan Burdick, Vice President	Julieet Begley	Jenny Nomura	George Simson	Honolulu
Marsha Schweitzer, Treasurer	Gloria Borland	Stephen O'Harrow		Hawai'i 96823
Karin Gill, Secretary	Chuck Huxel	Doug Pyle		

January 26 , 2018

TO: Honorable Chair Nishirara and Members of PSM Committee

RE: SB 2860 Relating to Pretrial Release

Support for hearing on Jan 30

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 2860 as it would require courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. In 2016, approximately forty-one per cent of the total inmate population in the Oahu Community Correctional (OCCC) system were pretrial inmates. Thus the State is paying too much money to incarcerate pretrial detainees. We support this bill as it would increase the number of these people who would be released and not be a burden to OCCC.

Thank you for your favorable consideration.

Sincerely,

John Bickel
President

SB-2860

Submitted on: 1/29/2018 1:34:28 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Loren Bullard	1982	Support	No

Comments:

To the Senate Committee on Public Safety, Intergovernmental and Military Affairs,

I am writing to show my support of SB2860. The 3 main points of this act will greatly reduce the amount of inmates in OCCC awaiting pretrial. We need bail reform for Hawaii because 41% of inmates in OCCC are pre-trial and are incarcerated because they cannot afford bail. They cannot afford a bail bond of \$500 dollars or less.

Holding these pre-trial inmates is costing the HI tax payer \$140 dollars a day per inmate. So by screening and releasing pre-trial inmates - it will save the State of Hawaii millions of dollars monthly. We currently have an estimated 1043 inmates in OCCC. 41% of inmates are pretrial which equals around 427 pre-trial inmates. So pre-trial inmates are costing the state around \$1.7 million dollars a month to hold (427 X \$140 a day x 30 days). Or about \$20.4 million dollars a year. This is alot of money we could put towards public schools, road repairs etc.

Also OCCC is experiencing overcrowding of inmates. If we were able to screen pretrial individuals and release on their own recognizance individuals that committed non-violent crimes and are likely to attend the trial, this will alleviate overcrowding. Getting rid of the need to build a very expensive, new jail. The screening component is definitely a necessary component as it will help alleviate community fears that violent offenders are being released to wander the streets.

Thank you,

Loren Bullard

To: Hawaii State Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Hearing Date/Time: Tuesday, January 30th, 2017, 1:15PM
Hawaii State Capitol, Rm. 229

Position Statement Supporting Senate Bill 2860

Thank you Chair Nishihara, Vice Chair Wakai, and committee members,

The YWCA O'ahu **supports Senate Bill 2860**, which would make progressive reforms to our pretrial system.

Women are a much smaller percentage of our pretrial population but the current system creates a disparate impact on them. Due to the wage gap and the likelihood of caring for children, women are less financially able to afford high bail amounts. The median income for a woman in jail prior to incarceration was just \$11,071¹. Spending even two days in jail has negative impacts on a person's life by reducing their economic viability and potentially causing eviction and loss of employment².

The recommendations proposed in SB 2860 make meaningful steps to correct our pretrial system and improve our communities. While we wait for the findings of the Pretrial Taskforce, SB 2860 gives concrete actions that can be taken now. For these reasons, the YWCA O'ahu **respectfully requests that this committee report favorably on Senate Bill 2860**.

Thank you for the opportunity to testify and for your consideration on this matter.

Kathleen Algire
Director, Public Policy and Advocacy
YWCA O'ahu

¹ Prison Policy Institute, *Detaining the poor*, 2016. <https://www.prisonpolicy.org/reports/incomejails.html>

² Vera Institute of Justice, *Incarceration's front door: The misuse of jails in America*. 2015.
<https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>



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 **strongly supports** SB 2860. Bail reform is one of the best ways to quickly and effectively reduce the pretrial incarcerated population. Eliminating cash bail is humane, logical and brings our state policy into accordance with the Constitution, while maintaining that some arrestees may be flight risks. Creating a standardized risk-assessment tool for the judiciary to determine this risk is good policy, and establishing a statewide court appearance reminder system is especially good policy.

We understand that the ACLU may have some suggestions for language changes in their testimony in support. We have not had a chance to review their suggestions, but believe that they have the expertise needed to make good recommendations and look forward to hearing how they would improve this bill. Please support this measure and take into consideration their suggestions.

Mahalo,

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

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



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

SUPPORT - SB 2860 - PRE-TRIAL RELEASE

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 2860 requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial, requires the Judiciary to establish statewide court appearance reminder system, and establishes requirements for any pretrial risk assessment tool used by the Judiciary.

Community Alliance on Prisons supports this measure to reform our bail system that is forcing too many people struggling with a host of public health and social challenges into our correctional system.

What is bail? Bail is the amount of money defendants must post to be released from custody until their trial. Bail is not a fine. It is not supposed to be used as punishment.

What is the purpose of bail? The purpose of bail is simply **to ensure that defendants will appear** for trial and all pretrial hearings for which they must be present. Cash bail is meant to get a person to court. Judges have many options beyond "money bail." With Hawai'i lockups bursting at the seams and the subject of an ACLU DOJ complaint, now is the time to act.

In Hawai'i, about 88% of the time you MUST pay cash or bond to be released. This creates a two-tiered system of release: the wealthy walk free, while the working poor sit in jail. In the 1st Circuit (Honolulu) it has been found that bail is generally \$11,000 - \$15,000.

Community Alliance on Prisons

We know that our jails are bursting at the seams. National studies have shown that jails are driving mass incarceration. Statewide, almost half of the detainees in our jails, charged but not convicted, many because they cannot afford money bail. The cost is great, and the conditions are inhumane.

COURT REMINDER SYSTEM:

The bill sets up a court reminder system that the data show works when the system is localized, it has increased court appearances and the collection of fines.

The Pretrial Justice Center for the Courts¹ outlined four approaches to a Court Date Notification System: 1) Letter or Postcard 2) Telephone (Live Call) 3) Telephone (Automated call) 4) Text message.

Cook County (Chicago) just implemented their Court Reminder System in November 2017. Here is their website: <https://courtreceiver.cookcountyil.gov/Public/Default.aspx>

Welcome to the Court Reminder System provided by the Circuit Court of Cook County.

This Court Reminder System is intended to provide telephonic court date reminders to those persons arrested and charged with a felony or misdemeanor offense in Cook County. The telephonic reminder will provide defendants (i.e. those accused of a crime) with details of their next court date, time, and courthouse location for which they are scheduled to appear. By registering, a court date reminder will be sent to defendants approximately 14, 7 and 2 days before their next court date. You may sign up for yourself or on behalf of a family member or friend.

Note: Please allow 72 hours from the point in which you received your notice to appear in court before you attempt to register via this web portal.

RESEARCH AND BEST PRACTICES:

The following is a summary of recent research into best practices around bond decisions and pretrial release by **Texas Appleseed**².

- A monetary bail system leads to detention based primarily on income level. Low income defendants remain in jail before trial regardless of risk level, while higher income defendants who can afford bond go free.
- Defendants who are detained pretrial have worse outcomes and receive lengthier sentences compared to otherwise identical defendants released on bond. This means the current system punishes the indigent more harshly solely because they are indigent and cannot afford their pretrial release.

¹ Use of Court Date Reminder Notices to Improve Court Appearance Rates, Pretrial Justice Brief 10, September 2017. <http://www.ncsc.org/~media/Microsites/Files/PJCC/PJCC%20Brief%2010%20Sept%202017%20Court%20Date%20Notification%20Systems.ashx>

² Bail & Pretrial Release: Summary of Recent Research on What Works, Texas Appleseed. <https://www.texasappleseed.org/sites/default/files/Bail%20Reform%20Summary.pdf>

- Court appearance rates improve by releasing low-risk defendants quickly and providing effective pretrial supervision for moderate- and high-risk defendants.
- Surety bonds and bail bondsmen do not reduce the risk of defendants committing a new crime, nor do they improve court appearance rates or rate of fugitive return compared to unsecured bonds.
- Jurisdictions have successfully moved away from monetary bond without suffering decreased court appearances rates or pretrial rearrest rates.

“Judge, if you set that amount of bail the odds are my client won't make it.” Those words are uttered frequently by defense attorneys in arraignment courts throughout New York City. Annually, almost 50,000 admissions to the jails at Rikers Island and across the city are for those held pretrial because they cannot afford the bail set in their case.

This is the opening of a report from Vera Institute of Justice³. This report outlines the outcomes of 99 cases in which two alternatives – partially secured and unsecured bonds – were set. The results suggest that expanding the use of alternative forms of bail will offer more New Yorkers the opportunity to await trial without the harm to employment, housing, family, and overall stability that comes from pretrial detention.

Recommendations from Vera study:

- Educate stakeholders about alternative forms of bail
- Simplify the paperwork required
- Allow an alternative form of bail to be routinely set as a third option
- Introduce an independent assessment of ability to pay

What happens when courts follow cookie-cutter bail guidelines is BAIL FAIL. Hawai`i surely doesn't need to add BAIL FAIL to our ongoing RAIL FAIL and JAIL FAIL debacles.

RISK ASSESSMENTS:

This has become quite an industry in the last decade. This bill has some good language about risk assessments, which is important for Hawai`i. Most of these assessment instruments are from the U.S. continent and don't take our local values and our multi-cultural communities into consideration. Risk Assessments can be helpful and ONE of the tools. When we start relying on computer algorithms alone to tell us about human beings, it is scary. Do we want a system that imprisons people because we *think* they might commit a crime? We must proceed with caution when using risk assessments.

³ Against the Odds, Experimenting with Alternative Forms of Bail in New York City's Criminal Courts, Insha Rahman, Vera Institute of Justice, September 2017.

Between cookie cutter "risk assessment tools" that are stacked against the poor and people of color, unconscionably long detention periods, and a pattern of prosecutorial objection to bail *until* a person pleads guilty, serious civil rights concerns abound, and similar concerns have driven change in other states.

This bill seeks to make risk assessments more applicable to our people by ensuring that they:

- are locally validated and regularly revalidated to assess the tool's appropriateness for Hawai`i;
- are evaluated for the impact on racial and ethnic disparities;
- have minimal or no impact on racial and ethnic disparities;
- are transparent about the data collected and scoring system;
- not replace individualized determinations of release;
- clearly and unequivocally define the risk factors and assessment terms used to ensure consistent evaluations and, if possible, distinguish between willful and no willful failure to appear separate all risk factors and assessments
- provide statistical analyses for comparisons between similarly situated persons and, if possible, avoid using a person's likelihood of future arrest as a basis for establishing dangerousness; and
- be subject to independent and community review including review by researchers and stakeholders who do not have proprietary interests in the tool's success.

In Massachusetts and New York, where prosecutors proudly proclaimed bail reform, they are: "Creating a loophole that permits the use of monetary bail simply because someone has multiple open misdemeanor cases ensures that the over-policed communities will be the least likely to benefit" from Vance's policy, says Josh Norkin, coordinator of the Legal Aid Society's Decarceration Project. This is another plea to the legislature to look closely at what is happening and the BIG role the prosecutors play in mass incarceration.

In 2018, we have a chance to right these wrongs, and reduce the real harm done to our communities by our cookie-cutter bail practices. We will also take a bold step to cut wasteful spending on pre-trial incarceration, and begin to confront the biases in our local criminal justice system.

Mahalo for this opportunity to share our research with the committee. Community Alliance on Prisons urges the committee to support this important reform.

"What has been demonstrated here is that usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money. How much money does the defendant have?"

Former U.S. Attorney General Robert Kennedy

SB-2860

Submitted on: 1/29/2018 1:12:04 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Scot Ling	4Freedom LLC	Oppose	No

Comments:

I do not support this bill as there has not been enough case study done on the pre trial release program and in States such as New Jersey and New Mexico it appears that this program is failing.

major questions would be if these catch and release individuals fail to show up for Court who will be responsible for apprehending them, currently with commercial bail the Bailbond agency that posted a Bailbond is responsible of apprehending a defendant should they fail to make their court date, further If they continue to fail and are not a flight risk are we to continue to release them back into the community? There is much more that needs be discussed regarding this matter and this bill is not the answer to our bail reform.



TO: Chair Taniguchi
Vice Chair Rhoads
Members of the Committee

FR: Nanci Kreidman, M.A

Re: Comments in Relation to SB2860, Relating to PreTrial Release

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 on recognizance (or an unsecured bond). This testimony is to underscore the importance of the system's commitment to effective assessment and reliable implementation of efforts to keep perpetrators of domestic violence away from those they have most access to and the singular intention to harming 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 and criminal justice system to understand that amendments to statute like this, potentially impacts their work addressing domestic violence. 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 preserved 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 broadest approach to supporting 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

SB-2860

Submitted on: 1/29/2018 1:25:04 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Greg and Pat Farstrup		Support	No

Comments:

SB-2860

Submitted on: 1/29/2018 11:46:01 AM

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

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

Comments:

GREAT BILL.

SB-2860

Submitted on: 1/28/2018 2:45:31 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-2860

Submitted on: 1/29/2018 9:28:45 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Brendon Heal		Oppose	No

Comments:

Legislators,

"non violent" until they become violent? Has everyone already forgot about Telma Boinville who was brutally murdered by "non violent" burglars and drug addicts? Doesn't people that get arrested get a hearing and charges, if there is actual evidence of a crime being committed, before their bail is set? That's the reason people are released "pending further investigation", there is not enough evidence to support charges! So NO, there is no constitutional RIGHT being violated by requiring someone bail to be released before trial!

Paying bail is collateral for incentive to appear in court. If they are then found not guilty then it may be returned. Judges have a job. They can set bail high, low, what ever.... Do we really need ANOTHER bureaucracy to hold a judges hand and tell him that a suspect is or is not a risk to society? Do we need one more drain on our pocketbooks, through taxation, to coddle the thieving dregs of society?

OPPOSE this bill and any bill that puts CRIMINALS ahead of citizens!

Thank you
Brendon Heal
VOTER
Ewa Beach, Hawaii

SB-2860

Submitted on: 1/29/2018 1:46:44 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Hampton		Oppose	No

Comments:

This is ludicrous, and just plain lazy and irresponsible legislation. If you want to make an adjustment to the law for first time offenders or otherwise responsible citizens to be released on their own recognizance, fine, do so. This bill will allow those that should be kept in jail out on the streets to commit even more crimes. Not to mention the fact that it unnecessarily creates yet another costly layer of bureaucracy at zero benefit to the public. You should be ashamed this garbage legislation has made it this far into the process. I feel soiled even having to testify against it.

SB-2860

Submitted on: 1/29/2018 2:11:18 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Marcus Tanaka		Oppose	No

Comments:

This is just stupid. Let's release non violent offenders. You still releasing people who broke the law.