TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019

ON THE FOLLOWING MEASURE:
H.B. NO. 1289, H.D. 2, RELATING TO CRIMINAL PRETRIAL REFORM.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 21, 2019 **TIME:** 12:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but has concerns.

The purpose of this bill is to implement the recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017as follows:

(1) Parts II, III, and IV of this Act implement recommendations of the task force that were accompanied by proposed legislation authored by the task force, with only technical, nonsubstantive changes to the task force's language for the purposes of clarity, consistency, and style; and

(2) Parts V, VI, VII, VIII, and IX of this Act implement recommendations of the task force for which no proposed legislation was provided; however, these parts incorporate, as much as possible, substantive language contained in the task force's recommendations.

Section 7 (page 11, line 5, to page 14, line 11) details the right to a prompt hearing regarding release or detention. However, changes in this process already have been implemented in response to the work of the Task Force. Therefore, until the effectiveness of these process changes are evaluated, we believe this statutory fix is premature and could possibly be detrimental.

Section 15 (page 25, line 18, to page 26, line 10) seeks to place the responsibility on the Intake Service Center to conduct periodic reviews of detainees to evaluate whether each detainee should remain in custody or whether new information warrants reconsideration of the detainee's status. This responsibility, however, should reside with the detainee's counsel who is in the best position to know whether a change in circumstances warrants reconsideration.

Amendments in section 8 (page 14, line 15, to page 15, line 11, and page 16, lines 1-5) seek to create a rebuttable presumption for release for all offenses with the exception of Murder, Attempted Murder, Class A felonies, and B and C felonies involving violence or threats of violence. This places the burden on the prosecution to establish, via an evidentiary hearing, that individuals charged with offenses such as Habitually Operating a Vehicle Under the Influence of an Intoxicant, Burglary, Criminal Property Damage, felony Theft, car theft, Forgery, Fraud, Bribery, Computer Crimes, Credit Card offenses, Money Laundering, Arson, Cruelty to Animals, Violation of Privacy, Gambling, Promoting Pornography, and various drug offenses should not be automatically released from custody. For example, an individual accused of Burglary in the First Degree (i.e., breaking into a residence to commit a crime therein) will be entitled to automatic release unless the prosecution provides contrary evidence.

We suggest that the recommendations of the Task Force be allowed to be implemented, and the criminal justice system be afforded ample time to evaluate the impact of these changes before presumptions favoring automatic release are imposed.

Based upon the above concerns, we respectfully request that this bill be amended by deleting section 7 (page 11, line 5, to page 14, line 11), section 15 (page 25, line 18, to page 26, line 10), and section 8 (page 14, line 15, to page 15, line 11, and page 16, lines 1-5). Thank you for the opportunity to comment.

DAVID Y. IGE
GOVERNOR

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
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Jodie F. Maesaka-Hirata
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Renee R. Sonobe Hong
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STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON HOUSE BILL 1289, HOUSE DRAFT 2
RELATING TO CRIMINAL PRETRIAL REFORM.
by
Nolan P. Espinda, Director
Department of Public Safety

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Wednesday, February 21, 2019; 12:30 p.m.
State Capitol, Conference Room 308

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Public Safety Department (PSD) supports House Bill (HB) 1289, House Draft (HD) 2, which incorporates key recommendations of the House Concurrent Resolution No. 134 (2017), Criminal Pretrial Task Force. PSD offers the following suggestions to help ensure that sufficient resources are provided to successfully meet the objectives underlying the Task Force recommendations.

The new language in Part II, Section 3, referencing Section 353-10(3) and (9), requiring a risk assessment and bail report to be completed within two days of admission to a community correctional center, will significantly overtax existing PSD staff and require additional resources, including, but not limited to, funds for staffing, office space, and equipment. PSD provides a conservative estimate for a suggested appropriation in Part, IX, Section 27 of this measure.

The Department respectfully suggests adding language in Part II, Section 3, Section 353-10(8) by specifying the State agencies with the relevant financial data systems that PSD's pretrial services officers need to access. PSD recommends the following addition:

> "… provided limited access for the purpose of viewing the Department of Labor and Industrial Relations' and the Department of Taxation's data system(s) related to an offender's employment history including wages and financial tax information;"

PSD reiterates its previous concern in Part IV, Section 11, Section 804-7, which requires that an individual be able to post bail 24 hours a day, 7 days a week at a community correctional center. The fact remains, the Department does not currently have sufficient and appropriately trained staff to implement this requirement, as the proposed duties and classification specifications would be the responsibility of staff not currently on a 24-hour, 7-day a week schedule. It follows that additional staff will be required, as well as, consultation with the relevant Collective Bargaining Unit Representative. PSD provides a conservative estimate for a suggested appropriation in Part, IX, Section 27 of this measure.

PSD also suggests adding language to Part V, Section 15, Section 353-__ (b) to ensure that the notification required to the court, prosecuting attorney, and defense counsel may be fulfilled by correspondence, as follows:

"(b) For each review conducted pursuant to subsection (a), the relevant community correctional center shall transmit its findings and recommendation <u>by correspondence</u> to the appropriate court, prosecuting attorney, and defense counsel."

In addition, the Department would recommend the deletion of Part VIII, Section 25, as its enactment would be premature, given PSD's recent contracting for a new validation study of the Ohio Risk Assessment System's Pretrial Assessment Tool (ORAS-PAT) for the Hawaii pretrial offender population. Any changes to the pretrial risk assessment prior to the completion of the validation study would be hasty. It should also be noted that the factors included in this section are already incorporated in the ORAS-PAT procedures currently utilized by PSD.

PSD appreciates the recognition of the substantial additional costs and resources that will be required in instituting the bail reform objective, focused on evaluating whether or not to detain an offender or releasing an offender on the least restrictive non-financial conditions, with the inclusion of budgetary appropriations in Section 22 and Section 27. Therefore, the Department respectfully requests in Section 22, the sum of $750,000 for fiscal year 2019-2020, to be continued in subsequent fiscal years, for the purpose of procuring service contracts, as referenced in (1) to (5). PSD respectfully requests the following appropriation for Section 27 in fiscal year 2019-2020 and in subsequent fiscal years:

Social Worker/Human Service Professional V	(1)	$ 64,476
Social Worker/Human Service Professional IV	(20)	$1,146,480
Office Asst. IV	(2)	$ 73,464
Working Differential	(23)	$ 46,000
Fringe Benefits		$ 663,668
Moving Expenses		$ 15,000
Office Equipment		$ 176,820
Office Space Lease (2 locations)		$ 65,000
Office Furniture		$ 60,000
Training Expense and Travel		$ 20,000

PSD welcomes these comprehensive changes to the criminal pretrial procedures, which we believe will assist in reducing the offender populations within the community correctional centers.

Thank you for the opportunity to present this testimony.

The Judiciary, State of Hawai‘i

Testimony to the House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Thursday, February 21, 2019 12:30 PM (Agenda #2)
State Capitol, Conference Room 308

WRITTEN TESTIMONY ONLY

by
Judge Shirley M. Kawamura
Deputy Chief Judge, Criminal Administrative Judge
Circuit Court of the First Circuit
Reporter, HCR 134 Criminal Pretrial Task Force

Bill No. and Title: House Bill No. 1289, H.D. 2, Relating to Criminal Pretrial Reform.

Purpose: Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017.

Judiciary's Position:

The Judiciary respectfully supports House Bill No. 1289, H.D. 2, which reflects the Criminal Pretrial Task Force recommendations as submitted to this Legislature on December 14, 2018.

Chief Justice Mark E. Recktenwald established the instant Criminal Pretrial Practices Task Force to examine and recommend legislation to reform Hawai‘i’s criminal pretrial system.

The Task Force embarked on its yearlong journey in August 2017 and began with an in-depth study of the history of bail and the three major generations of American bail reform of the 1960s, 1980s, and the last decade. The Task Force researched the legal framework underlying our current practices, which are firmly rooted in our most basic constitutional principles of presumption of innocence, due process, equal protection, the right to counsel, the right to confrontation and that in America, liberty is the norm and detention is the very limited exception. National experts were invited and the Task Force members delved into the latest research and evidence-based principles and learned from other jurisdictions where pretrial reforms are well

underway. Previous studies conducted in the State of Hawai‘i were reviewed, community experts were engaged and the views of our local stakeholders were considered. Task Force members visited cellblocks, jails, ISC offices and arraignment courts in an effort to investigate and present an unbridled view of our criminal pretrial process.

The recommendations in the report seek to improve current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants' release, court appearance and protecting community safety. With these goals in mind, the Task Force respectfully submitted the following recommendations to be considered and implemented as a whole:

1. Reinforce that law enforcement officers have discretion to issue citations, in lieu of arrest, for low level offenses and broaden discretion to include non-violent Class C felonies.

For low-risk defendants who have not demonstrated a risk of non-appearance in court or a risk of recidivism, officers should issue citations rather than arrest.

2. Expand diversion initiatives to prevent the arrest of low-risk defendants.

Many low-risk defendants have systematic concerns (homelessness, substance abuse, mental health, etc.) which lead to their contact with law enforcement. Diversion initiatives allow law enforcement to connect such defendants with community social service agencies in lieu of arrest and detention. This allows defendants to seek help and address their concerns, reducing their future risk of recidivism. Initiatives such as the Honolulu Police Department's Health, Efficiency, Long-Term Partnerships (HELP) Program and Law Enforcement Assisted Diversion (LEAD) Program, as well as initiatives such as Community Outreach Court (COC) should be expanded.

3. Provide adequate funding, resources and access to the Department of Public Safety, Intake Service Center.

At the heart of Hawai‘i's pretrial process is the Intake Service Center (ISC), a division of the Department of Public Safety (DPS). ISC is tasked with two primary responsibilities. First, ISC helps the court determine which pretrial defendants should be released and detained. More specifically, ISC conducts a risk assessment of the defendant to evaluate his/her risk of nonappearance and recidivism. The results of the risk assessment are reported to the court via a bail report, which recommends whether the defendant be held or released.

Second, once a defendant is released, ISC provides pretrial services to supervise the defendant and monitor his/her adherence to any terms and conditions of release. Pretrial services minimize the risk of nonappearance at court hearings while maximizing public safety by supervising defendants in the community.

Though Hawai‘i benefits from a dedicated and centralized pretrial services agency, staff shortages and limited funding hinders the administration of essential functions. ISC should be consulted to prepare an estimate of resources required to comply with current demand, as well as any potential future demands which may be triggered by any recommendations herein.

4. Expand attorney access to defendants to protect defendant's right to counsel.

Attorneys need access to clients to discuss matters of bail, case preparation and disposition. Inmate-attorney visiting hours and phone calls from county jails should be expanded to protect defendant's right to counsel.

5. Ensure a meaningful opportunity to address bail at the defendant's initial court appearance.

A high functioning pretrial system requires that release and detention decisions be made early in the pretrial process, at the defendant's initial court appearance. Prior to the initial appearance, parties must be provided with sufficient information (risk assessments and bail reports) to meaningfully address a defendant's risk of non-appearance, risk of recidivism and ability to pay bail. Adequate funding and resources must be provided to the ISC, courts, prosecutors and public defenders to ensure that such information is accessible to all parties and ensure that low risk defendants are released and high risk defendants are detained.

6. Where bail reports are received after the defendant's initial appearance, courts should automatically address pretrial detention or release.

In the event that a bail report is not provided for use at defendant's initial court appearance, especially when the bail report recommends release, courts should set an expedited bail hearing without requiring a filed, written motion.

7. Establish a court hearing reminder system for all pretrial defendants released from custody.

To decrease the number of defendants that fail to appear in court, a court hearing reminder system should be implemented. Each defendant who has been released from custody should receive an automated text message alert, email notification, telephone call or other similar reminder of the next court date and time.

8. Implement and expand alternatives to pretrial detention.

The Task Force recommends broadening alternatives to pretrial detention in two primary ways. First, home detention and electronic monitoring should be used as an alternative to incarceration for those who lack the finances for release on bail. Second, the use of residential and treatment programs should be expanded. Many low-risk defendants may be charged with crimes related to their inability to manage their lives because of substance abuse, mental health

conditions, or homelessness. Rather than face incarceration, defendants should be afforded the opportunity to obtain services and housing while awaiting trial. Providing a structured environment to address any potential criminogenic factors reduces the defendant's risk for non-appearance and recidivism.

9. Regularly review the jail population to identify pretrial defendants who may be appropriate for pretrial release or supervision.

Generally, court determinations as to whether a defendant is detained or released are made at or about the time of the initial arraignment hearing. Thereafter, there is no systematic review of the pretrial jail population to reassess whether a defendant may be appropriate for release. Absent a court appearance or the filing of a bail motion, there is no current mechanism in place to potentially identify low-risk defendant who may safely be released pretrial. In order to afford the pretrial detainee greater and continuing opportunities to be released, ISC should conduct periodic reviews to reassess whether a detainee should remain in custody.

10. Conduct risk-assessments and prepare bail reports within two (2) working days of the defendant's admission to a county correctional center.

Currently, ISC is required to conduct risk assessments within three (3) working days. There is no correlating time requirement for bail reports. Following a felony defendant's arrest, defendants charged by way of complaint are brought to preliminary hearing within two (2) days of defendant's initial appearance. Thus, requiring both risk assessments **and** bail reports to be completed in two (2), rather than three (3), days would enable bail to be addressed at the earliest phases of the pretrial process, including at felony preliminary hearings. The current three (3) day requirement forgoes this opportunity to address bail early on.

11. Inquire and report on the defendant's financial circumstances.

Federal courts have held that a defendant's financial circumstances must be considered prior to ordering bail and detention. Hawai‘i statute also instructs all officers setting bail to "consider [not only] the punishment to be inflicted on conviction, [but also] the pecuniary circumstances of the party accused." At present, little, if any, inquiry is made concerning the defendant's financial circumstances. Courts must be provided with and consider the defendant's financial circumstances when addressing bail.

12. Evaluate the defendant's risk of violence.

Currently, the risk assessment tool used in Hawai‘i does not evaluate the defendant's risk of violence. While risk of non-appearance and recidivism remain critical components to an informed decision concerning pretrial release or detention, it is imperative that any evidence-based assessment also take into account whether the defendant is a danger to a complainant or the community.

13. Integrate victim rights by considering a victim's concerns when making pretrial release recommendations.

The perspective of victims should be integrated into the pretrial system by requiring that ISC consider victims' concerns when making pretrial release recommendations. While ISC is mindful of the victim's concerns and does make efforts to gather this information (generally from the prosecutor's office) and report it to the court, an effective and safe pretrial system must actively provide victims with a consistent and meaningful opportunity to provide input concerning release or detention decisions. Balance and fairness dictate that the defendant's history of involvement with the victim, the current status of their relationship, and any prior criminal history of the defendant should be better integrated into the decision-making process.

14. Include the fully executed pretrial risk assessment as part of the bail report.

ISC and correctional center staff who administer the risk assessment tool often employ overrides that frequently result in recommendations to detain. Furthermore, the precise reasons for these overrides are generally not provided. To increase transparency and clarity, ISC should provide to judges and counsel, as part of the bail report, the completed risk assessment, including the score and written explanations of any overrides applied.

15. Periodically review and further validate the risk-assessment tool and publicly report any findings.

In 2012, Hawai‘i began using a validated risk-assessment tool, the Ohio Risk Assessment System Pretrial Assessment Tool ("ORAS-PAT"), which had been validated in Ohio in 2009 and in Hawai‘i in 2014. Pre-trial risk assessments, including the ORAS-PAT, are designed to provide an objective assessment of a defendant's likelihood of failure to appear or reoffend upon pre-trial release. Regular validation of the ORAS-PAT is vital to ensure Hawai‘i is using a reliable tool and process. This validation study should be done at least every five years and findings should be publicly reported.

16. Provide consistent and comprehensive judicial education.

A high-functioning pretrial system requires judges educated with the latest pretrial research, evidence-based principles and best practices. Release and detention decisions must be based on objective risk assessments used by judges trained to systematically evaluate such information. Judges must be regularly informed of reforms implemented in other jurisdictions and embrace the progression toward a fairer system which maximizes the release of low-risk defendants, but also keeps the community safe.

17. Monetary bail must be set in reasonable amounts, on a case-by-case basis, considering the defendant's financial circumstances.

Federal case law mandates that monetary bail be set in reasonable amounts based upon all available information, including the defendant's financial circumstances. Hawai'i statutes already instruct officers setting bail to "consider . . . the pecuniary circumstances of the party accused." This recommendation makes clear that information regarding a defendant's financial circumstances, when available, is to be considered in the setting of bail.

18. Permit monetary bail to be posted with the police or county correctional center at any time.

Defendants should be able to post bail and be released on a 24 hours, 7 days a week basis. Defendants should not be detained simply because of an administrative barrier requiring that bail or bond be payable only during normal business days/hours. Further, reliable forms of payment, beyond cash or bond, should be considered.

19. Require prompt bail hearings.

The current system is inconsistent as to whether and when a pretrial defendant is afforded a bail hearing. This recommendation would establish a new provision requiring defendants who are formally charged with a criminal offense and detained be afforded a prompt hearing to address bail.

20. Eliminate the use of money bail for low level, non-violent misdemeanor offenses.

The use of monetary bail should be eliminated and defendants should be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor and non-violent misdemeanor offenses with certain exceptions. Many jurisdictions across the nation have shifted away from money bail systems and have instead adopted risk-based systems. Defendants are released based on the risks they present for non-appearance and recidivism, rather than their financial circumstances. At least for lower level offenses, the Task Force recommends a shift away from money bail.

21. Create rebuttable presumptions regarding both release and detention.

This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many low-risk defendants will be released, while those who pose significant risks of non-appearance, re-offending and violence will be detained.

22. Require release under the least restrictive conditions to assure the defendant's appearance and protection of the public.

Courts, when setting conditions of release, must set the least restrictive conditions required to assure the purpose of bail: (1) to assure the defendant's appearance at court and (2) to protect the public. By requiring conditions of release to be the least restrictive, we ensure that these true purposes of bail are met. Moreover, pretrial defendants, who are presumed innocent, should not face "over-conditioning" by the imposition of unnecessary and burdensome conditions.

23. Create a permanently funded Criminal Justice Institute, a research institute dedicated to examining all aspects of the criminal justice system.

Data regarding pretrial decisions and outcomes is limited. Collecting such data and developing metrics requires deep understanding of the interactions of the various agencies in the system. A Criminal Justice Research Institute should be created under the office of the Chief Justice. The Institute should collect data to monitor the overall functioning of the criminal justice system, monitor evidence-based practices, conduct cost benefit analysis on various areas of operation and monitor national trends in criminal justice. The Institute should further develop outcome measures to determine if various reforms, including those set forth herein, are making positive contributions to the efficiency of the criminal justice system and the safety of the community.

24. A centralized statewide criminal pretrial justice data reporting and collection system should be created.

As part of our obligations pursuant to HCR No. 134, this Task Force is required to "[i]dentify 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 intervals." This Task Force recommends that a centralized statewide criminal pretrial justice data reporting and collection system be created. A systematic approach to gathering and analyzing data across every phase of our pretrial system is necessary to assess whether reforms, suggested by this group or others, are effective in improving the quality of pretrial justice in Hawai‘i.

25. Deference is given to the HCR 85 Task Force regarding the future of a jail facility on O‘ahu.

House Concurrent Resolution No. 85 (2016), requested that the Chief Justice establish a task force, now chaired by Hawai‘i Supreme Court Associate Justice Michael Wilson, to study effective incarceration policies (HCR 85 Task Force). Our Task Force was directed to consult with the HCR 85 Task Force and "make recommendations regarding the future of a jail facility on O‘ahu and best practices for pretrial release". Reforms to the criminal pretrial system will have a direct impact upon the size and needs of the pretrial population, as well as the design and

capacity of any future jail facility. This Task Force respectfully defers to the HCR 85 Task Force regarding the future of a jail facility on O‘ahu.

Each recommendation put forward by the Task Force came as a result of an extensive critical review and examination of each phase of our criminal pretrial system to identify strengths, weaknesses and missed opportunities which have prevented our system, thus far, from doing a better job of not only meaningfully protecting an individual arrestee's rights, but also in a way which makes our communities much safer. Notably, despite the marked differences of opinion and concerns expressed by our diverse group of criminal justice stakeholders, our members nonetheless were able to set aside their differences and work together toward the common goal of improving the quality of pretrial justice in Hawai‘i. This slate of recommendations represent a set of measured, practical and achievable reforms to our present pretrial system. The fact that each recommendation garnered broad consensus speaks volumes with respect to the careful thought and effort that the Task Force brought to this endeavor.

The Judiciary fully supports the passage of House Bill No. 1289, H.D. 2 in as much as it reflects the recommendations of the Task Force.

Thank you for the opportunity to testify on this measure.

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

HB1289 HD2
RELATING TO CRIMINAL PRETRIAL REFORM
Ke Kōmike Kumuwaiwai

Pepeluali 21, 2019 12:30 p.m. Lumi 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1289 HD2, a measure which would effectuate nearly all of the recommendations of the HCR134 Task Force on Pretrial Reform that OHA, as a member of the Task Force, has endorsed.

Unfortunately, our current bail system is overwhelmed, inefficient, ineffective, and has resulted in harmful, unnecessary socioeconomic impacts[1] on low-income individuals and their families, a disproportionate number of whom may be Native Hawaiian. The purpose of bail is not to punish the accused, but allow for their pretrial release while ensuring their return to court. However, our bail system, overwhelmed by a historically increasing volume of arrests, is fraught with delays and frequently does not provide sufficient information to judges and attorneys seeking timely and appropriate pretrial release determinations. Moreover, mounting evidence demonstrates that overreliance on cash-secured bail punishes poor individuals and their families before any trial, much less conviction. In Hawai'i, indigent defendants must often decide between posting hefty cash bail or bond amounts that impose considerable financial hardship, or pretrial incarceration that threatens their employment and housing. Notably, detaining individuals for weeks or months before their trial simply because they are too poor to post bail also represents a substantial cost to taxpayers,[2] and further exacerbates the overcrowding in our detention facilities.[3]

To address the inefficiency, ineffectiveness, and inequity inherent in our bail system, comprehensive reform of our pretrial system is needed. Accordingly, the HCR134

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[1] Socioeconomic effects include daily costs of detaining each inmate, family separations, child and welfare interventions, loss of family income, reduction of labor supply, forgone output, loss of tax revenue, increased housing instability, and destabilization of community networks. *See, e.g.,* MELISSA S. KEARNEY THE ECONOMIC CHALLENGES OF CRIME & INCARCERATION IN THE UNITED STATES THE BROOKINGS INSTITUTION (2014) available at https://www.brookings.edu/opinions/the-economic-challenges-of-crime-incarceration-in-the-united-states/.

[2] On average, it costs $182 per day—$66,439 per year—to incarcerate an inmate in Hawai'i. STATE OF HAWAI'I DEPARTMENT OF PUBLIC SAFETY: FISCAL YEAR 2018 ANNUAL REPORT 16 (2018) available at https://dps.hawaii.gov/wp-content/uploads/2018/12/PSD-ANNUAL-REPORT-2018.pdf.

[3] All four of the state-operated jail facilities—where pretrial defendants are detained—are assigned populations between 166-250% of the capacities for which they were designed and hold populations amounting to 127-171% of their modified operational capacities. STATE OF HAWAI'I DEPARTMENT OF PUBLIC SAFETY, END OF MONTH POPULATION REPORT, NOVEMBER 30, 2018 *available at* https://dps.hawaii.gov/wp-content/uploads/2018/12/Pop-Reports-EOM-2018-11-30.pdf.

Task Force, composed of experts and representatives from a broad collection of agencies and organizations who interface with the pretrial system, spent one and a half years examining the breadth and depth of Hawai'i's bail system and, in its 2018 report, made specific recommendations in many areas marked for improvement. The OHA representative to the HCR134 Task Force endorsed nearly all of these recommendations and OHA generally supports efforts to reduce the State's reliance on cash bail, increase resources for and the efficiency of pretrial administrative operations and judicial proceedings, improve access to robust and relevant information related to pretrial release determinations, and reduce unnecessary pretrial detention and its impacts on families and communities.

Specifically, OHA emphasizes the following Task Force recommendations addressed in HB1289 HD2:

- **Reinforcing law enforcement authority and discretion to cite low-level defendants** instead of arresting them, to reduce pretrial procedural volume and the pretrial incarcerated population;
- **Encouraging judicial pursuit of the least restrictive conditions necessary** to ensure defendants' appearance at trial, in order to reduce barriers to pretrial release and improve pretrial release compliance;
- **Reducing, wherever possible, the use of cash bail** and, thereby, its impacts on low-income defendants and their families;
- **Ensuring that where cash bail is used, its amount is set pursuant to an individualized assessment of a defendants' ability to afford it,** to reduce inequitable pretrial detention and its consequences;
- **Requiring Intake Service Centers to prepare bail reports in a timely manner, to include a robust set of relevant facts necessary to inform pretrial release decisions,** such as defendants' financial circumstances and fully executed pretrial risk assessments (with information about any administrative overrides applied to increase risk scores or elevate administrative risk recommendations);
- **Ensuring that pretrial risk assessments are periodically re-validated**, that they and the processes used to administer them are **regularly evaluated** for effectiveness and fairness, and that any validation and evaluation findings are publicly reported;
- **Providing sufficient and timely information to all participants** to ensure a meaningful opportunity to address bail at a defendant's initial appearance; and
- **Expanding alternatives to pretrial detention** including residence and community-based alternatives, electronic monitoring, and treatment programs.

OHA supports these and other efforts to reduce the State's overreliance on cash bail and to maximize pretrial release. OHA notes that while HB1289 HD2's proposed reforms to the pretrial system may limit and significantly reduce the use of cash bail, they stop short of completely eliminating the use of cash bail and its potential impacts on poor communities. Therefore, OHA also supports several other measures that would likewise progressively reduce the State's overreliance on cash bail, such as by prioritizing the

consideration of all other non-financial conditions of release. Moreover, we offer HB175, a measure in OHA's 2019 Legislative Package, which would provide an "unsecured" bail option to mitigate the disparate impacts of cash bail that may remain even if the Task Force's recommendations are adopted.

For the reasons set forth above, OHA respectfully urges the Committee to **PASS** HB1289 HD2. Mahalo piha for the opportunity to testify on this important measure.

Office of the Public Defender
State of Hawai‘i

Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Judiciary
Prepared by William C. Bagasol, Supervising Deputy Public Defender

February 19, 2019

H.B.1289, HD2: RELATING TO CRIMINAL PRETRIAL REFORM

Chair Sylvia Luke, Vice Chair Ty J.K. Cullen and Members of the Committee:

The Office of the Public Defender supports passage of H.B. 1289, HD2.

Our recommendation regarding HD 2 is to make all sections involving legal analysis or presumptions (such as those contained in Section 7) to be effective on July 1st, 2019, the same time as all the other provisions. On the other hand, we agree that it would be reasonable to allow sections that involve the allocation of resources, namely Section 11, to be effective later on January 1, 2020.

We encourage the passage of this legislation Thank you for the opportunity to comment on H.B. 1289, H.D.2.

Mental Health America of Hawai`i

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Helping Hawai'i Live Well

To: Representative Sylvia Luke, Chair, Representative Ty Cullen, Vice Chair, Members, House Committee on Finance

From: Trisha Kajimura, Executive Director

Re: TESTIMONY IN SUPPORT OF HB 1289 HD2 Relating to Criminal Pretrial Reform

Hearing: February 21, 2019, 12:30 pm, CR 308

Thank you for allowing us to provide testimony in support of HB 1289 HD2 which implements the recommendations of the criminal pretrial task force that met in 2017 and 2018, resulting in a report to the Legislature submitted on Dec 14, 2018.

Mental Health America of Hawaii is a 501(c)3 organization founded in Hawai'i 77 years ago, that serves the community by promoting mental health through advocacy, education and service. Unfortunately, many people who are arrested and/or incarcerated suffer from untreated mental illness. We support criminal pre-trial reform, particularly alternatives to money bail.

Our current bail system unfairly imprisons people who are awaiting trial and do not have the financial means to pay their bail. This can result in a cascade of additional problems such as job loss and the inability to fulfill family responsibilities that puts the pretrial individual in an even worse position than their arrest did. We support this bill and reform of the pretrial system to be more efficient and fairer for the pretrial individuals as well as taxpayers. Implementation will significantly cut our incarcerated population, reduce overcrowding and the cost of our prison system while continuing to equip the Judiciary with the tools needed to protect public safety.

Thank you for the opportunity to testify in support of HB 1289 HD2. Please contact me at trisha.kajimura@mentalhealthhawaii.org or (808)521-1846 if you have any questions.

COMMUNITY ALLIANCE ON PRISONS

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

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COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Ty Cullen, Vice Chair
Thursday, February 21, 2019
12:30 pm
Room 308

SUPPORT HB 1289 HD2 – IMPLEMENTING PRETRIAL T.F. RECOMMEDNATIONS

Aloha Chair Luke, Vice Chair Cullen 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 families of **ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 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 more than 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 629 HD2 is an important bill because it also demonstrates our community values of aloha and malama. To add clarity to the bill, we respectfully suggest that substituting the term that is defined **"debilitating disease or illness"** in place of the undefined "seriously debilitating and irreversible mental or physical condition would lend clarity to the bill and provide a reason for the definition. Removing the words *"seriously"* and *"irreversible"*, which could prove to be a problem in some cases, would also provide more clarity.

AMENDMENT:

§353(a)(2) which **now reads**: (a) An inmate may be considered for medical release if the inmate:
(2) Has a seriously debilitating and irreversible mental or physical condition that impairs the inmate's functional ability to the extent that they would be more appropriately managed in a community setting;

CHANGE TO: (a) An inmate may be considered for medical release if the inmate:
(2) Has a ~~seriously debilitating and irreversible mental or physical condition~~ debilitating disease or illness that impairs the inmate's functional ability to the extent that they would be more appropriately managed in a community setting;

The bill builds on the system that is already in place in which primary responsibility for initiating compassionate release rests with the DPS medical personnel, but allows for what is essentially an appeal process if an inmate believes that the DPS had made a mistake. An inmate can request medical release, PSD must prepare a medical report on the inmate and forward it to the Paroling Authority, who must give the inmate a hearing within 10 days. We believe the appeal process is absolutely essential because mistakes are inevitable and an appeal provides a mechanism for correcting them (or affirming the decision of the DPS if no mistake has been made).

The bill states that the Dept of Public Safety (PSD) must appoint an advocate for any inmate who requests medical release and is unable, due to incapacitation or debilitation, to advocate for himself or herself.

The bill specifies reasonable time limits for processing requests for compassionate release and incorporates all of the key recommendations found in an article[1] on compassionate release including:

(a) The use of evidence-based principles;

(b) A transparent release process;

(c) Assignment of an advocate to help incapacitated prisoners navigate the compassionate release process;

(d) A fast track procedure for rapidly dying inmates; and

(e) A well-described and disseminated application procedure.

Community Alliance on Prisons urges the committee to pass this important bill. Too many people have being dying alone, despite their families wanting to take care of them. This is NOT aloha.

Mahalo for this opportunity to testify.

[1] Balancing punishment and compassion for seriously ill prisoners. Ann Intern Med. 2011 Jul 19; 155(2):122-6)

Aloha Committee Chair Luke, Vice Chair Cullen, and Committee members,

On these islands that were invaded,
Taken and stay illegally occupied
We have a problem with mass incarceration
The cash bail system
And harsh sentencing regulations
Because they harm our communities and destroy lives.

We are Young Progressives Demanding Action and we will not stand idly by and watch as our government support
Endorse and enforce poorly drafted policy that is supposed to protect us but in truth only reflects the views of special interest groups.

Bail is not meant to be a form of pretrial punishment however they're using it to get convictions, now pay attention:
69% of arrestees in Hawaii during a 2017 bail study changed their plea from innocent to guilty while in custody.
Money is set as a condition of release almost 90% of the time.
and less than half of these folks actually have a dime.
So in the state of Hawaii more than 50% of all detainees haven't even been convicted of a crime.

We have outdated policies and regulations that disproportionately place native hawaiians and Pacific islanders behind bars
Target the poor and furthermore are not fucking pono at their core.

It has to stop
We are asking our governing bodies to stand up.
We want reform
A cash bail system should not be a norm.

So we have to fight.
Fight for the people,
Fight for the families,
Fight for community,
And fight for humanity.

This is our plea, please pass this bill out of committee.

Mahalo,
Destiny Brown
YPDA Social Justice Action Committee Chair
Email: dbrown31@my.hpu.edu

HB-1289-HD-2
Submitted on: 2/19/2019 6:16:43 PM
Testimony for FIN on 2/21/2019 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

Comments:

We believe that the various bail measures pending this session are significant proposals 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 to 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 a pose a risk of not appearing for Court or any danger to the community.

HB 1289, HD 2, RELATING TO CRIMINAL PRETRIAL REFORM

FEBRUARY 21, 2019 · HOUSE FINANCE COMMITTEE · CHAIR REP. SYLVIA LUKE

POSITION: Support.

RATIONALE: IMUAlliance supports HB 1289, HD 2, relating to criminal pretrial reform, which implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017.

IMUAlliance is one of the state's largest victim service providers for survivors of sex trafficking. Over the past 10 years, we have provided comprehensive direct intervention services to 135 victims, successfully emancipating them from slavery and assisting in their restoration, while providing a range of targeted services to over 1,000 victims in total. Each of the victims we have assisted has suffered from complex and overlapping trauma, including post-traumatic stress disorder, depression and anxiety, dissociation, parasuicidal behavior, and substance abuse. Trafficking-related trauma can lead to a complete loss of identity. A victim we cared for in 2016, for example, had become so heavily trauma bonded to her pimp that while under his grasp, she couldn't remember her own name. Yet, sadly, **many of the victims with whom we work are misidentified as so-called "voluntary prostitutes" and are subsequently arrested and incarcerated, with no financial resources from which to pay for their release**.

Hawai'i has approximately 5,500 inmates, over, 1,500 of whom are incarcerated overseas, away from their families and homeland. According to a report by the American Civil Liberties Union released last year, pre-trial detainees in Honolulu wait an average of 71 days for trial because

they cannot afford bail. Additionally, researchers found that circuit courts in Hawai'i set money bail as a condition of release in 88 percent of cases, though only 44 percent of those people managed to post the amount of bail set by the court. Moreover, the study found the average bail amount for a Class C felony on O'ahu is set at $20,000. Even with help from a bail bonding agency, posting bond, in such cases, would require an out-of-pocket expense of roughly $2,000. Finally, while officials claim that bail amounts are supposed to be based on a consideration of multiple factors–including flight risk, ability to pay, and danger to the community–researchers learned that in 91 percent of cases in Hawai'i, money bail mirrored the amount set by police in arrest warrants, an amount based solely on the crime charged. These injustices led the ACLU to declare that our state's pretrial detention system was and remains unconstitutional.

Furthermore, as the visitor industry reaps record profits and supports expansion of the local prison-industrial complex, people of Native Hawaiian ancestry, who comprise approximately 25 percent of the state's population, continue to suffer the pangs of a biased criminal (in)justice system. Approximately 39 percent of incarcerated detainees are Hawaiian, according to a comprehensive study by the Office of Hawaiian Affairs, with the proportionality gap being even greater for Hawaiian women, who comprise 19.8 percent of the state's female population, but 44 percent of the state's female inmate population. Researchers also found that, on average, Hawaiians receive longer sentences, more parole revocations, and, importantly for this measure, **harsher drug-related punishments than other ethnic groups**. Therefore, passage this measure is a step toward reforming and preventing more people from becoming victims of our unjust and racially coded prison system.

HB-1289-HD-2
Submitted on: 2/20/2019 11:26:02 AM
Testimony for FIN on 2/21/2019 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

February 20, 2019

TO: Committee on Finance
RE: HB 1289, HD 2
HEARING DATE: Thursday, February 21, 2019
TIME: 12:30 PM
CONF. ROOM: 308
POSITION: **SUPPORT**

Dear Chair Luke, Vice Chair Cullen, and members of the committee:

I support HB 1289, HD 2 which implements the recommendations of the House Concurrent Resolution 134 Task Force on Pretrial Procedures.

On April 30, 2018, there were 546 pretrial detainees at the Oahu Community Correctional Center (OCCC). It costs $152 per day to house an inmate at OCCC, therefore on April 30 the 546 pretrial detainees cost the State $82,992. Although the Department of Public Safety does not have data on the specific reasons why pretrial detainee are in custody, it is safe to assume that most of them are in jail because they cannot afford cash bail or a surety bond. If HB 1289, HD 2 reduced the number of pretrial detainees at OCCC by just 45%, that is from 546 to 245 inmates, the State would save approximately $46,000 a day, or about $17 million per year. On a statewide basis the savings would be even greater.

In addition to saving money, HB 1289, HD 2 would significantly improve our justice system by reducing the number of people who are who are held in jail simply because they are too poor to make bail.

If HB 1289, HD 2 is enacted, I recommend also enacting HB 175 which would give judges the option of allowing unsecured or partially secured bail when a defendant cannot make bail and continued incarceration would create a hardship on the defendant or his family.

HB 1289, HD 2 does not eliminate cash bail which, in my view, should be the goal of bail reform, but it is an important step in the right direction and will certainly improve our criminal justice system by making it more just and less expensive.

Thank you for the opportunity to comment on this bill.

HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

Testimony in Support, HB 1289, HD2 with Reservations and Subject to Recommendations
Presented By, James Waldron Lindblad
808-780-8887
James.Lindblad@gmail.com

Rep. Stacelynn K.M. Eli	Rep. Nadine K. Nakamura
Rep. Cedric Asuega Gates	Rep. Scott Y. Nishimoto
Rep. Troy N. Hashimoto	Rep. Chris Todd
Rep. Daniel Holt	Rep. Tina Wildberger
Rep. Lisa Kitagawa	Rep. Kyle T. Yamashita
Rep. Bertrand Kobayashi	Rep. Bob McDermott
Rep. Scot Z. Matayoshi	

NOTICE OF HEARING

DATE: Thursday, February 21, 2019

TIME: 12:30 P.M.

PLACE: Conference Room 308
State Capitol
415 South Beretania Street

A G E N D A # 2

HB 1289, HD2 (HSCR762) Status	RELATING TO CRIMINAL PRETRIAL REFORM. Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017.	PVM, JUD, FIN

Testimony in Support, With Reservations HB 1289, HD2.
(Subject to Recommended Amendments)

My name is James Waldron Lindblad, and I have worked in and around police, courts, jails and prisons since 1973, and I have worked in both pretrial release, and in surety bail bonding.

Much of what is being proposed in HB 1289 HD2, regarding bail and the pretrial process is already happening on a daily basis with 1) quick bail hearings every Monday and Thursday, and 2) reduced bail amounts on many warrants.

Judges already have authority to release or detain in Hawaii.

I think the HCR 134 Task Force report is a world class document and the most thorough and complete compilation on bail and the pretrial process ever written down anywhere. Hawai`i will continue to lead America in fewest pretrial persons in custody per-capita. The problem is, we need a new jail and no amount of effort elsewhere will change that. We have at least 1400 Hawai'i people on the mainland we must bring back. Jail or prison, or police holding facilities are required to administer justice and a decent jail as a line in the sand is also relied on by many families whose loved ones need out help. We should never force judges and law enforcement to release everyone they arrest using a citation and removing discretion.

By grouping types of offenses eligible for citation release and encouraging release with a citation we allow some degree of needed discretion. After all, citation release will work for many, even on class A felony matters. But, there will be consequences to fairness if the right for judges to judge individual pretrial decisions is forced by the legislature and law enforcement should have some latitude to make individual determinations based on individual circumstance. For instance, if we insist on grouping or batching pretrial release decisions based only on type of crime we must know that every action has an equal and opposite reaction. We need only look at other states and observe the spikes in property crime rates when citation release is used by forcing of a law or a policy rather than allowing individual discretion by the court or by the arresting officer and I think we should look to our prosecutors, law enforcement and our attorney

general to ensure all data is adequately collected and known by those persons in authority so that we may take smaller steps forward and reduce risk of unintended consequences. This is especially true when a person on probation or who was released on their own recognizance and has no family support and only state support commits new crimes. Balance and fairness is what we want and we all want fewer people in jail but how to accomplish this takes time, money and a group effort.

I support the intent of HB 1289, HD2, which I think will change the pretrial process for some by eliminating bail for most misdemeanants and certain class C felony cases. This means there will be more citation type releases by police rather than police booking those persons they arrest at the jail. This citation type release as proposed in HB 1289 HD2, rather than booking and setting bail will also eliminate the need for most misdemeanant and certain class C felony cases to be booked by police in the first place. Because, almost all misdemeanants are presently released by the court within 72 hours anyway, citation release will speed things up by at least 72 hours for many defendants. The downside will be police may not be able to identify some fugitives without arresting them and booking them to check their fingerprints in order to verify identification and if any fugitive warrants exist. Citation release is similar to a traffic ticket type of release. An an example of the fugitive problem as it happened to me was when my client, who was both a federal and a state fugitive fled to Florida and was arrested no fewer than seven times over several months prior to the police serving the two felony warrants from Hawaii since the Florida police already sometimes make use of citation release for certain of the misdemeanant crimes and the fugitive status and true identity of this person was not discovered until a Florida police officer saw my wanted poster and recognized the fugitive.

My support for HB 1289 HD2, is subject to the following proposed amendments but decision makers should also be aware of the present policy changes by our judiciary in setting initial bail amounts much lower and in the courts conducting prompt bail hearings on felony cases at arraignments every Monday and Thursday, which is a practice now

already accomplishing much of what HB 1289 HD2 calls for which is lower bail amounts and quicker bail hearings.

Further, if the intent of HB 1289, HD2 is truly to improve the pretrial process and not to get rid of bail agents, then fixing the Page 14, amendment as listed below is crucial. I ask for the stricken language in HB 1289 HD2, to be reinserted in order to preserve the needed clarity. This is because the HCR 134 Task Force report, on page 16, of the report demonstrates how law enforcement reliance in whole or in part on this specific statutory language is required to ensure the right to release on bail by sufficient sureties. This is especially true when reading our statutes together as this component and statute assures all people in Hawaii their right to bail by sufficient sureties and taking this section out confuses matters and could be used to deny release by sufficient sureties if removed pursuant to HD 1289 HD2.

<u>Page 16 of the HCR 134 TAsk Force Report:</u>

2. Hawai‘i Revised Statutes

In Hawai‘i, “bail” is defined as “the signing of the recognizance by the defendant and the defendant's surety or sureties, conditioned for the appearance of the defendant at the session of a court of competent jurisdiction to be named in the condition, and to abide by the judgment of the court.”32

Hawai‘i Revised Statutes (“HRS”) § 804-3 sets forth when bail is available for criminal defendants:33

… (b) Any person charged with a criminal offense shall be bailable by sufficient sureties;
provided that bail may be denied where the charge is for a serious crime,34 and:

(1) There is a serious risk that the person will flee;

(2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or
therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective
witness or juror;

(3) There is a serious risk that the person poses a danger to any person or the community; or

(4) There is a serious risk that the person will engage in illegal activity.

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32 Haw. Rev. Stat. § 804-1.

33 "'[B]ail' includes release on one's own recognizance, supervised release, and conditional release." Haw. Rev.
Stat. § 804-3(a).

34 "'[S]erious crime' means murder or attempted murder in the first degree, murder or attempted murder in the
second degree, or a class A or B felony, except forgery in the first degree and failing to render aid under section
291C-12." Id.

Further Summary:

HB 1289, HD2, attempts to follow the recommendations of the HCR 134 Task Force Report. Presently, the judiciary is already doing many of the things needed to speed up the pretrial release process. Recent initial bail amounts are being set much lower and since January 17, 2019, bail hearings are now scheduled or are included at circuit court felony arraignments, every Monday and Thursday at 8:30 AM. Hawaii presently has a high-functioning pretrial process and is rated very high among states in fewest number of persons held that are denied release on their own recognizance per capita. Judges in Hawaii can already release or detain. Public safety will be impacted as demonstrated in California, by Proposition 47, but the trade off should be fewer people in jail pending court hearings.

Recommendations and Amendments:

Page 4, (1) Time to make pretrial assessment at 48 hours v 72 hours. I think quick assessments are great but our Hawaii Intake Service Center knows what it is doing and I think 48 hours is too quick. There are many clients that are not even interviewable at 48 hours due to drugs and alcohol. This 48 hours is listed again on Page 6, (9)

Page 7, regarding Pretrial Bail Reports. This pretrial bail report should be made readily available to all competent sureties or licensed and approved bail agents or at least by direction of defendant and the defendant should not be required to deliver the pretrial bail report to the bail agent or competent surety themselves but should be able to direct delivery of the report via intake. This will help ensure quicker release when suretyship is required by the court. Bail agents can use the information to speed release when bail is required. The public defenders could also be instructed to provide the pretrial bail report to any surety considering involvement in the pretrial release. There is nothing confidential in the pretrial bail report requiring the report to be sealed and openness would assist those persons in providing quicker release when the court decides bail

should be a condition of release. I have prepared over 2000 pretrial bail reports and validated the information when I was a pretrial worker and believe this information should be shared.

Page 9 (1) Money or monetary bail and language relevant to any and all bail including bail bonds should be uniform and refer to a statute defining bail in order that money bail is not confused with cash only bail or cashier's checks and bail bonds are included in the pretrial release process. The police holding stations and DPS jails should allow and to be instructed further in order to ensure bail bonds as defined and bail agents as defined are adequate and sufficient for pretrial release and that the statutory intent is that bail bonds and bail agent be treated the same as money bail which is presently the true intention of our statutory scheme. In fact, money is a substitute for sufficient surety which is the foundation of bail release. To say monetary bail as suggested in Part IV., Section 6., (2) on Pages 9 and 10, confuses matters and law enforcement persons along with everyone else including me who all require clear language and intent. <u>This section must be corrected to clearly state what is allowable and if bail bonds and bail bond agents are allowable 24/7 we must state so, very clearly and read this into the committee report so that going forward everyone knows the legislative intent and any ambiguity or lack of clarity in the statutes can be made clear by reading the committee report as to legislative intent. This is very important.</u>

Page 11, on section *804 A. We need to say, set bail. Or refer to bail setting and not limit the section to release or detain. What is meant here is to <u>set bail,</u> or to release or to detain. We must say this clearly to avoid confusion.

Page 11, 804-B Money Bail; non-violent offenders. We must be very careful here as already those persons being arraigned are complaining on camera regarding the expectation of release on OR or SR as their crime is non-violent. We cannot write laws where the expectation of fairness becomes an entitlement. Certainly judges will have

guidelines but people with 50 arrests expecting release after release as their crime is deemed not violent when every person in Hawaii whose had their house burglarized feels violated must be made clear as to legislative intent. We cannot go overboard as I believe judges know best and we cannot force every decision or instruct our judges who may know better on mandatory pretrial release and we must trust our judges to judge. Otherwise, why even book a defendant. It would be better to require the police to issue a citation release instead if the intent is not to ever require bail.

Page 14, Section 8 (b) Lines 13, 14, 15 are taken out that speak to "bailable by sufficient sureties." Bailable by Sufficient Sureties is the cornerstone of equal justice and explained very well the the Washington state Barton Case, https://caselaw.findlaw.com/wa-supreme-court/1674501.html

13 (b) [~~Any person charged with a criminal offense shall be~~

14 ~~bailable by sufficient sureties; provided that bail may be~~

15 ~~denied where the charge is for a serious crime, and:~~] There

I believe removal of this sentence causes 3 adverse outcomes which a) decreases equal access to pre-trial release and b) impede the goal of solving mass incarceration.

****Suggest leaving in the lines 13,14,15, absent good cause. Taking these words out confuses matters and could be interpreted to mean no more bail by sufficient sureties and no more bail bond agents which is not the intent. Further, since the intent of HB1289, HD2 is to keep bail by sufficient surety and money bail as an option for judges when setting pretrial release conditions, this section is very important and should not be deleted or replaced.**

As I interpret the future of pretrial release, I think it's critical to keep the term "sufficient sureties"in the statutes because the more options that may be associated with the term, the more cause a judge may find to release a detainee.

Page 21, Line 1 Release after Bail. When bail is offered and taken the prisoner shall be discharged from custody or imprisonment. This language has been a cornerstone to pretrial justice in Hawaii for many years and should never be deleted. Courts, police and public safety persons and especially bail agents rely on this statute to ensure fairness and prompt release when bail is posted or filed with the court or holding facility. Please add this back and do not delete or substitute this important language. Importantly, an added mention of bail bond agent, bail bond or sufficient surety language should be added here, on or around lines 2 and 3 or anywhere on page 21. Officials must know bail bonds mean bail or money and bail bonds are sufficient for release. Adding the words bail bond agent or licensed and approved sufficient surety or something to mean bail agents that can in-fact, bail people out is needed here. How a person proves they are a legitimate bonafide bail agent would help too. Is there an approved list? Is there an approval procedure for bail agent certification or is going online to the state site showing insurance bonds are sufficient or the producer license is current the only needed proof? Whatever the proof must be to show bail agent adequacy, we should say so in this section. I think everyone requires more certainty in this section and improved language here stating bail agents are in the mix and a mention of bail agents in the committee notes as to legislative intent is required.

Page 24, line 12. Taking out considering punishment is a mistake and should be left alone. Anyone in the position of determining risk factors must know and consider potential consequences in order to make the right decisions. Consequences play a key role in determining risk factors. To not include risk factors is going overboard and takes away or hamstrings the decision maker as consequences are key elements in criminal justice and consequences guide us all. We must consider consequences on the release, detain or setting of pretrial release bail conditions or in setting money bail amounts that can also be provided by surety bonds a.k.a., bail bonds.

Comment:

People commit crimes and society must deal with criminals. I have great faith in our DPS having worked in and around the Hawaii DPS since 1980. There is no finer group of more dedicated people anywhere. I think we, the people, must provide the needed tools for our DPS to succeed and it is in the public interest to take the advice of those DPS professionals working inside the correctional system who work on the front lines every day in Hawaii and we must provide the needed basic information to enable our judges to judge and to administer justice. We don't need to write everything down as we need to trust those persons we place in authority. We have a process to ensure pretrial justice that works pretty well in Hawaii and has been proven. As I have stated, Hawaii rates very high among states in fewest defendants per capita and there are only about 577 actual pretrial defendants 500 felon and 77 misdomenants at OCCC out of 20,000 HPD arrests and probation violators should be counted separately of which there are about 250 HOPE and about 450 other probationers.

Further Information:

Pretrial justice and reforms needed to help maintain our already very high functioning pretrial process in Hawaii is something we have worked very hard to maintain and improve and that we know is among the best in the nation and is rated very high and has produced among the lowest numbers of pretrial persons waiting in jail and not able to be released pending court dates per capita in the nation but we can be #1 in Hawaii and HB 1289, HD1, will help accomplish this.

I think the HCR 134 Task Force report is one of the most informative documents on pretrial justice ever written in anywhere, and moves us forward toward achieving improved equal

access to justice for all. The HCR 134 report is crystal clear, offers a road map for pretrial justice improvement and helps to provide improved equal justice for all by requiring individual decision making by the courts. Thus, the discrimination caused by machine-generated algorithms is avoided and any algorithm issues deemed discriminatory can be addressed by the court asking more questions on a one-on-one, case-by-case basis.

There are several levels of support in matters of pretrial justice contained in the HCR 134 Task Force Report, that are also contained in the HCR 85 Task Force Report. Bail agents like me, and especially pretrial workers like me, when I began my career, all know full well the significance of the substantial effort that produced such clarity and great purpose in HCR 134, regarding pretrial justice and equal treatment by judges. There is nothing else comparable to the HCR 134 Task Force report in terms of thoroughness and completeness anywhere. Judges will remain in the pretrial process, be allowed to judge, and will have a palette of pretrial release choices at their disposal in order to ensure and protect every individual's right to equal justice. The HCR 134 report also maintains our constitutional right to bail by sufficient surety when a court determines that it is needed as an alternative to detention, to protect us all from potential government oppression that is caused by improper or unnecessary pretrial detention. The HCR 134 report achieves a balance between preferring release while avoiding the need to detain, except in extreme circumstances. We still allow our courts the pretrial detention tools required to detain, which are preserved for use by the court on a case-by-case basis.

I think parents or other relatives should be able to bail out their family members, and when a judge sets bail a paid surety bail bond should be allowable to speed up the process of release for those persons, who, in my view, comprise the vast majority of those persons arrested.

Scarce state resources should be reserved for the truly needy. No person should remain in jail simply for lack of funds.

Many states and countries will soon have the opportunity to look at our Hawaii pretrial model, as Hawaii already rates very high among American states, just below Maine with the least percentage of pretrial detainees, on a per capita basis. Again, Hawaii can be #1.

We all want Hawaii to be a leader in pretrial justice and in prison and jail reforms. I have extensive personal experience on issues relating to pretrial release and I am uniquely qualified, based on my background in bail and in pretrial release and with forty-two years of experience to help to achieve positive results. I believe that Magistrate Judge Rom Trader's HCR 134 bail report is of very high quality.

- There is a certain new and improved clarity and perfection regarding pretrial release that is clearly documented in the HCR 134 Task Force Report. The report clarifies duties and responsibilities of all concerned and fully argues the issues.

I think we should insist that the police use the citation-release option more frequently. This citation-release procedure is often used in Oregon and in Vancouver, B.C. The police should book only class B and class A felons into jail and then let the court decide what to do with the class B and class A felons in the pretrial phase. That decision would include the options of release or detain or perhaps setting bail.

Individualizing bail decisions is very important but also is understanding and employing basic suretyship concepts that are in the public interest. We can't just trust every recognizance defendant to show up for court like OR and SR calls for. Magistrate Judge Trader and the HCR 134 Task Force understand this and say so in the HCR 134 report. California decriminalized many classes of crime and released many people from custody in prison reform efforts, and the result was a spike in property crimes.

This is what Justice Marshall wrote in his dissent in United States v. Salerno, 481 U.S. 739 (1987), which I think is on point.

https://www.law.cornell.edu/supremecourt/text/481/739 (Marshall, J., dissenting)

I think we need a new jail to replace the decrepit OCCC and we should not wait to build one. We all want fewer people in jail and we all want equal access to justice. Perhaps purchasing the Federal Detention Center will speed up improvements. In the meantime, tweaking what we have, one small step at at time and watching places like New Jersey, New Mexico, Washington, D.C., and especially now California and SB-10 and the referendum that will be heard regarding the abolition of bail to see what evolves that is better or worse. We do not want the spike in crime caused by Proposition 47 as demonstrated in California. We should go slow, include testing and reporting how any new procedure impacts crime, prison populations and fairness but most of all public safety. I think taking small bite sized pieces to gather information, data, and statistics will benefit decision makers.

We are very close to perfection with the HCR 134 Task Force report. Comparing and contrasting the work of other states and nations to see what has actually worked will benefit Hawaii too.

I believe the two HCR reports, are correct in their thinking and correct in asking the Hawaii Legislature for the reforms they are seeking. But, there are many things and going slow learn the consequences is very important.

I think both reports can help move matters forward. All this is especially true for the HCR 134 Task Force report, and mostly true but to a lesser degree for the HCR 85 Task Force. This is because as I said before, I think we need a new jail now, and the HCR 85 report does not call for moving forward now with a new facility. Much of my thinking involves the need for contact visits for new parents as at least one of my clients, was denied contact visits with his newly born child while awaiting trial, and before his attorney could arrange for bail release with my bail bond company. Further, I see the anguish of parents and their children on a daily basis when seemingly harsh treatment for genuinely remorseful and repentant defendants is meted out in the name of our statutes. I think we need to put fewer people in prison in the first place, those who are in jail should be subject to reviews for early release, and minimum sentences should be amendable at the discretion of the sentencing judge or parole board. I have a client (with children and a wife) who was sentenced to a very long time in prison due to an offense committed long ago. That situation focuses me on the idea of a new correctional facility, as I know that treatment of local prisoners is sometimes substandard, vicious, and lacking in compassion. As to jail and prison, I did my own poll of my clients and every single one of them prefers mainland incarceration for one reason alone: cleanliness. We must do better and that

is why I participate in the process and try to ensure that valid data is provided to those administrators in authority and to our legislative decision makers.

We know from California proposition 47 that bail reform will bring about a spike in property crimes and we know in order to improve the success rates for pretrial release we must have jail as a last resort. In my experience, family members of some defendants rely on jail as a last resort. While Hawaii is a leader in pretrial justice in America today ranking very high among the states in having the fewest numbers in pretrial status per capita the fact is, we need jail space now and have needed jail space since at least 1980. Buying the Federal Detention Center is a great opportunity and must be explored. We should not force our judges to release persons due to crowding. Of the 500 felons and 77 misdemeanants at OCCC, left over after 20,000 arrests by HPD, dated on or around June 2018, all these remaining defendants have been thoroughly reviewed by the Hawaii Intake Service Center and the court and it was ruled by a judge that bail is required in part, to ensure public safety and to ensure appearance at court but if crowding persists and there is no adequate pretrial holding facility these persons must be released. At a minimum, pressure to release due to crowding is on our courts and on the Director of Public Safety and we know the results and failure rates when minimum release standards cannot be met and the resulting spikes in crime rates affecting public safety. A line in the sand being jail, as a last stop and required is very important for a high-functioning criminal justice system.

I attended almost every HCR 85 Task Force meeting and submitted testimony along with over 100 emails containing additional support and data. I submitted three sets of testimony to HCR 134 Task Force Members and offered oral testimony at the public meeting, October 13, 2017.

http://808bail.com/honolulu/ My blog contains links to relevant data and reports. I have invited person interested in pretrial justice to my office and to view bail hearing and to visit the jails, booking facilities and prisons so that they may know how hard all this is. I believe the hard decisions our judges face are very difficult because I see the before and after effects to both defendant and their families as well as victims and this is why I think our community and tax payers will support our providing improvements.

I think buying the Federal Detention Center will improve pretrial justice and improve fairness in Hawaii and will jumpstart the needed infrastructure and foundation required to maintain our high-functioning pretrial process in Hawaii as HCR 134 Task Force members report.

Please support HB 1289, HD2, subject to proposed amendments.

Thank you for the opportunity to present this testimony.

James Waldron Lindblad

808-780-8887.
James.Lindblad@gmail.com REV 02.21.2019

Useful Links.

Hope Probation offers no advantage.
https://nij.gov/topics/corrections/community/drug-offenders/Pages/rigorous-multisite-evaluation-finds-hope-model-offers-no-advantage.aspx

Bail in Hawaii explained.
http://www.expertbail.com/resources/bail-industry-news/expertbail-agent-james-lindblad-talking-bail-bonds-hawaii-style

Bail Bond Myths and Prison Population Management.
http://www.808bail.com/bailmyth.pdf

Tribune Article, Mitch Roth
https://www.hawaiitribune-herald.com/2019/01/28/hawaii-news/bail-reform-on-tap-in-legislature/

New Women's Jail Los Angeles- Jan 9th 2019
https://laist.com/2019/01/09/how_sheriff_villanuevas_election_may_have_doomed_las_new_womens_jail.php

LATE

HB-1289-HD-2
Submitted on: 2/20/2019 6:19:21 PM
Testimony for FIN on 2/21/2019 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William Caron	Individual	Support	No

Comments:

Aloha Chair Luke, members of the committee,

I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant’s constitutional rights. However, requiring cash bail does not achieve any of these outcomes.

Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties.

Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo!

finance8 - Joy

LATE

From: Kainani Derrickson <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 7:53 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Kainani Derrickson

Testimony in Support of HB1289

Name	Kainani Derrickson
Email	kainanid@hawaii.edu
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance8 - Joy

LATE

From: Patricia Blair <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 6:52 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Patricia Blair

Testimony in Support of HB1289

Name	Patricia Blair
Email	patriciablair@msn.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance8 - Joy

LATE

From: Jun Shin <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 6:50 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Jun Shin

Testimony in Support of HB1289

Name	Jun Shin
Email	junshinbusiness729@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance8 - Joy

LATE

From: Courtney Mrowczynski <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 8:09 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Courtney Mrowczynski

Testimony in Support of HB1289

Name	Courtney Mrowczynski
Email	cmrow@hawaii.edu
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I SUPPORT a reduction OR elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does NOT serve the function for which it was intended. The purpose of bail is NOT pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while PRESERVING the defendant's constitutional rights. However, requiring cash bail does NOT achieve ANY of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen BETTER rates of court attendance and LOWER rates of re-arrest, all while satisfying the intent of bail WITHOUT violating civil liberties. Cash bail has SERIOUS societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues AND loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo, Courtney Mrowczynski

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

DWIGHT K. NADAMOTO
ACTING FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i

February 21, 2019

RE: H.B. 1289, H.D. 2; RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Luke, Vice-Chair Cullen, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1289, H.D. 2.

The purpose of H.B. 1289, H.D. 2 is to examine the current criminal pretrial procedures and to implement recommendations based on the findings of House Concurrent Resolution 134 Task Force report. While the Department appreciates the Committee's good intentions of improving upon current procedures, we agree with the Task Force's recommendation from the informational briefing on January 22, 2019, when it suggested that the prudent next step would be data collection following current changes implemented by various stakeholders, since the conclusion of H.C.R. 134.

With regards to the specific contents of H.B. 1289, H.D. 2, we would also like to note the following issues:

Section 5 (pg. 8, ln. 13)
By creating a broad range of eligible offenses (non-violent Class C felony, any misdemeanor or petty misdemeanor offenses) while creating a static list of excludable offenses (domestic violence, sexual assault, robbery and offenses contained in chapter 707 of the H.R.S.) this section fails to take into account that there are a plethora of charges classified as non-violent Class C felony, misdemeanor and petty misdemeanor offenses that are not excluded from being citation eligible. This includes but is not limited to Habitual OVUII (§291E-61.5, H.R.S.), Violation of an Order for Protection (§586-11, H.R.S.), Violation of a Temporary Restraining

Order (§586-4, H.R.S.), Promoting Pornography for Minors (§712-1215, H.R.S.), and Solicitation of a Minor for Prostitution (§712-1209.1, H.R.S.), Harassment by Stalking (§711-1106.1, H.R.S.), and Violation of an Injunction Against Harassment (§604-10.5, H.R.S.).

Section 7 (pg. 10, ln. 17)
The Department supports the proposed idea for the right to a prompt hearing. However, as currently written, section 804-A does not outline any procedure or mechanism to initiate such a hearing on behalf of the defendant. In addition, if this is a mandated contested hearing for all cases, there will be a huge influx of contested hearings which will delay trial cases, create a backlog, and impose a large financial burden for a number of agencies without proper funding. In addition, the Department would raise concerns over the amendments made in H.B. 1289, H.D. 2, pertaining to the release of defendants who are unable to post bail that is set at an amount of $99 or less. The Department would note that bail is routinely set at a nominal amount for defendants who may have additional felony offenses that preclude their release. By removing bail for the defendant's lower level offense this amendment would preclude that person from receiving jail credit for time that he or she may be serving. **Lastly, H.B. 1289 H.D. 2 proposes to define "prompt hearing" to mean as soon as possible, but within five days of arrest. The Department believes that the requirement of a bail hearing within five days of arrest is not financially feasible or practical. Currently, the courts have already been routinely conducting a prompt bail hearing at the initial arraignment date for cases charged by information or by a grand jury. The said arraignment date are conducted within seven days after the service of the Information Charging Warrant of Arrest or the Grand Jury Bench Warrant. (See, Hawaii Rules of Penal Procedure, Rule 10). The Department would note that during the arraignment date, all necessary parties, to wit, the Deputy Prosecuting Attorney, the Deputy Public Defender and the Judge, are present. Thus, the current bail hearings that are set at arraignment and plea have not placed a financial burden on the Department, the Public Defender's Office or the Judiciary. It is logical and fiscally ideal to conduct both hearings on the same date. Taking into account the fact that an individual can be held no longer then forty-eight hours without being charged and the seven days as outlined in HRPP Rule 10, amending the "prompt hearing" from five days to nine days would be more in line with the current practices. In addition, nine days would provide the Department adequate time to subpoena necessary witnesses and obtain any certified documents required to show why it would be necessary to confirm bail on a suspect.**

Section 8 (pg. 14, ln 1)
This section raises similar concerns that the Department addressed in section 7. Currently, as written H.B. 1289, H.D. 1 creates a rebuttable presumption to release an individual charged of a criminal offense, but does not provide a procedure or mechanism for the courts. In addition, as proposed, the courts could encounter cases involving an individual charged with a Habitual OVUII (meaning an individual charged with a 4th OVUII offense in the last 10 years) offense that would be released without bail or released on bail with the least restrictions imposed. This proposal essentially shifts the burden to the state to show that an individual on probation or parole for a felony offense or a serial burglar is not a serious danger to any person or community or engage in illegal activity.

Although the Task Force report provided twenty-five various recommendations for pre-trial reform, many recommendations have already been applied without statutory requirements or mandates. Since the completion of the Task Force, it is our understanding that each agency has

re-evaluated their policies and procedures and reassessed their approach to the current pretrial issues. As previously noted, we would strongly encourage the Committee to allow time for appropriate data collection and analysis as recommended by the Task Force at the informational briefing on January 22, 2019, before making any further statutory changes.

For all the reasons above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 1289, H.D. 2. Thank you for the opportunity to testify on this matter.

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI THE SEX ABUSE TREATMENT CENTER

LATE

Date: February 21, 2019

To: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapiʻolani Medical Center for Women & Children

RE: Testimony in Opposition to H.B. 1289 H.D. 2
Relating to Criminal Pretrial Reform

Good afternoon Chair Luke, Vice Chair Cullen, and members of the House Committee on Finance:

The Sex Abuse Treatment Center (SATC) respectfully opposes H.B. 1289 H.D. 2 and asks that the Committee please defer this measure.

As a threshold issue, it is our understanding that victims of crime and victim service agencies were not invited to participate as members of the Criminal Pretrial Task Force, which drafted much of the language included in this measure. Consequently, the proceedings of that task force did not include a key group of stakeholders as partners in discussions about the impacts of proposed changes in pretrial practices and in decision making about the task force's findings and recommendations.

Victims of crime and service providers that work closely with victims are in a unique position to communicate the impact that crime, and Hawaiʻi's responses to crime, have on individuals, families, and local communities. It is therefore important that victims and victim service providers be included in discussions about criminal justice system reform.

We would like to share the following concerns for the Committee's consideration.

- The Criminal Pretrial Task Force's Report included recommendations that a parallel system of comprehensive supportive and social services be constructed, including integrated system- and community-based case management, housing provision or assistance, and behavioral health and substance abuse treatment options.

  It is our understanding that this parallel system has not been developed and implemented, and there is a further lack of clarity regarding what models will be

adopted in Hawai‘i and an absence of key stakeholder voices concerning such a system’s workability and resource needs.

The purpose of this parallel system would be to ensure that bail reform has the intended effect of reducing recidivism, mitigating the threat of harm to individuals and the community at large posed by offenders, and ensuring offenders’ appearance and participation in criminal justice proceedings should they be released from custody.

Example models were described in the Report, including Honolulu’s Mahoney Hale, where offenders in federal cases can be housed and managed; San Francisco’s Homeless Release Project, where offenders released in limited misdemeanor cases are supervised by dedicated case managers; and the Seattle Municipal Court’s day reporting center program, where offenders report at set times, sometimes daily, until court appearances are no longer required, with assessment and referrals made for social services and community support.

The Report also detailed, as a best practice, what it described as the “gold standard of pretrial justice reform,” in Washington, D.C.’s system designed to support and supervise offender release. That system utilizes “a pretrial services agency staffed by 350 people, 75% of whom are case workers, with an annual operating budget of $65 million (emphasis added).”

We note that, according to the FBI’s Uniform Crime Reporting System, with yearly reports available from the Hawai‘i State Department of the Attorney General and the D.C. Metropolitan police, the State of Hawai‘i experiences ~30% more property crime – the crimes most cited as being targets of bail reform – than Washington, D.C.

For example, the 2016 reports indicate ~31,600 property crimes reported in D.C., compared with ~42,400 in Hawai‘i.

Unfortunately, the Report included no information concerning the number of offenders who are likely to be affected by the Task Force’s statutory bail reform proposals; no recommendations regarding a specific model that should be adopted; no consideration of whether housing, behavioral health and substance abuse, and other service providers would be readily able to accommodate offenders who are released to the community and what their resource needs may be; or analysis of costs and impacts for the public safety department, judiciary, and other affected agencies may be for the parallel development and implementation of appropriate social services and case management infrastructure.

However, if we were to assume the adoption of a system comparable to the one in Washington, D.C., and considering the geographic and systems differences between the State of Hawai‘i and Washington, D.C., it would be reasonable to expect that tens of millions of dollars in additional funding and the hiring and training of hundreds of staff members would be needed, ahead of the release of offenders subject to bail reform efforts.

We also note that government and community-based social services agencies should be brought to the table, ahead of the adoption of bail reform pursuant to H.B. 1289 H.D. 2, to ensure a clear understanding of what their expected contribution to the management of and services for released offenders will be, and what this may require in terms of funding, staffing, and other resources.

Should H.B. 1289 H.D. 2 continue to move forward, we would ask that the bill be amended to postpone its effective date for as long as may be needed to resolve this issue and implement appropriate and timely case management and social services support for released offenders.

- Section 3 of the bill, on page 5 at line 11, provides that the pretrial risk assessment should use an "objective, research-based, validated" assessment tool that measures, among other things, an offenders risk of violence or harm to "*any person or the general public* (emphasis added)."

  We note that the Ohio Risk Assessment System (ORAS) Pretrial Assessment Tool (PAT) utilized as a pretrial risk assessment tool in Hawai'i measures risk of flight (e.g. failure to appear) and recidivism (re-arrest or conviction for another crime). However, it does not measure risk of violence or harm to any person or the general public, which is of particular concern in crimes that may be targeted to specific persons or concerning property or interests/rights, like privacy, belonging to specific persons.

  The ORAS PAT provides scores that are predictive of risk of flight and any-crime recidivism based on seven data items: (1) age at first arrest; (2) number of failure-to-appear warrants past 24 months; (3) three or more prior jail incarcerations; (4) employed at the time of arrest; (5) residential stability; (6) illegal drug use during past six months; (7) severe drug use problem. It is not validated as a tool for predicting the risk that an offender will cause violence or harm to a specific person or the public at large—indeed, the 7 questions are not ones that would be asked if seriously considering the safety of potential future victims of crime.

  It is also important to understand what it means when a tool is said to be 'validated.' The Ohio Risk Assessment System (ORAS): A Re-Validation & Inter-Rater Reliability Study: Final Report (October 2017), found that even offenders deemed 'low risk' by the ORAS PAT empirically recidivated at fairly high rates, with 19.3 percent newly arrested and 10.3 percent newly convicted *within 6 months* (emphasis added). In addition, there was variation in how different users of the ORAS PAT scored identical cases, with two of the seven data items found to be "particularly problematic." As such, ORAS PAT does have a level of vulnerability to significantly disparate risk scoring of identical cases depending on the person who administers it.

  It is unclear what, if any, pre-trial risk assessment tool currently exists that would meet the requirements of Section 3 of the bill, and how such a tool could be satisfactorily and timely validated for use upon H.B. 1289 H.D. 2's effective date of July 1, 2019.

  Should this measure continue to move forward, we would respectfully ask that this issue be considered in setting an appropriate later effective date for the bill, to ensure adoption of validated tools that meet the statutory requirements ahead of the implementation of the bill's other reforms that are reliant upon effective and accurate pretrial risk assessment.

- Section 3 of the bill, on page 6 at line 14, provides that the Department of Public Safety is responsible for "making inquiry with the offender concerning [their] financial circumstances" for inclusion in the bail report, and that the Department be granted "limited access for the purpose of viewing other state agencies' relevant data related to an offender's employment wages and taxes."

We note that an understanding of an offender's financial circumstances would tend to include verifying if the offender has assets, requiring that the Department also be given access to additional financial and county records, such as banking, investment, real property and vehicle information. Additional information, such as reports of finances created during law enforcement investigation should also be reviewed if possible.

We further respectfully submit that reliance primarily, or solely, on an offender's self-report of income and their formal reporting of income in tax filings, would tend to have the unintended consequence of privileging offenders who derive wealth from illegal or otherwise concealed sources.

As drafted, the bill does not include inquiry as to assets as part of the assessment of the financial circumstances of the offender, which could distort determinations as to appropriate bail.

Should this measure continue to move forward, we ask that the Committee please expand the intake service centers' information access to include financial (banking and investment) and county records for a more complete understanding of the offender's financial situation.

- In Section 3, on page 4 at line 21, the bill reduces the time available to conduct pretrial risk assessments from three to two working days. On page 7 at line 2, the bill further provides that pretrial bail reports to the court are due within 2 working days of admission of the offender to a community correctional center, whereas the current law does not seem to provide a due date.

  As the pre-trial risk assessment tool envisioned by H.B. 1289 H.D. 2 is significantly more sophisticated than the existing ORAS PAT, it would seem that more time, and not less, would be required to conduct pre-trial risk assessment in advance of making a report for bail and release decisions.

  Moreover, accurate assessment of an individual's financial circumstances for the purpose of bail determinations would seem to require review of information that goes beyond limited access to state sources, like income tax records. Banking institutions and county offices may need time to respond to requests for information. The inclusion of a bona fide review of offender financial circumstances as part of the bail report would tend to require that more time be granted to the Department, rather than less.

  Should this measure continue to move forward, we ask that the Committee please amend it to extend the period of time granted for more sophisticated pretrial risk assessment and financial review, which would be statutorily required by H.B. 1289 H.D. 2, to take place and subsequently be incorporated into the pretrial bail report.

- In Section 5, on page 9 at line 4, the bill expands the discretion for police offers to issue a citation in lieu of arrest to include "non-violent class C felony," so long as, on page 9 at line 19, the police officer determines that "[t]he offense does not involve domestic violence, sexual assault, robbery, or any other offense enumerated in chapter 707 [Crimes Against the Person]."

A sample of the crimes which would be made eligible for citation, rather than arrest, with this change includes:

1) Violation of Privacy in the First Degree (H.R.S. Section 711-1110.9), a crime that involve "Peeping Toms" who record their victims and revenge porn that is explicitly created to harm the health, safety, finances, reputation, and relationships of the victim;
2) Aggravated Harassment by Stalking (H.R.S. Section 711-1106.4), a crime involving a offender who has been convicted of multiple incidences of stalking;
3) Burglary in the Second Degree (H.R.S. Section 708-811) and Unauthorized Entry in a Dwelling in the Second Degree (H.R.S. Section 708-812.6), which are crimes of home invasion either with intent to commit a crime in the home, or *when the homeowner is present in the home*.

It seems that H.B. 1289 H.D. 2 would tend to set up a situation where a victim of one of these crimes calls police, but the offender, upon being identified and in circumstances that would normally result in arrest, is allowed to remain at large and unmonitored in the community.

Should the bill continue to move forward, we ask that the Committee please amend it to provide that class C felonies involving personal victimization, such as Violation of Privacy in the First Degree and Aggravated Harassment by Stalking, or that constitute crimes of home invasion are ineligible for citation in lieu of arrest.

- The factors, listed in Section 5, on page 9 at line 10, that police are required to consider when deciding to exercise discretion and issue a citation to offenders who commit C felonies, do not include any risk assessment of the offender. This seems strangely dissonant when compared with Section 3's emphasis on sophisticated pretrial risk assessment for offenders who are taken into custody.

  The decision to allow an offender who commits a C felony—many which a reasonable member of the public would tend consider serious crimes—should explicitly include a consideration of the risk of recidivism and potential for harm to specific persons and the general public posed by the offender.

  From the language of H.B. 1289 H.D. 2, it is not clear what tools or training, if any, would be provided to a police officer to perform this analysis in the field.

  Should this measure continue to move forward, we ask that the Committee please amend it to require that police officers be provided validated tools to make an accurate field pretrial risk assessment to support the decision to issue a citation in lieu of arrest.

- In Section 7, on page 11 at line 10, the bill provides that an offender has a right to a bail hearing within five days of arrest.

  We are concerned that five days may be insufficient time to conduct a bail hearing, taking into account the more sophisticated pretrial risk assessment envisioned by H.B. 1289 H.D. 2 and the need for a bona fide financial analysis to inform the setting of appropriate bail.

  In addition, if the right is interpreted to mean that bail hearings should happen automatically in all cases, this would tend to require substantial prosecutor and court resources, as well as

defense attorney resources—the bill, on page 11 at line 18, provides that offenders have the right to counsel at their bail hearings.

However, we note that the Pretrial Task Force's report makes no findings or recommendations with respect to the impact of this proposed change to bail proceedings with respect to prosecutor, defense, and court funding and resources, and the bill does not include an appropriation amount should additional prosecutor and defense resources be needed.

Should the bill move forward, we ask the Committee to please amend it by clarifying that bail hearings should be upon motion of the offender, rather than provided automatically. We also ask that the Committee please consider extending the time permitted for a bail hearing, noting the pretrial risk and financial analyses required by Section 3 of the bill. We further ask that the Committee please incorporate an appropriation for the prosecutors and public defender, consistent with the expected increase in volume of potentially time-and resource-intensive evidentiary bail hearings.

- In Section 7, on page 11 at line 20, the bill provides that "[t]he defendant shall be afforded an opportunity to . . . present witnesses [and] to cross-examine witnesses who appear at the hearing."

  Procedurally, it is not clear from the plain language of H.B. 1289 H.D. 2 how this would take place. It seems that this could potentially give the offender the right to subpoena or otherwise compel a complainant victim or a witness to the crime to court for an adversarial and contentious proceeding.

  Placing oneself in the victim's or witness's shoes, this would mean that, before trial begins, they could be called to face the offender on the specific issue of whether the offender is a threat to their safety, with the potential outcome that the offender is released into the community immediately following the hearing.

  We note that this creates a risk of further traumatizing or intimidating victims and witnesses, and may cause some to discontinue their willing participation in the court process and, as a result, distort public safety and criminal justice outcomes.

  The bail hearing could also potentially add to the burden on victims and witnesses to appear in criminal cases, by adding another proceeding where their presence may be compelled. We note that the burden of appearing in court proceedings is already challenging for victims and witnesses, especially in felony cases that are sometimes repeatedly continued at the trial stage and require them to be prepared and appear several times at personal cost, such as missed work or school, and at risk of additional trauma and re-victimization during each appearance.

  Should this measure continue to move forward, we ask that the Committee please amend it to deny an offender any ability to compel a victim or witness to their crime to testify or submit to cross examination in the bail hearing.

- In Section 8, on page 14 at line 20, the bill would remove class B felonies that don't involve violence or the threat of violence to any person from the definition of "serious crime," with the effect of rendering these crimes presumptively bailable. The bill further provides that

class C felonies that don't involve violence or the threat of violence to any person will also be presumptively bailable.

Class B felonies that would be rendered presumptively bailable include Burglary in the First Degree (H.R.S. Section 708-810), meaning breaking and entering a building with an intent to commit crime while armed with a dangerous weapon or knowing that building is a home, and Burglary of a Building During an Emergency Period (H.R.S. Section 708-818), which is of particular interest given Hawai'i's recent experience with natural disasters resulting in emergency declarations.

Should this measure continue to move forward, we ask that the Committee please amend it to provide that class B and class C felonies that involve personal victimization or that feature acts of home invasion will not be presumptively bailable.

- In Section 8, on page 15 at line 10, the bill provides that, in order to overcome the presumption that a crime is bailable, the prosecution would need to establish by clear and convincing evidence that the offender poses a serious risk.

  In practice, what this means is that an offender would remain presumptively bailable, even if prosecutors were able to demonstrate it is *more likely than not* (e.g. by a preponderance of the evidence) that the offender is a flight risk, will obstruct justice, will harm another person, or will commit more crime.

  Should this measure continue to move forward, we ask that the Committee please amend it by providing that the presumption of bail may be overcome by a showing by a preponderance of the evidence that the offender poses a serious risk of flight, obstruction of justice, harm to another person, or recidivism.

- In Section 25, on page 39 at line 12, the bill requires the Department of Public Safety to "revise the pretrial risk assessment processes currently used by its intake service centers *with respect to offenses committed against persons, including offenses involving domestic violence and violation of restraining orders and protective orders*, to ensure integration of victims' rights into the criminal pretrial system (emphasis added)."

  We note that just because a crime is not specifically an "offense against the person" (H.R.S. Chapter 707), does not mean it was victimless or was not personally violating. For example, the B and C felonies referenced elsewhere in this testimony are not classified as Chapter 707 offenses against the person, but involve significant violations of victims' homes, privacy, and other personal rights and interests.

  Should this measure move forward, we ask that the Committee please amend it by requiring that the pretrial risk assessment process integrate victims' rights for a broader range of crimes that involve personal victimization than those enumerated only in H.R.S. Chapter 707.

We appreciate the opportunity to testify on H.B. 1289 H.D. 2, and respectfully ask that the Committee please defer this measure in order to allow Hawai'i's victims of crime and agencies that serve victims, like SATC, the opportunity to meaningfully engage and collaborate with the Criminal Pretrial Task Force stakeholders on this important issue.

finance1 - Sean

From: Cody Moniz <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 9:11 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Cody Moniz

LATE

Testimony in Support of HB1289

Name	Cody Moniz
Email	cody.moniz@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance8 - Joy

LATE

From: Raelyn Reyno Yeomans <noreply@jotform.com>
Sent: Thursday, February 21, 2019 9:06 AM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Raelyn Reyno Yeomans

Testimony in Support of HB1289

Name	Raelyn Reyno Yeomans
Email	raebudden@aol.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

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finance8 - Joy

LATE

From: Nathan Yuen Yuen <noreply@jotform.com>
Sent: Thursday, February 21, 2019 7:34 AM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Nathan Yuen Yuen

Testimony in Support of HB1289

Name	Nathan Yuen Yuen
Email	808nateyuen@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance8 - Joy

LATE

From: Phillip Schrager <noreply@jotform.com>
Sent: Thursday, February 21, 2019 6:21 AM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Phillip Schrager

Testimony in Support of HB1289

Name	Phillip Schrager
Email	peschrager@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance8 - Joy

LATE

From: David Mulinix <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 10:01 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - David Mulinix

Testimony in Support of HB1289

Name	David Mulinix
Email	dave.mulinix@juno.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

You can edit this submission and view all your submissions easily.

finance8 - Joy

LATE

From: Carla Allison <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 9:30 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Carla Allison

Testimony in Support of HB1289

Name	Carla Allison
Email	cbm@hawaii.rr.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

finance1 - Sean

From: Carla Allison <noreply@jotform.com>
Sent: Wednesday, February 20, 2019 9:30 PM
To: FINtestimony
Subject: Re: Testimony in Support of HB1289 - Carla Allison

Testimony in Support of HB1289

Name	Carla Allison
Email	cbm@hawaii.rr.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Luke, members of the committee, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant’s constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,