The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

Thursday, March 28, 2019 10:05 AM
State Capitol, Conference Room 211

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. 1552, H.D. 2, S.D. 1, Proposed S.D. 2 Relating to Public Safety.

Purpose: Establishes the Hawaii Correctional System Oversight Commission. Creates a position for an Oversight Coordinator for the Commission. Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. (Proposed S.D. 2)

Judiciary's Position:

The Judiciary has no comment on Part I, regarding a correctional system oversight commission. The Judiciary respectfully supports other parts of House Bill No. 1552, H.D. 2, S.D. 1, Proposed S.D. 2, in as much as it reflects the H.C.R. 134, H.D. 1 (2017) Criminal Pretrial Task Force recommendations 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.

In summary, the Judiciary has no comment on Part I, regarding a correctional system oversight commission, and respectfully supports other parts of House Bill No. 1552, H.D. 2, S.D. 1, Proposed S.D. 2, in as much as it reflects the H.C.R. 134, H.D. 1 (2017) Criminal Pretrial Task Force recommendations.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

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

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 1552, HOUSE DRAFT 2, SENATE DRAFT 2 (PROPOSED)
RELATING TO PUBLIC SAFETY.
by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Ways and Means
Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, March 28, 2019; 10:05 a.m.
State Capitol, Conference Room 211

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The Public Safety Department (PSD) supports House Bill (HB) 1552, House Draft (HD) 2, Senate Draft (SD) 2 (Proposed), which consolidates the functions of the Reentry Commission and the Corrections Population Management Commission into a single, independent oversight commission, to be established in the Office of the Governor, abolishes those Commissions, and imbues the new oversight commission with functions of complaint investigations and programmatic review. The Hawaii Correctional System Oversight Commission will be responsible for overseeing the State's correctional system and facilitating its transition to an increasing rehabilitative and therapeutic model.

PSD welcomes the impetus and support for enhancing reentry programs and of incorporating additional Native Hawaiian culture-based programs, with an emphasis on healing and reducing recidivism amongst the inmate population. The Department looks forward to the Oversight Commission's recommendations

for additional best practices to help effectuate a more effective correctional system for Hawaii.

Part II of this measure 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 III, Section 13, 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, Sections 32 and 37 of this measure.

The Department respectfully suggests adding language in Part III, Section 13, Section 353-10(8), specifying the State agencies with the relevant financial data systems that PSD's pretrial services officers will need to access. PSD recommends the following amendment:

> "… 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;"

In addition, PSD respectfully requests that the language in Part III, Section 13, page 18, lines 9-10, related to considering a specific risk of violence or harm to any person or the general public be deleted, as its enactment would be premature, given PSD's recent contracting for a new validation study of PSD's version 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 counter-

productive. It should be noted that the risk of violence or harm is incorporated into PSD's version of the ORAS-PAT and its procedures.

In order to ensure the timeline requirements established by Part III, Section 13, Section 353-10(9), the Department respectfully recommends that the following language be added after "bail report" on page 20, line 6:

> "A copy of the pretrial bail report shall be electronically filed by the Department of Public Safety staff utilizing the Judiciary Electronic Filing and Service System (JEFS) to ensure timely access by the prosecuting attorney, offender or offender's defense counsel, and the courts."

PSD also suggests that the language in Part V, Section 17, Section 804-B (c), allowing for release by the director of public safety be amended to be consistent with the language in HRS 353-36: Release of Misdemeanants to Prevent Overcrowding. This change would ensure that a conflicting or a double standard is not created.

In the interest of balancing the rights of the offender and a "victim's right", the Department would also recommend that Part V, Section 18, page 28, line 20 be amended to reflect an evidentiary standard of "preponderance of the evidence." This will ensure the "victim rights" objective of Part IX and expand the protections to the prosecution, who is charged with ensuring justice for the victim and our community.

PSD reiterates its previously stated concerns with similar language in this and other measures as found in Part V, Section 16, Section 804 (2) and Part V, Section 21, Section 804-7, which requires that an individual be able to post bail 24 hours a day, 7 days a week at a "county correctional center" or community correctional center. The language in Section 804 (2) and Section 804-7 are conflicting. The fact remains, the Department has neither the staff, expertise, nor safe and secure monetary handling resources to implement the requirements of Section 21.

Since its inception, PSD has not been responsible for collecting posted bail on behalf of the Judiciary. The Department, instead, has always been willing to and capable of, enacting releases authorized by a bail receipt issued by the Judiciary, 24 hours a day, 7 days a week. To be clear, if the posting of bail is to be allowed 24/7, it is an expansion of the existing bail posting process, which is the province of the Judiciary. PSD will continue its practice of enacting bail receipt releases, 24/7, whenever bail is posted with the Judiciary.

The Department also suggests adding language to Part VI, Section 24 and Section 25, Section 353-__ (b) to ensure that the required notification 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 by correspondence to the appropriate court, prosecuting attorney, and defense counsel."

The Department appreciates the recognition of the substantial additional costs and resources that will be required in instituting the bail reform objectives, 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 Part XIII, Section 32 and Part X, Section 37. Therefore, the Department respectfully requests in Section 32, 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 37 in fiscal year 2019-2020 and in subsequent fiscal years, while considering any future cost increases:

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 appreciates the considerations provided in Part IX, which are focused on victims' rights consideration. The Department requests that language be added to Section 35 as follows:

> "(5) The relevant county or state law enforcement entity, who initiated the individual's arrest shall provide to the PSD Intake Service Center for their jurisdiction a copy of the complete police report within twenty-four (24) hours of arrest, including the alleged victim's statement and contact information."

This will ensure that the Intake Service Center has the victim's contact information to incorporate the victim's concerns into the bail report and risk assessment tool.

The Department 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.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY

655 KĪLAUEA AVENUE
HILO, HAWAI'I 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAI'I UNIT
81-980 HALEKI'I ST, SUITE 150
KEALAKEKUA , HAWAI'I 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1552, HD 2, SD 1

A BILL FOR AN ACT RELATING TO PUBLIC SAFETY

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, March 28, 3019, 10:05 a.m.
State Capitol, Conference Room 211

Honorable Chair Dela Cruz, Honorable Vice-Chair Keith-Agaran, and Members of the Committee on Ways and Means, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in SUPPORT of House Bill No. 1552, HD 2, SD 1, with Amendments.

This measure establishes the Hawai'i Corrections System Oversight Commission, creates a position for an Oversight Coordinator for the Commission, and transfers all rights, powers, functions, and duties of the Re-entry Commission and Corrections Population Management Commission to the Hawaii Corrections System Oversight Commission.

It is crucial when establishing a Hawai'i Correctional System Oversight Commission that the voices of those most affected by crime be part of the process. Victims of crime have a right to expect that criminals will be held accountable for their crimes, and in turn should have a voice in the commission that oversees the department responsible for this accountability. At least one member on the commission should be a qualified advocate for crime victims.

The Office of the Prosecuting Attorney, County of Hawaii, supports the intent of House Bill 1552, HD 2, SD 1, **with the aforementioned amendment addressing victim needs**. Thank you for the opportunity to testify on this matter.

O‘ahu County Democrats

oahudemocrats.org

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Ways and Means Committee,

RE: HB1552 HD2 SD1, Relating to Public Safety.

The O‘ahu County Democrats write in support of the proposed measure, House Bill 1552, House Draft 2, Senate Draft 1. The measure seeks to establish the Hawaii Correctional System Oversight Commission. With public funding, the measure further creates a position for an Oversight Coordinator for the Commission.

This measure is consistent with the Platform of the County Democrats. We “*support reforms to our criminal justice system that encourage the reintegration of formally incarcerated individuals into greater society and reduces their rate of recidivism.*”

The anticipated impacts of the bill are as follows: 1) consolidation of existing redundancy among criminal justice organizations, 2) greater independent oversight 3) re-allocation of system resources for efficiency, lower recidivism and more successful criminal rehabilitation, providing for such means as culture-rooted behavioral treatment.

These impacts appear to be just for the incarcerated, their families, the taxpayer, and those at greatest risk of victimization by crime alike. Where rehabilitation is possible, we seek to separate those who have wronged society and will maliciously do so again, from those individuals seeking responsible reintegration with their families and society. In so doing, we acknowledge the differentiation between human individuals, and validate the worth of the person. We affirm that the freedom to determine one’s life can prevail over our most base impulses to destroy, avenge and dominate.

We write in support of House Bill 1552. We thank Representative Takayama for his introduction of the measure. We ask that the Committee vote ‘aye’ in support.

Respectfully,

D P Armstrong

Dylan P. Armstrong, Vice Chair
O‘ahu County Committee, O‘ahu County Democrats

ROBERT K. MERCE
2467 Aha Aina Place
Honolulu, Hawaii 96821

Telephone: (808) 732-7430
mercer001@hawaii.rr.com

March 27, 2019

TO: Committee on Ways and Means
RE: HB 1552, HD 2, SD 1
HEARING DATE: Thursday March 28, 2019
TIME: 10:05 a.m.
CONF. ROOM: 211
POSITION: **STRONG SUPPORT**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

I recently served as Vice Chair of the HCR 85 Task Force on prison reform. I am writing in **strong support** of HB 1552, HD 2, SD 1. I am sorry that I cannot attend the hearing in person, but I have a prior commitment for Thursday morning that would be extremely difficult to reschedule.

HB 1552, HD 2, SD 1 implements two of the most critically important recommendations of the HCR 85 Task Force: independent oversight, and the transition from a punitive to a correctional system. In its present form it would also implement important recommendations of the HCR 134 Task Force on pretrial procedures and bail reform.

Independent Oversight

Independent oversight is a correctional best practice and an essential element of the effort to ensure the constitutional treatment of prisoners and preserve the integrity of correctional systems.[1] Professor Michele Deitch of the University of Texas at Austin, one of country's leading experts on oversight, explains it this way:

> Prisons and jails are closed institutions, both literally and symbolically, and they operate far away from public view. In such closed environments, abuse is more likely to occur and less likely to be discovered. Staff members and inmates with malicious intent often find they can act with impunity, while those with more benign objectives may find their plans thwarted by a lack of resources or an institutional culture that is unsupportive of

[1] See Michele Deitch, The Need for Oversight in a Post-PLRA Word, Federal Sentencing Reporter, Vol. 24, No. 4 (April 2012) accessed January 31, 2019 https://www.equitasproject.org/wp-content/uploads/2018/01/Deitch-The-Need-for-Independent-Prison-Oversight-in-a-Post-PLRA-World-Federal-Sentencing-Reporter-April-2012.pdf

their efforts or content with the status quo. Insular environments tend to put prisoners at risk of abuse, neglect, and poor conditions, and the lack of outside scrutiny provides no challenge to this treatment.[2]

The type of oversight that would be provided by HB 1552, HD 2, SD 1 is exactly what professor Dietsch has recommended, and many of the key elements of the bill are based on her scholarly writing. By adopting this bill Hawaii would be taking an important step forward in reforming and improving its correctional system, particularly in light of the recent events such as the riot in the Maui Community Correctional Center, the lethal use of forces, a rash of suicides over the past two years, and the Department of Public Safety's apparent failure to release inmates when their sentence is up (overstays).

Transitioning to a Rehabilitative Correctional System

The single most important recommendation of the HCR 85 Task Force is that Hawaii should transition from a punitive to a rehabilitative correctional system. The coordinator position described in HB 1552, HD 2, SD 1 would ensure that this transition takes place, and that it occurs in a timely and effective manner.

Other Matters

HB 1552, HD 2, SD 1 would merge two existing but narrowly focused oversight commissions on reentry and prison population management into a single new oversight commission. This consolidation makes sense and, in my view, would make oversight of the correctional system more efficient and effective.

I fully support Part II of HB 1552, HD 2, SD 1 which would implement key provisions of the HCR 134 Task Force. Improving pretrial procedures and reducing reliance on cash bail for low level offenses makes sense and will save money by reducing our jail population without jeopardizing public safety.

Thank you for the opportunity to comment on this bill.

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[2] Michele Deitch, "The Need for Independent Prison Oversight in a Post-PLRA World," *Federal Sentencing Reporter*, vol. 24, no. 4, (April 2012): 236–244.

DAVID Y. IGE
GOVERNOR

LATE

EDMUND "FRED" HYUN
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MICHAEL A. TOWN
ANNELLE C. AMARAL
FITUINA F. TUA
MEMBERS

TOMMY JOHNSON
ADMINISTRATOR

STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON HOUSE BILL 1552, HD2, SD1
A BILL FOR AN ACT RELATING TO PUBLIC SAFETY
BY
HAWAII PAROLING AUTHORITY
Edmund "Fred" Hyun, Chairman

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, March 28, 2019, 10:05 a.m.
State Capitol, Conference Room 211

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

The Hawaii Paroling Authority (HPA) supports the intent of this House Bill 1552, HD2, SD1, which seeks to establish the Hawaii Correctional System Oversight Commission. However, the HPA has concerns regarding the stated proposed powers and duties of the Hawaii Correctional System Oversight Commission as outlined in subparagraph (3) on page 6 (line 13 through 20) and subparagraph (4) on page 7 (line 1 through 6).

The HPA is a separate quasi-judicial board that is attached to the Department of Public Safety (DPS) for administrative purposes only. As such, the DPS neither monitors the work of the HPA nor has the authority to review decisions of the HPA. Therefore, the HPA respectfully requests that all references to the HPA and the parole population be removed from this measure.

Thank you for the opportunity to provide testimony on House Bill 1552, HD2, SD1.

COMMUNITY ALLIANCE ON PRISONS
P.O. Box 37158, Honolulu, HI 96837-0158
Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com

LATE

COMMITTEE ON WAYS AND MEANS
Sen. Donovan DelaCruz, Chair
Sen. Gilbert Keith-Agaran, Vice Chair
Thursday, March 28, 2019
10:05 am
Room 211

COMMENTS ON HB 1552 PROPOSED SD2 – CORRECTIONAL OVERSIGHT & PRETRIAL REFORM

Aloha Chair DelaCruz, Vice Chair Keith-Agaran 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 5,500 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that 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.

Community Alliance on Prisons supports oversight of our very broken correctional system. We, as a society, cannot start a conversation about prison conditions without knowing how prisons currently operate. This has been a fundamental problem with this administration. TOO MUCH SECRECY. Hawai`i definitely needs an INDEPENDENT Oversight Commission. **We respectfully ask that the Commission not be stacked with current or former public safety employees** to assure that nothing will change. This has been the practice of this department and it needs to be stopped.

We also respectfully submit suggestions on Part II of the bill pertaining to pretrial reform that the HCR 134 Task Force recommendations:

- Pretrial risk assessments should be validated annually, not "at least every 5 years"
- Remove the word "offender" throughout this measure and replace with person or individual. These people are innocent until proven guilty and stigmatizing people does not promote fairness.
- Please specify that prompt bail hearings should occur within 48 hours, not "within 5 days of arrest"
- Clarify that the purpose of bail is to ensure that the person reappears in court. Until a person has been convicted of a crime, s/he should be treated just like any other member of society whenever possible
- If public safety is included, it should be clearly stated that the person poses a specific threat to an identifiable person, not "any person or the community"
- Ensure that the director of the proposed criminal justice research institute is not a current or former employee of the department of public safety

Mahalo for this opportunity to testify and submit our suggestions, that we sincerely hope you will consider.

LATE

ACLU Hawai'i

Committees:	Senate Committee on Ways and Means
Hearing Date/Time:	Thursday, March 28, 2019, 10:05 a.m.
Place:	Conference Room 211
Re:	*Testimony of the ACLU of Hawai'i with Comments Regarding H.B. 1552, H.D. 2, Proposed S.D. 2, Relating to Public Safety*

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee on Ways and Means:

The American Civil Liberties Union of Hawai`i ("ACLU of Hawai`i") writes with comments regarding H.B. 1552, H.D. 2, Proposed S.D. 2. Part I of this bill 1) establishes the Hawai`i Correctional System Oversight Commission; 2) creates a position for an Oversight Coordinator for the Commission; and 3) transfers all rights, powers, functions, and duties of the Reentry Commission and Corrections Population Management Commission to the Hawai`i Correctional System Oversight Commission. The ACLU of Hawai`i supports Part I of this proposed draft. Part III-X of this measure implements the recommendations of the House Concurrent Resolution 134 Task Force. Regarding parts III-X of this measure, the ACLU of Hawai`i offers comments.

Part I

We are in a new and re-imagined era of corrections. Community safety *depends* on the state taking swift and bold steps to ensure that our correctional system is not one that yields recidivism rates hovering around 50%. It is imperative that we know whether our institutions are treating inmates humanely and preparing them for re-entry. Increased accountability and transparency is a promising follow-up step to the recommendations of the House Concurrent Resolution 85 Task Force on Prison Reform (HCR 85) which stated, "Hawaii`s correctional system is not producing acceptable, cost-effective, or sustainable outcomes and needs immediate and profound change."

H.B. 1552, H.D. 2, Proposed S.D. 2 correctly points out that other states have already implemented criminal justice reforms. Texas moved forward with reforms that have allowed the state to close eight prisons since 2007, reduced the prison population by 30,000, while having the lowest crime rate since 1967. However, Texas is also a study in what can happen if there is no oversight. Similarly, the media and other advocates have exposed the horror stories inside Hawai`i jails and prisons. There is an undeniable, persistent problem.

The legislature asked for and was presented with a thorough blueprint for reform in the form of the HCR 85 Task Force report. **We respectfully ask the Committee to pass Part I of this measure, which is one of the Task Force's recommendations.** The ACLU of Hawai`i hopes that whoever holds the newly created position is a visionary with great commitment to a better system.

Parts III-X

Parts III through X of this measure adopt the recommendations of the Criminal Pretrial Task Force (Task Force) convened pursuant to House Concurrent Resolution No. 134 (2017). While we support the general intent behind this portion of the legislation and agree with some of the Task Force's findings, we have concerns that with its broad exceptions to the eligibility for non-cash conditions of release, this legislation will do little to address the problems within our pretrial system.

Bail, in any form, *should never be used* as a punitive tool, and any conditions set for release should be only as restrictive as is absolutely necessary to ensure that the accused shows up to court. In United States v. Salerno, 481 U.S. 739, 755 (1987) the United States Supreme Court advised that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." But over the years our State has fallen short of that dictate. And, unfortunately, the list of exceptions in H.B. 1552, Proposed S.D. 2 is not "carefully limited" and will only cement a system in which detention prior to trial *is* the norm. In its current form, H.B. 1552, Proposed S.D. 2 seems to assume guilt upon arrest, when under our system of government precisely the opposite is supposed to be true.

While we appreciate the extensive work and deliberation behind the Task Force's recommendations to improve our broken pretrial system, and agree with some of the Task Force's proposals — such as allowing the accused to post bail 24/7 — the language of Parts III-X of H.B. 1552 Proposed S.D. 2 does practically nothing to prevent the continued abuse occurring in our cash-based system and this system's disparate impact on the poor.

We have delineated our particular concerns and related recommendations with H.B. 1552, Proposed S.D. 2. in the following table. We are happy to continue this conversation and to work with the Committee on developing alternative language.

Provision(s) of H.B. 1552, S.D. 2 Proposed	**Description of provision(s)**	**Summary of concerns**	**Recommendation**
Throughout	Uses the term "offenders" to describe individuals who have been arrested or are being considered for pretrial release or detention.	The individuals meant to be included in this term have not been convicted of the crime of which they are accused. They are not,	References to "offender(s)" should be deleted and replaced by "person," "people" or "individual(s)."

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluHawai'i.org
www.acluHawai'i.org

		therefore, "offenders."	
Part IV, Section 14 Part V, Section 16, Part V, Section 17 Part V, Section 18 Part VI, Section 29 Part VI, Section 30 Part VI, Section 31	Various provisions stating the purpose of the legislation, establishing a rebuttable presumption of release, granting exemptions to the presumption, and implementing/expanding alternatives to pretrial detention.	The risks proposed to be considered are inconsistent throughout this legislation. At different points in the bill, the list of risks appears to include: non-appearance, protection of the public, obstruction and witness tampering, the safety of any other person or the community. Current framing regarding public safety creates too broad a net. Further, obstruction and witness tampering are separate crimes and should not be an additional consideration.	As a matter of policy, the appropriate risks should be that of: 1) intentional, willful flight; or 2) specific threat of imminent harm to an identifiable person or persons.
Part V	Requires an individual's release on their own recognizance for certain offenses with exemptions. Creates a rebuttable presumption of release on one's own	The carve-outs in this provision are not linked to the purpose of bail, which is to guarantee appearance in court.	These carve-outs should be eliminated.

American Civil Liberties Union of Hawai'i
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Honolulu, Hawai'i 96801
T: 808.522-5900
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www.acluHawai'i.org

	recognizance, but grants broad exemptions to the presumption.	The exemptions are linked to offense, rather than individualized risk of flight or threat of imminent harm to an identifiable person or persons. These carve-outs essentially *assume* the person arrested will be convicted, which is backwards from "innocent until proven guilty."	
Part III, Sections 12 & 13	Requires risk assessment tools to be reviewed and subject to validation every 5 (five) years.	Risk assessment tools should be revalidated annually.	Replace "every 5 (five) years" with "annually."
Part V, Section 17, §804-A	Defines "prompt hearing" as occurring within 5 (five) days of arrest.	This is too long. Best practices require hearings to be held within 48 hours.	Replace "five days" with "forty-eight hours."
Part V, Section 19; §804-4; Part V, Section 22, §804-7.1; Part VIII, Section 30, §804-7.1	Allows for liberty-restricting conditions of release.	These restrictions should be tailored to individual circumstances. Courts should not create a blanket requirement for individuals to pay for things like electronic monitoring as a condition of their release.	Insert language providing that all conditions of release should be individually tailored to the circumstances, and the least restrictive conditions necessary to mitigate the above-mentioned risks. Further, liberty-restricting conditions such as no contact orders, geographic restrictions, curfews, GPS monitoring, house arrest and

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Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
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			other restrictions on travel/movement should be only after a finding by a judge based on clear and convincing evidence and as a last resort if it is the least restrictive condition or set of conditions. Language restricting an individual's association is invalid and should be stricken from statute.
Part V, Section 19, §804-4; Section 22; Part VIII, Section 30 §804-7.1;	Maintains statutory requirement/allowance that bail be revoked if an individual does not meet their conditions of release.	There should be due process prior to revocation of bail and imprisonment. Detention should not be the default outcome.	Insert language requiring a due process hearing prior to the revocation of bail and imprisonment. Courts should consider the least restrictive conditions that may be more appropriate for release.
Part V, Section 22, §804-7.1	Allows for monetary bail to be set to address dangerousness.	This is not an appropriate use of money bail. There is no connection between money bail and public safety.	Money bail should be limited to address the risk of a specific threat of imminent harm to an identifiable person or persons.
Part III, Section 13, §353-10(b)(8)	Requires intake service centers to make an inquiry into the individual's ability to afford bail.	The ability to pay inquiry is not time limited and does not include any presumptions of inability to pay.	Insert language stating that a court shall only consider a person's self-reported present ability to pay (within 24 hours). Further, there should be a

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Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
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www.acluHawai'i.org

			presumption of inability to pay if a person receives state welfare aid. Money bail should not be set for minors.
Part III, Sec. 13, § 353-10	This provision seems to require intake service centers to conduct risk assessment tools for all arrestees.	This is labor-intensive and clogs up the system, preventing others from receiving timely assessments.	Insert language to create a group of persons for whom there is mandatory release (e.g., traffic offenses, petty misdemeanors, and misdemeanors) and are excluded from being given a risk assessment.
Part III, Section 13, §353-10(b)(3), §353-10(b)(9)	Requires intake service centers to conduct internal pretrial risk assessments.	Pretrial risk assessment tools have been shown to have racial bias. If risk assessment tools are to be used, there needs to be strict standards to ensure that the tool is free from racial bias.	Insert language providing that, as part of the validation, it should be specifically required that both the rate of accurate predictions and the rate of failed predictions be equal across racial groups.
Part III, Section 13, §353-10(b)(9)	Requires that judges receive the "executed risk assessment delineating the scored items, the total score, any administrative scoring overrides, and written explanations for administrative scoring overrides.	The adoption and use of risk assessment tools should be transparent. However, in individual cases, judges may be unduly prejudiced by tools that are not scientific and are based on the normative judgement of the tool developer. For	Judges should not receive the score or the categorized risk output of a risk assessment (i.e., the "low," "medium," or "high" determination). Instead, they should just get the report and recommendation from pretrial services and listed substantiating information, but not

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F: 808.522-5909
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		example, someone who is high risk may only have a 20% chance of failing to appear, and when this is labeled as "high" it bears a connotation of severity that may not actually translate when people see the numbers.	the score, to assist in the decision.

Thank you for the opportunity to testify.

Sincerely,

Monica Espitia
Smart Justice Campaign Director
ACLU of Hawai`i
Mespitia@acluhwaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI THE SEX ABUSE TREATMENT CENTER

LATE

Date: March 28, 2019

To: The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

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

RE: Comments on H.B. 1552 H.D. 2 S.D. 1 Proposed S.D. 2
Relating to Public Safety

The Sex Abuse Treatment Center (SATC) respectfully submits comments on this proposed S.D. 2, sharing our concerns that some provisions may harm crime victims and our communities, against the interest of public safety.

Sections 15 and 18 would allow the release of felony suspects by respectively making certain class C felonies that would normally result in arrest citable by the police, and by creating a strong presumption of release for suspects in many class B felonies. A number of these crimes are red flags for sex offenders, such as violation of privacy, promoting porn for minors, and breaking and entering crimes.

Sections 17 and 18 would also convert simple bail hearings into adversarial mini trials that must take place within 5 days of arrest, increasing court congestion and burdens on the system. Crime victims and witnesses would experience concomitant burdens and trauma, and may discontinue participation in cases, distorting criminal justice outcomes and making it more difficult to successfully prosecute crimes.

Section 13 would rush bail reports and compromise their accuracy by requiring an impracticable two-day deadline for complex assessments concerning suspects' likelihood of recidivism, no-showing for court, and danger posed to individuals and the community, and concerning suspects' ability to pay bail.

We also note the need for more case management, monitoring, and social services to support pretrial reform efforts and keep the public safe. The Pretrial Task Force recommended strong upfront investment in this infrastructure, citing Washington, D.C.'s pretrial agency with 350 employees (75% case managers) and a $65 million annual operating budget. However, the Hawaiʻi Public Safety Department's request relating to H.B. 1289 H.D. 2 included only ~$3 million annually for these purposes.

SATC and our partner agencies hope that we will have the opportunity to work with the Legislature to address these concerns. Thank you for the opportunity to comment on this Proposed S.D. 2.

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

LATE

ON THE FOLLOWING MEASURE:
H.B. NO. 1552, H.D. 2, PROPOSED S.D. 2, RELATING TO PUBLIC SAFETY.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, March 28, 2019 **TIME:** 10:05 a.m.

LOCATION: State Capitol, Room 211

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

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Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General provides the following comments on the proposed Senate Draft 2 of this bill.

Part I of the bill combines the functions of the Reentry Commission and Corrections Population Management Commission into the Hawaii correctional oversight commission, to be placed within the Office of the Governor for administrative purposes. Parts II through XI of the bill implement some of the recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017, sometimes referred to as "bail reform".

Reentry Commission and Corrections Population Management Commission:

By placing the correctional oversight commission within the Office of the Governor, part I of the bill violates article V, section 6, of the Hawai'i Constitution, which requires all executive and administrative offices, departments and instrumentalities of the State to be placed within the principal departments of the executive branch unless they are temporary and for a special purpose. The Office of the Governor is not a principal department of the executive branch. *See* Hawaii Revised Statutes (HRS) § 26-4; *see also* Attorney General Opinion No. 96-1 (February 16, 1996), page 1. Nor does the bill make the correctional oversight commission temporary.

To avoid this constitutional concern, we recommend amending page 2, line 8, of the bill to place the commission in one of the 18 principal executive departments listed in Section 26-4 for administrative purposes, rather than the Office of the Governor. Page 13, lines 19-20, of the bill should also be amended so that funds for the commission are appropriated to the respective department.

Bail Reform:

Parts II through XI relate to bail reform. The purpose of this newly added portion of the bill is to implement some of the recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017 as follows; page 16, lines 1-12:

(1) Parts III through V 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 VI, VII, VIII, IX, and X 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 17 (page 24, line 4, to page 27, line 9) 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 25 (page 38, line 18, to page 39, line 10) seeks to place the responsibility on the Community Correctional Centers 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.

Section 18 (page 27, line 13, to page 28, line 9, and page 28, line 20, to page 29, line 3) seeks 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 by a clear and convincing standard.

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 to the law before presumptions favoring automatic release are imposed.

Based upon the above concerns, we respectfully request that this portion of the bill relating to bail reform be amended by deleting section 17 (page 24, line 4, to page 27, line 9), section 25, (page 38, line 18, to page 39, line 10), and section 18, (page 27, line 13, to page 28, line 9, and page 28, line 20, to page 29, lines 1-3).

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
GOVERNOR

LATE

MARI McCAIG
Chair

MARTHA ROSS
Commissioner

SANDRA JOY EASTLACK
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAI`I
CRIME VICTIM COMPENSATION COMMISSION
1164 Bishop Street, Suite 1530
Honolulu, Hawai`i 96813
Telephone: 808 587-1143
Fax 808 587-1146

TESTIMONY ON HB 1552 HD2 SD2
RELATING TO PUBLIC SAFETY
by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, March 28, 2019, 10:05 AM
State Capitol, Conference Room 211

Good morning Chair Dela Cruz, Vice Chair Keith-Agaran, and the Senate Committee on Ways and Means. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide comments on House Bill 1552 HD 2 SD 2. This bill establishes a Correctional System Oversight Commission; and implements recommendations of the Criminal Pretrial Task Force ("Task Force"). The Commission is currently working with other victim service providers on draft language to address Task Force recommendations that jeopardize victim and community safety.

PRE-TRIAL BAIL REFORM
The Commission supports pre-trial bail reform that results in equity - - no one should be kept in custody solely because they cannot afford to pay bail, and inefficiencies and the failure to set timely bail hearings should not result in the continued detention of inmates who would otherwise be released.

While the Commission supports bail reform provisions that are consistent with this intent, the crime victim service community has identified several provisions that do not move this effort forward, and, instead, will negatively impact crime victim and community safety. Paramount among our concerns are the provisions that: 1) allow pretrial defendants to cross-examine crime victims during the bail process; and 2) create a rebuttable presumption that defendants charged with certain crimes will be released (including burglary and gun control laws). The Commission is working with other victim service organizations to draft language to address these concerns.

Thank you for providing the Commission with the opportunity to testify on House Bill 1552 HD2 SD2.

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

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS

Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i

March 28, 2019

RE: H.B. 1552, H.D. 2, Proposed S.D. 2; RELATING TO PUBLIC SAFETY.

Chair Dela Cruz, Vice-Chair Keith-Agaran, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1552, H.D. 2, S.D. 1, Proposed S.D. 2.

The purpose of H.B. 1552, H.D. 2, Proposed S.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. 1552, H.D. 2, Proposed S.D. 2, we would also like to note the following issues:

Section 15 (pg. 21, ln. 16)
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.), Promoting Pornography for Minors (§712-1215, H.R.S.), Solicitation of a Minor for Prostitution (§712-1209.1, H.R.S.), Aggravated Harassment by Stalking (§711-1106.4, H.R.S.), and Theft in the Second Degree (§708-831, H.R.S.).

Section 17 (pg. 24, ln. 1)
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 there is a mandated bail hearing for all cases, there will be a huge influx of contested hearings, which would 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. 1552, H.D. 2, Proposed S.D. 2, pertaining to the release of defendants who are unable to post bail that is set at an amount of $99 or less. In our experience, bail is routinely set at a nominal amount for defendants who may have additional felony offenses precluding their release. By removing bail for the defendant's lower level offense, this amendment would prohibit that person from receiving jail credit for time that he or she may be serving.

Lastly, H.B. 1552 H.D. 2, Proposed S.D. 2, proposes to define "prompt hearing" to mean as soon as possible, but within five days of arrest. The Department believes that requiring a bail hearing within five days of arrest is neither financially feasible nor practical. Since working on the Task Force, the courts have routinely begun holding a prompt bail hearing at the initial arraignment date, for cases charged by information or by grand jury. These arraignments 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).

Notably, all of the parties needed for a meaningful bail hearing, to wit, the Deputy Prosecuting Attorney, the Deputy Public Defender and the Judge, are already present at arraignment. Thus, the bail hearings currently being held at arraignment and plea have not placed a financial burden on our Department, the Public Defender's Office or the Judiciary. It is logical and fiscally responsible 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, plus the seven days outlined in HRPP Rule 10, amending the "prompt hearing" from five days to at least nine days would be more in line with the current practices. In addition, nine days would provide the Department more reasonable length of time to subpoena necessary witnesses and obtain any certified documents required to show why a suspect's bail should be confirmed.

Section 18 (pg. 27, ln 10)
This section raises similar concerns that the Department addressed in section 17 regarding the procedure and mechanisms implemented. Currently, as written H.B. 1552, H.D. 2, Proposed S.D. 2, creates a rebuttable presumption to release an individual charged of a criminal offense, but does not provide a procedure or mechanism for the courts. **This proposal would shift the burden to the State to show, by clear and convincing evidence, that a serious risk exists to require an individual's continued detention. This would only add to the "victimization" that victims in these cases already feel, in the course of their involvement with our criminal justice system, and all prior to the actual trial. For examples, victims of Sex Assault in the Third Degree would first be subpoenaed to testify regarding the sexual assault in a**

preliminary hearing or grand jury. Then, as proposed in H.B. 1552, H.D. 2, Proposed S.D. 2, this same sex assault victim would be required to testify in a bail hearing; then they would be subpoenaed for court (at minimum) a third time for trial, to recount and re-live their sexual assault on the witness stand, subject to cross-examination, face-to-face with the perpetrator. And the minimum three appearances would only apply if the proceedings are never continued, which is rarely the case. The added time-commitment, stress, and potential re-traumatization, could potentially lead to reduced participation by victims who feel re-victimized by the system, which is ostensibly put in place to provide protection. 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, back in the community and potentially back behind the wheel.

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 Proposed H.B. 1552, H.D. 2, Proposed S.D. 2. Thank you for the opportunity to testify on this matter.

LATE

HB-1552-SD-1
Submitted on: 3/27/2019 8:14:18 PM
Testimony for WAM on 3/28/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:

LATE

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

HB1552 HD2 SD2 PROPOSED
RELATING TO PUBLIC SAFETY
Senate Committee on Ways and Means

March 28, 2019 10:05 a.m. Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** the proposed SD2 of HB1552 HD2 SD1. Part I of this measure would (i) establish the Hawai'i Correctional System Oversight Commission (Commission), to subsume the responsibilities of two other commissions and further develop a much-needed and long-awaited strategy to reduce the State's incarcerated population; (ii) reduce corrections spending; and (iii) reinvest in public safety and recidivism reduction. Part I would also create a position for an oversight coordinator to oversee the administration of the Hawai'i Commission, and assist in transitioning our correctional system from a punitive model to a rehabilitative and therapeutic one. Parts II-X of this measure 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.

1. **Part I: Establishing the Hawai'i Correctional System Oversight Commission**

OHA has long advocated for criminal justice reform that would thoroughly examine and effectively implement evidence-based corrections policies and incarceration alternatives that can successfully rehabilitate pa'ahao, reduce recidivism, improve public safety, and save taxpayer dollars. This measure's proposed Commission, as well as the administrative Oversight Coordinator, will further these goals, facilitating the transition of Hawai'i's criminal justice system from a punitive model to a much more effective rehabilitative and therapeutic one. The Commission would also provide much needed oversight over the policies, procedures, and actions of state agencies relating to the administration of justice in our state. We accordingly support the Commission proposal represented in this bill, and are prepared to 'auamo the kuleana of assisting the Commission in every way we can; we particularly look forward to helping achieve the vision of the Native Hawaiian Justice Task Force and the HCR85 Task Force, to better rehabilitate pa'ahao, and enhance the overall effectiveness and efficiency of our criminal justice system.

2. **Parts II-X: Implementing the Recommendations of the HCR134 Task Force on Pretrial Reform**

OHA further supports Parts II-X of the proposed draft, which would implement recommendations of the HCR134 Task Force on Pretrial Reform, and thereby improve the efficiency of our pretrial processes, reduce the state's reliance on cash bail, and help reduce the costly and inhumane overcrowding in our jails.

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. As a result, those accused of a crime – particularly the indigent – often face severe consequences arising from unnecessarily high bail amounts and prolonged pretrial detention, tantamount to a punishment without conviction. The unnecessary detention of pretrial defendants who pose no risk of flight or threat to public safety may also contribute significantly to the rampant overcrowding in our detention facilities, and the growing strain on our limited public safety resources. **To address the inefficiency, ineffectiveness, and inequity inherent in our bail system, comprehensive reform of our pretrial system is needed.**

Accordingly, OHA supports the proposed adoption of the recommendations put forward by the HCR134 Task Force. The HCR134 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. Specifically, OHA emphasizes the following Task Force recommendations addressed in the proposed draft of this measure:

- **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);

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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/.

- **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 believes that these recommendations would significantly reduce the harms and inefficiencies arising from the State's overreliance on cash bail.

For the reasons set forth above, OHA respectfully urges the Committee to **PASS** HB1552 HD2 SD2 PROPOSED. Mahalo piha for the opportunity to testify on this important measure.

LATE

HB 1552 Proposed SD2

THE SENATE
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF HEARING

Testimony Support with Amendment To Page 28, Sufficient Sureties by James Waldron Lindblad.

DATE:	Thursday, March 28, 2019
TIME:	10:05 AM
PLACE:	Conference Room 211 State Capitol 415 South Beretania Street

A G E N D A

HB 1552, HD2, SD1 Proposed SD2 (SSCR1446) Status & Testimony	RELATING TO PUBLIC SAFETY. Part I: Establishes the Hawaii Correctional System Oversight Commission. Creates a position for an Oversight Coordinator for the Commission. Extends the sunset date of the Reentry Commission to 1/1/2020. Repeals the Reentry Commission and Corrections Population Management Commission on 1/1/2020 and transfers all rights, powers, functions, and duties of those commissions to the Hawaii Correctional System Oversight Commission. Effective 1/28/2081. Parts II through X: Implements recommendations of the Criminal Pretrial Task Force convened

pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. (SD2 PROPOSED)

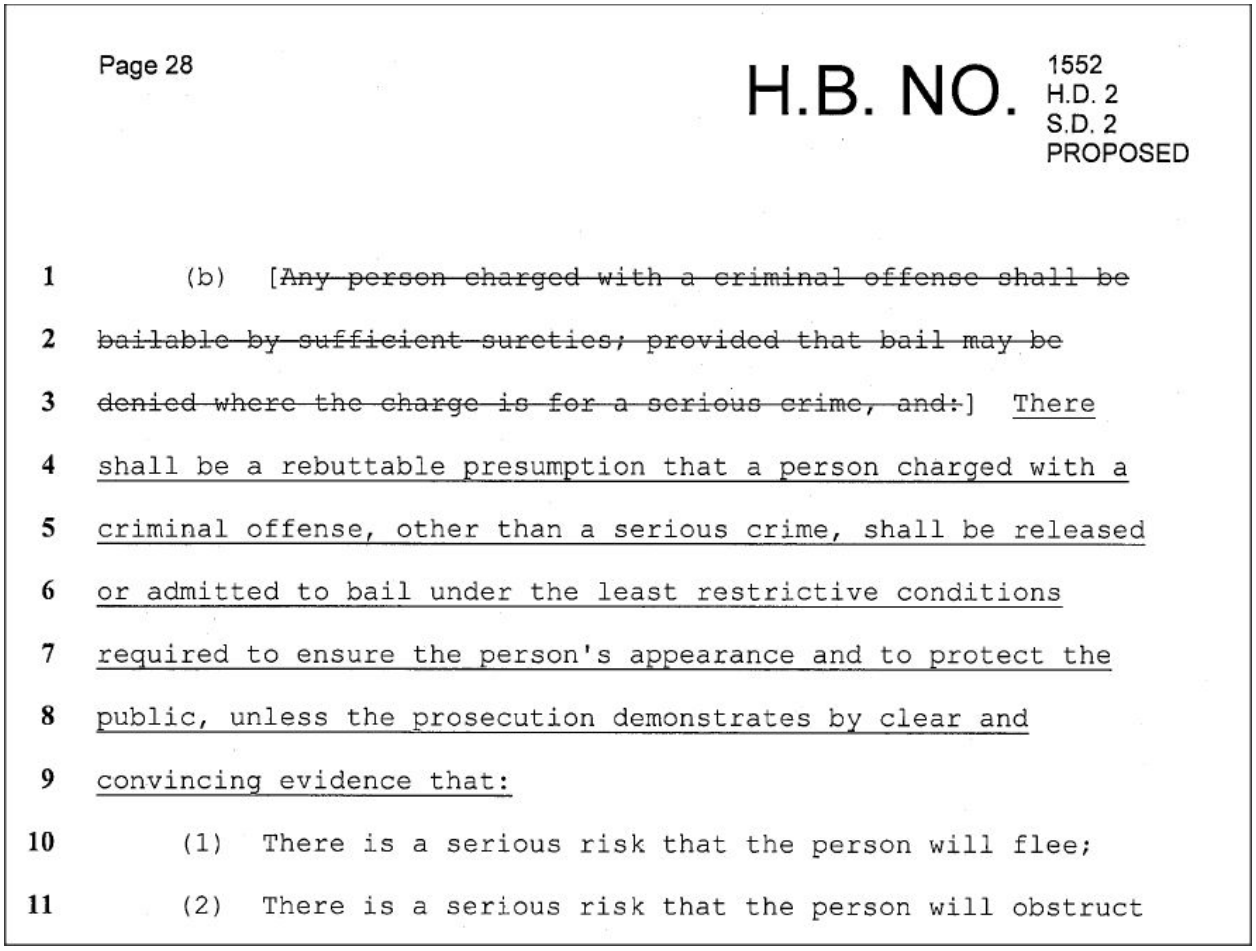
Chair and Members of the Committee:

My name is James Waldron Lindblad. I am a former pretrial worker and am presently a bail bond agent. I also sell surety bonds including licensing bonds.

The purpose of proposed HB 1552 DS2 is to improve the criminal justice system in Hawaii. The measure does not seek to eliminate bail by sufficient sureties or to get rid of bail agents. The bill establishes the Hawaii Correctional System Oversight Commission. Creates a position for an Oversight Coordinator for the Commission. Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. (Proposed S.D. 2)

*This testimony is limited to page 28, of the Proposed HB 1552, SD2.

The intent of the HB 1552, SD2 bail section overall and specifically on Page 28, is to improve the pretrial process and not to eliminate bail by sufficient surety and not to eliminate bail agents. There is no purpose or reason I know of that requires the bill to eliminate the *sufficient sureties* language from our statutory scheme such as on Page 28, of the bill seems to do. Further, even if the intent is not to eliminate bail agents now by eliminating these words, ***bailable by sufficient sureties,*** the taking out of this language would make is easier to eliminate bail agents later and this is not the purpose or intent of HB 1552 SD2. I ask that the committee report reflect the intent of this measure is not to eliminate bail agent or any other means of bail or pretrial release by sufficient sureties. In other words, the bill does not want to limit judicial options or choices but the bill wants to add options and choices for our judges.



Page 28

H.B. NO. 1552 H.D. 2 S.D. 2 PROPOSED

(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, and:~~] There shall be a rebuttable presumption that a person charged with a criminal offense, other than a serious crime, shall be released or admitted to bail under the least restrictive conditions required to ensure the person's appearance and to protect the public, unless the prosecution demonstrates by clear and convincing evidence that:

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

(2) There is a serious risk that the person will obstruct

As such, please see the Barton Case:

http://808bail.com/honolulu/cash-bail-in-washington-state-barton-ruling/
In my view, the Barton case explains the importance of bail by sufficient sureties best. Substituting cash or property for bail by sufficient sureties is explained.

History:

My son Nick Lindblad previously submitted the following concerns relevant to this section on sufficient sureties when HB 1289 was heard and the section he addresses is now contained on Page 28, of the newly Proposed HB 1552 SD2. The same language I object to here on Page 28 was then contained on Page 14, of the HB 1289 and that measure was deferred. This testimony inserted here applies to reasons and negative effects or unintended consequences of taking out the sufficient sureties language.

SB 1421:
“I would like to openly contest the removal of the following crossed out language contained on page 14 of Senate Bill 1421:

(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, and:~~] There

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

Adverse outcome #1 - Removing the specific words “sufficient sureties” inadvertently removes the practice of third party actors assisting the most vulnerable of detainees and strengthening their argument for release.

For example, a bail agent, is a third party, which functions as a “sufficient surety” to guarantee a detainee will return to court after release from custody. It’s critical to recognize sufficient sureties, because stand alone, many detainees do not qualify for release upon review of their attendance record, previous arrests, and mental health/substance abuse/housing history.

Adverse outcome #2 - A liberal defining of “sufficient sureties” can expand access to pre-trial release by involving many “alternative sureties” that are both sufficient and effective.

For example, the concept of a sufficient third party as surety, maybe also be applied to:

-social service agencies-military chain of command units
- church or faith based groups-non-profit and community outreach groups
-clean and sober home programs-drug treatment programs (inpatient & outpatient)
-mental health agencies -sponsors pledged to assist in supervised released programs
-innovative, but yet to be discovered or implemented third parties which can assist and support detainees through novel alternative programming

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.

Adverse outcome #3 - A undefined benefit to removing the term “sufficient sureties.”

Unfortunately, I cannot see the benefit of the sentence’s removal. Although the upside is unclear, I admit I could be missing a detail or even the bigger picture as to why the sentence must be removed.

In conclusion, my experience has been that the help of a third party, sufficient surety, overwhelmingly strengthens the case for a detainee’s release. Without a sufficient surety’s involvement, a Judge essentially releases a detainee on their “own recognizance,” with optional conditions set by the court; which is fine, but it's also the least effective way to guarantee a defendant appears in court and highest category for re-arrest according to the US Department of Justice’s Bureau of Justice Statistics report on pre-trial released felony defendants: https://www.bjs.gov/content/pub/pdf/prfdsc.pdf

Table 7. State court felony defendants in the 75 largest counties charged with pretrial misconduct, 1990-2004

Variable	Number of defendants	Percent of released defendants charged with pretrial misconduct			
		Any type	Rearrest	Failure to appear	Fugitive
Type of pretrial release					
Release on recognizance	80,865	34%	17%	26%	8%
Surety bond	78,023	29	16	18	3
Conditional release	31,162	32	15	22	6
Deposit bond	20,993	30	14	22	7
Unsecured bond	17,001	36	14	30	10
Full cash bond	11,190	30	15	20	7
Property bond	3,649	27	17	14	4
Emergency release	2,656	52	17	45	10

I see no reasoning or upside of the aforementioned sentence’s removal.

My feeling is the removal is a goof or a mistake and needs correcting. This is because it is my understanding removal or banning of money bail itself or bail agents or bail by sufficient suretyship is not intended with the SB 1421 intent or reasoning. As a suggestion, putting the language back would clarify the true intention as there is nothing in the HCR 134 report demanding the removal or banning of bail agents or modifying bail suretyship in Hawaii.”

Summary:

I also take the following quote from an attorney familiar with pretrial release and bail matters who has 50 years of practicing law in Hawaii:

... “when judges paid more attention to the individuals brought before them. Perhaps it was because the judges had the responsibility to make the decision and could not defer to institutional cover.”

Institutional cover in this context means the bail report.

We all want fewer people in jail, we are all concerned about the decrepit conditions of our present facilities and we all know the need for adequate jail/prison bedspace and I think HCR 134 report positions us for a giant step in the right direction and I support any and all recommendations of the HCR 134 Task Force. The HCR 134 Task Force did not ask for bail by sufficient sureties to be eliminated and the report does not want to ban bail agents. The HCR 134 report wants to improve the process. The recommendations in the report seek to improve current pretrial 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.

I agree with the HCR 134 Task Force report and the twenty-five recommendations but we need to correct page 28, and put the ***bailable by sufficient sureties*** language back in to accurately reflect the intent of the HCR 134 Task Force report.

Thank you for this opportunity to testify on this measure.

James Waldron Lindblad
808-780-8887
James.Lindblad@Gmail.com
Rev 03.28.2019

LATE

HB-1552-SD-1
Submitted on: 3/28/2019 12:38:42 PM
Testimony for WAM on 3/28/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tiani	Individual	Oppose	No

Comments:

There is no victim's advocate on the board, at least one member on the commsion should be a qualified advocate for crime victims. This bill is recommending to eliminate the use of money bail for low level, non-violent misdemeanor offenses, this is NOT a good idea espeically for habitual offenders, this number will increase if the habitual offenses and even encourage offenders to repeat the offense. We see things being taken from law abiding, hardworking citizens by the dozen each day and action needs to be taken on OUR behalf.

LATE

HB-1552-SD-1
Submitted on: 3/28/2019 12:51:02 PM
Testimony for WAM on 3/28/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Lizama	Individual	Oppose	No

Comments:

We need to hold repeat offenders accountable for their actions. Our communities need to be made safer. These criminals repeatedly steal from law abiding citizens and get away with it. Enough is enough. Stop the leniency and bring back justice for the families in Hawaii.

LATE

HB-1552-SD-1
Submitted on: 3/28/2019 1:25:37 PM
Testimony for WAM on 3/28/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Amber Dowland	Individual	Oppose	No

Comments:

In a nutshell, I oppose this bill and largely agree with the Office of the Prosecuting Attorney. Victims have a right to justice when victimized by habitual and repeat offenders and ANY offender in reality. People lost faith in the justice system when habitual criminals do not receive punishments or are left to victimize more after a slap on the hand. We should NOT be more LENIENT on these criminals, we need to bring JUSTICE appropriate to their crimes. The communities should not have to live in fear knowing any criminal popping up in the news will be out on the streets ready to commit more crime in just a few days or weeks.

"It is crucial when establishing a Hawaii Correctional System Oversight Commission that the voices of those most affected by crime be a part of the process. Victims of a crime have a right to expect that criminals will be held accountable for their crimes, and in turn should have a voice in the commission that oversees the department responsible for this accountability. At least one member on the commission should be a qualified advocate for crime victims." - Office of the Prosecuting Attorney

I also oppose the move to eliminate the use of money bail for low level, non-violent misdemeanor offenses. I do agree that not all low level, non-violent crimes require the highest of punishments, but when these people already have previous offenses, the hammer should come down on them. "Three strikes" should be more than enough for these people. The very criminals terrorizing the islands on a daily basis are criminals who have countless misdemeanor offenses on public record for which they repeatedly get away with, again, a slap on the hand.

The community cannot trust in justice and the legal system if it continually works against them and their rights as law-abiding citizens and victims. The people who follow the law should feel secure and be able to trust that their government will work to preserve their rights and ability to feel safe in their own communities and homes.

LATE

HB-1552-SD-1
Submitted on: 3/28/2019 1:50:11 PM
Testimony for WAM on 3/28/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dexter Yuen	Individual	Comments	No

Comments:

To: Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S. C. Keith-Agaran, Vice Chair

RE: HB1552 House Draft 2, Senate Draft 2 (proposed)

Relating to Public Safety.

Dear Chair, Dela Cruz, Vice Chair, Keith-Agaran, and Committee Members.

I am a citizen who is retired and having a difficulty to understand our lenient misdemeanor laws which are affecting innocent victims of petty crimes, anti-social behavior, theft, assault, breaking and entering, graffiti, shop-lifting, car theft, whatever crimes are committed countless of times without any laws to stop this crime cycle.

Our judicial system considers these crimes to be less traumatizing, when the truth is these crimes are as traumatizing as murder of people being violated. Low prosecution rates and worse conviction rates are insulting when it comes to providing justice for our victims of misdemeanor crime.

I am suggesting abandon this bill recommending eliminating the use of money bail for low level non violent misdemeanor offenses. And consider Laws to address the

misdemeanor crimes affecting the entire State. Current catch and release misdemeanor offenses are ineffective.

We need eviction, GPS collars, and other means of eliminating these offenses.

I suggest Hawaii should have laws – Three strikes and you are out. Evicted from the Hawaii for several weeks to a few months. Nothing harsh gut to get them off island for a short period of time.

This eviction may straighten criminal's anti-social behavior when or if they return. Hawaii should do this because we are isolated from the other States.

Laws are also needed to punish poor parenting. Our State should garnish a portion of their income to support laws for their adolescent's criminal behavior, until the adolescent becomes an adult. Perhaps then, parenting becomes their obligation.

Thank you for your time and consideration.

Sincerely,

//Signed//

Dexter Yuen, retired USAF, Msgt.