



The Judiciary, State of Hawai‘i

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Clarence K. Nishihara, Chair

Senator Glenn Wakai, Vice-Chair

and

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Friday, February 8, 2019, 10:05a.m.
State Capitol, Conference Room 016

WRITTEN TESTIMONY ONLY

By

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit
Reporter, Criminal Pretrial Task Force

Bill No. and Title: Senate Bill No. 1423, Relating to Payment of Bail.

Purpose: Senate Bill No. 1423 permits defendants for whom a monetary amount of bail has been set to pay the bail amount on a twenty-four hours a day, seven days a week basis and be released from custody forthwith upon posting or payment of bail.

Judiciary’s Position:

The Judiciary respectfully supports Senate Bill No. 1423, which adopts the recommendation of the Criminal Pretrial Procedures Task Force to allow payment of bail and defendant’s subsequent release, at any time.

Pursuant to House Concurrent Resolution No. 134, H. D. 1 Regular Session of 2017, Chief Justice Mark E. Recktenwald established the Criminal Pretrial Procedures 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. It began with an in-depth study of the



Senate Bill No. 1423, Relating to Payment of Bail
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Friday, February 8, 2019, 10:05 a.m.
Page 2

history of bail and the three major generations of American bail reform of the 1960s, 1980s, and the last decade. The Task Force members researched the legal framework underlying 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. We invited national experts and delved into the latest research and evidence-based principles and learned from other jurisdictions where pretrial reforms are well underway. We reviewed previous studies conducted in our state, engaged with community experts and heard the views of our local stakeholders. We visited our cellblocks, jails, ISC offices and arraignment courts in an effort to investigate and present an unbridled view of our criminal pretrial process.

The recommendations set forth in the report seek to improve our 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 submitted twenty-five recommendations, to include amending Section 804-7 of the Hawaii Revised Statutes to allow criminal defendants to post bail and be released from detention at any time. The Task Force concluded that defendants should not be detained simply because of an administrative barrier requiring that bail or bond be payable only during normal business days/hours. The Judiciary respectfully supports Senate Bill No. 1423 in so far as it adopts the recommendation of the Criminal Pretrial Task Force.

Thank you for the opportunity to submit testimony.

SB-1423

Submitted on: 2/7/2019 9:38:06 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William Bagasol	Testifying for Office of the Public Defender	Support	No

Comments:

The contents of SB 1423 appears to be subsumed within the Ominbus Pretrial Bail Reform Bill. SB 1421. Kindy refer to our testimony in support of the work of the Pretrial Task Force and relating to SB 1421. Thank you very much for the opportunity to be heard. Sincerely,

William C. Bagasol, Supervising Deputy Public Defender



SB1422/SB1423

RELATING TO LAW ENFORCEMENT/RELATING TO PAYMENT OF BAIL

Ke Kōmike Palekana Lehulehu, Pilina O Nā Aupuni, a me Nā Kuleana Pū'ali Koa
Ke Kōmike Ho'okolokolo

Pepeluali 8, 2019

10:05 a.m.

Lumi 016

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **SUPPORT** SB1422 and SB1423, measures which would effectuate two of the recommendations of the HCR134 Task Force on Pretrial Reform: reinforcing law enforcement authority to cite low-level defendants in lieu of arresting them, and allowing for bail posting on a 24-hour-a-day/7-day-a-week basis. OHA, as a member of the Task Force, has endorsed each of these recommendations.

Unfortunately, our current bail system is overwhelmed, inefficient, ineffective, and has resulted in harmful, unnecessary socioeconomic impacts¹ on low-income individuals and their families, a disproportionate number of whom may be Native Hawaiian. The intended purpose of bail is not to punish the accused, but rather to permit their pretrial release while ensuring their return to court. Presently, our bail system, overwhelmed by a historically increasing volume of arrests, is fraught with delays and frequently does not provide sufficient information to judges and attorneys seeking timely and appropriate pretrial release determinations. Moreover, mounting evidence demonstrates that overreliance on cash-secured bail punishes poor individuals and their families before any trial, much less conviction. In Hawai'i, indigent defendants must often decide between posting hefty cash bail or bond amounts that impose considerable financial hardship, or pretrial incarceration that threatens their employment and housing. Notably, detaining individuals for weeks or months before their trial simply because they are too poor to post bail also represents a substantial cost to taxpayers,² and further exacerbates the overcrowding in our detention facilities.³

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

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

³ All four of the state-operated jail facilities—where pretrial defendants are detained—are assigned populations between 166-250% of the capacities for which they were designed and hold populations

Criminal justice experts have identified the pressing need for comprehensive reform of our pretrial system to adequately address the inherent and systemic inefficiency, ineffectiveness, and inequity in our bail system. 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 and OHA generally supports efforts to reduce the State's reliance on cash bail, increase resources and reduce inefficiency in administrative operations and judicial proceedings, improve access to robust and relevant information related to pretrial release determinations, and reduce unnecessary pretrial detention and its impacts on families and communities.

Specifically, OHA emphasizes the Task Force recommendation addressed in SB1422, which would **reinforce law enforcement authority and discretion to cite low-level defendants instead of arresting them, to reduce pretrial procedural volume and the pretrial incarcerated population**. OHA further emphasizes the Task Force recommendation addressed in SB1423, which would **expand the timeframe in which defendants may post bail beyond normal business days and hours, to similarly reduce the pretrial procedural volume and incarcerated population resulting from defendants who are unable to post timely cash bail**. OHA supports these and other efforts to reduce the harms arising from the State's overreliance on cash bail, and to maximize pretrial release.

For the reasons set forth above, OHA respectfully urges the Committees to **PASS** SB1422 and SB1423. Mahalo piha for the opportunity to testify on these important measures.

amounting to 127-171% of their modified operational capacities. STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY, END OF MONTH POPULATION REPORT, NOVEMBER 30, 2018 *available at* <https://dps.hawaii.gov/wp-content/uploads/2018/12/Pop-Reports-EOM-2018-11-30.pdf>.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Glenn Wakai, Vice Chair

Friday, February 8, 2019

10:05 am

Room 016

STRONG SUPPORT for SB 1423 - 24/7 BAIL

Aloha Chairs Nishihara and Rhoads, Dual Vice Chair Wakai and Members of the Committees!

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.

SB 1423 permits defendants for whom a monetary amount of bail has been set to pay the bail amount on a twenty-four hours a day, seven days a week basis and be released from custody forthwith upon posting or payment of bail.

Community Alliance on Prisons is in strong support of this measure. Currently, a person who is arrested on a Friday night has been stuck in jail all weekend and if Monday is a holiday, they are imprisoned until Tuesday. This does not promote justice and is another burden on taxpayers, for something that can be easily fixed.

Community Alliance on Prisons thanks committees for hearing this important bill and we urge you to pass it!

Mahalo for this opportunity to testify.

SB-1423

Submitted on: 2/7/2019 3:45:43 PM

Testimony for PSM on 2/8/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael L Inouye	Testifying for Democratic Socialists of Honolulu	Support	No

Comments:

Strong support in favor of this bill.

SB-1423

Submitted on: 2/7/2019 9:55:13 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

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

Comments:

SB-1423

Submitted on: 2/5/2019 9:29:38 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

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

Comments:

Support!

SB-1423

Submitted on: 2/7/2019 6:32:43 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments:

I support 1423 strongly because no person should be held in custody longer than is necessary. At present, the "necessity" is due to administrative procedures that could be changed, rather than to public safety or other considerations. Ability to pay monetary bail as soon as it is set will help clear our jails of people who do not need to be there. Even a few days of incarceration, such as over a weekend or holiday, has serious negative effects on an individual and constitutes a punishment when the person has not been found guilty of a crime. (When did we move from "innocent until proven guilty" to "guilty until proven innocent?")

Since there is one jurisdiction in the State in which posting bail 24 hours a day, seven days a week is already the practice, it is clear that this could be done in other jurisdictions as well.

Please pas SB1423

LATE

SB-1423

Submitted on: 2/8/2019 9:17:14 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Testifying for Drug Policy Forum of Hawaii	Support	No

Comments: