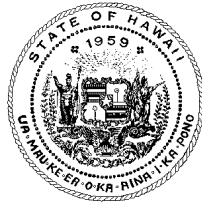


DAVID Y. IGE
GOVERNOR



MARI McCAIG
Chair

MARTHA ROSS
Commissioner

SANDRA JOY EASTLACK
Commissioner

PAMELA FERGUSON-BREY
Executive Director

STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1164 Bishop Street, Suite 1530
Honolulu, Hawai'i 96813
Telephone: 808 587-1143
FAX 808 587-1146

TESTIMONY ON SB 1539 SD 1
RELATED TO BAIL HEARINGS

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, March 21, 2019; 2:05 PM
State Capitol, Conference Room 325

Good afternoon Chair Lee, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to request deferral of Senate Bill 1539 SD1. This bill seeks to implement one of the recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017 ("Task Force"). The Commission requests that the Committee defer SB1539 SD1 pending a review of data collected from the current implementation efforts and to address the provisions that jeopardize victim and community safety.

The Commission was established in 1967 to mitigate the suffering and financial impact experienced by victims of violent crime by providing compensation to pay un-reimbursed crime-related expenses. Many victims of violent crime could not afford to pay their medical bills, receive needed mental health or rehabilitative services, or bury a loved one if compensation were not available from the Commission.

SB1539 SD1 Negative Impacts to Victim and Public Safety

The Task Force did not include representatives of victims or victim service providers as members, therefore, the recommendations fall short of insuring the needs of crime victims and community and public safety. The Task Force recommended, among other things, a significant increase in social services for offenders who are released and the development of new risk assessments tools in conjunction with prompt hearings. SB1539 SD1 creates prompt hearings without the new risk assessment tools and social services. The result of passing SB1539 SD1

would be faster hearings with no counterbalancing safety measures to insure the needs of victims and community and public safety.

Hasty In-or-Out Hearings Jeopardize Victim and Public Safety

SB1539 SD1 is an in-or-out approach to release for every level of offense – felony or misdemeanor, serious or non-serious, violent or nonviolent -- and for every offender, regardless of criminal history. SB1539 SD1 requires prompt hearings on the issue of “release or detention,” for all crimes. While there may be an assumption that these hearings would consider the issue of money bail, nothing in SB1539 SD1 involves money bail at all.

SB1539 SD1 does not require the completion of risk assessments and bail reports before the decision is made to release the offender. Offenses such as murder, sexual assault, and abuse are not appropriate for in-or-out decisions that do not require any risk assessment or bail report to be completed before a decision to release is made.

SB1539 SD1’s Unnecessary Evidentiary Hearings Place Burdens on Victims

Current law and practice lets courts hear motions for release based on proffers by the parties and a neutral pretrial bail report. There has been no explanation or example of why new evidentiary hearings are needed. SB1539 SD1’s proposed evidentiary hearings therefore are both unduly burdensome on victims and unnecessary.

SB1539 SD1 provides an opportunity for offenders to harass, threaten, and intimidate the victims at the proposed evidentiary hearings. This is particularly problematic in cases involving sexual assaults, domestic violence, and child abuse. Under SB1539 SD1, the offender could require the victim’s presence as a witness at this hearing – i.e., subpoena the victim and make them testify “in support” of the offender’s own motion for release.

Evidentiary hearings are burdensome for all victims. The citizens of Hawai`i voted to amend the state constitution to allow for information charging, so that victims of certain crimes, like felony shoplifting, burglary, or car break-ins, do not need to appear at court at the beginning stages of a case. Creating evidentiary bail hearings undermines the goal of information charging to reduce the inconvenience, hassle, and intrusion on victims’ lives

An evidentiary hearing is especially onerous when the victims are visitors. Visitors already have a difficult time participating in the criminal justice system in Hawai`i, due to distance and time differences placing burdens on visitors who must testify. Adding yet another evidentiary hearing to the process is unfair to those victims and makes crimes against tourists even harder to prosecute.

Thank you for providing the Commission with the opportunity to request deferral of SB1539 SD1.



SB1539 SD1
RELATING TO BAIL HEARINGS
House Committee on Judiciary

March 21, 2019

2:05 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1539 SD1, a measure which would effectuate one of the recommendations of the HCR134 Task Force on Pretrial Reform: clarifying that criminal defendants shall have a right to a prompt hearing concerning pretrial release and associated conditions. OHA, as a member of the Task Force, has endorsed each of its recommendations, and believes that this measure will facilitate improved judicial pretrial efficiency, reduce the harms arising from the State's overreliance on cash bail, and minimize the costs of unnecessary and prolonged pretrial detention.

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 amounting to 127-171% of their modified operational capacities. STATE OF HAWAII DEPARTMENT OF PUBLIC

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 SB1539 SD1, which would **reinforce the need for prompt bail hearings and bail determinations that are thoroughly informed, based on defendants' ability to pay, and made expediently**. OHA supports this and other efforts to improve judicial pretrial efficiency, reduce the harms arising from the State's overreliance on cash bail, and minimize the costs of unnecessary and prolonged pretrial detention.

For the reasons set forth above, OHA respectfully urges the Committee to **PASS** SB1539 SD1. Mahalo piha for the opportunity to testify on this important measure.

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>.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Thursday, March 21, 2019 2:05 PM
State Capitol, Conference Room 325

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. 1539, S.D. 1, Relating to Bail Hearings.

Purpose: Adds provision that, upon formal charge and detention, and upon motion by either party, defendants shall have the right to a prompt bail hearing concerning release or detention and whether any condition will reasonably assure the defendant's appearance. Allows defendants to be represented by counsel at the hearing, or have one appointed if they are financially unable to obtain representation. Allows defendants to present evidence and witnesses and to cross-examine witnesses who appear at the hearing. Effective 3/15/2019. (SD1)

Judiciary's Position:

The Judiciary respectfully supports Senate Bill No. 1539, S.D. 1 which adopts the recommendation of the Criminal Pretrial Practices Task Force to entitle defendants in criminal cases to a prompt bail hearing.

Pursuant to House Concurrent Resolution No. 134, H. D. 1 Regular Session of 2017, Chief Justice Mark E. Recktenwald established the 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. It 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 members researched the legal framework underlying current practices, which are firmly rooted in our most basic constitutional principles of presumption of innocence,



Senate Bill No. 1539, S.D. 1, Relating to Bail Hearings
House Committee on Judiciary
Thursday, March 21, 2019, 2:05 PM
Page 2

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 of the Hawai'i Revised Statutes to add a new provision requiring defendants who are formally charged with a criminal offense and detained be afforded a prompt hearing to address bail. The Judiciary respectfully supports Senate Bill No. 1539, S.D. 1, in so far as it adopts the recommendation of the Criminal Pretrial Task Force.

Thank you for the opportunity to testify on this measure.



**Office of the Public Defender
State of Hawai‘i
Testimony of the Office of the Public
Defender,**



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

March 19, 2019

S.B.1539, SD1: RELATED TO BAIL HEARINGS

Chair Chris Lee, Joy A San Buenaventura, and Members of the Committee:

The Office of the Public Defender supports S.B. 1539, SD1

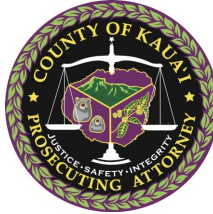
The Office is in support of this measure requiring a prompt bail hearing. The need for this measure is supported in the recommendations of the Pretrial Task Force and is an integral part of any effective pretrial system. As confirmed by the Pretrial Task Force, there have been delays in addressing matters of bail. Scheduling of bail hearing varies widely from island to island. In the First Circuit Court, bail hearings are still being set several weeks or more after the filing of a written bail motion. This serves to increase the time in custody for an accused before bail matters are addressed in a meaningful way.

The Office of the Public Defender offers a suggestion to improve the measure. A specific time-period should be included in such a measure. While there is very strong support for requirement of a “prompt hearing” for release or detention determinations, there is concern as to what this exactly means. A prompt hearing may mean several weeks or longer from the time of arrest which arguably may not be “prompt.” Other jurisdictions have **specific time limitations** for hearing pretrial release decisions, which provides clarity and consistency. These jurisdictions set a time limit between 48 hours after commitment to jail to five (5) days after the date of arrest. The SB 1421 and HB 1289 versions of the Pretrial Task Force Bills have added a 5-day window for a “prompt hearing.”

We appreciate the opportunity to provide input on this Bill. We respectfully support the passage of S.B. 1539, SD 1 out of your committee.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
The Thirtieth Legislature
Regular Session of 2019
State of Hawai'i**

March 21, 2019

RE: S.B. 1539 S.D. 1: RELATED TO BAIL HEARINGS.

Chair Lee, Vice-Chair San Buenaventura, and members of the House Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i **opposes** this Bill. This bill seeks to implement one of the recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017 ("task force"). Our opposition is based on the following:

Hasty In-or-Out Hearings Jeopardize Victim and Public Safety.

This Bill contemplates a binary approach to release for every level of offense – felony or misdemeanor, serious or non-serious; violent or nonviolent -- and for every offender, regardless of criminal history. The Bill requires prompt hearings on the issue of "release or detention" for all crimes. While there may be an assumption that these hearings would consider the issue of money bail, nothing in the text of the Bill involves money bail at all.

Some offenses, such as murder and sexual assault, are inappropriate for in-or-out decisions made during hastily scheduled hearings that do not require any neutral assessment or report to be completed ahead of time. The legislature should not be too hasty to adopt this reform, simply for the sake of enacting any reform, without ensuring that safeguards are in place.

The HCR 134 Task Force Recommended Comprehensive, Not Piecemeal, Reforms.

The task force, which our Office participated in as a member, recommended prompt hearings as part of a comprehensive reform package, including better risk assessments, completed bail reports that factor in offender dangerousness, and increased opportunities for victim input. The task force also recommended increasing social services for offenders who are released. The intent was to balance victim and public safety and a defendant's interest in a speedy hearing. This Bill calls for prompt hearings, without requiring the other reforms that the task force recommended to protect victims and the public. The result would be faster bail hearings with no counterbalancing safety measures.

This Bill Does not Guarantee Victim Input, but Allows Offenders to Harass Victims.

The task force did not include representatives of victims or victim service providers among its full voting members. As a result, the Bill negatively affects victims' interests.

This Bill fails to provide victims a statutory right to give direct input to the court regarding release. The prompt setting of the hearing would decrease the likelihood that a victim could be notified properly or give indirect input ahead of time. Yet, if a victim did not want to show up at the hearing and did not want to see the offender, the offender still could "present" them as a witness – i.e. subpoena them and make them testify in support of the offender's own motion for release. At the conclusion of the hearing, the offender could be released while the victim was still at court.

The end result is that a victim could appear at a release-or-detain hearing, have no statutory right to give input directly to the court, but still be examined by the offender. The task force noted that opportunity for victim input is limited under the current pretrial bail system, and victim input should be increased and "meaningful." This Bill does exactly the opposite.

Defer SB 1539 SD 1.

Currently, stakeholders are experimenting with holding hearings – that include money bail -- early on in criminal cases, such as at the time of arraignment. SB 1539 SD 1 should be deferred to allow stakeholders to find the right balance between holding hearings earlier, and protecting public safety.

Thank you for this opportunity to testify on this bill.

SB-1539-SD-1

Submitted on: 3/18/2019 6:37:59 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of SB 1539 SD1.

Our current bail system has turned our jails into a debtor's prisons. This is unacceptable to the LGBT Caucus. This proposed change will allow the judicial system to view people as people. It will help with the over crowding while protecting society from violent offenders.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawaii

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy San Buenaventura, Vice Chair

Thursday, March 21, 2019

2:05 pm

Room 325

SUPPORT- SB 1539 SD1 - RIGHT TO PROMPT BAIL HEARING

Aloha Chair Lee, Vice Chair SanBuenaventura 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 is in support of this measure. This bill would require prompt bail hearings for people awaiting trial. They are innocent until proven guilty.

SB 1539 SD1 is another recommendation of the HCR 134 Task Force. Getting people out of jail quickly minimizes the disruption of their lives. Research has shown the even a few days in jail can have lifelong consequences on an individual and their families. Prompt bail hearings would reduce the unconstitutional overcrowding of our jails, saving money and reducing harm.

It is sad, although not surprising, that the prosecutors and attorney general oppose this measure as they were included on the HCR 134 Pretrial Task Force. The prosecutors have been the biggest barrier to reform in our justice system and we sincerely hope that the legislature will pass the reforms recommended by the work of the task force.

We urge the committee to pass this bill.

Mahalo for the opportunity to testify.



Aloha Chair Lee, Vice-Chair San Buenaventura and Committee Members,

I am writing in support of SB 1539 SD1 in regards to the right to a prompt bail hearing. As a recommendation from the HCR134 Task Force I support the forward direction towards reform of our criminal justice system.

No one should be forced to remain in jail before they have been proven guilty of the crime they have been charged with. Being in jail for just one day can destroy people lives. By ensuring that defendants have the right to a prompt bail hearing you minimize the disruption this situation can cause in a person's life.

I appreciate you taking the time to hear this bill and hope that you will see it's merit and that you too will support SB 1539 SD1.

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

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Joshua A. Wisch

Date: March 21, 2019

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

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

RE: Testimony in Opposition to S.B. 1539 S.D. 1
Relating to Bail Hearings

Good afternoon Chair Lee, Vice Chair San Buenaventura, and members of the House Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) opposes S.B. 1539 S.D. 1 and asks that the Committee please defer this measure.

The Pretrial Task Force that recommended this measure did not include crime victims and stakeholder service agencies, and consequently many important issues were not addressed. We believe that further work is needed to ensure that the release of suspected criminals is appropriate, and that crime victims and the community are kept safe.

This measure converts bail hearings from simple proceedings to adversarial mini trials that will harm crime victims and witnesses, while increasing court congestion and overwhelming the system.

By giving suspects the right to present and cross-examine witnesses in bail hearings, this measure would allow victims and witnesses to be subpoenaed into court on the issue of whether the suspect is a danger to them and their loved ones, with the risk that the suspect could be released immediately after the hearing.

This will intimidate and cause trauma to victims and witnesses, increase the number of times they will have to appear in court, and force some to discontinue their participation in the criminal justice process, making crimes harder to prosecute and distorting public safety outcomes.

SATC respectfully notes that the criminal justice system should make it easier, not harder, for crime victims to participate in proceedings, and should prioritize protecting them from further trauma and harm.

S.B. 1539 S.D. 1 also does not address important practical concerns, such as funding and resource needs on the part of the prosecution, public defender, and courts to conduct adversarial mini trials.

Similarly, this measure does not provide the significant infrastructure for case management, monitoring, and social services needed to protect the community by ensuring that released suspects show up for court and do not commit more crimes, a key recommendation of the Pretrial Task Force.

Thank you for this opportunity to testify in opposition to S.B. 1539 S.D. 1.

SB-1539-SD-1

Submitted on: 3/21/2019 1:47:44 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

LATE

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

Comments:

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

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

March 20, 2019

TO: Committee on Judiciary
RE: SB 1539, SD 1
HEARING DATE: Thursday, March 21, 2019
TIME: 2:05 pm
CONF. ROOM: 325
POSITION: **SUPPORT**

Dear Chair Lee, Vice Chair Buenaventura, and Members of the Committee:

SB 1539, SD 1, would help ensure a prompt bail hearing for pretrial defendants, many of whom are considered low-risk and for whom release pending trial would be appropriate. It also promotes due process, and implements an important recommendation of the HCR 134 Task Force on Pretrial Reform. It should be enacted.

Thank you for the opportunity to testify on this bill.

SB-1539-SD-1

Submitted on: 3/19/2019 10:58:33 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

SB 1539 SD1 is based on an excellent recommendation from the HCR 134 Task Force.

It allows people to avoid the consequences of being detained, which could turn their entire lives upside down. If a person is detailed for even a short period of time, they could lose their job, lose their housing, custody of children, etc.

This bill will help people avoid the serious consequences of detainment and its resulting destabilizing effect on family and community.

SB-1539-SD-1

Submitted on: 3/20/2019 1:59:09 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Weger	Individual	Support	No

Comments:

Aloha, please consider:

(1) Your own commissions report that our overcrowded jails are due largely to the fact that we have an unusually high rate of pre-trial incarceration. Shortening the length of pre-trial detention

(2) Any money bail system disproportionately jails the poor--and incarceration, even for short time periods, often results in the loss of employment and financial disaster for the family--a domino effect that only increases poverty and crime.

(3) The oft-quoted phrase "justice delayed is justice denied" is most apt in the context of pre-trial detention--where there has often been no prior judicial determination regarding the strength of the evidence against the detainee.

Mahalo,

Christine Weger, Atty at Law

LATE

SB-1539-SD-1

Submitted on: 3/20/2019 9:21:45 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Individual	Support	No

Comments:

I support this as I believe that getting people out of jail quickly minimizes the disruption of their lives.

SB-1539-SD-1

Submitted on: 3/20/2019 10:55:16 PM

Testimony for JUD on 3/21/2019 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Individual	Support	No

Comments:

LATE

SB-1539-SD-1

Submitted on: 3/21/2019 8:17:22 AM
Testimony for JUD on 3/21/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I strongly support SB1539 SD1.

The extensive work of the HCR 134 Task Force has resulted in their support of this bill.

Getting people out of jail quickly minimizes the disruption of their lives, the lives of their families, employers and community. Even a few days in jail can have lifelong consequences on an individual.

Please move this bill forward.

HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019



COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Testimony, Comments, Suggested Amendments, Presented by James Waldron Lindblad

Rep. Tom Brower

Rep. Calvin K.Y. Say

Rep. Richard P. Creagan

Rep. Gregg Takayama

Rep. Nicole E. Lowen

Rep. Ryan I. Yamane

Rep. Angus L.K. McKelvey

Rep. Cynthia Thielen

Rep. Dee Morikawa

AMENDED NOTICE OF HEARING

DATE: Thursday, March 21, 2019

TIME: 2:05pm

PLACE: Conference Room 325
State Capitol
415 South Beretania Street

AMENDED AGENDA

Re: Matters Pertaining to Bail SB 1539 SD1 and SB 192, SD1, HD1.

[SB 1539, SD1](#)
[\(SSCR803\)](#)
[Status](#)

RELATED TO BAIL HEARINGS.

JUD, FIN

Adds provision that, upon formal charge and detention, and upon motion by either party, defendants shall have the right to a prompt bail hearing concerning release or detention and whether any condition will reasonably assure the defendant's appearance. Allows defendants to be represented by counsel at the hearing, or have one appointed if they are financially unable to obtain representation. Allows defendants to present evidence and witnesses and to cross-examine witnesses who appear at the hearing. Effective 3/15/2094. (SD1)

[SB 192, SD1, HD1](#)
[\(HSCR1319\)](#)
[Status](#)

RELATING TO BAIL.

PVM, JUD, FIN

Authorizes a defendant in custody to petition a court for unsecured bail. (SB192 HD1)

Chair and Members of the Committee:

My name is James Waldron Lindblad. I began my career in 1973, as a recognizance officer working in pretrial release and later when I saw the deficiencies of court run programs like mine and their use of questionnaires we called tools to assist us in decision making rather than making use of relatives with skin in the game and money to ensure compliance I switched to bail bonding in 1976, where money was involved and every single customer I had for two years had already been rejected and had been denied free own recognizance release and yet, I made money and those persons I bailed out were released and all attended court as required. This is because I used relatives, primarily the mother to co-sign and promise they would see to court attendance and compliance. Bail bond work is suretyship and three party in nature and contains a co-signer or indemnitor in the three party contract. Court sponsored free release or OR or SR is between only the court and the defendant with no third party. This means it is very difficult for any court to ensure compliance when making use of only the defendant and the defendant's promise without a cosigner or collateral. We cannot trust every recognized person to comply but we can trust mothers who bail out their children to comply as I have proven many times.

SB 192, SD1, HD1 and SB 1539, SD1 pertain to bail and pretrial release and the bills are both telling our judges what the legislators want. These matters also pertain to HCR 134 and HCR 85 along with the new jail, prison population management and how to better deal with equal protection and fairness. The task of eliminating money and suretyship and changing pretrial release conditions to defendant only promises is complex and we must ensure individual attention as every release is unique and we cannot put defendants into three buckets based on a list of questions and a black box algorithm, like Sears, good, better, and best and our judges know this. Other states and the District of Columbia have spent and continue to spend huge money with poor results that include higher crime, less fairness due to more detention and still the mainland jails are full in Oregon, New Mexico, Chicago, and New York. West Virginia had a similar matter and their experience can be read about here.

<http://ambailcoalition.org/breaking-west-virginia-legislature-rejects-bail-reform-legislation-in-2019-session-as-the-gavel-comes-down>

Charleston, WV – Legislators from the Mountain State rejected calls for bail reform and sent to pasture [House Bill 2190: Modifying Bail Requirements](#) as the session came to a close for 2019.

H.B. 2190, which was supported by the ACLU, died on the calendar March 9, 2019.

The bill, while well intended, simply forced the hand of West Virginia judges to release a wide range of offenders on their own recognizance, a discretion judges already have and use often. Removing judicial discretion is an insult to the judiciary, who are tasked with maintaining the rule of law and protecting public safety.

The sponsors of H.B. 2190 attempted to convince their colleagues that criminal defendants are solely in jail because they can't afford their bail. At best, this is a misunderstanding of the function and intent of bail. These statements were and are made without evidence – not only in West Virginia but across many states considering similar reforms.

Bail is typically a third-party provided benefit that most often does not depend on the resources of the defendant. It is more akin to a test of your ties to the community, and whether the community believes in you to comply with release conditions. In addition, many defendants are negotiating plea

deals involving time served, and that calculation is never backed out of the equation, even though it is a significant amount of jail time that would otherwise be served and perhaps for longer durations.

Further, many defendants suffer from alcohol abuse, substance abuse, addiction issues, mental health issues, and co-occurring disorders that the criminal justice system is not addressing. Families and friends of defendants often choose not to post their bail due lack of alternatives for defendant's suffering from these issues. In addition, there are many other reasons that defendants are held in jail that make up the vast majority of reasons people are in jail in the first place.

Certainly, there are some for whom bail will not be posted. But there is no right to "pretrial release" in America—there is instead a right to reasonable bail, a bail that is not excessive under the settled law on this continent for over 400 years. The right to bail doesn't guarantee release, and judges get motions for bail reductions all the time, and they decide these cases based on the facts and circumstances of each case – not with a broad brush as this legislation would have mandated.

We think maintaining accountability is in the best interest of West Virginia and exploring more reasonable options to improve the criminal justice system is a better idea. The 2020 West Virginia legislature should instead focus on alternatives, such as;

1. **Due process.** Defendants should be given a bail review by a judge within 48 hours of arrest should they not post bail.
2. **Nuisance Bail:** If a bail bond is under \$500 and the finding of guilt results in no jail time, the jailing of these individuals seems excessive considering the circumstances.
3. **Uniform Bail Schedules:** Bail schedules act only as a guide for judges in the setting of bail. In addition, uniformity of these schedules allow for defendants to act quickly in securing their release and therefore slow down the jail turnstile as a result. Review of schedules should occur periodically by the judiciary, along with other stakeholders.

Making large wholesale changes to the criminal justice system without adequate research and consideration from all stakeholders can have consequences that are very difficult to unwind. In states like Alaska and New Hampshire, where similar reforms have passed, law enforcement and

even the Governor are having buyer's remorse mere months into similar policy changes because of repeat offenders being released over and over with no oversight.

Fortunately, West Virginia legislators denied H.B. 2190, instead giving priority to judicial discretion and public safety first.

HD 1289 HD2, contained the following qualifiers that are lacking in either SB 1539, SD1 or SB 192, SD1, HD1 as HB 1289 HD2 was 43 pages long and these bills are only 4 pages each.

To me, SB 192 SD1 is still very confusing. If the legislative intent is to duplicate "own recognizance" release then the bill should say so but it does not. The bill purports to ask for collateral for part of the bond and no collateral for some of the bond. The bill sort of says release without money but then later sort of says cosigner and collateral needed under HRS 804 11.5. The committee should review this language and when needed clarify the intention so those persons in jail and those persons in authority may understand the legislative intent.

As to SB 1539 SD1 and prompt bail hearings, we now already have prompt bail hearings every Monday and Thursday and have had these hearing since January 17, 2019. The court has bail hearing with or without the ISC intake report and many bail amounts are reduced and many defendants are released. These are felony releases. Further district court already releases almost every person on first appearance and the weekend duty judge releases many more defendants from HPD every weekend as proven in the HPD arrest logs posted online at the HPD website.

My feeling is conditions should be outlined and legislative intent made clear in both of these bills in a similar manner to HB 1289 that included the following language and exclusions for special treatment and release without money or surety bail and without collateral of a co-signer pledging collateral. This is where the bail funds demonstrate how the pretrial system should not work as bail funds bail out strangers without cosigners when in my view, the court has always expected a relative or person known to the defendant in the community would offer money bail as bail has

historically been community based. I suggest the following conditions be added if either of these two bills move forward.

Add the following **exemptions** to any free release without money or collateral of cosigners.

(1) The offense involves:

(A) Assault;

(B) Terroristic threatening;

(C) Sexual assault;

(D) Abuse of family or household members;

(E) Violation of a temporary restraining order;

(F) Violation of an order for protection;

(G) Operating a vehicle under the influence of an

intoxicant;

(H) Negligent homicide; or

(I) Any other crime of violence; or

(2) One or more of the following apply:

(A) The defendant has a history of non-appearance in the last twenty-four months;

(B) The defendant has at least one prior conviction for a misdemeanor crime of violence or felony crime of violence within the last twenty years;

(C) The defendant was pending trial or sentencing at the time of arrest;

(D) The defendant was on probation, parole, or conditional release at the time of arrest;

(E) The defendant is also concurrently charged with a violent petty misdemeanor, a violent misdemeanor, or any felony offense arising from the same or separate incident; or

(F) The defendant presents a risk of danger to any other person or to the community.

(c) If any of the exceptions in subsection (b) apply, bail may be set in a reasonable amount. If the defendant is unable to post the amount of bail, the defendant shall be entitled to a prompt hearing under section 804-A. If the defendant is unable to post bail in the amount of \$99 or less, the director of public safety shall be authorized to release the defendant; provided that electronic defendant monitoring devices are used."

I think the courts are trying very hard to make things consistent statewide and I think the courts should be allowed the time to change and make improvements such as already the case with the new twice weekly bail hearing and the new lower bail amounts in many cases. These two things are bringing about the needed consistency.

Thank you for the opportunity to testify on this measure.

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REV 03.21.2019

Support for SB1539 SD 1 Relating to Bail Hearings

TO: Chair Chris Lee, Vice Chair Joy San Buenaventura and
Members of the House Committee on the Judiciary

FROM: Barbara Polk

I support SB1539 that would require prompt bail hearings for people awaiting trial. Getting people out of jail quickly minimizes the disruption of their lives. Psychologists have estimated that as little as three days in jail can have serious mental health impacts on individuals. In addition, of course, holding people in jail unnecessarily is very expensive to the taxpayers and requires larger jails.

I am concerned about homeless people, in these hearings, who may be seen as unreliable about returning to court. It is important that the court set up ways to assist a person in returning. New York City called individuals to notify them of upcoming hearings, and provided cell phone to anyone who didn't have one. The City found that the rate of failure to return to court was the same for those released without cash bail as for those who had paid cash bail.