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No. _____

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

House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019; 10:00 a.m.
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Public Safety Department (PSD) supports House Bill (HB) 1289, which incorporates key recommendations of the House Concurrent Resolution No. 134 (2017), Criminal Pretrial Task Force. PSD offers the following comments to ensure that the objectives are implemented by providing sufficient resources.

PSD has contracted to conduct a validation study of the Ohio Risk Assessment System's Pretrial Assessment Tool (ORAS-PAT) for Hawai'i pretrial offender population. The new language to require a risk assessment and bail report within two days of admission to a community correctional center will require additional resources, including staff, to be incorporated in Section 27 of this measure.

PSD is limited in verifying the self-reported financial information from offenders; therefore, the Department respectfully suggests that PSD's Pretrial Service Officers be provided authorization for limited access, for the purpose of

viewing other State agencies' relevant data related to employment wages and taxes. PSD also recommends adding language to the measure's Section 3, referencing Section 353-10(b)(9)(F), to clarify that the research entity shall be approved and contracted by PSD to protect the confidentiality of the information, as this section specifies that the information is not a public record.

PSD has concerns based on the measure's Section 11, Section 804-7, which requires that an individual be able to post bail at a community correctional center 24 hours a day, 7 days a week. PSD does not have the appropriate staff to facilitate this requirement; based on the proposed duties and the personnel classification specification this will require additional staff and consultation with the appropriate Collective Bargaining Unit Representative.

The measure's Section 15, Section 353 should substitute any reference to "intake service center" with "relevant community correctional center." When an offender is formally admitted to the community correctional center, then the community correctional center staff supervises and manages the offender. Also, the Department notes that the Intake Service Center has four of its five branches in privately leased offices, located off-site from the community correction center.

PSD suggests that the measure's Section 25, be deleted, as the ORAS-PAT is currently being validated, and any change prior to the completion of the validation study would be premature. Please also note that the factors included in this section are already incorporated in the application of the ORAS-PAT utilized by PSD.

PSD appreciates the inclusion of budgetary items specified in the measure's Section 22 and Section 27, as there will be additional costs and resources required to not detain or to release an offender on the least restrictive non-financial conditions.

PSD welcomes these changes to assist with reducing our offender population within the community correctional centers.

Thank you for the opportunity to present this testimony.

POLICE DEPARTMENT

CITY AND COUNTY OF HONOLULU

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OUR REFERENCE LU-LS

February 6, 2019

The Honorable Gregg Takayama
and Members
Committee on Public Safety, Veterans,
and Military Affairs
House of Representatives
415 South Beretania Street, Room 430
Honolulu, Hawaii 96813

Dear Chair Takayama and Members:

SUBJECT: House Bill No. 1289, Relating to Criminal Pretrial Reform

I am Deputy John McCarthy of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD respectfully opposes House Bill No. 1289, Relating to Criminal Pretrial Reform, in part. While the HPD supports the efforts of the Hawaii Criminal Pretrial Reform Task Force (of which we were a part of), we feel compelled to voice our objection to the proposed enactment of Hawaii Revised Statutes (HRS), Section 804-B Monetary bail; nonviolent offenders which provides for certain defendants arrested and charged with a criminal violation, a nonviolent petty misdemeanor offense, or a non-violent misdemeanor offense to be released on their own recognizance.

Currently, there is no database the HPD can query to determine whether a defendant has "a history of nonappearance in the last twenty-four months." Neither the judiciary nor the state documents contempt of court charges based on nonappearance. Thus, the HPD would have no way of determining whether an arrestee has such a history.

Further, the proposed amendment would result in the release of individuals who pose a significant danger to the community. For example, offenses such as negligent injury, driving without a license, and operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant

(DWOL OVUII) are all offenses that would result in release without bail under the proposed amendment. Given the public concern regarding fatalities and impaired drivers, such offenses, while seemingly innocuous and nonviolent on its face, have a significant impact on the community at large and such arrests should not result in release on one's own recognizance.

Additionally, proposed HRS subsection 804-B(a)(2)(B) providing for the consideration of a prior conviction for a nonviolent misdemeanor is far too limiting and does not include such offenses as operating a vehicle under the influence of an intoxicant (OVUII). Enactment of the statute as written will result in the release on own recognizance of a person arrested for DWOL OVUII with a previous OVUII conviction. Such a result would not best serve the community and other alternatives should be seriously considered.

The HPD submits that the proposed amendments providing for the immediate involvement of the Hawaii State Judiciary, Adult Client Services Branch – Intake Section and a prompt bail hearing are more than sufficient to protect the rights of the arrested persons while balancing the protection of the public and community at large. As such, we respectfully oppose the passage of Section 804-B of House Bill No. 1289.

Thank you for the opportunity to testify.

Sincerely,

John D. McCarthy
Deputy Chief of Police

APPROVED:

Susan Ballard
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY

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THE HONORABLE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

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

February 1, 2019

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

Chair Takayama, Vice-Chair Gates, and members of the House Committee on Public Safety, Veterans & Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 1289.

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

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

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

Violation of an Order for Protection (§586-11, H.R.S.), Violation of a Temporary Restraining Order (§586-4, H.R.S.), Promoting Pornography for Minors (§712-1215, H.R.S.), and Solicitation of a Minor for Prostitution (§712-1209.1, H.R.S.), Harassment by Stalking (§711-1106.1, H.R.S.), and Violation of an Injunction Against Harassment (§604-10.5, H.R.S.).

Section 7 (pg. 10, ln. 17)
The Department supports the proposed idea for the right to a prompt hearing. However, as currently written, section 804-A does not outline any procedure or mechanism to initiate such a hearing on behalf of the defendant. In addition, if this is a mandated contested hearing for all cases, there will be a huge influx of contested hearings which will delay trial cases, create a backlog, and impose a large financial burden for a number of agencies without proper funding.

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

Although the Task Force report provided twenty-five various recommendations for pre-trial reform, many recommendations have already been applied without statutory requirements or mandates. Since the completion of the Task Force, it is our understanding that each agency has re-evaluated their policies and procedures and reassessed their approach to the current pretrial issues. As previously noted, we would strongly encourage the Committee to allow time for appropriate data collection and analysis as recommended by the Task Force at the informational briefing on January 22, 2019, before making any further statutory changes.

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

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

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

BEFORE THE:
HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

DATE: Wednesday, February 6, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 430

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

Chair Takayama and Members of the Committee:

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

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

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

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

Section 7, (pages 11-13, lines 1-19) 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 is evaluated, we believe this statutory fix is premature and could possibly be detrimental.

Section 15, (page 25, lines 9-19) seeks to place the responsibility on the Intake Service Center to conduct periodic reviews of detainees to evaluate whether each detainee should remain in custody or whether new information warrants reconsideration of the detainee's status. This responsibility, however, should reside with the detainee's counsel who is in the best position to know whether a change in circumstances warrants reconsideration.

Section 8, (page 14, lines 4-21 and page 15, lines 1-15) 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.

This presumptive approach will have a devastating and irreversible impact on community safety and the effective administration of justice. Again, the recommendations of the Task Force are being implemented and should be evaluated before any changes to the law are made.

Laws designed to reduce the incarcerated population must be undertaken with reasonable caution. The criminal justice system should 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 bill be amended by deleting section 7 (page 11, lines 1-19), section 15 (page 25, lines 9-19), and section 8 (page 14, lines 4-21 and page 15, lines 1-15). Thank you for the opportunity to comment.

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 Public Safety, Veterans and Military Affairs**

February 4, 2019

H.B.1289: RELATING TO PRETRIAL REFORM

Chair Gregg Takayama, Vice Cedrick Gates and Members of the Committee:

The Office of the Public Defender supports the work of the Pretrial Task Force and therefore passage of H.B. 1289 but expresses a few concerns:

The Office offers a few suggestions to strengthen and clarify the Bill for consideration.

1. The requirement of **prompt hearings** on the issues of release and detention are imperative to any efficient and just pretrial system. While the proposal is well intentioned there is ambiguity in the definition of what constitutes a "prompt hearing." One court may deem a prompt hearing as meaning within two days of arrest, while other courts may set the hearing, as is often the current practice, several weeks after a person's detention. Therefore, The Office asserts that the better practice is to specifically state when hearings must commence. Other jurisdictions, such as New Jersey and New Mexico have specified these deadlines for hearings and decisions on detention between two (2) to five (5) days, depending on where defendants are held.

2. **Release of Non-Violent offenders.** The Office of the Public Defender supports the intention to release non-violent offenders that can be safely returned to our community. However, our Office believes that certain portions of the bill are too restrictive and may prevent consideration of certain individuals who can be safely released. For example, under the proposed legislation, Section 804-B(b)(2)(B) "a defendant with one prior conviction for a misdemeanor crime of violence or felony crime of violence" would not be eligible for release on own recognizance. Here there is no clear definition of what constitutes a crime of violence. Furthermore, people may have committed these types of offenses a substantial number of years prior to an arrest on a new, non-violent offense. This provision will restrict a court from releasing a defendant even if the he or she determines that it is safe and reasonable to do so, and despite the number of intervening years since the prior offense or the current circumstances of the accused. For these persons, the better practice is to allow the court to make a decision using this type of criteria on a case-by-case basis. At the very least this provision should set a time limit for "looking back" on when these convictions should be considered for pretrial decisions.

   The current wording is also too vague and may lead to individuals being detained that should otherwise be released. For example, proposed Section 804-B(b)(2)(F), would prevent release on own recognizance for defendants that present "a risk of danger to any other person or to the community." While seemingly well-intentioned, the statute is vague as to the kind of risk that would be necessary to detain an individual. Even someone of "minimal" risk, as opposed to "substantial" or "serious" risk of danger to another would not be eligible for release under the current proposal. Civil commitment hospitalization criteria under H.R.S. Section 334-60.2 requires a court finding that a person be *imminently* dangerous to others before a person can be committed. Hence, many of our mentally ill will be at risk of being jailed in a punitive setting under the proposed statutory language, even if they do not fit the criteria for hospital level civil commitment. This is clearly not the intention of anyone. We would therefore seek to clarify the degree of risk, the kind of danger that is being considered and whether that risk is imminent.

While we encourage the passage of this legislation, there are portions of the omnibus bill that can be improved. Thank you for the opportunity to comment on H.B. 1289.

The Judiciary, State of Hawai‘i

Testimony to the House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019 10:00 AM
State Capitol, Conference Room 430

WRITTEN TESTIMONY ONLY

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

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

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

Judiciary's Position:

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

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

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

underway. Previous studies conducted in the State of Hawaii 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 Hawaii. This slate of recommendations represent a set of measured, practical and achievable reforms to our present pretrial system. The fact that each recommendation garnered broad consensus speaks volumes with respect to the careful thought and effort that the Task Force brought to this endeavor.

The Judiciary fully supports the passage of House Bill 1289 in as much as it reflects the recommendations of the Task Force.

Thank you for the opportunity to testify on this measure.

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

HB1289
RELATING TO CRIMINAL PRETRIAL REFORM
House Committee on Public Safety, Veterans, & Military Affairs

February 6, 2019 10:00 a.m. Room 430

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **SUPPORT** HB1289, a measure which would effectuate nearly all of the recommendations of the HCR134 Task Force on Pretrial Reform which OHA, as a member of the Task Force, has endorsed.

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

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

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

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

To address the inefficiency, ineffectiveness, and inequity inherent in our bail system, comprehensive reform of our pretrial system is needed. 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 following Task Force recommendations addressed in HB1289:

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

OHA supports these and other efforts to reduce the State's overreliance on cash bail and to maximize pretrial release. OHA notes that HB1289's proposed reforms to the pretrial system stop short of completely eliminating the use of cash bail and its potential impacts on poor communities, although they may be comparatively limited. Therefore, OHA also supports several other measures that would likewise progressively reduce the

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

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

HB 1289, RELATING TO CRIMINAL PRETRIAL REFORM

FEBRUARY 6, 2019 · HOUSE PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS COMMITTEE · CHAIR REP. GREGG TAKAYAMA

POSITION: Support.

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

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

Hawai'i has approximately 5,500 inmates, over, 1,500 of whom are incarcerated overseas, away from their families and homeland. According to a report by the American Civil Liberties Union

released last year, pre-trial detainees in Honolulu wait an average of 71 days for trial because they cannot afford bail. Additionally, researchers found that circuit courts in Hawai'i set money bail as a condition of release in 88 percent of cases, though only 44 percent of those people managed to post the amount of bail set by the court. Moreover, the study found the average bail amount for a Class C felony on O'ahu is set at $20,000. Even with help from a bail bonding agency, posting bond, in such cases, would require an out-of-pocket expense of roughly $2,000. Finally, while officials claim that bail amounts are supposed to be based on a consideration of multiple factors–including flight risk, ability to pay, and danger to the community–researchers learned that in 91 percent of cases in Hawai'i, money bail mirrored the amount set by police in arrest warrants, an amount based solely on the crime charged. These injustices led the ACLU to declare that our state's pretrial detention system was and remains unconstitutional.

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

HB-1289
Submitted on: 2/2/2019 6:30:38 PM
Testimony for PVM on 2/6/2019 10:00:00 AM

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

Comments:

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

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS
Rep. Gregg Takayama, Chair
Rep. Cedric Asuega Gates, Vice Chair
Wednesday, February 6, 2019
10 am
Room 430

SUPPORT HB 1289 – IMPLEMENTING HCR 134 TASK FORCE RECOMMEDNATIONS

Aloha Chair Takayama, Vice Chair Gates and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons supports reforming pretrial services and we thank the Task Force members and Chair, Judge Rom Trader for their work.

Although the community supports eliminating money bail, the Task Force did not do so entirely, however, they have granted judicial discretion to the courts on Class C felonies and non-violent offenses.

The recommendations include broader discretion for police officers to issue citations for low- level offenses; consideration for the victim's concerns, and determination of appropriate supervision or detention of defendants. Developing an alternative set of options for the courts would definitely improve the quality of justice in Hawai`i. Many judges to whom I have spoken have said that they wish they had more options to address the wrongdoing happening in our community.

Changing the law to enable defendants to be released on their own recognizance and any non-financial condition is needed to ensure they appear in court. Key exceptions would be for violent crimes or history thereof, prior non-appearance in court, or existing involvement in a criminal case.

Community Alliance on prisons supports this measure and urges the committee to pass it, Mahalo for this opportunity to testify.

LATE

Aloha Chair Takayama, Vice Chair Gates, and members of the committee,

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

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

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

We have outdated policies and regulations that disproportionately place native hawaiians and Pacific islanders behind bars

Target the poor and furthermore are truly not pono at their core.
It has to stop
We are asking our governing bodies to stand up.
We want reform
A cash bail system should not be the norm.

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

This is our plea, please pass HB1289 out of committee

Mahalo,

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

R O B E R T K. M E R C E

February 5, 2019

House Committee on House Committee on Public Safety, Veterans, & Military Affairs
RE: HB 1289
HEARING DATE: February 6, 2019
TIME: 10:00 AM
ROOM: 430
POSITION: **SUPPORT**

Chair Takayama, Vice Chair Gates, and members of the committee:

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

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

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

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

Thank you for the opportunity to comment on this bill.

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TESTIMONY IN SUPPORT ON HOUSE BILL 1289

By
James Waldron Lindblad
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HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair

Rep. Cedric Asuega Gates, Vice Chair

Rep. Dale T. Kobayashi Rep. Takashi Ohno

Rep. Sam Satoru Kong Rep. Bob McDermott

Rep. Scott Y. Nishimoto

NOTICE OF HEARING

DATE: Wednesday, February 6, 2019

TIME: 10:00 A.M.

PLACE: Conference Room 430
State Capitol
415 South Beretania Street

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

Support HB 1289 with Amendments.

Testimony in Support of 1289 Yes, Please Pass, Subject to Recommendations.

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

*I support the intent of HB 1289 which I think will improve the pretrial process. Subject to the following proposed amendments.

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

Page 7, regarding Pretrial Bail Reports. This pretrial bail report should be made readily available to all competent sureties or licensed and approved bail agents or at least by direction of defendant and the defendant should not be required to deliver the pretrial bail report to the bail agent or competent surety themselves but should be able to direct delivery of the report via intake. This will help ensure quicker release when suretyship is required by the court. Bail agents can use the information to speed release when bail

is required. The public defenders could also be instructed to provide the pretrial bail report to any surety considering involvement in the pretrial release. There is nothing confidential in the pretrial bail report requiring the report to be sealed and openness would assist those persons in providing quicker release when the court decides bail should be a condition of release. I have prepared over 2000 pretrial bail reports and validated the information when I was a pretrial worker and believe this information should be shared.

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

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

Page 11, 804-B Money Bail; non-violent offenders. We must be very careful here as already those persons being arraigned are complaining on camera regarding the expectation of release on OR or SR as their crime is non-violent. We cannot write laws where the expectation of fairness becomes an entitlement. Certainly judges will have guidelines but people with 50 arrests expecting release after release as their crime is deemed not violent when every person in Hawaii whose had their house burglarized feels violated must be made clear as to legislative intent. We cannot go overboard as I believe judges know best and we cannot force every decision or instruct our judges who may know better on mandatory pretrial release and we must trust our judges to judge. Otherwise, why even book a defendant. It would be better to require the police to issue a citation release instead if the intent is not to ever require bail.

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

Page 21, Line 1 Release after Bail. When bail is offered and taken the prisoner shall be discharged from custody or imprisonment. This language has been a cornerstone to pretrial justice in Hawaii for many years and should never be deleted. Courts, police and public safety persons and especially bail agents rely on this statute to ensure fairness and prompt release when bail is posted or filed with the court or holding facility. Please add this back and do not delete or substitute this important language. Importantly, an added mention of bail bond agent, bail bond or sufficient surety language should be added here, on or around lines 2 and 3 or anywhere on page 21. Officials must know bail bonds mean bail or money and bail bonds are sufficient for release. Adding the words bail bond agent or licensed and approved sufficient surety or

something to mean bail agents that can in-fact, bail people out is needed here. How a person proves they are a legitimate bonafide bail agent would help too. Is there an approved list? Is there an approval procedure for bail agent certification or is going online to the state site showing insurance bonds are sufficient or the producer license is current the only needed proof? Whatever the proof must be to show bail agent adequacy, we should say so in this section. I think everyone requires more certainty in this section and improved language here stating bail agents are in the mix and a mention of bail agents in the committee notes as to legislative intent is required.

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

People commit crimes and society must deal with criminals. I have great faith in our DPS having worked in and around the Hawaii DPS since 1980. There is no finer group of more dedicated people anywhere. I think we, the people, must provide the needed tools for our DPS to succeed and it is in the public interest to take the advice of those DPS professionals working inside the correctional system who work on the front lines every day in Hawaii and we must provide the needed basic information to enable our judges to judge and to administer justice. We don't need to write everything down as we need to trust those persons we place in authority. We have a process to ensure pretrial justice that works pretty well in Hawaii and has been proven. As I have stated, Hawaii rates very high among states in fewest defendants per capita

and there are only about 577 actual pretrial defendants 500 felon and 77 misdomenants at OCCC out of 20,000 HPD arrests and probation violators should be counted separately of which there are about 250 HOPE and about 450 other probationers.

Pretrial justice and reforms needed to help maintain our already very high functioning pretrial process in Hawaii is something we have worked very hard to maintain and improve and that we know is among the best in the nation and is rated very high and has produced among the lowest numbers of pretrial persons waiting in jail and not able to be released pending court dates per capita in the nation but we can be #1 in Hawaii and SB 1421 will help accomplish this.

I think the HCR 134 Task Force report is one of the most informative documents on pretrial justice ever written in anywhere, and moves us forward toward achieving improved equal access to justice for all. The HCR 134 report is crystal clear, offers a road map for pretrial justice improvement and helps to provide improved equal justice for all by requiring individual decision making by the courts. Thus, the discrimination caused by machine-generated algorithms is avoided and any algorithm issues deemed discriminatory can be addressed by the court asking more questions on a one-on-one, case-by-case basis.

There are several levels of support in matters of pretrial justice contained in the HCR 134 Task Force Report, that are also contained in the HCR 85 Task Force Report. Bail agents like me, and especially pretrial workers like me, when I began my career, all know full well the significance of the substantial effort that produced such clarity and great purpose in HCR 134, regarding pretrial justice and equal treatment by judges. There is really nothing else comparable anywhere in terms of thoroughness and completeness. Judges will remain in the

pretrial process, be allowed to judge, and will have a palette of pretrial release choices at their disposal in order to ensure and protect every individual's right to equal justice. The HCR 134 report also maintains our constitutional right to bail by sufficient surety when a court determines that it is needed as an alternative to detention, to protect us all from potential government oppression that is caused by improper or unnecessary pretrial detention. The HCR 134 report achieves a balance between preferring release while avoiding the need to detain, except in extreme circumstances. We still allow our courts the pretrial detention tools required to detain, which are preserved for use by the court on a case-by-case basis.

I think parents or other relatives should be able to bail out their family members, and when a judge sets bail a paid surety bail bond should be allowable to speed up the process of release for those persons, who, in my view, comprise the vast majority of those persons arrested. Scarce state resources should be reserved for the truly needy. No person should remain in jail simply for lack of funds.

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

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

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

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

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

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

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

I think we need a new jail to replace the decrepit OCCC and we should not wait to build one. We all want fewer people in jail and we all want equal access to justice. Perhaps purchasing the Federal Detention Center will speed up improvements. In the meantime, tweaking what we have, one small step at at time and watching places like New Jersey, New Mexico, Washington, D.C., and especially now California and SB-10 and the referendum that will be heard regarding the abolition of bail to see what evolves that is better or worse.

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

I believe the two HCR reports, are correct in their thinking and correct in asking the Hawaii Legislature for the reforms they are seeking.

I think both reports can help move matters forward. All this is especially true for the HCR 134 Task Force report, and mostly true but to a lesser degree for the HCR 85 Task Force. This is because as I said before, I think we need a new jail now, and the HCR 85 report does not call for moving forward now with a new facility. Much of my thinking involves the need for contact visits for new parents as at least one of my clients, was denied contact visits with his newly born child while awaiting trial, and before his attorney could arrange for bail release with my bail bond company. Further, I see the anguish of parents and their children on a daily basis when seemingly harsh treatment for genuinely remorseful and repentant defendants is meted out in the name of our statutes. I think we need to put fewer people in prison in the first place, those who are in jail should be subject to reviews for early release, and minimum sentences should be

amendable at the discretion of the sentencing judge or parole board. I have a client (with children and a wife) who was sentenced to a very long time in prison due to an offense committed long ago. That situation focuses me on the idea of a new correctional facility, as I know that treatment of local prisoners is sometimes substandard, vicious, and lacking in compassion. As to jail and prison, I did my own poll of my clients and every single one of them prefers mainland incarceration for one reason alone: cleanliness. We must do better and that is why I participate in the process and try to ensure that valid data is provided to those administrators in authority and to our legislative decision makers.

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

in the sand being jail, as a last stop and required is very important for a high-functioning criminal justice system.

I attended almost every HCR 85 Task Force meeting and submitted testimony along with over 100 emails containing additional support and data. I submitted three sets of testimony to HCR 134 Task Force Members and offered oral testimony at the public meeting, October 13, 2017. http://808bail.com/honolulu/ My blog contains links to relevant data and reports. I have invited person interested in pretrial justice to my office and to view bail hearing and to visit the jails, booking facilities and prisons so that they may know how hard all this is. I believe the hard decisions our judges face are very difficult because I see the before and after effects to both defendant and their families as well as victims and this is why I think our community and tax payers will support our providing improvements.

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

Please support HB 1289, with amendments.

Thank you for the opportunity to present this testimony.

James Waldron Lindblad
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808-780-8887.
James.Lindblad@gmail.com

REV 02.04.2019

HB-1289
Submitted on: 2/4/2019 10:36:10 AM
Testimony for PVM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Susan Graham	Individual	Support	No

Comments:

HB-1289
Submitted on: 2/5/2019 7:09:16 AM
Testimony for PVM on 2/6/2019 10:00:00 AM

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

Comments:

I **Strongly Support HB1289** to implement the key recommendations of the Pre-Trial Task Force. This group has done a comprehensive job of considering all aspects of pre-trial practice and making recommendations.

One concern throughout reading the bill is the situation of homeless individuals, who not infrequently come in contact with the criminal justice system, if only for sleeping where or when they are not allowed to. Many long-term homeless people now have little option but to break the law due to changes in state and local laws that have increased the places they are not permitted to sleep. If they have timed out of shelters they may not have anywhere to go. This puts them at a disadvantage in dealing with the courts.

I suggest amending Part to include assessment of the impact of the pre-trial provisions on homeless individuals, including making recommendation to DPS, the police departments, and the legislature for ways to mitigate any adverse impacts identified.

Also, please consider amending Part VII, Section 22, to include establishing a system of cell phone notification of court appointments. This was done on New York City a few years ago, where it was found that people notified by cell phone and people released on cash bail did not differ in the percentages that showed up in court.

Thank you for the opportunity to testify on this bill. With or without the amendments I have suggested, I urge you to pass HB1289.

HB-1289
Submitted on: 2/5/2019 8:50:52 AM
Testimony for PVM on 2/6/2019 10:00:00 AM

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

Comments:

The Criminal Pretrial Task Force recommendations must be followed if we want our criminal pretrial practices and procedures to be fair. The HCR 134 has been called a major milestone in achieving true justice in America.

HB-1289
Submitted on: 2/5/2019 9:25:27 AM
Testimony for PVM on 2/6/2019 10:00:00 AM

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

Comments:

Support!

HB-1289
Submitted on: 2/5/2019 9:52:25 AM
Testimony for PVM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Individual	Support	No

Comments:

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A-1 Bail Bonds
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f: 808.522.1972

HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

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AMENDED NOTICE OF HEARING

DATE: Wednesday, February 6, 2019

TIME: 10:00 A.M.

PLACE: Conference Room 430
State Capitol
415 South Beretania Street

TESTIMONY IN SUPPORT - Nicholas Lindblad HB 1289
A-1 Bail Bonds 808-372-2245

Dear House Members:

I am a bail agent and believe universal adoption of the ecourt kokua electronic documents system among the Department of Public Safety, Judiciary, and various Police Departments will reduce prison overcrowding and speed up access to justice for all parties involved.

As we stand today, hard copies and faxed copies of court documents are heavily relied upon for actions such as: release from custody, recognition of a bail reduction, and ex officio bail filing.

An ever changing protocol exists where certain agencies will not fax, email, or call another agency even in the face of absolute necessity for a speedy release. Thusly, I foresee issues in delivering prompt 24 hour bail releases and ex officio filings shall House Bill 1289 pass as constructed.

If HB1289 allows for 24 hour bail posting, it will be essential for bail related documents to be transmitted electronically so that:

1) Cash bail or bail bond posted at HPD may secure the after hours release of a detainee at OCCC, or any other facility island wide without delay.
2) Recognition of a minute order and/or downloadable "order pertaining to bail," PDF confirming a bail reduction, could mean the difference between a detainee's immediate release vs. spending several additional days waiting on a hard copy submission.
3) Overwhelmed friends or family members of a detainee can simply and efficiently post bail or bond at one facility, without the added complication of submitting a hard copy to another facility. In most cases, the release process is already several hours, and in extreme cases, family on Oahu cannot possibly fly to another island to submit bail paperwork in a timely fashion.

Within the last week, I have personally had two clients that posted bail be held for an entire weekend at HPD because of a failure of each aforementioned agency to utilize information that was readily available on ecourt kokua. My clients were not released until I resubmitted hard copies of the bail bonds which were posted 2 weeks prior. The hard copies accepted by the sheriff cell block at circuit court were simply reprints of the original bond, electronically uploaded by the court, then personally downloaded and reprinted for submission. At either the HPD arrest level or sheriff cell block holding level, posting of bail could have easily been confirmed if the PDF uploaded on ecourt kokua was downloaded for review.

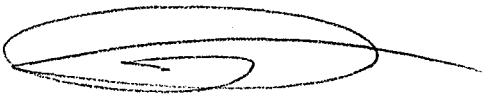
Secondly, ex officio bail filing takes days to execute without universal acceptance of ecourt kokua's updated information. I recently posted a bail via bail bond which was reduced on 11/5/18, but not posted till 11/14/18, because of the delays in drafting 1) the order pertaining to bail, confirming the bail reduction, and 2) having to physically present a bail bond filed on Oahu to HCCC for the detainee's release.

The issue of delayed release may be easily remedied upon universal acceptance of electronic documents. However, the Department of Public Safety, and various Police Departments needs to be given written permission to accept an electronic original downloaded off the ecourt kokua or submitted from another state agency, or licensed bail agent.

Furthermore, there are many instances when referring back to the ecourt kokua record could clear up issues resulting from recalled bench warrants, arrests on previously posted bails, or simply verifying up-to-date information before hard copies are transported and entered into each agency's separate systems.

For more information on the specific cases I referrence, please feel free to email me at nicholaslindblad@gmail.com

Warmest regards,



Nicholas Lindblad
Bail Bond Agent with A-1 Bail Bonds