



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

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 1421
RELATING TO CRIMINAL PRETRIAL REFORM.

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, February 5, 2019; 1:15 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Public Safety Department (PSD) supports Senate Bill (SB) 1421, 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.



SB1421
RELATING TO CRIMINAL PRETRIAL REFORM

Senate Committee on Public Safety, Intergovernmental, & Military Affairs

February 5, 2019

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **SUPPORT** SB1421, 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 impacts¹ 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

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 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 SB1421:

- **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 SB1421'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** SB1421. Mahalo piha for the opportunity to testify on this important measure.



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the Senate Committee on Public Safety, Intergovernmental and Military Affairs

February 4, 2019

S.B. No. 1421: RELATING TO PRETRIAL REFORM

Chair Clarence K. Nishihara, Vice Chair Glenn Wakai and Members of the Committee:

The Office of the Public Defender supports the intention and passage of S.B. 1421 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 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 even fit the criteria for hospital level civil commitment. This is clearly not the intention of anyone.

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 S.B. 1421.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, February 4, 2019

1:15 pm

Room 229

SUPPORT SB 1421 - IMPLEMENTING HCR 134 TASK FORCE RECOMMEDNATIONS

Aloha Chair Nishihara, Vice Chair Wakai 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.

SB-1421

Submitted on: 2/2/2019 5:22:35 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	Yes

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 too 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 pose a risk of not appearing for Court or any danger to the community.



SB 1421, RELATING TO CRIMINAL PRETRIAL REFORM

FEBRUARY 5, 2019 · SENATE PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS
COMMITTEE · CHAIR SEN. CLARENCE K.
NISHIHARA

POSITION: Support.

RATIONALE: IMUAlliance supports SB 1421, 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.

SB-1421

Submitted on: 2/2/2019 8:38:01 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki	Individual	Support	No

Comments:

TESTIMONY IN SUPPORT OF SB 1421 PRETRIAL REFORM AND BAIL

Presented by

James Waldron Lindblad
550 Halekauwila #303
Honolulu, HI 96813
808-780-8887
James.Lindblad@gmail.com

THE SENATE
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair

Senator Glenn Wakai, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, February 5, 2019

TIME: 1:15 p.m.

PLACE: Conference Room 229
State Capitol
415 South Beretania Street

A G E N D A

[SB 1421](#)
[Status &
Testimony](#)

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.

PSM, JDC/WAM

Testimony in Support of SB 1421. Yes, Please Pass, Subject to Recommendations.

My name is 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 SB 1421 which I think will improve the pretrial process. Subject to the following proposed amendments.

Page 4, (1) Time to assessment at 48 hour 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 bail 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. 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.

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 set bail 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 instruct our judges who may know better and we must trust our judges to judge.

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 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 hamstring 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 misdemeanants 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 a 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 SB 1421, with amendments.

Thank you for the opportunity to present this testimony.

James Waldron Lindblad
A1BondingHawaii.com
808-780-8887.
James.Lindblad@gmail.com
REV 02.04.2019

ROBERT K. MERCE

February 4, 2019

TO: Senate Committee On Public Safety, Intergovernmental, and Military Affairs

RE: SB 1421

HEARING DATE: Tuesday, February 5, 2019

TIME: 1:15 PM

ROOM: 229

POSITION: **SUPPORT**

Dear Chair Nishihara, Vice Chair Wakai, and members of the committee:

My name is Bob Merce. I am a retired lawyer and recently served as vice chair of the HCR 85 Task Force on prison reform. I am also on the Board of Directors of the Native Hawaiian Legal Corp.

SB 1436 adopts a reasonable approach to pretrial release, beginning with a presumption of release on own recognizance or execution of an unsecured bond. The burden of overcoming the initial presumption is placed on the prosecution, which is where it should be, and if the prosecution meets its burden, the judge has a series of options available to him or her beginning with release with conditions, followed by a surety bond, and as a last resort, a denial of bail.

Thank you for the opportunity to comment on this bill.

SB-1421

Submitted on: 2/4/2019 12:58:54 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	Yes

Comments:

SUPPORT FOR SB1421 WITH SUGGESTED AMENDMENTS

I strongly support this measure 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. It is, however, somewhat conservative relative to pre-trial changes that are being implemented in other parts of the country. Therefore, it is important that as the changes included in this bill are implemented, they be evaluated to determine whether they are having the desired effect, or whether additional changes may be needed.

One concern that came to my mind 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 and recent homeless people now have little option but to break the law due to changes in state and local laws, enlarging 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 would suggest that Part VI be amended 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 percentage that failed to show 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 SB1421