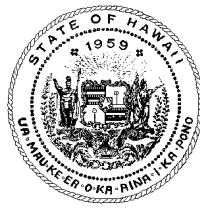


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GOVERNOR



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No. _____

TESTIMONY ON SENATE BILL 1538
RELATING TO BAIL.

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) 1538, which incorporates a key recommendation 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 is limited in verifying the self-reported financial information from offenders; therefore, it is suggested that PSD's Pretrial Service Officers be provide authorization to access for the limited purpose of viewing other State agencies' data related to employment wages and tax information.

PSD welcomes bail reform changes to assist with reducing our offender population within the community correctional centers

Thank you for the opportunity to present this testimony.

SB-1538

Submitted on: 2/4/2019 1:28:29 PM

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

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

Comments:

As this relates to SB 1421, please see testimony in support with concerns regarding that Bill. Thank you.

COMMUNITY ALLIANCE ON PRISONS

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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 1538 - REASONABLE BAIL

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.

SB 1538 requires bail to be set in reasonable amounts based upon all available information, including the alleged offense, possible punishment upon conviction, and the offender's financial ability to afford bail. It also repeals the requirement of an officer letting to bail to consider the punishment to be inflicted on conviction and the pecuniary circumstances of the party accused.

Community Alliance on Prisons supports this measure. There are too many people serving jail sentences because they cannot afford bail. This bill will remind judges that bail should be set in a reasonable amount that the defendant can pay. Criminalizing people on the lowest rung of the economical ladder is just mean and serves no penological purpose.

Research and data show that people who cannot pay bail and end up in jail are on the fast track to the big house (prison). Even a day or a few days in jail has lifelong consequences for an individual and his/her family.

Community Alliance on Prisons support this measure and urges the committee to do so as well. Mahalo for this opportunity to testify.

SB-1538

Submitted on: 2/2/2019 5:23:24 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 1538, RELATING TO BAIL

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

POSITION: Support.

RATIONALE: IMUAlliance supports SB 1538, relating to bail, which requires bail to be set in reasonable amounts based upon all available information, including the alleged offense, possible punishment upon conviction, and the offender's financial ability to afford bail; and repeals the requirement of an officer letting to bail to consider the punishment to be inflicted on conviction and the pecuniary circumstances of the party accused.

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-1538

Submitted on: 2/4/2019 1:01:59 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 SB1538 Relating To Bail

Holding people in jail simply because they cannot afford bail is immoral, if not illegal. Please pass this bill to start remedying this policy.

SB-1538

Submitted on: 2/4/2019 10:34:36 AM

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

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

Comments: