



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Finance

Representative Sylvia J. Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Friday, March 29, 2019 2:00 PM – Agenda #1
State Capitol, Conference Room 308

WRITTEN TESTIMONY ONLY

by

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge

Circuit Court of the First Circuit

Reporter, Criminal Pretrial Task Force

Bill No. and Title: Senate Bill No. 1539, S.D. 1, Relating to Bail Hearings.

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

Judiciary's Position:

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

Pursuant to House Concurrent Resolution No. 134, H. D. 1 Regular Session of 2017, Chief Justice Mark E. Recktenwald established the Criminal Pretrial Practices Task Force to examine and recommend legislation to reform Hawai‘i’s criminal pretrial system. The Task Force embarked on its yearlong journey in August 2017. It began with an in-depth study of the history of bail and the three major generations of American bail reform of the 1960s, 1980s, and the last decade. The Task Force members researched the legal framework underlying current practices, which are firmly rooted in our most basic constitutional principles of presumption of innocence,



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due process, equal protection, the right to counsel, the right to confrontation and that in America, liberty is the norm and detention is the very limited exception. We invited national experts and delved into the latest research and evidence-based principles and learned from other jurisdictions where pretrial reforms are well underway. We reviewed previous studies conducted in our state, engaged with community experts and heard the views of our local stakeholders. We visited our cellblocks, jails, ISC offices and arraignment courts in an effort to investigate and present an unbridled view of our criminal pretrial process.

The recommendations set forth in the report seek to improve our current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants' release, court appearance and protecting community safety. With these goals in mind, the Task Force submitted twenty-five recommendations, to include amending Section 804 of the Hawai'i Revised Statutes to add a new provision requiring defendants who are formally charged with a criminal offense and detained be afforded a prompt hearing to address bail. The Judiciary respectfully supports Senate Bill No. 1539, S.D. 1, in so far as it adopts the recommendation of the Criminal Pretrial Task Force.

Thank you for the opportunity to testify on this measure.



SB1539 SD1
RELATING TO BAIL HEARINGS
House Committee on Finance

March 29, 2019

2:00 p.m.

Room 308

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

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

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

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

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

Criminal justice experts have identified the pressing need for comprehensive reform of our pretrial system to adequately address the inherent and systemic inefficiency, ineffectiveness, and inequity in our bail system. The HCR134 Task Force, composed of experts and representatives from a broad collection of agencies and organizations who interface with the pretrial system, spent one and a half years examining the breadth and depth of Hawai‘i’s bail system and, in its 2018 report, made specific recommendations in many areas marked for improvement. The OHA representative to the HCR134 Task Force endorsed nearly all of these recommendations and OHA generally supports efforts to reduce the State’s reliance on cash bail, increase resources and reduce inefficiency in administrative operations and judicial proceedings, improve access to robust and relevant information related to pretrial release determinations, and reduce unnecessary pretrial detention and its impacts on families and communities.

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

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

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>.

SB-1539-SD-1

Submitted on: 3/28/2019 12:31:20 AM

Testimony for FIN on 3/29/2019 2:00:00 PM

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

Comments:

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Friday, March 29, 2019

2:00 pm

Room 308

SUPPORT INTENT – SB 1539 SD1 – RIGHT TO PROMPT BAIL HEARING

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE “CARE AND CUSTODY” OF THE STATE** as well as the approximately 5,500 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in support the intent of this measure. This bill would require prompt bail hearings **AND WE SUUGEST CLARIFYING “PROMPT” TO MEAN WITHIN 48 HOURS.** **These individuals are innocent until proven guilty.**

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

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

We urge the committee to consider our suggestion and pass this bill.

Mahalo for the opportunity to testify.

SB-1539-SD-1

Submitted on: 3/28/2019 9:36:16 AM

Testimony for FIN on 3/29/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lorenn Walker	Hawai'i Friends of Restorative Justice	Support	No

Comments:

Dear Honorable Committee Members,

Mahalo for your public service.

This bill is vital for helping to reduce Hawai'i's mass incarceration problem. We support this important measure, but please amend it to reflect that the right to a prompt bail hearing, as the bill describes, be clarified to read "within 48 hours".

Our non-profit organization was incorporated in 1981 to improve the justice system. We have a long history of assisting people harmed by crime and wrongdoing along with developing rehabilitation processes for people who have caused harm. Our work is published in books and over 40 academic articles and is replicated in other states and countries.

Please contact me if you have any questions about our support for this desperately needed bail reform and improving Hawai'i's criminal justice system, which costs over \$200 million a year to incarcerate people.

Aloha, Lorenn Walker, Director, Hawai'i Friends of Restorative Justice

SB-1539-SD-1

Submitted on: 3/27/2019 11:38:16 PM

Testimony for FIN on 3/29/2019 2:00:00 PM

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

Comments:

Aloha Representatives,

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

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

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

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

SB-1539-SD-1

Submitted on: 3/27/2019 1:42:55 PM

Testimony for FIN on 3/29/2019 2:00:00 PM

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

Comments:

Aloha, please consider:

(1) Your own commissions report that our overcrowded jails are due largely to the fact that we have an unusually high rate of pre-trial detention. Any costs associated with altering the bail system will be more than compensated for by a reduced jail population.

(2) Plans for a new jail call for a massive infusion of tax dollars--a public/private partnership is NOT the answer. Private prison companies have a woeful record of poor services. and high costs. The answer has been made crystal clear by the Task Force Report.

(3) Any money bail system disproportionately jails the poor. Incarceration, even for a short period, often results in the loss of employment and financial disaster for the family--a domino effect that only increases poverty and crime -- and its cost to our State.

(4) The Legislature was right to study criminal justice/bail reform--but WHY be hesitant to implement the recommendations of your own Task Force which has studied all aspects of this problem?

(5) The oft-quoted phrase "justice delayed is justice denied" is most apt in the context of pre-trial detention.

Mahalo for your good work,

Christine Weger, Attorney at Law

SB-1539-SD-1

Submitted on: 3/27/2019 4:08:55 PM

Testimony for FIN on 3/29/2019 2:00:00 PM

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

Comments:

SB 1539 SD1 is based on an excellent recommendation from the HCR 134 Task Force. It provides that a pretrial defendant has a right to a prompt bail hearing to determine whether they should be detained or released, and it allows defendants to be represented by counsel at the hearing.

The right to a prompt bail hearing is necessary to prevent disruption of a defendant's life (loss of job, housing, education, or custody of children, and weakening of family ties). These negative impacts of even short detentions may render a person unable to maintain themselves in the community, perhaps leading to further crime and less public safety.

By having a prompt bail hearing in which all the circumstances can be considered, the outcomes for the defendant will be fairer, improve public safety by avoiding a destabilizing impact on family and community, lower the cost for Hawaii's taxpayers, and alleviate jail overcrowding.

Please pass SB 1539 SD1.

Mahalo.

Support for SB1539 SD 1 Relating to Bail Hearings

TO: Chair Sylvia Luke, Vice Chair Ty Cullen and
Members of the House Committee on Finance

FROM: Barbara Polk

Thank you for hearing this important bill.

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

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

Please pass SB1539 SD 1.

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Date: March 29, 2019

To: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

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

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

The Sex Abuse Treatment Center (SATC) respectfully opposes S.B. 1539 S.D. 1 and expresses our concern that this measure may harm crime victims and our communities, against the interest of public safety.

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

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

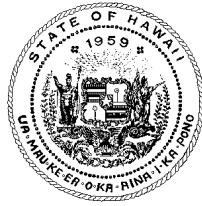
SATC submits that the criminal justice system should make it easier, not harder, for crime victims to participate in proceedings, and should prioritize protecting them from further trauma and harm.

S.B. 1539 S.D. 1 also does not address important practical concerns, such as funding and resource needs on the part of the prosecution, public defender, and courts to conduct adversarial evidentiary hearings on the factors listed on page 2 lines 12 - 21.

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

Therefore, we ask that the Committee please defer this measure.

DAVID Y. IGE
GOVERNOR



MARI McCAIG
Chair

MARTHA ROSS
Commissioner

SANDRA JOY EASTLACK
Commissioner

PAMELA FERGUSON-BREY
Executive Director

LATE

STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

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TESTIMONY ON SB 192 SD1 HD2
RELATING TO BAIL

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Friday, March 29, 2019, 3:30 PM
State Capitol, Conference Room 308

Good afternoon Chair Luke, Vice Chair Cullen, and the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide comments on Senate Bill 192 SD 1 HD 2. This bill seeks to implement recommendations of the Criminal Pretrial Task Force ("Task Force"). The Commission is currently working with other victim service providers on draft language to address Task Force recommendations that jeopardize victim and community safety.

PRE-TRIAL BAIL REFORM

The Commission supports pre-trial bail reform that results in equity - - no one should be kept in custody solely because they cannot afford to pay bail, and inefficiencies and the failure to set timely bail hearings should not result in the continued detention of inmates who would otherwise be released.

While the Commission supports bail reform provisions that are consistent with this intent, the crime victim service community has identified several provisions in the various Task Force bills that do not move this effort forward, and, instead, will negatively impact crime victim and community safety. Paramount among our concerns are the provisions that: 1) allow pretrial defendants to cross-examine crime victims during the bail process; 2) create a rebuttable presumption that defendants charged with certain crimes will be released (including burglary and gun control laws); and 3) allow for the release of a defendant who represents a danger to the person they victimized – there is no validated danger assessment tool and insufficient time is provided to make this determination. The Commission is working with other victim service organizations to draft language to address these concerns.

Thank you for providing the Commission with the opportunity to testify on Senate Bill 192 SD1 HD 2.