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

ON THE FOLLOWING MEASURE:
H.B. NO. 1289, H.D. 2, RELATING TO CRIMINAL PRETRIAL REFORM.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

DATE: Tuesday, March 12, 2019 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 229

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

Chair Nishihara 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 2017, as 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, (page 11, line 8 to page 14, line 11) 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 are evaluated, we believe this statutory fix is premature and could possibly be detrimental.

Section 15, (page 25, line 18 to page 26, line 10) 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, line 15 to page 15, line 11, and page 16, lines 1-5) 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 by a clear and convincing standard.

We suggest that the recommendations of the Task Force be allowed to be implemented, and the criminal justice system 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, line 8 to page 14, line 11), section 15 (page 25, line 18 to page 26, line 10), and section 8 (page 14, line 15 to page 15, line 11, and page 16, lines 1-5). Thank you for the opportunity to comment.

The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Public Safety, Intergovernmental, & Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, March 12, 2019 1:15 PM
State Capitol, Conference Room 229

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, H.D. 2, 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, H.D. 2, 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 Hawai‘i 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 Hawai‘i. 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 No. 1289, H.D. 2 in as much as it reflects the recommendations of the Task Force.

Thank you for the opportunity to testify on this measure.

Office of the Public Defender
State of Hawai‘i

Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Public Safety,
Intergovernmental and Military Affairs
Prepared by William C. Bagasol, Supervising Deputy Public Defender

March 11, 2019

H.B.1289, HD2: RELATING TO CRIMINAL PRETRIAL REFORM

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

The Office of the Public Defender **supports** passage of H.B. 1289, HD2.

The Office previously submitted testimony on H.B. 1289. We do not seek to repeat it here.

However, more specifically, our recommendation regarding HD 2 is to make all sections involving legal analysis or presumptions (such as those contained in Section 7) to be effective on July 1st, 2019, the same time as all the other provisions. On the other hand, we agree that it would be reasonable to allow sections that involve the allocation of resources, namely Section 11, to be effective later on January 1, 2020.

We encourage the passage of this legislation Thank you for the opportunity to comment on H.B. 1289, H.D.2.

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THE HONORABLE CLARANCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

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

March 12, 2019

RE: H.B. 1289, H.D. 2; RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Nishihara, Vice-Chair Wakai and members of the Senate Committee on Public Safety, Intergovernmental, and 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, H.D. 2.

The purpose of H.B. 1289, H.D. 2 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, H.D. 2, 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. In addition, the Department would raise concerns over the amendments made in H.B. 1289, H.D. 2, pertaining to the release of defendants who are unable to post bail that is set at an amount of $99 or less. The Department would note that bail is routinely set at a nominal amount for defendants who may have additional felony offenses that preclude their release. By removing bail for the defendant's lower level offense this amendment would preclude that person from receiving jail credit for time that he or she may be serving. Lastly, H.B. 1289 H.D. 2 proposes to define "prompt hearing" to mean as soon as possible, but within five days of arrest. The Department believes that the requirement of a bail hearing within five days of arrest is not financially feasible or practical. Currently, the courts have already been routinely conducting a prompt bail hearing at the initial arraignment date for cases charged by information or by a grand jury. The said arraignment date are conducted within seven days after the service of the Information Charging Warrant of Arrest or the Grand Jury Bench Warrant. (See, Hawaii Rules of Penal Procedure, Rule 10). The Department would note that during the arraignment date, all necessary parties, to wit, the Deputy Prosecuting Attorney, the Deputy Public Defender and the Judge, are present. Thus, the current bail hearings that are set at arraignment and plea have not placed a financial burden on the Department, the Public Defender's Office or the Judiciary. It is logical and fiscally ideal to conduct both hearings on the same date. Taking into account the fact that an individual can be held no longer then forty-eight hours without being charged and the seven days as outlined in HRPP Rule 10, amending the "prompt hearing" from five days to nine days would be more in line with the current practices. In addition, nine days would provide the Department adequate time to subpoena necessary witnesses and obtain any certified documents required to show why it would be necessary to confirm bail on a suspect.

Section 8 (pg. 14, ln 1)
This section raises similar concerns that the Department addressed in section 7. Currently, as written H.B. 1289, H.D. 2 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, H.D. 2. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT

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OUR REFERENCE JM-NC

March 12, 2019

The Honorable Clarence K. Nishihara
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
State Senate
415 South Beretania Street, Room 229
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: House Bill No. 1289, H.D. 2, Relating to Criminal Pretrial Reform

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

The HPD respectfully opposes House Bill No. 1289, H.D. 2, Relating to Criminal Pretrial Reform, in part. While the HPD supports the efforts of the Hawaii 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) 804-B, Monetary Bail; non-violent offenders which provides for certain defendants arrested and charged with a criminal violation, a non-violent petty misdemeanor offense, or a non-violent misdemeanor to be released on their own recognizance.

Currently, there is no database that 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 non-appearance. 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, reckless driving, 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 the release without bail under the proposed amendment. Given the public concern regarding traffic fatalities and impaired drivers, such offenses, while seemingly innocuous and non-violent on its face, have a significant impact on the community at large and such arrests should not result in the release on one's own recognizance.

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, H.D. 2

Thank you for the opportunity to testify.

Sincerely,

John D. McCarthy
Deputy Chief of Police

APPROVED:

for Susan Ballard
Chief of Police

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 1289, H.D. 2

A BILL FOR AN ACT RELATING TO CRIMINAL PRETRIAL REFORM

COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, March 12, 2019, 1:15 p.m.
State Capitol, Conference Room 229

Honorable Chair Nishihara, Vice-Chair Wakai, and Members of the Committee on Public Safety, Intergovernmental, and Military Affairs, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in OPPOSITION to House Bill No. 1289, H.D. 2.

This measure seeks to implement criminal pre-trial recommendations based on the findings of House Concurrent Resolution 134 Task Force Report toward a comprehensive strategy of pretrial system reform. As a result of the Task Force, agencies have made significant changes to pretrial hearings and procedures. We agree with the Task Force's recommendation that the prudent next step would be data collection and analysis following the changes that have been implemented.

The bill itself is based on a false pretense that statistically Hawai'i has one of the highest numbers of pretrial detainees in the United States. In fact, the evidence is quite the contrary, Hawai'i has one of the lowest numbers of pre-trial detainees in the country.

Pretrial reform is often characterized as focusing on fairness to low level, non-violent misdemeanants. However, the reform bill would particularly benefit suspects in cases of serious felony crimes. As proposed, the courts could encounter cases involving an individual charged with a habitual offense, wherein the individual would be released without bail or released on bail with the least restrictions imposed. This proposal fundamentally shifts the burden to the state to show that an individual on probation or parole for a felony offense or a serial offender is not a serious danger to the community, and will not engage in further illegal activity.

The measure would require courts to provide every suspect with an automatic evidentiary bail hearing within five days of arrest. This would essentially convert bail hearings from simple

proceedings into adversarial mini trials, increase court congestion, overload public defenders and prosecutors, and generally overwhelm the system.

While we appreciate the objective of improving upon current criminal pre-trial procedures, we strongly encourage the Committee to permit time for appropriate data collection and analysis, including input from a full group of stakeholders, before making any further statutory changes. We must ensure that the release of suspects from custody is appropriate and based on accurate information to effectively safeguard crime victims and the community.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i opposes the passage of House Bill No. 1289, H.D. 2. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy

Rebecca A. Vogt Like
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THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
The Thirtieth Legislature
Regular Session of 2019
State of Hawai`i

February 7, 2019

RE: H.B. 1289, H.D. 2; RELATING TO CRIMINAL PRETRIAL REFORM.

Chair Nishihara, Vice-Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Office of the Prosecuting Attorney of the County of Kaua'i submits the following testimony regarding H.B. 1289, H.D. 2, which we recommend be DEFERRED.

The purpose of H.B. 1289, H.D. 2 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 Office appreciates the Committee's intentions and agrees 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, we do have several concerns with various provisions of this wide-ranging Bill.

With regards to the specific contents of H.B. 1289, H.D. 2, we would like to note the following problems:

1. **This Bill gives unwarranted breaks to suspects of serious felony crimes.** 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.).

2. **This Bill creates unwarranted and non-feasible timelines for accurate pretrial guidance and will harm crime victims**. Our Office 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. In addition, if this is a mandated evidentiary 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. The Bill proposes to define "prompt hearing" to mean as soon as possible, but within five days of arrest. The Office believes that the requirement of a bail hearing within five days of arrest, especially an evidentiary hearing, may not be logistically possible. Moreover, no new, validated assessment tool has been identified for timely use in Hawai‘i. This provision would also convert routine bail hearings into adversarial mini-trials that will result in re-victimization of crime victims, who may be forced to testify, subject to cross-examination, at these mini-trials.

3. **This Bill does not identify a mechanism for funding the reforms called for.** The HCR 134 Task Force identified Washington, D.C. as the ideal jurisdiction to emulate; however, Washington, D.C. has a 350-person agency with a $65 million operating budget, responsible for managing the pretrial population. Our social service capacity is simply insufficient to meet the demands that would be imposed by these provisions.

Our Office participated in the HCR 134 Task Force. We strongly support the reform of our systems in meaningful ways. We support initiatives to reduce or eliminate the use of bail bonds in Hawai‘i. And we support the majority of the provisions of this Bill; however the flaws that are present cannot be overlooked or ignored.

For all the reasons above, the Office of the Prosecuting Attorney of the County of Kaua‘i recommends the DEFERRAL of H.B. 1289, H.D. 2. Thank you for the opportunity to testify on this matter.

Mothers Against Drunk Driving HAWAII
745 Fort Street, Suite 303
Honolulu, HI 96813
Phone (808) 532-6232
Fax (808) 532-6004
hi.state@madd.org

March 12, 2019

To: Senator Clarence K. Nishihara, Chair, Senate Committee on Public Safety, Intergovernmental and Military Affairs; Senator Glenn Wakai, Vice Chair; and members of the Committee

From: Carol McNamee and Theresa Paulette, Public Policy and Victim Services Committees - MADD Hawaii

Re: House Bill 1289, HD 2– Relating to Criminal Pretrial Reform

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I am Carol McNamee, submitting testimony on behalf of the Hawaii Chapter of Mothers Against Drunk Driving in respectful opposition to House Bill 1289, HD 2 relating to Criminal Pretrial Reform.

MADD appreciates the work of the Hawaii Criminal Pretrial Reform Task Force but has concerns about community safety and certain sections' unintended impact on victims of crime – especially victims of homicide, negligent homicide and negligent injury.

On page 9, Part III, Section 5. Section 803-6 HRS (b) states "In any case in which it is lawful for a police officer to arrest a person without a warrant for a non-violent class C felony, any misdemeanor, any petty misdemeanor or violation, the police officer may exercise discretion and issue a citation in lieu of the requirements of subsection (a). Those categories would include OVUII and habitual OVUII (class C felony) cases. MADD does not believe it is appropriate for these crimes to be considered for a citation in lieu of an arrest. Anyone driving with a .08 BAC is a definite threat on our highways and approximately one third of arrestees will be arrested again for the same crime.

MADD understands the stress placed on victims when they may be called to attend hearings prior to their eventual court case. It appears that this bill would allow offenders to be present and cross examine witnesses in bail hearings. Victims and witnesses could be subpoenaed into court relating to whether the impaired driver could still be a danger to them.

MADD asks you to defer HB 1289, HD2 until further discussions can be held and possible amendments made. Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS
Senator Clarence Nishihara, Chair
Senator Glenn Wakai, Vice Chair
Tuesday, March 12, 2019
1:15 pm
Room 229

COMMENTS ON HB 1289 HD2 – PRETRIAL REFORM

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 5,500 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 appreciates the work of the HCR 134 Task Force. What is disappointing to us, however, are the actions of the Honolulu Prosecutor's Office (themselves under a dark cloud) and the Attorney General, whose representatives served on the task force. Both entities have been working along with the bail industry to maintain the unjust status quo.

We object to the use of the term "offender" throughout the bill since pretrial detainees are innocent until proven guilty. Labelling people creates stigma and the state should not be using a derogatory term for someone who has not yet been proven and convicted by a court.

There are many problems with this version of the bill, however, Community Alliance on Prisons is going to focus on Part IV of this bill relating to bail.

Part IV, Section 6 (6) of the bill reads:

"Require the release of a defendant under the least restrictive conditions required to ensure:

(A) The defendant's appearance; and

(B) The protection of the public.

How does a system that relies on money bail protect public safety? Money bail doesn't keep violent people locked up; it just keeps poor people locked up. People who may pose a threat to public safety can still get out of jail; they just need to have the money to do it. Even a few days in jail can have lifelong consequences for a person. Criminalizing poverty does nothing to protect public safety.

Community Alliance on Prisons respectfully requests that the two purposes of bail be amended to read:

"The two purposes of bail:
1) It helps assure reappearance of the accused, and
2) It prevents the unconvicted individuals from suffering unnecessary imprisonment."

An ACLU report entitled "Selling Off Our Freedom"[1] from 2017:

The for-profit bail industry allows large corporations to manipulate our justice system to serve their own financial interests rather than justice. The profit-motivated bail industry is unnecessary and inherently abusive and exploitative.

For-profit bail presents barriers—to justice, to ensuring the public good, and to guaranteeing our most basic constitutional freedoms—and should be abolished. Until private companies are extricated from the pretrial justice system, those with the power to investigate, regulate, and restrain the industry must vigilantly do so, bringing it out of the shadows and building on the findings of this report.

Specifically, this report recommends the following:

- *States should **abolish** the for-profit bail industry. Elected representatives must end the bail insurance industry's financial hold on millions of Americans each year.*
- *Where for-profit bail continues, state and federal regulators, attorneys general, and legislators must immediately **investigate the industry** and **conduct ongoing oversight**. Further investigations will bring more stories to light, create a greater understanding of the perverse and harmful operations of the industry, and expose unethical activity.*
- *Judges and prosecutors should **reevaluate** their practices of assigning unaffordable bail amounts and consider instead release on one's own recognizance or, where appropriate, reasonable non-financial conditions of release. Where courts order money bail, they should **rely on unsecured bonds** rather than profit-motivated surety bonds.*
- *Legislators and public officials should respond to communities' demands and work to **create a stronger and fairer criminal justice system** that neither depends on money bail nor supports it.*
- *Corporations interested in operating ethically should take a close look at their business ties and investments and **cut any ties to the bail industry**.*

Alternatives to Money Bail

*Money bail, which drives people into the hands of private bail corporations, is not required to promote court attendance and successful release. Organizations like the **Vera Institute** have identified proven opportunities at nearly every stage in the arrest and pretrial process to avoid the unjust and costly consequences of trapping people behind bars who have not been convicted of a crime—including avoiding detention through citations, pre- or post-charge diversion, and earlier hearings.*

Simple and low-cost methods of support, including automated phone calls and even text messages, improve appearance rates dramatically without the burdens of money bail or paying for-profit bailers.

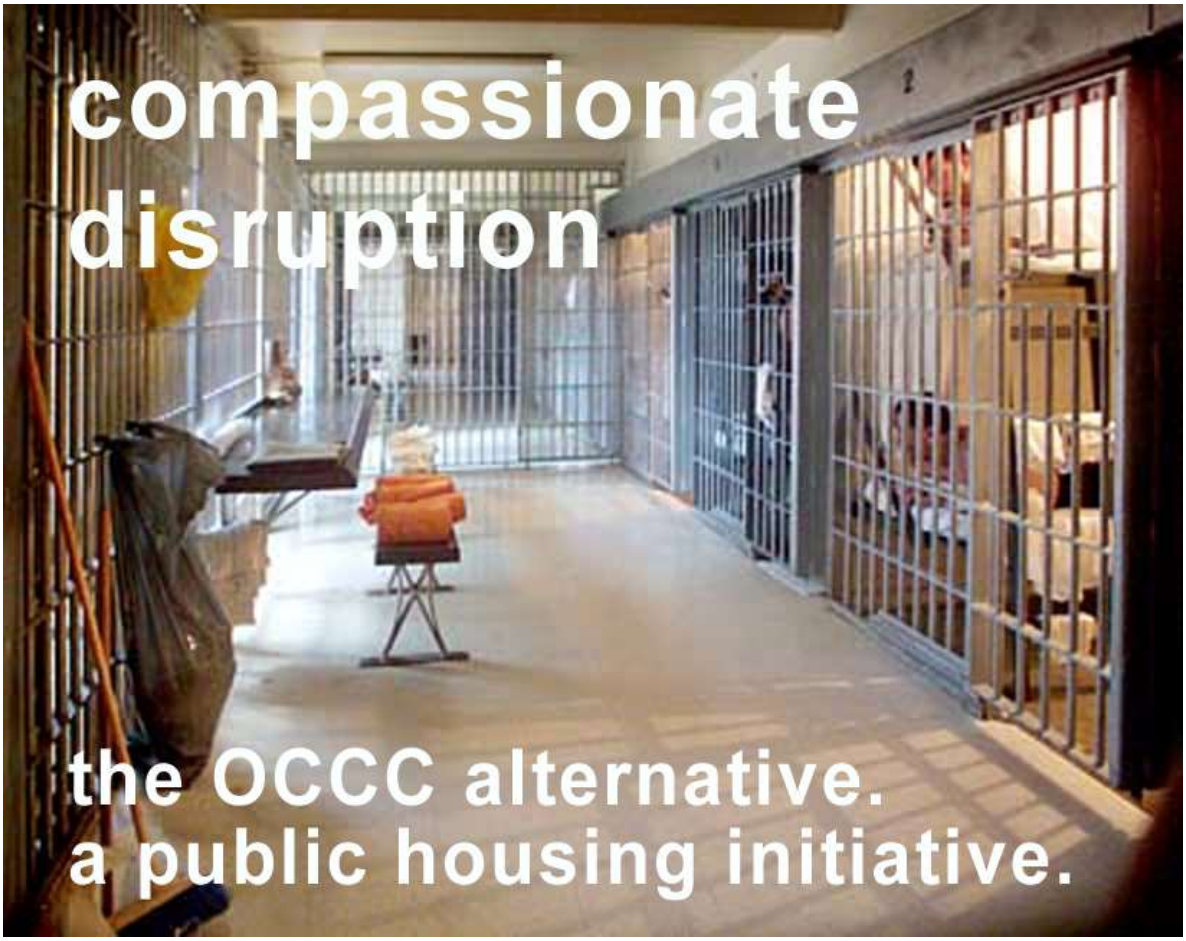
A 2005 study in Jefferson County, Colorado, found that simply calling defendants to remind them of their court date brought failure-to-appears down to 8 percent from the county's usual rate of

[1] **SELLING OFF OUR FREEDOM** How Insurance Companies Have Taken Over Our Bail System, MAY 2017. https://www.aclu.org/sites/default/files/field_document/059_bail_report_2_1.pdf

21 percent. After Oregon's Multnomah County started using an automated reminder system in 2005, its failure-to-appear rate fell 31 percent; soon the system was saving the county $1.55 million each year, according to a 2007 report by the Multnomah County Local Public Safety Coordinating Council.

Alternatives that facilitate safe and successful release and return for trial without forcing people to pay for their freedom have been implemented and proven many times over many years, yet they remain the exception due to the persistent opposition of the industry that profits from money bail.

Let's keep the purpose of bail to assure the person's reappearance in court. Bail should not be punishment for poverty.



This is the shameful reality of Hawai`i's pre-trial system.

Mahalo for this opportunity to testify.

HB 1289, HD 2, RELATING TO CRIMINAL PRETRIAL REFORM

MARCH 12, 2019 · SENATE PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS COMMITTEE · CHAIR SEN. CLARENCE K. NISHIHARA

POSITION: Support.

RATIONALE: IMUAlliance supports HB 1289, HD 2, 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.

That said, we ask the committee to consider the concerns raised by Sex Abuse Treatment Center about implementation of this measure, particularly with regard to fully funding a comprehensive community-based care management system to ensure that bail reform reduces recidivism. We note that Washington D.C.'s care management system employs 350 people, 75 percent of whom are case workers, at an annual cost of $65 million, far more than the amount currently being requested to implement the protocols established by this measure.

Additionally, we echo SATC's concerns about the development of a pretrial risk assessment tool that includes an evidence-based assessment of risk of violence toward potential victims. Survivors of sex trafficking are subjected to horrific abuse by pimps, traffickers, and sex buyers. 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.

Sex trafficking is a profoundly violent crime. The average age of entry into commercial sexual exploitation in Hawai'i may be as low as 14-years-old, with 60 percent of trafficked children being under the age of 16. Based on regular outreach and monitoring, se estimate that approximately 150 high-risk sex trafficking establishments operate in Hawai'i. In a recent report conducted by the State Commission on the Status of Women, researchers from Arizona State University found that 1 in every 11 adult males living in our state buys sex online. When visitors are also counted, that number worsens to 1 in every 7 men walking the streets of our island home and a daily online sex buyer market of 18,614 for O'ahu and a total sex buyer population for the island of 74,362, including both tourists and residents.

ASU's findings are grim, but not surprising to local organizations that provide services to survivors of sex trafficking. IMUAlliance, for example, has trained volunteers to perform outreach to victims in high-risk locations, like strip clubs, massage parlors, and hostess bars. More than 80 percent of runaway youth report being approached for sexual exploitation while on the run, over 30 percent of whom are targeted within the first 48 hours of leaving home. With regard to mental health, sex trafficking victims are twice as likely to suffer from PTSD as a soldier in a war zone. Greater than 80 percent of victims report being repeatedly raped and 95 percent report being physically assaulted, numbers that are underreported, according to the United States Department of State

and numerous trauma specialists, because of the inability of many victims to recognize sexual violence. As one underage survivor told IMUAlliance prior to being rescued, “I can’t be raped. Only good girls can be raped. I’m a bad girl. If I *want* to be raped, I have to *earn* it.”

Accordingly, we believe that it is imperative that any risk assessment tool developed pursuant to this measure demonstrate an ability to assess the prospect of re-traumatization toward victims, so that those we serve are not forced to live in fear that slavetraders will seek them out upon release. Finally, we, too, are concerned about expanding the discretion of law enforcement to issue citations in lieu of arrest for non-violent class C felonies, per Section 5 of this proposal. We note that solicitation of a minor for prostitution–i.e., buying sex with a child–is not currently considered a violent crime under HRS §351-32, nor is the act of “revenge porn”, which is criminalized as a class C felony under HRS section §711-1110.9(1)(b). Allowing citations to be issued in lieu of arrest for individuals who pay for sex with our keiki or humiliate another person by vengefully disclosing lewd images of that individual would be an abhorrent step backward in our state’s march toward ending sex trafficking and sexual assault, especially at a time when local police departments are under increased scrutiny for buying sex from trafficking victims, rather than rendering aid.

HB-1289-HD-2
Submitted on: 3/8/2019 3:59:19 PM
Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for 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.

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI THE SEX ABUSE TREATMENT CENTER

Date: March 12, 2019

To: The Honorable Clarence Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

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

RE: Testimony in Opposition to H.B. 1289 H.D. 2
Relating to Criminal Pretrial Reform

Good afternoon Chair Nishihara, Vice Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

The Sex Abuse Treatment Center (SATC) respectfully opposes H.B. 1289 H.D. 2 and asks that the Committee please defer this measure.

The Pretrial Task Force that drafted much of H.B. 1289 H.D. 2's operative language did not include crime victims and stakeholder social service agencies, and it is our understanding that many important issues were not addressed.

We believe that additional work is needed to ensure that the release of suspects from custody in Hawaiʻi is appropriate and based on accurate information, and that crime victims and the community are kept safe.

<u>Suspects in Serious, Felony Crime Cases</u>

The current language of H.B. 1289 H.D. 2 would allow the release of suspects in cases of serious, felony crimes, rather than focusing on providing fairness to low-level, non-violent misdemeanants.

Section 5 of the bill makes many Class C felonies citable. This means that in cases which would normally result in arrests, suspects will receive citations and remain in the community. These Class C felonies include violation of privacy, promoting pornography for minors, solicitation of a minor for prostitution, theft, criminal property damage, identity theft, and drunk driving crimes.

Section 8 of the bill also gives suspects in many Class B felonies a strong presumption that they will be released. Even if the suspect is more likely than not to be a no-show in court, commit more crimes, or be dangerous, the court would be

compelled to release them. These Class B felonies include higher level theft, criminal property damage, identity theft, and burglary crimes.

SATC finds this particularly concerning because we note that many of these crimes are red flags for sexual offending.

Harm to Crime Victims and Witnesses

Section 7 of H.B. 1289 H.D. 2 gives suspects the right to present and cross-examine witnesses in bail hearings. This means that victims and witnesses can be subpoenaed into court for a contentious, adversarial hearing on the issue of whether the suspect is a danger to them, with the risk that the suspect could be released immediately after the hearing.

This will increase the number of times that victims and witnesses have to appear in court, traumatize and intimidate them, and force some to discontinue their participation in the criminal justice process, distorting public safety outcomes.

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

Lack of Case Management, Monitoring, and Social Services

The task force found that a parallel system of case management, monitoring, and social services, like housing, mental health care, and substance abuse treatment, should be developed in order to safeguard the community against additional crime and ensure suspects' appearance in court.

The task force identified Washington, D.C., as the "gold standard' best practice with a 350 person agency (75% case managers) and a $65 million annual operating budget.

Although Hawai'i has significantly more property crime than D.C. – the crimes most affected by pretrial reform – we note that the Department of Public Safety (DPS) requested additional funds of only $2.3 million annually for this undertaking, to be appropriated in Section 27 of the bill. In addition, there is no indication that the community has the capacity to readily manage a significant increase in the number of released suspects and their social service needs.

Without first establishing an infrastructure for case management, monitoring, and social services, pretrial reform as described in H.B. 1289 H.D. 2 should not move forward. This infrastructure, as noted by the task force, is necessary to protect the public.

Inadequate Time for Accurate Pretrial Guidance

The courts rely on DPS bail reports to inform release decisions. We believe that Section 3 of H.B. 1289 H.D. 2 will rush the production of bail reports and make them inaccurate by increasing the complexity of suspect assessments while decreasing the time allowed to create the report to 2 days.

DPS currently predicts if a suspect will appear in court or commit more crimes using a validated risk assessment tool. H.B. 1289 H.D. 2 would require that DPS further predict if the suspect is a

danger to individuals, such as victims and witnesses, or the community—an additional, complex inquiry.

However, no new tool for this inquiry has been identified or validated for timely use, and we note that such an assessment would involve the victims and witnesses, as well as other criminal justice system stakeholders outside of DPS. It is our understanding that this could not be performed within the timeframe provided by H.B. 1289 H.D. 2.

H.B. 1289 H.D. 2 also directs DPS to ask a suspect about their finances with only limited access to check state tax records, and no way to examine a suspect's assets. As such, the current language of the bill would result in inaccurate reports of suspect finances, leading to artificially low bail amounts. This will particularly benefit suspects who obtain income from illicit sources, like sex trafficking, and do not report it to state tax authorities.

The possibility that suspects who may be a danger to crime victims, witnesses, and the community at large may be released based on hurried, inaccurate information is of particular concern to SATC.

Procedural Changes with Negative Consequences

Section 7 of H.B. 1289 H.D. 2 requires courts to rush and provide every suspect an automatic evidentiary bail hearing within 5 days of arrest. This converts the bail hearings from simple proceedings to adversarial mini trials that will increase court congestion and overwhelm the system.

SATC further notes that agencies that worked on the Pretrial Task Force are currently testing changes to their procedures that could become best practices for Hawai'i, based on what they learned from participating in the task force. Those agencies asked the Legislature to hold off on statutory changes for now to allow time to measure the effects of these pilot programs.

We appreciate the opportunity to testify on H.B. 1289 H.D. 2, and respectfully ask that the Committee please defer this measure.

HB-1289-HD-2
Submitted on: 3/11/2019 12:39:35 PM
Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

HB-1289-HD-2
Submitted on: 3/10/2019 11:13:28 AM
Testimony for PSM on 3/12/2019 1:15:00 PM

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

Comments:

SUPPORT

HB-1289-HD-2
Submitted on: 3/11/2019 7:36:53 AM
Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

HB-1289-HD-2
Submitted on: 3/11/2019 8:23:11 AM
Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R Siciliano	Individual	Support	No

Comments:

Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs,

I support the reduction and elimination of cash bail in Hawaii. Cash bail in its current form is punitive - pretrail excessive punishment - that falls hardest on those least able to afford it, disrupting their lives and their families' and leading many to be endlessly caught up in the criminal justice system.

Thank you.

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

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

March 11, 2019

TO: Committee on Public Safety, Intergovernmental and Military Affairs
RE: HB 1289, HD 2
HEARING DATE: Tuesday, March 12, 2019
TIME: 1:30 PM
CONF. ROOM: 229
POSITION: **SUPPORT**

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

I am a retired lawyer and recently served as Vice Chair of the HCR 85 Task Force on prison reform. I am writing in **support of HB 1289, HD 2** which seeks to implement recommendations of the HCR 134 Task Force on pretrial procedures.

The positive aspects of HB 1289, HD 2 is that it would probably result in a slight increase in the number of low level, non-violent, individuals who would be released from jail on their own recognizance, and it would create a research institute to examine all aspects of the criminal justice sytem.

The primary problem with HB 1289, HD 2, is that it does not address the fundamenatl unfairness of the cash bail system. It retaines cash bail for most offenses, and imposes so many limitations on the presumption of release on own recognizance for low level offenses that the limitations swallow up the rule. Worse yet, the exceptions to release on own recognizance – such as a conviction for a misdemeanor crime of violence within the past 20 years – do not appear to be evidenced-based or rationally related to the risk that a person is a danger to the public or will not appear for trial.

Thank you for the opportunity to comment on this bill.

SUPPORT FOR HB1289 HD2 Criminal Pre-Trial Reform

TO: Chair Clarence Nishihara, Vice Chair Glen Wakai and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs

FROM: Barbara Polk

I strongly support HB1289HD2 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 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 II to include assessment of the impact of the pre-trial provisions on homeless individuals, including making recommendations 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 in 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 HD2.

From: Carla Allison
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Carla Allison
Date: Saturday, March 9, 2019 9:16:16 PM

Testimony in Support of HB1289

Name	Carla Allison
Email	cbm@hawaii.rr.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Elizabeth O'Connor
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Elizabeth O'Connor
Date: Monday, March 11, 2019 3:25:26 AM

Testimony in Support of HB1289

Name	Elizabeth O'Connor
Email	island.auntee@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Ida Peric
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Ida Peric
Date: Saturday, March 9, 2019 7:01:21 PM

Testimony in Support of HB1289

Name	Ida Peric
Email	peric.ida@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Jun Shin
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Jun Shin
Date: Saturday, March 9, 2019 6:37:55 PM

Testimony in Support of HB1289

Name	Jun Shin
Email	junshinbusiness729@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Kainani Derrickson
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Kainani Derrickson
Date: Sunday, March 10, 2019 3:59:52 PM

Testimony in Support of HB1289

Name	Kainani Derrickson
Email	kainanid@hawaii.edu
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, My name is Kainani Derrickson. I am testifying in support HB 1289 which implements the recommendations of the House Concurrent Resolution 134 Task Force on Pretrial Procedures. I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant’s constitutional rights. However, requiring cash bail does not achieve any of these outcomes. An astounding 50% of detainees in our detention facilities do not post bail, primarily because they cannot afford it. These detainees spend an average of 90 days held behind bars pre-trial at the cost of $146/day per person. Notably, detaining individuals for weeks or months before their trial simply because they are too poor to post bail represents a substantial cost to taxpayers and further exacerbates the overcrowding in already overburdened detention facilities. Besides this, cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative

outcomes like homelessness, health problems, and crime: costs for which we all pay the price.
Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart pretrial reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying
the intent of bail. Hawaii is poised with the opportunity to make our justice system not only more
just but also less expensive. For the reasons set forth above, I respectfully ask the Committee to
PASS HB 1289.

Thank you for the opportunity to testify on this bill.

From: Nathan Yuen
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Nathan Yuen
Date: Monday, March 11, 2019 1:36:45 PM

Testimony in Support of HB1289

Name	Nathan Yuen
Email	808nateyuen@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Shannon Rudolph
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Shannon Rudolph
Date: Monday, March 11, 2019 10:28:21 AM

Testimony in Support of HB1289

Name	Shannon Rudolph
Email	shannonkona@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Shawn Valente
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Shawn Valente
Date: Saturday, March 9, 2019 11:43:04 PM

Testimony in Support of HB1289

Name	Shawn Valente
Email	Svblue.mist2322@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: david derauf
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - david derauf
Date: Sunday, March 10, 2019 3:59:46 PM

Testimony in Support of HB1289

Name	david derauf
Email	derauf@hawaii.edu
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Kevin Landers
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Kevin Landers
Date: Sunday, March 10, 2019 9:08:59 AM

Testimony in Support of HB1289

Name	Kevin Landers
Email	kvnplndrs@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha You must put a stop to caging our cousins for no better reason than their lack of money. This is exactly what you are allowing to happen if you believe in their constitutional right to an assumption of innocence until proven guilty by a court. Mass incarceration begins with punitive pre-trial detention, and affects people disproportionately according to race. Hawaiians are thus subject to the cosmogenic violence that is ripping them from their homeland and sent to a for-profit prison on the continent. This begins with money bail. Begin ending it now with this bill. Mahalo,

From: Landon Li
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Landon Li
Date: Sunday, March 10, 2019 7:39:49 PM

Testimony in Support of HB1289

Name	Landon Li
Email	landonli@hawaii.edu
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Leilani Riahi
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Leilani Riahi
Date: Sunday, March 10, 2019 4:45:53 PM

Testimony in Support of HB1289

Name	Leilani Riahi
Email	lriahi7@hawaii.edu
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Marion McHenry
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Marion McHenry
Date: Sunday, March 10, 2019 2:01:21 PM

Testimony in Support of HB1289

Name	Marion McHenry
Email	bob-marion@hawaiiantel.net
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

From: Shari Ilander
To: PSMTestimony
Subject: Re: Testimony in Support of HB1289 - Shari Ilander
Date: Sunday, March 10, 2019 11:08:29 AM

Testimony in Support of HB1289

Name	Shari Ilander
Email	akshario@gmail.com
Subject	Testimony in SUPPORT of HB1289
Testimony	Aloha Chair Nishihara, members of the Committee on Public Safety, Intergovernmental, and Military Affairs, I support a reduction or elimination of our state's reliance on cash bail in determining pretrial incarceration. Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant's constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties. Cash bail has serious societal costs. Incarceration disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, increasing the likelihood of negative outcomes like homelessness, health problems and crime: costs for which we all pay the price. Please pass HB1289. Mahalo! Mahalo,

DAVID Y. IGE
GOVERNOR

LATE

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

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

No. _____

TESTIMONY ON HOUSE BILL 1289, HOUSE DRAFT 2
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, March 12, 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 House Bill (HB) 1289, House Draft (HD) 2, which incorporates key recommendations of the House Concurrent Resolution No. 134 (2017), Criminal Pretrial Task Force. PSD offers the following suggestions to help ensure that sufficient resources are provided to successfully meet the objectives underlying the Task Force recommendations.

The new language in Part II, Section 3, referencing Section 353-10(3) and (9), requiring a risk assessment and bail report to be completed within two days of admission to a community correctional center, will significantly overtax existing PSD staff and require additional resources, including, but not limited to, funds for staffing, office space, and equipment. PSD provides a conservative estimate for a suggested appropriation in Part, IX, Section 27 of this measure.

The Department respectfully suggests adding language in Part II, Section 3, Section 353-10(8) by specifying the State agencies with the relevant financial data systems that PSD's pretrial services officers need to access. PSD recommends the following addition:

> "… provided limited access for the purpose of viewing the Department of Labor and Industrial Relations' and the Department of Taxation's data system(s) related to an offender's employment history including wages and financial tax information;"

PSD also suggests that in order to ensure the timeline requirements established by Part II, Section 3, Section 353-10(9), that the following language be added prior to "a copy of" on page 7, line 13:

> "A copy of the pretrial bail report shall be electronically filed by the Department of Public Safety staff utilizing the Judiciary Electronic Filing and Service System (JEFS) to ensure timely access by the prosecuting attorney, offender or offender's defense counsel, and the courts."

In addition, PSD suggests that the language in Part IV, Section 7, Section 804-B (c), allowing for release by the director of public safety be consistent with the language in HRS 353-36: Release of Misdemeanants to Prevent Overcrowding, to ensure that a conflicting or double standard is not created.

PSD reiterates its previous concern in Part IV, Section 11, Section 804-7, which requires that an individual be able to post bail 24 hours a day, 7 days a week at a community correctional center. The fact remains, the Department does not currently have sufficient and appropriately trained staff to implement this requirement, as the proposed duties and classification specifications would be the responsibility of staff not currently on a 24-hour, 7-day a week schedule. It follows that additional staff will be required, as well as, consultation with the relevant Collective Bargaining Unit Representative. PSD provides a conservative estimate for a suggested appropriation in Part, IX, Section 27 of this measure.

PSD also suggests adding language to Part V, Section 15, Section 353-__ (b) to ensure that the notification required to the court, prosecuting attorney, and defense counsel may be fulfilled by correspondence, as follows:

"(b) For each review conducted pursuant to subsection (a), the relevant community correctional center shall transmit its findings and recommendation by

correspondence to the appropriate court, prosecuting attorney, and defense counsel."

In addition, the Department would recommend the deletion of Part VIII, Section 25, as its enactment would be premature, given PSD's recent contracting for a new validation study of the Ohio Risk Assessment System's Pretrial Assessment Tool (ORAS-PAT) for the Hawaii pretrial offender population. Any changes to the pretrial risk assessment prior to the completion of the validation study would be hasty. It should also be noted that the factors included in this section are already incorporated in the ORAS-PAT procedures currently utilized by PSD.

PSD appreciates the recognition of the substantial additional costs and resources that will be required in instituting the bail reform objective, focused on evaluating whether or not to detain an offender or releasing an offender on the least restrictive non-financial conditions, with the inclusion of budgetary appropriations in Section 22 and Section 27. Therefore, the Department respectfully requests in Section 22, the sum of $750,000 for fiscal year 2019-2020, to be continued in subsequent fiscal years, for the purpose of procuring service contracts, as referenced in (1) to (5). PSD respectfully requests the following appropriation for Section 27 in fiscal year 2019-2020 and in subsequent fiscal years, while considering any future cost increases:

Social Worker/Human Service Professional V	(1)	$ 64,476
Social Worker/Human Service Professional IV	(20)	$1,146,480
Office Asst. IV	(2)	$ 73,464
Working Differential	(23)	$ 46,000
Fringe Benefits		$ 663,668
Moving Expenses		$ 15,000
Office Equipment		$ 176,820
Office Space Lease (2 locations)		$ 65,000
Office Furniture		$ 60,000
Training Expense and Travel		$ 20,000

PSD welcomes these comprehensive changes to the criminal pretrial procedures, which we believe will assist in reducing the offender populations within the community correctional centers.

Thank you for the opportunity to present this testimony.

OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

LATE

HB1289 HD2
RELATING TO CRIMINAL PRETRIAL REFORM
Senate Committee on Public Safety, Intergovernmental, & Military Affairs

March 12, 2019 1:15 p.m. Room 229

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB1289 HD2, a measure which would effectuate nearly all of the recommendations of the HCR134 Task Force on Pretrial Reform that 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]

To address the inefficiency, ineffectiveness, and inequity inherent in our bail system, comprehensive reform of our pretrial system is needed. Accordingly, the HCR134

[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.

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 for and the efficiency of pretrial 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 HD2:

- **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 a 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 while HB1289 HD2's proposed reforms to the pretrial system may limit and significantly reduce the use of cash bail, they stop short of completely eliminating the use of cash bail and its potential impacts on poor communities. Therefore, OHA also supports several other measures that would likewise progressively reduce the State's overreliance on cash bail, such as by prioritizing the

consideration of all other non-financial conditions of release. Moreover, companion measures in OHA's 2019 Legislative Package, HB175 and SB192, the latter of which has been passed by the Senate as SB192 SD1, 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 HD2. Mahalo piha for the opportunity to testify on this important measure.

DAVID Y. IGE
GOVERNOR

MARI McCAIG
Chair

MARTHA ROSS
Commissioner

SANDRA JOY EASTLACK
Commissioner

PAMELA FERGUSON-BREY
Executive Director

LATE

STATE OF HAWAI`I
CRIME VICTIM COMPENSATION COMMISSION
1164 Bishop Street, Suite 1530
Honolulu, Hawai`i 96813
Telephone: 808 587-1143
FAX 808 587-1146

TESTIMONY ON HB 1289 HD2
RELATING TO CRIMINAL PRETRIAL REFORM
by
Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

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

Tuesday, March 12, 2019, 1:15 PM
State Capitol, Conference Room 229

Good afternoon Chair Nishihara, Vice Chair Wakai, and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to request deferral of House Bill 1289, HD2. This bill seeks to implement some of the recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017 ("Task Force"). The Commission requests that the Committee defer HB 1289, HD2, pending a review of data collected from the current implementation efforts and to address the provisions that jeopardize victim and community safety.

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

Defer Pending Results of Data Collections
Since the Task Force convened, various stakeholders have already implemented some of the proposed recommendations. In the Task Force's report to the legislature, the Task Force recognized the need for data collection in order to promote best practices for bail and pre-trial release. HB 1289, HD2, should be deferred until there has been more opportunity to study the results and effectiveness of the new processes.

Provisions Put Victims at Risk
The Commission is concerned that the rush to release offenders will result in dangerous offenders being released into the community.

Provisions of Section 5 in HB 1289, HD2, allow the police to give citations for certain Class C felonies. These felonies include gun control laws, impersonating an officer with a firearm, escape, bribing witnesses and jurors, failing to register as a sex offender, violations of privacy, promoting pornography, soliciting a minor for prostitution, theft, criminal property damage, identify theft and serious impaired-driving crimes. The fact that these offenders are simply given a citation and remain in the community unsupervised jeopardizes the safety of the victim and the public.

In Section 8, HB 1289, HD2, creates a presumption that offenders charged with certain Class B and Class C felonies shall be released or admitted to bail under least restrictive conditions. This presumption increases the burden of proof that the prosecutor must meet in order for an offender who poses a serious risk of flight, obstruction of justice, danger to the community, or engaging in future illegal activity to be detained on bail.

The Task Force recommended bail reforms in conjunction with improvements in pre-trial assessments, pre-trial bail reports, and increasing options for offenders to be supervised upon release into the community. However, at this time there is no validated pre-trial assessment tool used to measure the risk of danger to the community. There are not enough resources available to provide housing and other support services, thereby jeopardizing public safety and the ability of offenders to succeed once released. Promoting the release of offenders before the new risk assessment tool is available and before there are additional community resources for offender supervision could result in the release of dangerous offenders jeopardizing victims and the community.

No Victims Voice on the Task Force
The needs of crime victims are often marginalized during criminal justice planning. We note that the Hawai‘i Pretrial Task Force did not include representatives from the Victim Service Community as full members of the Task Force. As such, the Task Force excluded an important voice in the criminal justice planning process. The impact of crime and the criminal justice process on a victim needs to be taken into consideration to ensure that the system is fair to victims, the offenders, and the community.

Thank you for the opportunity to testify and request that the Committee defer HB 1289, HD2.

LATE

ACLU Hawai'i

Committees:	Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing Date/Time:	Tuesday, March 12, 2019, 1:15 p.m.
Place:	Conference Room 229
Re:	*Testimony of the ACLU of Hawai'i with Comments on H.B. 1289, H.D. 2, Relating to Criminal Pretrial Reform*

Dear Chair Nishihara, Vice Chair Wakai, and members of the Committee,

The American Civil Liberties Union of Hawai'i writes **with comments** regarding H.B. 1289, H.D. 2, which adopts the recommendations of the Criminal Pretrial Task Force (Task Force) convened pursuant to House Concurrent Resolution No. 134 (2017). While we support the general intent behind this legislation and agree with some of the Task Force's findings, we have concerns that with its broad exceptions to the eligibility for non-cash conditions of release, this legislation will do little to address the problems within our pretrial system.

Bail, in any form, *should never be used* as a punitive tool, and any conditions set for release should be only as restrictive as is absolutely necessary to ensure that the accused shows up to court. In United States v. Salerno, 481 U.S. 739, 755 (1987) the United States Supreme Court advised that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." But over the years our State has fallen short of that dictate. And, unfortunately, the list of exceptions in H.B. 1289 is not "carefully limited" and will only cement a system in which detention prior to trial *is* the norm. In its current form, H.B. 1289 seems to assume guilt upon arrest, when under our system of government precisely the opposite is supposed to be true.

While we appreciate the extensive work and deliberation behind the Task Force's recommendations to improve our broken pretrial system, and agree with some of the Task Force's proposals — such as allowing the accused to post bail 24/7 — H.B. 1289 does practically nothing to prevent the continued abuse occurring in our cash-based system and this system's disparate impact on the poor.

We have delineated our particular concerns and related recommendations with H.B. 1289, H.D. 2. in the following table. We are happy to continue this conversation and to work with the Committee on developing alternative language.

Provision(s) of H.B. 1289, H.D. 2	**Description of provision(s)**	**Summary of concerns**	**Recommendation**
Part III, Section 4 Part IV, Section 6, Part IV, Section 7 Part IV, Section 8 Part VII, Section 19 Part VII, Section 20 Part VII, Section 21	Various provisions stating the purpose of the legislation, establishing a rebuttable presumption of release, granting exemptions to the presumption, and implementing/expanding	The risks proposed to be considered are inconsistent throughout this legislation. At different points in the bill, the list of risks appears to include:	As a matter of policy, the appropriate risks should be that of: 1) intentional, willful flight; or 2) specific threat of imminent harm to an

	alternatives to pretrial detention.	non-appearance, protection of the public, obstruction and witness tampering, the safety of any other person or the community. Current framing regarding public safety creates too broad a net. Further, obstruction and witness tampering are separate crimes and should not be an additional consideration.	identifiable person or persons.
Part IV	Requires an individual's release on their own recognizance for certain offenses with exemptions. Creates a rebuttable presumption of release on one's own recognizance, but grants broad exemptions to the presumption.	The carve-outs in this provision are not linked to the purpose of bail, which is to guarantee appearance in court. The exemptions are linked to offense, rather than individualized risk of flight or threat of imminent harm to an identifiable person or persons. These carve-outs essentially *assume* the person arrested will be convicted, which is backwards from "innocent until proven guilty."	These carve-outs should be eliminated.

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Part II, Sections 2 & 3	Requires risk assessment tools to be reviewed and subject to validation every 5 (five) years.	Risk assessment tools should be revalidated annually.	Replace "every 5 (five) years" with "annually."
Part IV, Section 7, §804-A	Defines "prompt hearing" as occurring within 5 (five) days of arrest.	This is too long. Best practices require hearings to be held within 48 hours.	Replace "five days" with "forty-eight hours."
Part IV, Section 9; Part IV, §804-4; Part IV, Section 12, §804-7.1; Part IV, Section 20, §804-7.1	Allows for liberty-restricting conditions of release.	These restrictions should be tailored to individual circumstances. Courts should not create a blanket requirement for individuals to pay for things like electronic monitoring as a condition of their release.	Insert language providing that all conditions of release should be individually tailored to the circumstances, and the least restrictive conditions necessary to mitigate the above-mentioned risks. Further, liberty-restricting conditions such as no contact orders, geographic restrictions, curfews, GPS monitoring, house arrest and other restrictions on travel/movement should be only after a finding by a judge based on clear and convincing evidence and as a last resort if it is the least restrictive condition or set of conditions. Language restricting an individual's association is invalid and should be stricken from statute.

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Part IV, Section 9, §804-4; Section 12 & Section 20 §804-7.1;	Maintains statutory requirement/allowance that bail be revoked if an individual does not meet their conditions of release.	There should be due process prior to revocation of bail and imprisonment. Detention should not be the default outcome.	Insert language requiring a due process hearing prior to the revocation of bail and imprisonment. Courts should consider the least restrictive conditions that may be more appropriate for release.
Part IV, Section 12, §804-7.1	Allows for monetary bail to be set to address dangerousness.	This is not an appropriate use of money bail. There is no connection between money bail and public safety.	Money bail should be limited to address the risk of a specific threat of imminent harm to an identifiable person or persons.
Part II, Section 3, §353-10(b)(8)	Requires intake service centers to make an inquiry into the individual's ability to afford bail.	The ability to pay inquiry is not time limited and does not include any presumptions of inability to pay.	Insert language stating that a court shall only consider a person's self-reported present ability to pay (within 24 hours). Further, there should be a presumption of inability to pay if a person receives state welfare aid. Money bail should not be set for minors.
Part II, Sec. 3, § 353-10	This provision seems to require intake service centers to conduct risk assessment tools for all arrestees.	This is labor-intensive and clogs up the system, preventing others from receiving timely assessments.	Insert language to create a group of persons for whom there is mandatory release (e.g., traffic offenses, petty misdemeanors, and misdemeanors) and are excluded from

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			being given a risk assessment.
Part II, Section 3, §353-10(b)(3), §353-10(b)(9)	Requires intake service centers to conduct internal pretrial risk assessments.	Pretrial risk assessment tools have been shown to have racial bias. If risk assessment tools are to be used, there needs to be strict standards to ensure that the tool is free from racial bias.	Insert language providing that, as part of the validation, it should be specifically required that both the rate of accurate predictions and the rate of failed predictions be equal across racial groups.
Part II, Section 3, §353-10(b)(9)	Requires that judges receive the "executed risk assessment delineating the scored items, the total score, any administrative scoring overrides, and written explanations for administrative scoring overrides.	The adoption and use of risk assessment tools should be transparent. However, in individual cases, judges may be unduly prejudiced by tools that are not scientific and are based on the normative judgement of the tool developer. For example, someone who is high risk may only have a 20% chance of failing to appear, and when this is labeled as "high" it bears a connotation of severity that may not actually translate when people see the numbers.	Judges should not receive the score or the categorized risk output of a risk assessment (i.e., the "low," "medium," or "high" determination). Instead, they should just get the report and recommendation from pretrial services and listed substantiating information, but not the score, to assist in the decision.
Throughout	Uses the term "offenders" to describe individuals who have been arrested or are	The individuals meant to be included in this term have not been convicted of the	References to "offender(s)" should be deleted and replaced by "person,"

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	being considered for pretrial release or detention.	crime of which they are accused. They are not, therefore, "offenders."	"people" or "individual(s)."

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

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LATE

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

AMENDED NOTICE OF HEARING

Testismony of James Waldron Lindblad.

DATE: Tuesday, March 12, 2019

TIME: 1:15 p.m.

PLACE: Conference Room 229
State Capitol
415 South Beretania Street

A M E N D E D A G E N D A

HB 1289, HD2 (HSCR905) 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. (HB1289 HD2)	PSM, JDC/WAM

The purpose of H.B. 1289, H.D. 2 is to examine the current criminal pretrial procedures and to implement recommendations based on the findings of House Concurrent Resolution 134 Task Force report. I 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.

As such, many states are reviewing bail and coincidentally, on March 9, 2019, another state working on similar bail matters decided the following.

"Charleston, WV – Legislators from the Mountain State rejected calls for bail reform and sent to pasture House Bill 2190: Modifying Bail Requirements as the session came to a close for 2019. H.B. 2190, which was supported by the ACLU, died on the calendar March 9, 2019.

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

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

Bail is typically a third-party provided benefit that most often does not depend on the resources of the defendant. It is more akin to a test of your ties to the community, and whether the community believes in you to comply with release conditions. In addition, many defendants are negotiating plea deals involving time served, and that calculation is never backed out of the equation, even though it is a significant amount of jail time that would otherwise be served and perhaps for longer durations.

Further, many defendants suffer from alcohol abuse, substance abuse, addiction issues, mental health issues, and co-occurring disorders that the criminal justice system is not addressing. Families and friends of defendants often choose not to post their bail due lack of alternatives for

defendant's suffering from these issues. In addition, there are many other reasons that defendants are held in jail that make up the vast majority of reasons people are in jail in the first place.

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

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

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

Making large wholesale changes to the criminal justice system without adequate research and consideration from all stakeholders can have consequences that are very difficult to unwind. In states like Alaska and New Hampshire, where similar reforms have passed, law enforcement and even the Governor are having buyer's remorse mere months into similar policy changes because of repeat offenders being released over and over with no oversight.

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

Personally, I initially favored HB 1289 because I favor the 25 things submitted in the testimony from Judiciary and I think the HCR 134 Task Force Report is the most thorough and complete document on bail ever written and proves we, in Hawaii have a high-functioning pretrial process but that there is room for improvement by speeding things up, which the court is present doing and has done since 2018. Most notably there are now bail hearings every Monday and Thursday in the Fist Circuit Court and the bail hearing takes place with or without the Intake Service Report.

Bail is more about public safety than release. Bail is also about appearance. My 17 pages of testimony on 02.21.2019 further clarifies what I think will benefit HB 1289 HD2 and the needed corrections and amendment if HB 1289 HD2 moves foward.

In the meantime, we can continue to learn from others and their mistakes but the data must be gathered. Gathering the data is very important. In fact, just last Monday, March 4, 2018, a very important ruling as made by Judge Gonzalez Rogers adopted the strict scrutiny standard of review in terms of analyzing the equal protection claims brought under the Due Process Clause of the Fourteenth Amendment to the US Constitution concerning so-called “wealth-based” discrimination. Two higher courts, the United States Courts of Appeals for the Fifth and Eleventh Circuits have already ruled otherwise and is contrary to Judge Gonzalez Rogers ruling.

The entire ruling by Judge Gonzalez Rogers can be read here.
http://ambailcoalition.org/abc-statement-on-buffin-vs-san-francisco

This commotion nationwide on pretrial justice means we, in Hawaii should not jump in head first and we should wait and see and take smaller steps.

While I do favor the twenty-five things listed in the 02.21.2019 Judiciary testimony I now think rushing is a mistake and more time is needed to craft appropriate legislation.

Sincerely,

James Waldron Lindblad
808-780-8887, James.Lindblad@Gmail.com

HB-1289-HD-2
Submitted on: 3/11/2019 4:57:40 PM
Testimony for PSM on 3/12/2019 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
William Caron	Individual	Support	No

Comments:

Aloha Chair Nishihara, Vice Chair Wakai, Members of the Committee on Public Safety, Intergovernmental, and Military Affairs,

Jurisdictions across the country are coming to terms with the fact that draconian criminal justice policies like Three Strikes, Mandatory Minimums and The War on Drugs have been complete failures in their supposed missions of reducing crime in America. What's worse, research suggests that many of these policies have actually made communities less stable, increasing crime and taking away hope and opportunity for millions of Americans with no good reason. As a result, these jurisdictions are moving away from punitive measures that lead to over-policing and over-incarceration, particularly among communities of color. Smart Justice, or criminal justice policies based on a growing body of data and analysis, now spanning two decades, is replacing Tough on Crime stances, and the results show widespread success in both reducing crime and preserving the integrity and strength of communities.

HB1289 implements multiple recommendations from the Pretrial Taskforce this legislature convened for the express purpose of identifying areas of reform for our state criminal justice system. I applaud the taskforce for coming up with a number of impactful reforms, such as encouraging police discretion to issue citations, rather than make arrests, for nonviolent offenses; improving the efficiency of the intake system, should an arrest still take place; and dramatically reducing the instances in which cash bail is required by law and giving judges more discretion to release nonviolent offenders, particularly when financial hardship is a factor, as it so often is.

Like the policies mentioned above, cash bail leads to over-incarceration and destroys communities, all without reducing crime or improving public safety. On top of that, it is a violation of constitutional rights to due process by creating a de facto, pre-conviction punishment for those who are unable to afford to post their bail. And in today's growing climate of economic inequality, this is representative of more and more people, with communities of color again being disproportionately impacted.

Bail bondsmen will tell you that they are just small mom and pop businesses trying to provide a service to the community. In fact, they are a localized racket funded by multinational insurance companies whose business model relies on exploiting poor people, especially in communities of color.

In jurisdictions where cash bail policy has been eliminated, or drastically reduced, rates of crime have remained stable and are statistically identical to states where cash bail is still widely used. Moreover, rates of court attendance are actually higher in jurisdictions where cash bail has been replaced with a risk assessment system and an electronic, text message-based reminder system. But the most important aspect for me is that, in jurisdictions where cash bail has been repealed, the chances that a nonviolent encounter with the law will result in a loss of housing, employment or custody—that a life will be destroyed—has been proven to be greatly reduced.

This bill provides plenty of exemptions for violent, dangerous people who should be held on bail. They are not for whom this bill was written. We're talking about people who have made mistakes that are well within the realm of possibility for most people, should circumstances in their lives be different.

When we destroy a person's life by holding them in jail, even before they have been convicted of a crime, we are increasing the likelihood that person will commit more, increasingly dangerous offenses; we are increasing the likelihood that person will become homeless; or drug-addicted; we are increasing the chances they will need emergency health care services; we are increasing the chances that taxpayers will need to foot the bill for either prison time, welfare services, medical treatment and more. There is no good reason for it. Please pass HB1289 and start the path toward reform here in Hawai‘i.

FACTS & DATA

In the United States, the accused is presumed innocent until proven guilty, and the the Fifth and Fourteenth Amendments prohibit depriving a person of his or her liberty without due process of law (including while awaiting trial and regardless of indigence).

Hawai‘i’s courts currently require bail as a condition of release in 88 percent of cases. More than half of the arrestees in those cases were unable to post the amount required by the court. Although Hawai‘i’s Constitution prohibits “excessive bail,” many judges in Hawai‘i admit to arbitrarily setting bail at a certain amount based solely on the offense the individual is accused of committing. Source: https://acluhi.org/bailstudy/

In Hawai‘i, some 1,145 individuals are currently being held behind bars without having been convicted of a crime. Nationwide, 443,000 people are being detained without ever having been tried in a court of law. This is a gross violation of their civil liberties and amounts to an unconstitutional, extrajudicial punishment. Sources: https://dps.hawaii.gov/wp-content/uploads/2018/01/Pop-Reports-EOM-2017-12-31.pdf; https://www.prisonpolicy.org/reports/pie2017.html

In Hawai‘i, 64 percent of those who could not afford bail changed their plea to guilty to get out of jail sooner. Using pre-trial detention to coerce arrestees into guilty pleas is routine practice for prosecutors throughout the country. Furthermore, a 2012 study

conducted by the New York City Criminal Justice Agency found that pretrial detention has a negative impact on trial outcomes: among non-felony cases with no pretrial detention, 50 percent ended in conviction compared to a 92 percent conviction rate among cases with an arrestee who was detained. Sources: https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4c666992-0b1b-632a-13cb-b4ddc66fadcd&forceDialog=0; https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly; http://www.nycja.org/library.php#

Most bail for all felony charges in the First Circuit is set in the $11,000 to $25,000 range, but it was as high as $1 million in eight cases and $2 million in two cases in 2015. Source: https://acluhi.org/bailstudy/

In Hawai‘i, Native Hawaiians and Pacific Islanders are more likely to be arrested and detained with a bail amount set to an unreasonable cost based on their charge, record or lack thereof, and socioeconomic status. Source: https://19of32x2yl33s8o4xza0qf14-wpengine.netdna-ssl.com/wp-content/uploads/2015/01/native-hawaiians-criminal-justice-system.pdf

Hawai‘i spends more than $60 million on pretrial incarceration each year. It costs a lot of money to lock people up behind bars: about $54,500 per detainee each year, or $150 per day. Compare this to Washington D.C., which releases 85-90 percent of pretrial arrestees and spends a mere $18 a day in supervising costs per individual. The U.S. spends $13.6 billion annually to detain people who have not been convicted of a crime. Sources: https://dps.hawaii.gov/wp-content/uploads/2018/01/Pop-Reports-EOM-2017-12-31.pdf; https://www.psa.gov/?q=data/performance_measures; https://www.prisonpolicy.org/reports/pie2017.html

Six out of nine Hawai‘i facilities are “over design capacity” and four of those are over “operational capacity.” Source: https://dps.hawaii.gov/wp-content/uploads/2018/01/Pop-Reports-EOM-2017-12-31.pdf

HB-1289-HD-2
Submitted on: 3/11/2019 7:02:05 PM
Testimony for PSM on 3/12/2019 1:15:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Nonohe Botelho	Individual	Oppose	No

Comments:

My name is Nonohe Botelho. I am the contact person for Parents of Murdered Children-Oahu.

I am writing in OPPOSITION of HB 1289.

The Pretrial Task Force that drafted this bill did not include crime victims and community victim service organizations deadicated to victim advocacy. Becasue of lack of input from victims and victim advocates many important issues were not considered or addressed.

HB 1289 creates many issuses for victims including: 1) Gives break to Suspects of Serious, Felony Crimes, 2) Lacks Case Management, Monitoring and Socail Servcies, 3) Does Not Allow Adequate Time for Pretrial Guidance, 3) Procedures Changes with Negative Consequences and 4) Does Not Consider Harmful consequences to Victims and Witnesses of Crime.

Crime Victims and Victim Advocacy Agencies MUST be included on the Pretrial Task Force to ensure the safety of Victims and Witnesses of crime.

Thank You,

Nonohe Botelho, POMC

LATE

TO: Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice-Chair
And members of the Senate Committee on
Public Safety, Intergovernmental and Military Affairs

FROM: Jessica Lani Rich, President, Visitor Aloha Society of Hawaii (VASH)

SUBJECT: Testimony on House Bill 1289 HD2
Relating to Pretrial Reform

DATE: Tuesday, March 12, 2019 at 1:15 p.m.

POSITION: House Bill 1289 should be Deferred

Good afternoon Chair Nishihara, Vice Chair Wakai and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs. Thank you for the opportunity to provide testimony that House Bill 1289 should be Deferred, since the current draft of the bill does not include crime victims, victim service organizations, and social service agencies, and other important issues were not considered or addressed.

My name is Jessica Lani Rich and I'm the President and CEO of the Visitor Aloha Society of Hawaii, a non-profit agency that assists visitors who are victims of a crime or other adversities. Our agency assists 1,600 to 2,000 victims every year. We request that you defer this bill because it gives a break to suspects of serious or felony crimes. The bill makes Class C felonies citable. Instead of being arrested, suspects can be cited in the community. These Class C felonies include violation of privacy, promoting pornography for minors, solicitation of a minor to prostitution, theft, criminal property damage, identity theft and drunk driving crimes.

In addition, this bill brings harm to victims and witnesses of crime. The bill gives suspects the right to present and cross-examine witnessed in bail hearings. This means that victims and witnesses can be subpoenaed into court on the issue whether the suspect is a danger to them, with the added threat that the suspect could be released right after the hearing. This will increase the burden on victims and witnesses to appear in court, traumatize and intimidate them, and force some to discontinue their participation in the criminal justice process.

Thank you for considering my testimony that House Bill 1289 Should be Deferred.