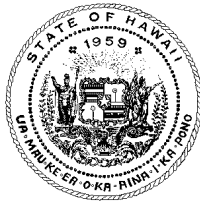


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
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WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL 1392, SENATE DRAFT 1
RELATING TO PERIODIC REVIEWS OF DETAINEES IN COMMUNITY
CORRECTIONAL CENTERS.

By

Tommy Johnson, Director
Department of Corrections and Rehabilitation

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, February 29, 2024; 10:00 a.m.
State Capitol, Conference Room 016 & via Videoconference

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) supports Senate Bill (SB) 1392, Senate Draft (SD) 1, which proposes to amend Section 353-6.2, Hawai'i Revised Statutes, to extend the time limit for periodic reviews of pretrial detainees from three months to six months.

The department's intake service centers continue to conduct labor-intensive reviews that produce minimal results. From August 2022 through December 2022, there were 656 regular reviews conducted. Of the 656 cases reviewed, only six pretrial detainees met the criteria to be recommended for pretrial release, and the court only granted one release of the six recommended. In the calendar year 2023, there were 1,341 regular reviews conducted. None of those cases that were reviewed in 2023 met the criteria to be recommended for pretrial release.

Notwithstanding the review requirement, upon receipt of new or supplemental information regarding a pretrial detainee, a review is conducted to determine the detainee's eligibility for release. Extending the time limit for periodic reviews to six months is more

Senate Bill 1392, Senate Draft 1 – Relating to Periodic Reviews of Detainees in
Community Correctional Centers.

Senate Committee on the Judiciary

February 29, 2024

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appropriate, less burdensome to our limited staff, and allows our intake service centers to focus on pretrial diversion efforts, as well as supervision of pretrial defendants released into the community with court-ordered terms and conditions as set forth by the courts.

Thank you for the opportunity to provide testimony in support on SB 1392, S.D. 1.

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February 27, 2024

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Conference Room 016
State Capital
Honolulu, HI 96813

Re: Testimony in Opposition of S.B. 1392, SD 1
Hearing: February 29, 2024, 10:00 AM

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

This letter is in opposition of S.B. 1392, SD 1 which seeks to extend the time limit for periodic reviews of pretrial detainees in community correctional centers from three months to six months for mandatory review to reassess whether a detainee should remain in custody or whether new information or a change in circumstances warrants reconsideration of a detainee's pretrial release or supervision.

The bill seeks to extend the period of mandatory review from three months to six months because of 1,244 cases in a ten month period, ten qualified for review and the court granted release of three. The numbers do not justify less reviews. The bill rationalizes that the "process [] is labor-intensive but produces minimal results[.]" so pretrial detainees, who are presumed innocent, should remain locked up longer, have less opportunity to be released and should remain incarcerated for at least half a year before any review. This view is not only privileged and entitled but inhumane. A pretrial custody review at three months is already too long. Extending the review period to six months is egregious and excessive. Here, if the information in the initial bail report is accurate, then the required information for the review need only be updated. The information is limited to new information or changed circumstances. Given the pretrial detainees deprivation of liberty and potential injury and losses, a three month review should not be extended, but be the longest duration tolerated.

Hawaii's prisons and community correctional centers are notoriously overcrowded and overcapacity. As a result of the consistent overcrowding, in 2019, the Hawaii Correctional System Oversight Commission ("HCSOC") was created to help improve the correction system, including overcrowding. See <https://hcsoc.hawaii.gov/about-us/>. The HCSOC found the conditions of overcrowding severe, egregious and unacceptable. See <https://www.civilbeat.org/2022/09/hawaii-oversight-commission-finds-unacceptable-conditions-at-the-crowded-hilo-jail/>. As a direct result of the dangerous overcrowding and the correctional

centers being overcapacity, there have been at least two riots which caused \$5 million of damage at one facility and necessitating a \$60,000.00 settlement between the state and an inmate who was injured. See Thirty-Second Legislature, 2024, Senate H.B. 2340. Not only are there costs related to the inmates and maintaining facilities, but there are severe staffing shortages at the correctional facilities which costs the state money in overtime and compromises safety for the inmates and officers alike. See <https://www.civilbeat.org/2022/06/staffing-shortages-at-the-oahu-jail-are-raising-alarms-about-safety-and-ot-costs/>.

Not only does leaving pretrial detainees, who are presumed innocent of their charges, in-custody significantly increase the population at Hawaii correctional facilities, but it also unfairly exposes the inmates to violence and inhumane treatment. This not only creates economic devastation to the pretrial detainee, but it also increases costs to the state. Moreover, the longer the pre-trial detainee is incarcerated, the greater the risk of the inmate losing employment, housing, education/training, medical and/or mental health services and state and/or federal government services or benefits. Once lost, it is difficult, if not impossible to re-establish. An individual can lose everything, even if they are later found not guilty or the charges are dismissed.

Every individual and entity involved in the correctional and justice systems is busy, stressed and overworked. Intake service center isn't the only government agency with constitutional responsibilities and mandates. The gravity and consequences of pretrial detention are so significant that the review period to reassess whether a detainee should remain in custody or whether new information or a change in circumstances warrants reconsideration of a detainee's pretrial release or supervision should not extend beyond three months. S.B. 1392 should be rejected.

Thank you for taking these comments into consideration.

Sincerely,
/s/ Taryn Tomasa
Deputy Public Defender

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, February 29, 2024

10:00 AM

STRONG SUPPORT FOR SB 1392 SD1 **PERIODIC REVIEWS OF PRETRIAL DETAINEES**

Aloha Chair Rhoads, Vice Chair Gabbard 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 almost thirty years. This testimony is respectfully offered on behalf of the 3,849 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Corrections and Rehabilitation on February 19, 2024. We are always mindful that 858 - 44% - of the male prison population of 1,963 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 this opportunity to testify in **strong support of SB 1392 SD1**. The SD1 restores language that requires periodic reviews of detainees in community correctional centers; extending the time requirement for pretrial release reassessments from three months to six months; and amends Section 1 to reflect its purpose.

We know people who have lingered in jail when they could have been sent to treatment or services they needed. Sometimes, their cases were dismissed after they lost their job, were threatened with eviction and the loss of their children.

¹ DPS/DCR Weekly Population Report, February 19, 2024.

<https://dcr.hawaii.gov/wp-content/uploads/2024/01/Pop-Reports-Weekly-2024-02-19.pdf>

The purpose of Section 353-6.2 is to afford pretrial detainees greater and continuing opportunities to be released..." (Act 179, Section 22, page 31) by allowing additional reviews for release consideration once incarcerated. The reviews are really about people who want treatment and are willing to enter programs to access the services they need. This is reasonable and helpful in keeping people out of the correctional system, which impacts the lives of justice-involved people in gaining employment, housing, and other needed services.

We share these statistics that were provided at the Breaking Cycles Symposium last Fall to illustrate the need for periodic reviews:

- 56% of the Jail population are pretrial detainees
- 49% of new intakes need mental health treatment
- 30% of OCCC's population were homeless immediately prior to entry

Many jurisdictions have successfully implemented "second look" pretrial programs that significantly impact the number of pretrial detainees kept in jail for extended periods. We recommend that the Department of Corrections and Rehabilitation develop and implement a "second look" program for pretrial detainees so people don't linger in jail when their specific issues could be better addressed in alternative ways.

In California and Washington, elected prosecutors have the authority to examine past cases, and, upon determining that a sentence no longer serves the purpose of justice, may recommend the individual for resentencing. Acknowledging the unconstitutional and overcrowded condition of Hawai'i jails, only highlights the need for these reviews.

Community Alliance on Prisons respectfully asks the committee to pass this bill that will provide some hope for the people who live in and work in Hawai'i jails.