



*The Judiciary, State of Hawai‘i*

**Testimony to the House Committee on Public Safety**

Representative Gregg Takayama, Chair

Representative Cedric Asuega Gates, Vice Chair

Thursday, February 1, 2018 10:00 AM

State Capitol, Conference Room 229

By

The Honorable Rom A. Trader

Chair

Criminal Pretrial Task Force

**WRITTEN TESTIMONY ONLY**

---

**Bill No. and Title:** House Bill No. 2221, Relating to the Pretrial Release.

**Purpose:** Requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Requires the Judiciary to establish statewide court appearance reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

**Judiciary's Position:**

The Judiciary takes no position on House Bill No. 2221 and respectfully suggests that the Committee defer consideration of criminal pretrial procedures until receiving the report of the Criminal Pretrial Task Force (HCR 134 Task Force) no later than twenty days prior to the 2019 Regular Session of the Legislature.

The HCR 134 Task Force was convened in August 2017 pursuant to 2017 House Concurrent Resolution Number 134, House Draft 1, Requesting the Judiciary to Convene a Task Force to Examine and Make Recommendations Regarding Criminal Pretrial Practices and Procedures to Maximize Public Safety, Maximize Court Appearances, and Maximize Pretrial Release of the Accused and Presumed Innocent (HCR 134). (Attachment A) The Judiciary supported HCR 134, noting that “[p]articularly in recent years, a growing number of states and localities have reconsidered criminal pretrial release practices and have undergone reforms to increase—indeed, maximize—public safety, court appearances, and pretrial release.”



Chief Justice Mark E. Recktenwald appointed the current Criminal Pretrial Task Force (HCR134 Task Force), comprised of 31 members representing County and State agencies involved in criminal pretrial procedures. A list of Task Force members and affiliations is also attached.

As directed in HCR 134, the HCR 134 Task Force is scheduled to submit its report of findings and recommendations, including any proposed legislation, to the Legislative Reference Bureau no later than August 1, 2018, with the report to be finalized for submission to the Legislature prior to the 2019 Regular Session.

Chaired by First Circuit Judge Rom A. Trader, the Task Force has begun study and deliberations to address issues named in HCR 134: (1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and (2) Identify 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 time intervals.

Following presentations on national and state pretrial procedures and a public comment session, Judge Trader appointed six subcommittees, with a mix of stakeholders on each subcommittee. Subcommittees are currently conducting further study in their respective subject areas:

1. Arrest/Booking Subcommittee
2. Jail Screening and Intake Assessment Subcommittee
3. Prosecutorial Decision-Making & Discretion Subcommittee
4. Initial Appearance / Defense Counsel Subcommittee
5. Pretrial Services - Risk Assessment / Supervision Subcommittee (Pretrial Services Operations)
6. Judicial Release & Detention Decision-Making Subcommittee

The Judiciary and the HCR 134 Task Force will reserve comments on proposed changes to current pretrial procedures until after the Task Force Report is submitted in December 2018.

In the event this bill moves forward, the Judiciary respectfully requests a delayed effective date to allow the Judiciary additional time to make modifications to the Judiciary's Information Management System (JIMS) to satisfy the basic requirements of this bill which are currently not available, and to determine the funding for vendor services necessary for these changes.

Thank you for the opportunity to testify on this measure.



**HCR134 Task Force Members:**

Judge Rom A. Trader, Circuit Court, First Circuit, Chair  
Judge Shirley Kawamura, Circuit Court, First Circuit, Recorder  
William C. Bagasol, Supervising Deputy, Office of the Public Defender  
Myles S. Breiner, Hawai'i Association of Criminal Defense Lawyers - Honolulu  
Michael Champion, M.D., State Department of Health  
Craig A. De Costa, Hawai'i Association of Criminal Defense Lawyers - Kaua'i  
Chief Tivoli S. Faaumu, Maui County Police Department  
Chief Paul K. Ferreira, Hawai'i County Police Department  
Janice Futa, Office of the Prosecuting Attorney, City & County of Honolulu  
Judge Colette Y. Garibaldi, Circuit Court, Admin. Judge, Criminal Division, First Circuit  
Wendy Hudson, Hawai'i Association of Criminal Defense Lawyers - Maui  
John D. Kim, Maui County Prosecuting Attorney  
Justin Kollar, Prosecuting Attorney, County of Kaua'i  
Milton Kotsubo, Public Member  
Judge Rhonda I. L. Loo, Circuit Court, Second Circuit  
Kamaile Maldonado, Office of Hawaiian Affairs  
Brook Mamizuka, Intake Administrator, Adult Client Services Branch, First Circuit  
Deputy Chief John McCarthy, Honolulu Police Department  
Judge Greg K. Nakamura, Circuit Court / Chief Judge, Third Circuit  
Senator Clarence K. Nishihara, State Senate, Public Safety Committee Chair  
Representative Scott Y. Nishimoto, House of Representatives, Judiciary Comm. Chair  
Shelley D. Nobriga, Intake Service Center, PSD  
Lester Oshiro, Chief Court Administrator, Third Circuit  
Chief Darryl D. Perry, Kaua'i County Police Dept.  
Michelle M.L. Puu, Deputy Attorney General, Dept. of the Attorney General  
Deputy Chief Victor Ramos, Maui County Police Department  
Mitchell D. Roth, Prosecuting Attorney, County of Hawai'i  
Judge Michael K. Soong, District Court, Fifth Circuit  
Kari Yamashiro, Deputy Chief Court Administrator, Fifth Circuit  
Marsha Yamada, Deputy Chief Court Administrator, Second Circuit  
Michael S. Zola, Hawai'i Association of Criminal Defense Lawyers - Hawai'i Island

---

## HOUSE CONCURRENT RESOLUTION

---

REQUESTING THE JUDICIARY TO CONVENE A TASK FORCE TO EXAMINE AND  
MAKE RECOMMENDATIONS REGARDING CRIMINAL PRETRIAL PRACTICES  
AND PROCEDURES TO MAXIMIZE PUBLIC SAFETY, MAXIMIZE COURT  
APPEARANCES, AND MAXIMIZE PRETRIAL RELEASE OF THE ACCUSED  
AND PRESUMED INNOCENT.

1 WHEREAS, the United States Supreme Court declared in *United*  
2 *States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our  
3 society, liberty is the norm, and detention prior to or without  
4 trial is the carefully limited exception"; and  
5

6 WHEREAS, Article I, section 12, of the Hawaii State  
7 Constitution provides, "Excessive bail shall not be required,  
8 nor excessive fines imposed", and further provides, "The court  
9 may dispense with bail if reasonably satisfied that the  
10 defendant or witness will appear when directed, except for a  
11 defendant charged with an offense punishable by life  
12 imprisonment"; and  
13

14 WHEREAS, section 804-9, Hawaii Revised Statutes, provides  
15 that "[t]he amount of bail rests in the discretion of the  
16 justice or judge or the officers named in section 804-5; but  
17 should be so determined as not to suffer the wealthy to escape  
18 by the payment of a pecuniary penalty, nor to render the  
19 privilege useless to the poor. In all cases, the officer  
20 letting to bail should consider the punishment to be inflicted  
21 on conviction, and the pecuniary circumstances of the party  
22 accused"; and  
23

24 WHEREAS, House Concurrent Resolution No. 85 (2016)  
25 requested that the Chief Justice establish a task force to study  
26 effective incarceration policies; and  
27

28 WHEREAS, the Chief Justice has established the task force,  
29 which issued an interim report in December 2016, in which it



1 proclaimed, "Hawaii must chart a new course and transition from  
2 a punitive to a rehabilitative correctional model"; and  
3

4 WHEREAS, the task force has referenced a Vera Institute of  
5 Justice conclusion that "just a few days in jail can increase  
6 the likelihood of a sentence of incarceration and the harshness  
7 of that sentence, reduce economic viability, promote future  
8 criminal behavior, and worsen the health of those who enter -  
9 making jail a gateway to deeper and more lasting involvement in  
10 the criminal justice system at considerable costs to the people  
11 involved and to society at large"; and  
12

13 WHEREAS, the American Bar Association Criminal Justice  
14 Section Standards for Criminal Justice: Pretrial Release  
15 sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the  
16 judicial officer should assign the least restrictive  
17 condition(s) of release that will reasonably ensure a  
18 defendant's attendance at court proceedings and protect the  
19 community, victims, witnesses or any other person", and  
20 financial conditions "should not be employed to respond to  
21 concerns for public safety", nor should financial conditions  
22 result "in the pretrial detention of the defendant solely due to  
23 an inability to pay"; and  
24

25 WHEREAS, the American Council of Chief Defenders Policy  
26 Statement on Fair and Effective Pretrial Justice Practices  
27 (June 4, 2011) explains standards that "require public defenders  
28 to present judicial officers with the facts and legal criteria  
29 to support release, and where release is not obtained, to pursue  
30 modification of the conditions of release"; and  
31

32 WHEREAS, the National District Attorneys Association's  
33 National Prosecution Standards, Third Edition, with Revised  
34 Commentary, provides that "[a] prosecutor should not seek a bail  
35 amount or other release conditions that are greater than  
36 necessary to ensure the safety of others and the community and  
37 to ensure the appearance of the defendant at trial" and "[t]hese  
38 provisions recognize a respect for the presumption of innocence  
39 and therefore state a clear preference for release of defendants  
40 pending trial"; and  
41

42 WHEREAS, research suggests that pretrial services should  
43 include adequate and timely pretrial assessments of the accused  
44 that are focused on assessing risk of not appearing and risk to



1 public safety, and that the criminal justice system include  
2 viable options of appropriate supervision for different types  
3 and levels of risks; and  
4

5 WHEREAS, in recent years, several other states have  
6 undertaken significant reforms to their criminal pretrial  
7 practices and procedures, including Alaska, Arizona, Colorado,  
8 Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah;  
9 and  
10

11 WHEREAS, the Hawaii State Bar Association, through its  
12 Judicial Administration Committee, conducted a Criminal Law  
13 Forum in September 2016, during which it thoroughly discussed  
14 criminal pretrial issues among a diverse group of judges,  
15 prosecutors, and criminal defense attorneys, and featured  
16 speakers from the Honolulu Police Department, Intake Service  
17 Center of the Department of Public Safety, National Institute of  
18 Corrections, United States Pretrial Services Office of the  
19 District of Hawaii, and Arizona Administrative Office of the  
20 Courts; and  
21

22 WHEREAS, the Judicial Administration Committee recommended  
23 establishment of a criminal pretrial task force to examine and  
24 make recommendations regarding criminal pretrial practices and  
25 procedures; and  
26

27 WHEREAS, an examination of potential revisions to criminal  
28 pretrial practices, procedures, and laws would improve public  
29 safety while protecting state and federal constitutional  
30 principles regarding the presumption of innocence, liberty, and  
31 right to non-excessive bail, and lower costs throughout the  
32 criminal justice system; and  
33

34 WHEREAS, the task force will make recommendations regarding  
35 the future of a jail facility on Oahu and best practices for  
36 pretrial release, and any such recommendations should be  
37 considered by or coordinated with the Criminal Pretrial Task  
38 Force; now, therefore,  
39

40 BE IT RESOLVED by the House of Representatives of the  
41 Twenty-ninth Legislature of the State of Hawaii, Regular Session  
42 of 2017, the Senate concurring, that the Judiciary is requested  
43 to convene a Criminal Pretrial Task Force to:  
44



1 (1) Examine and, as needed, recommend legislation and  
2 revisions to criminal pretrial practices and  
3 procedures to increase public safety while maximizing  
4 pretrial release of those who do not pose a danger or  
5 a flight risk; and  
6

7 (2) Identify and define best practices metrics to measure  
8 the relative effectiveness of the criminal pretrial  
9 system, and establish ongoing procedures to take such  
10 measurements at appropriate time intervals; and  
11

12 BE IT FURTHER RESOLVED that the task force be comprised of  
13 members that represent the various perspectives of public  
14 officials with significant roles in the criminal pretrial system  
15 and include:  
16

17 (1) The Chief Justice or the Chief Justice's designee, who  
18 shall serve as the chairperson of the task force;  
19

20 (2) A judicial officer representative of each Circuit  
21 Court;  
22

23 (3) A member of the House of Representatives, appointed by  
24 the Speaker of the House of Representatives;  
25

26 (4) A member of the Senate, appointed by the President of  
27 the Senate;  
28

29 (5) A court administrator representative of each Circuit  
30 Court;  
31

32 (6) A representative of the Department of the Attorney  
33 General;  
34

35 (7) A representative from one of the various Intake  
36 Services Center of the Department of Public Safety;  
37

38 (8) A representative of the Prosecuting Attorney's Office  
39 of each county;  
40

41 (9) A representative of the Office of the Public Defender  
42 for the State of Hawaii;  
43



- 1 (10) Four representatives appointed by the Hawaii  
2 Association of Criminal Defense Lawyers, including one  
3 representative from each county;  
4  
5 (11) A representative of each county police department;  
6  
7 (12) A representative of the Department of Health;  
8  
9 (13) The Chairperson of the Board of Trustees of the Office  
10 of Hawaiian Affairs, or the Chairperson's designee;  
11 and  
12  
13 (14) A member of the public who has knowledge and expertise  
14 with the criminal pretrial system appointed by the  
15 Director of Public Safety; and  
16

17 BE IT FURTHER RESOLVED that no member be made subject to  
18 chapter 84, Hawaii Revised Statutes, solely because of that  
19 member's participation as a member of the task force; and  
20

21 BE IT FURTHER RESOLVED that the Judiciary and the  
22 Department of Public Safety are requested to provide  
23 administrative support to the task force; and  
24

25 BE IT FURTHER RESOLVED that the task force, with the  
26 assistance of the Legislative Reference Bureau, is requested to  
27 submit a report of its findings and recommendations, including  
28 any proposed legislation, to the Legislature no later than  
29 twenty days prior to the convening of the Regular Session of  
30 2019; and  
31

32 BE IT FURTHER RESOLVED that, upon request of the task  
33 force, the Legislative Reference Bureau is requested to assist  
34 in the preparation of the report; provided that the task force  
35 submits a draft, including any other information and materials  
36 deemed necessary by the Bureau, to the Bureau no later than  
37 August 1, 2018, for the preparation of the report; and  
38

39 BE IT FURTHER RESOLVED that certified copies of this  
40 Concurrent Resolution be transmitted to the Chief Justice of the  
41 Hawaii Supreme Court, Attorney General, Public Defender of the  
42 State of Hawaii, Director of Health, Director of Public Safety,  
43 Chairperson of the Board of Trustees of the Office of Hawaiian  
44 Affairs, Chief of Police of each county police department,





1 Prosecuting Attorney of each county, and the Hawaii Association  
2 of Criminal Defense Lawyers.  
3  
4  
5  
6

