



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. 2387, Relating to the Release of Misdemeanants.

Purpose: Defines the circumstances for the Director of Public Safety or a designee of the director to release pretrial and sentenced misdemeanants at community correctional centers.

Judiciary's Position:

The Judiciary takes no position on House Bill No. 2387 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.
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