



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Public Safety, Intergovernmental and Military Affairs

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, February 5, 2019, 1:15 p.m.
State Capitol, Conference Room 229

WRITTEN TESTIMONY ONLY

By

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Reporter, Criminal Pretrial Task Force

Bill No. and Title: Senate Bill No.1538, Relating to Bail.

Purpose: Senate Bill No. 1538 requires bail to be set in reasonable amounts based upon all available information, including the alleged offense, possible punishment upon conviction, and the offender’s financial ability to afford bail.

Judiciary's Position:

The Judiciary respectfully supports Senate Bill No. 1538, which amends Section 804-9 of the Hawaii Revised Statutes to require bail be set in reasonable amounts, based upon all available information, including the alleged offense, possible punishment upon conviction, and the offender’s financial ability to afford bail. This is consistent with the recommendation set forth in the Criminal Pretrial Practices Task Force report submitted to this Legislature on December 14, 2018.

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



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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. We invited national experts and delved into the latest research and evidence-based principles and learned from other jurisdictions where pretrial reforms are well underway. We reviewed previous studies conducted in our state, engaged with community experts and heard the views of our local stakeholders. We visited our cellblocks, jails, ISC offices and arraignment courts in an effort to investigate and present an unbridled view of our criminal pretrial process.

The recommendations set forth in the report seek to improve our current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants' release, court appearance and protecting community safety. With these goals in mind, the Task Force respectfully submitted twenty-five recommendations, to include requiring monetary bail to be set in reasonable amounts based upon all available information, including information concerning the defendant's financial circumstances.

The Judiciary fully supports the passage of Senate Bill No. 1538 as far as it adopts the recommendation of the Criminal Pretrial Practices Task Force.

Thank you for the opportunity to submit testimony.