



*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 PM  
State Capitol, Conference Room 229

**WRITTEN TESTIMONY ONLY**

by

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Reporter, Criminal Pretrial Task Force

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**Bill No. and Title:** Senate Bill No. 1539, Relating to Bail Hearings.

**Purpose:** Adds provision that, upon formal charge and detention, defendants shall have the right to a prompt bail hearing concerning release or detention and whether any condition will reasonably assure the defendant's appearance. Permits defendants to be represented by counsel at the hearing, or have one appointed if they are financially unable to obtain representation. Permits defendants to present evidence and witnesses and to cross-examine witnesses who appear at the hearing.

**Judiciary's Position:**

The Judiciary respectfully supports Senate Bill No. 1539, which adopts the recommendation of the Criminal Pretrial Practices Task Force to entitle defendants in criminal cases to a prompt bail hearing.

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 practices,



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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 submitted twenty-five recommendations, to include amending Section 804 of the Hawai'i Revised Statutes to add a new provision requiring defendants who are formally charged with a criminal offense and detained be afforded a prompt hearing to address bail. The Judiciary respectfully supports Senate Bill 1539 in so far as it adopts the recommendation of the Criminal Pretrial Task Force.

Thank you for the opportunity to testify on this measure.