



The Judiciary, State of Hawai‘i

**Testimony to the House Committee on Public Safety, Veterans,
and Military Affairs**

Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019 10:00 AM
State Capitol, Conference Room 430

WRITTEN TESTIMONY ONLY

By

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Bill No. and Title: House Bill No. 1436, Relating to 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 a statewide court reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

Judiciary’s Position:

The Judiciary appreciates the intent of this proposed bill, but respectfully suggests that the Committee defer consideration of this bill.

Release on Personal Recognizance or Unsecured Bond

First, House Bill No. 1436 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. However, the House Concurrent Resolution No. 134 Criminal Pretrial Procedures Task Force proposed significant legislation regarding pretrial release, which may alleviate some of the concerns underlying this bill.



Pursuant to House Concurrent Resolution No. 134, H. D. 1 Regular Session of 2017, Chief Justice Mark E. Recktenwald established the Criminal Pretrial Procedures 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 American bail reform. The Task Force members researched the legal framework underlying current 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 the notion that liberty is the norm and detention is the very limited exception. Members invited national experts, delved into the latest research and evidence-based principles, and took steps to learn from other jurisdictions where pretrial reforms are well underway. In addition, members reviewed previous studies conducted in the State of Hawai‘i, engaged with community experts, heard the views of local stakeholders, and visited cellblocks, jails, Intake Service Center offices and arraignment courts in an effort to investigate and present an unbridled view of othe criminal pretrial process.

The Task Force submitted its final report to the legislature in December 2018. The twenty-five recommendations set forth in the report seek to improve Hawai‘i’s current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants’ release and court appearance, and keeping the community safe. An omnibus bill package was also introduced this legislative session to implement the Task Force’s recommendations.

The Judiciary notes several concerns with the aspects of this measure that relate to unsecured bonds. First, the bill requires release of a defendant on recognizance or unsecured bond unless the release “will not reasonably assure the appearance of the person when required.” There is no emphasis on considerations of dangerousness or the risk of recidivism. Second, the instant bill authorizes a defendant’s release on unsecured bond, but does not set forth any procedures with respect to implementation. An agency must be designated to draft, implement and monitor the status of any unsecured bond. In the event that the defendant released on unsecured bond does not appear in court, there is no specified procedure regarding the enforcement and collection of the bond. Finally, there may be little need for unsecured bonds because non-financial release alternatives are currently available. In state court, defendants eligible for supervised release are released without any financial obligation. Defendants can be released on their own recognizance, or on supervised release to the Department of Public Safety’s Intake Service Center, to a sponsor (often a family member or friend with a stable residence), or to a treatment program.

Statewide Court Reminder System

Next, House Bill 1436 requires the Judiciary to establish a statewide court reminder system. The Judiciary appreciates the intent of this provision, however, administrative efforts



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are currently underway that do not require legislation. For example, the Judiciary recently launched a pilot electronic reminder system for criminal cases on the neighbor islands, and expects to extend it to First Circuit district court soon. This system allows defendants to receive text reminders before their next scheduled court date.

Requirements for the Pretrial Risk Assessment Tool

Finally, House Bill 1436 establishes requirements for any pretrial risk assessment tool used by the Judiciary. The Judiciary appreciates the intent of this measure to the extent that some of the provisions are consistent with the recommendations of the Task Force.

Thank you for the opportunity to testify on this measure.