
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 2012, as part of Hawaii's justice
2 reinvestment efforts, the legislature found that the State's
3 pretrial population had increased due to longer lengths of stay.
4 The legislature attempted to address the issue by requiring that
5 an objective assessment be conducted within the first three
6 working days of a person's commitment to a community
7 correctional center to allow the courts to quickly exercise
8 discretion in determining whether to release a pretrial
9 offender.

10 To accomplish this mandate, Hawaii's intake services center
11 selected the Ohio Risk Assessment Survey-Pretrial Assessment
12 Tool, which involves a brief face-to-face interview with the
13 defendant. The assessment tool consists of seven risk variables
14 in criminal history, employment and residential stability, and
15 drug use, and categorizes detainees into groups based on their
16 likelihood of reoffending or failing to appear in court during
17 the pretrial period.



1 The Ohio Risk Assessment Survey-Pretrial Assessment Tool
2 was recently validated in Hawaii, and the researcher concluded
3 that the tool can be used in Hawaii to safely and predictably
4 allocate detention and pretrial resources based on assessed
5 level of risk. The risk assessment data is just one piece of
6 information that intake services center staff provide in the
7 bail report, which is delivered to the court within five days of
8 an individual's admission to jail.

9 The legislature finds that despite the advancement in
10 pretrial assessment since 2012, pretrial lengths of stay for
11 those who are ultimately released before trial have remained
12 very long and even increased, averaging almost seventy days.
13 Pretrial length of stay in Hawaii remains about four times as
14 long as the national average. Reentry intake service centers
15 have addressed their mandate to conduct more timely assessments,
16 but this alone has not produced more timely processing of cases
17 or affected release decisions. The result, incarcerating
18 defendants before they are ultimately released on bail,
19 recognizance, or supervision, and before they plead or are found
20 guilty, is costly for the State.



1 Therefore, the purpose of this Act is to require timely
2 processing and quality information for appropriate pretrial
3 release decisions.

4 SECTION 2. Section 353-10, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The centers shall:

7 (1) Provide orientation, guidance, and technical services;

8 (2) Provide social-medical-psychiatric-psychological
9 diagnostic evaluation;

10 (3) Conduct [~~internal~~] pretrial risk assessments on adult
11 [~~offenders~~] defendants within [~~three~~] _____ working
12 days of [~~admission to a community correctional center~~]
13 arrest, which shall then be provided to the court for
14 its consideration[+] and to those who may receive a
15 pretrial bail report under paragraph (9); provided
16 that this paragraph shall not apply to persons subject
17 to county or state detainers, holds, or persons
18 detained without bail, persons detained for probation
19 violation, persons facing revocation of bail or
20 supervised release, and persons who have had a
21 pretrial risk assessment completed prior to admission



1 to a community correctional center. For purposes of
2 this [†]paragraph[†], "pretrial risk assessment" means
3 an objective, research-based, validated assessment
4 tool that measures a defendant's risk of flight and
5 risk of criminal conduct while on pretrial release
6 pending adjudication; provided that the pretrial risk
7 assessment shall be confidential and shall not be
8 deemed to be a public record;

9 (4) Provide correctional prescription program planning and
10 security classification;

11 (5) Provide other personal and correctional services as
12 needed for both detained and committed persons;

13 (6) Monitor and record the progress of persons assigned to
14 correctional facilities who undergo further treatment
15 or who participate in prescribed correctional
16 programs;

17 (7) Provide continuing supervision and control of persons
18 ordered to be placed on pretrial supervision by the
19 court and persons ordered by the director; [~~and~~]



- 1 (8) Interview prospective lay sponsors within
2 working days of their identification, by scheduling
3 interviews during evening and weekend hours; and
- 4 [~~8~~] (9) Provide pretrial bail reports to the courts on
5 adult [~~offenders that are consented to by the~~
6 defendant or that are ordered by the court.]
7 defendants who are eligible for release under sections
8 804-3 and 804-4, within working days of arrest.
9 Any recommendation for financial bail shall comply
10 with section 804-9, and any recommendation shall link
11 assessments of the risk of flight and of public safety
12 to appropriate release options designed to respond to
13 the specific risk and supervision needs identified.
- 14 The pretrial bail reports shall be confidential and
15 shall not be deemed to be public records. A copy of a
16 pretrial bail report shall be provided only:
- 17 (A) To the defendant or defendant's counsel;
18 (B) To the prosecuting attorney;
19 (C) To the department of public safety;



- 1 (D) To any psychiatrist, psychologist, or other
2 treatment practitioner who is treating the
3 defendant pursuant to a court order;
- 4 (E) Upon request, to the adult client services
5 branch; and
- 6 (F) In accordance with applicable laws, persons, or
7 entities doing research."

8 SECTION 3. Section 804-4, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) If the charge is for an offense for which bail is
11 allowable under section 804-3, the defendant may be admitted to
12 bail before conviction as a matter of right~~[-]~~ and, without
13 unnecessary delay, an arraignment conducted no more than
14 days after arrest. Except for section 712-1207(7), bail shall
15 be allowed for any person charged under section 712-1207 only
16 subject to the mandatory condition that the person observe
17 geographic restrictions that prohibit the defendant from
18 entering or remaining on public property, in Waikiki and other
19 areas in the State designated by county ordinance during the
20 hours from 6 p.m. to 6 a.m.; and provided further that nothing
21 contained in this subsection shall be construed as prohibiting



1 the imposition of stricter geographic restrictions under section
2 804-7.1. The right to bail shall continue after conviction of a
3 misdemeanor, petty misdemeanor, or violation, and release on
4 bail may continue, in the discretion of the court, after
5 conviction of a felony until the final determination of any
6 motion for a new trial, appeal, habeas corpus, or other
7 proceedings that are made, taken, issued, or allowed for the
8 purpose of securing a review of the rulings, verdict, judgment,
9 sentence, or other proceedings of any court or jury in or by
10 which the defendant has been arraigned, tried, convicted, or
11 sentenced; provided that:

12 (1) No bail shall be allowed after conviction and prior to
13 sentencing in cases where bail was not available under
14 section 804-3, or where bail was denied or revoked
15 before conviction;

16 (2) No bail shall be allowed pending appeal of a felony
17 conviction where a sentence of imprisonment has been
18 imposed; and

19 (3) No bail shall be allowed pending appeal of a
20 conviction for a violation of section 712-1207, unless
21 the court finds, based on the defendant's record, that



1 the defendant may be admitted to bail subject to the
2 mandatory condition that the person observe geographic
3 restrictions that prohibit the defendant from entering
4 or walking along the public streets or sidewalks of
5 Waikiki or other areas in the State designated by
6 county ordinance pursuant to section 712-1207 during
7 the hours from 6 p.m. to 6 a.m.

8 Notwithstanding any other provision of law to the contrary, any
9 person who violates these bail restrictions shall have the
10 person's bail revoked after hearing and shall be imprisoned
11 forthwith."

12 SECTION 4. Section 804-7.1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§804-7.1 Conditions of release on bail, recognizance, or**
15 **supervised release.** (a) Upon a showing that there exists a
16 danger that the defendant will commit a serious crime or will
17 seek to intimidate witnesses, or will otherwise unlawfully
18 interfere with the orderly administration of justice, the
19 judicial officer named in section 804-5 may deny the defendant's
20 release on bail, recognizance, or supervised release. A
21 pretrial risk assessment score that reflects high risk of flight



1 or commission of a new criminal offense shall be sufficient to
2 satisfy this showing. Absent such a score, the judicial officer
3 shall not deny the defendant's release on bail, recognizance, or
4 supervised release.

5 (b) Upon the defendant's release on bail, recognizance, or
6 supervised release, [~~however,~~] the court may enter an order:

7 (1) Prohibiting the defendant from approaching or
8 communicating with particular persons or classes of
9 persons, except that no such order should be deemed to
10 prohibit any lawful and ethical activity of
11 defendant's counsel;

12 (2) Prohibiting the defendant from going to certain
13 described geographical areas or premises;

14 (3) Prohibiting the defendant from possessing any
15 dangerous weapon, engaging in certain described
16 activities, or indulging in intoxicating liquors or
17 certain drugs;

18 (4) Requiring the defendant to report regularly to and
19 remain under the supervision of an officer of the
20 court[+] or a lay sponsor approved by the intake
21 service center;



- 1 (5) Requiring the defendant to maintain employment, or, if
- 2 unemployed, to actively seek employment, or attend an
- 3 educational or vocational institution;
- 4 (6) Requiring the defendant to comply with a specified
- 5 curfew;
- 6 (7) Requiring the defendant to seek and maintain mental
- 7 health treatment or testing, including treatment for
- 8 drug or alcohol dependency, or to remain in a
- 9 specified institution for that purpose;
- 10 (8) Requiring the defendant to remain in the jurisdiction
- 11 of the judicial circuit in which the charges are
- 12 pending unless approval is obtained from a court of
- 13 competent jurisdiction to leave the jurisdiction of
- 14 the court;
- 15 (9) Requiring the defendant to satisfy any other condition
- 16 reasonably necessary to assure the appearance of the
- 17 person as required and to assure the safety of any
- 18 other person or community; or
- 19 (10) Imposing any combination of conditions listed above.



1 (c) The judicial officer may revoke a defendant's bail
2 upon proof that the defendant has breached any of the conditions
3 imposed."

4 SECTION 5. Section 804-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§804-9 Amount.** The amount of bail rests in the
7 discretion of the justice or judge or the officers named in
8 section 804-5; but should be so determined as not to suffer the
9 wealthy to escape by the payment of a pecuniary penalty, nor to
10 render the privilege useless to the poor. In all cases, the
11 officer letting to bail should consider the punishment to be
12 inflicted on conviction, and the pecuniary circumstances of the
13 party accused. The officer shall not rely upon a bail schedule
14 or upon an amount of bail that would have been necessary to
15 prevent the release of a defendant during jail overcrowding."

16 SECTION 6. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 8. This Act shall take effect on January 7, 2059.



Report Title:

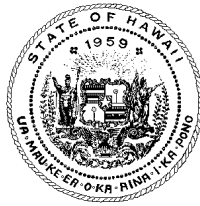
Pretrial Risk Assessment; Pretrial Release; Bail

Description:

Requires pretrial risk assessments, pretrial bail reports, and arraignments to be completed within an unspecified number of working days after an arrest. Obligates the intake service centers to interview lay sponsors within an unspecified number of days of their identification and allows the court to order defendants released on bail, recognizance, or supervised release to report to lay sponsors for supervision. Prohibits judicial officers from denying bail absent a pretrial risk assessment score that reflects a high risk of flight or commission of a new criminal offense. Prohibits judicial officers from relying on a bail schedule or bail amount that would have been necessary to prevent release of a defendant during jail overcrowding. Effective 01/07/2059. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





Cathy Ross
Deputy Director
Administration

Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TESTIMONY ON SENATE BILL 1331, SENATE DRAFT 2
A BILL RELATING TO PUBLIC SAFETY

By
Nolan P. Espinda, Director
Department of Public Safety

House Committee on Public Safety
Representative Gregg Takayama, Chair
Representative Kyle T. Yamashita, Vice Chair

Thursday, March 19, 2015, 10:05 AM
State Capitol, Conference Room 309

Chair Takayama, Vice Chair Yamashita, and Committee Members:

The Department of Public Safety (PSD) **opposes** Senate Bill (SB) 1331, Senate Draft (SD) 2, Relating to Public Safety. This draft as written, specifically Section 2, lacks time frames for completing required tasks for the court and requires additional duties of the Intake Service Centers without the provision of additional resources.

The PSD adopted the use of the Ohio Risk Assessment Survey-Risk Assessment Tool (ORAS) as part of the Justice Reinvestment Initiative. The purpose of the tool is to assist the pretrial officer in standardizing release recommendations. As with all risk assessment tools, the individual making the assessment should not rely solely on the scores of the instrument when making a recommendation. The severity of the immediate offense and medical and mental health conditions are factors often used to “override” the assessment score when making a recommendation.

Currently, the PSD is fulfilling the statutory mandate of completing the ORAS on defendants within three working days of entering a community correctional center. It should be noted that upon arrest, law enforcement agencies have the option of holding an arrestee in custody for up to 48 hours before officially charging the arrestee with a crime, discharging the arrestee pending investigation, or releasing the arrestee with no charge.

The arrestee also has the right to post bail after being charged, voiding the need for an assessment. For practical reasons, initiating the assessment process would not take place until the arrestee is charged and referred to the court.

It is the PSD's position that resources are not available to conduct interviews with sponsors during evening and weekend hours nor perform financial investigations on defendants. To accomplish this, an increase in staff would be needed. Additional resources may be needed by the other entities involved in the judicial process in order for the pretrial process to be expedited as proposed in this measure.

The current procedures have been in place since 2012, and modifying the current statutes maybe premature. We ask for your support in deferring this measure.

Thank you for this opportunity to testify.



The Judiciary, State of Hawaii

Testimony to the House Committee on Public Safety

Representative Gregg Takayama, Chair
Representative Kyle T. Yamashita, Vice Chair

Thursday, March 19, 2015, 10:05 AM
State Capitol, Conference Room 309

by
Sidney Nakamoto
Adult Client Services Branch Administrator
First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1331, S.D. 2, Relating to Public Safety.

Purpose: Requires pretrial risk assessments, pretrial bail reports, and arraignments to be completed within an unspecified number of working days after an arrest. Obligates the intake service centers to interview lay sponsors within an unspecified number of days of their identification and allows the court to order defendants released on bail, recognizance, or supervised release to report to lay sponsors for supervision. Prohibits judicial officers from denying bail absent a pretrial risk assessment score that reflects a high risk of flight or commission of a new criminal offense. Prohibits judicial officers from relying on a bail schedule or bail amount that would have been necessary to prevent release of a defendant during jail overcrowding. Effective 01/07/2059. (SD2)

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 1331, SD 2 Relating to Public Safety. However, we respectfully offer the following comments on the bill:

In regard to Section 3, we respectfully suggest that the time for arraignment in Circuit Court for misdemeanor jury demands and felonies originating in District Court should be measured from the District Court's commitment order, as it is now, rather than arrest, as proposed by the bill because of post-arrest contingencies that could affect compliance with the bill's time



Senate Bill No. 1331, Senate Draft 2, Relating to Public Safety
House Committee on Public Safety
Thursday, March 19, 2015
Page 2

requirement. Those contingencies include how long after arrest the defendant is held in police custody, when the defendant first appears in District Court, the need to hold and complete a preliminary hearing in felony cases, the time required to prepare and transmit the District Court record to Circuit Court, and the time required to process and calendar the case for arraignment by Circuit Court staff. Starting the time period at the District Court's commitment order would remove the first three contingencies, leaving for consideration only the need to allow a reasonable amount of time to process the case in District and Circuit Court. The time currently allowed for those purposes under the Hawaii Rules of Penal Procedure is 14 days.

As to Section 4, the Judiciary's primary concern is overreliance on the risk assessment to the practical exclusion of other relevant information that may not be reflected in the risk assessment itself. Bail is a constitutional right and judges therefore consider a request to deny bail very seriously, welcoming the presentation of any evidence relevant to this and, for that matter, any other release determination.

The Judiciary respectfully recommends that the following language be inserted in place of the language proposed in Section 4 of the bill at the end of HRS Section 804-7.1(a): "A pretrial risk assessment score that reflects high risk of flight or commission of a new criminal offense shall be sufficient to satisfy this showing. The absence of such a score shall raise a rebuttable presumption that the defendant's release on bail, recognizance, or supervised release should not be denied."

Since Section 4 of the bill at least arguably limits the court's authority to deny bail not only under Section 804-7.1, but under Section 804-3 as well, it is suggested that the bill be clarified to expressly subject Section 804-3 to, or exempt it from the risk assessment limitation.

Lastly, the Judiciary will carefully assess the operational impact of Senate Bill No. 1331, Senate Draft 2 if this measure is enacted. If impacts prove to be significant, the Judiciary will request additional resources in the future to administer and timely adjudicate bail calendars in accordance with the requirements of law.

Thank you for the opportunity to provide comment on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawai'i

March 19, 2015

RE: S.B. 1331, S.D. 2; RELATING TO PUBLIC SAFETY.

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department"), submits the following testimony in opposition to S.B. 1331, S.D. 2. The general purpose of this bill is to expedite the rate and process by which pretrial detainees are released, under supervised release, into the community.

In 2012, the Legislature passed Act 139, which significantly accelerated the bail evaluation process for pretrial detainees. Since that time, and at the urging of third-party consultants, evaluations for pretrial release have expanded from addressing only "low risk" pretrial felons, to including "high risk" pretrial felons as well.

To facilitate the resulting expansion of the "lay sponsor" program, stakeholders met and agreed that—starting October 1, 2013—court hearings would be scheduled within two weeks of arraignment and plea in Circuit Court, to determine if prospective sponsors are credible and reliable. Some prospective sponsors failed to appear at these hearings. For those who appeared, deputy prosecutors were able to review the Oahu Intake Services Center ("OISC") evaluations, verify the prospective sponsor's background and character, assess whether the prospective sponsor understood his/her obligations, and assess whether information in the written reports was accurate. These hearings also provided an opportunity to educate sponsors about their responsibility to keeping pretrial felons on course with their release recommendations (made by the OISC pretrial officers).

However, as this program began to include all types of dangerous candidates for pretrial release, OISC was overwhelmed by the large number of eligible participants, which included defendants charged with manslaughter, robbery in the first degree, kidnapping, sex assault in the first degree, arson in the first degree, promoting dangerous drugs in the first degree, and similarly egregious class A felonies. Over time, OISC's investigations and thorough reporting suffered. It

became exceedingly clear that OISC has neither the manpower nor resources needed to perform sufficient evaluations for all pre-trial felons, in addition to evaluation of their prospective sponsors, within the time frame currently provided.

Over the past two years, the Department has experienced a significant problem with misrepresentations being made by prospective sponsors, including some who do not reside where they claim to reside, or have a significant criminal history themselves, or are simply not prepared or willing to accept the full responsibilities of being a pretrial sponsor. Alarming, some of this information has only been discovered through additional research conducted by our deputy prosecutors, when preparing for these court hearings, and some has only been discovered later, upon revocation proceedings. For some defendants, it is very difficult to identify a potential sponsor at all, as family members and friends may be just as afraid of the defendant as their victims are.

Due to such high-risk individuals now being evaluated under the current system, the Department has observed a significant increase in the "supervised release" of individuals who have committed serious crimes, such as sexual assault, felony domestic violence, and other violent crimes against persons. Even under existing conditions, the Department believes that the pretrial assessments process is shortchanging its duty to ensure the safety of victims and public safety; any efforts to further accelerate this process pose a grave risk to victims and to the public.

Another problem that has emerged is the closeness that OISC pretrial officers develop to their pretrial felon candidates for supervised release. Currently, OISC is housed in the same compound as the pretrial inmates at OCCC. In time, OISC supervisors have expressed empathy for inmates who are subject to long (over 90 days) pretrial incarceration pending trial and/or sentencing, and seem to identify with the pretrial inmates' hardships. As human beings, OISC pretrial officers have felt compelled to provide support to these pretrial felons, which sometimes skews their objectivity when conducting assessments. For example, even after a particular pretrial felon—released on supervised release—expressly violated a judge's orders multiple times, the pretrial officer did not initiate a revocation of supervised release. This is not an isolated occurrence, and the Department is very concerned about these types of close relationships. While we would expect OISC pretrial officers to set aside their personal feelings, and to provide a fair assessment of each pretrial felon and their prospective sponsors, this appears to be unattainable within the current system. As it stands today, the close proximity, contact and relationship between OISC pretrial officers and their pretrial felon candidates, makes it nearly impossible for OISC to provide a fair assessment.

Given the difficulties that OISC faces, in terms of heavy caseloads, limited resources, and objectivity, the court hearings process—as previously described—is undoubtedly a necessary safeguard, and must not be shortened or eliminated. These hearings provide a true opportunity to assess whether a pretrial felon should be released, allowing the Court, defense counsel, and deputy prosecutor to convene and evaluate information presented in the OISC report. Based on all available information, the Court can impartially make a determination on supervised release because it lacks any personal connection to the pretrial felon, prospective sponsor, or victim.

With regards to specific proposals raised in S.B. 1331, S.D. 2, the Department appreciates the Legislature's efforts to improve reliability of the process, by requiring OISC to interview prospective sponsors during evening and weekend hours. However, OISC is already

stretched thin, understaffed, and unable to keep up with the current demand and time frames. Adding further mandates and hours to their workload is unlikely to be sustainable within the current system.

With regards to use of the Ohio Risk Assessment Tool, the Department notes that this tool has significant shortcomings. In particular, it is known to be deficient in assessing risk for domestic violence offenders or sex offenders, and thus many jurisdictions utilize additional tools, rather than relying on the Ohio Risk Assessment score as a determining indicator of risk. Moreover, the Ohio Risk Assessment does not consider any danger posed to the victim of the instant offense. Thus, OISC staff routinely (daily) requests input from our victim advocates, to assess victims' concerns about defendants' risks to their safety. The lack of such information or assessment within the Ohio Risk Assessment Tool seriously brings its legitimacy into question, particularly if this is to be a primary factor in determining the suitability of pretrial felons for release.

In addition to the foregoing, the Department is greatly concerned about the availability of treatment programs for pre-trial detainees with serious substance abuse or mental health problems. Individuals who could be acceptable for release if they were admitted to an in-patient program are literally being released onto the streets when there are no openings in, or they fail to qualify for, a particular program. Recently, a felony domestic violence victim informed our Department that her abuser had contacted her (through a family member), stating that—despite his own request to be released into a drug treatment program—there was no space available for him, and he had essentially been released with no place to stay, no money and no job. Thus, the “supervised release” of individuals who have insufficient support systems in the community not only puts victims and public safety at risk, but also does a disservice to the pretrial felons themselves, who may end up back on the streets, in the same circumstances that led to their arrest in the first place.

Since October 2013, the Department has amassed a large number of motions for revocation of supervised release, after pretrial felons failed to comply with the conditions of their supervised release. While such proceedings may be initiated after a single violation, this is rarely the case, and revocation proceedings typically involve multiple violations spanning a significant period of time. If the pretrial felon does not appear or report-in as ordered, bench warrants must be issued, and law enforcement is burdened with locating these individuals. Those pretrial felons remain at large, until found. Some are residentially challenged and have no local address.

Despite the initial appearance that moving up deadlines and imposing additional work hours may ultimately improve the pretrial assessment process, while continuing to guard the safety of victims and the general public, the Department respectfully disagrees, and asks that the Legislature focus on improving the current system, before attempting to accelerate the process.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 1331, S.D. 2. Thank you for the opportunity to testify on this matter.

yamashita1-Marianne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 7:10 PM
To: pbstestimony
Cc: blawaiianlvr@icloud.com
Subject: *Submitted testimony for SB1331 on Mar 19, 2015 10:05AM*

SB1331

Submitted on: 3/16/2015

Testimony for PBS on Mar 19, 2015 10:05AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY

Chair: Rep. Gregg Takayama

Vice Chair: Rep. Kyle Yamashita

Thursday, March 19, 2015

10:05 p.m.

Room 309

SUPPORT for SB 1331 SD2 – Pretrial Risk Assessments – Justice Reinvestment

Aloha Chair Takayama, Vice Chair Yamashita and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 1331 SD2 is part of the Justice Reinvestment Initiative, which if fully implemented correctly, will save Hawai'i millions of dollars. As in other jurisdictions that have embraced Justice Reinvestment, the prosecutors have strenuously objected to any reforms that would reduce the imprisoned population.

Community Alliance on Prisons supports this measure that amends Section 353-10, HRS to facilitate the implementation of Justice Reinvestment. We urge the Legislature to continue to push for the implementation of the Justice Reinvestment Initiative that has proven to be effective in reducing incarcerated populations, crime and saving millions of dollars in the jurisdictions where it was truly embraced.

Sadly, Hawai'i's implementation of Justice Reinvestment has been less than lackluster. We can change that, if we truly want a system that corrects behavior rather than one that has succeeded in creating an increasing criminal underclass.

Please support data-driven, cost-effective strategies in the criminal justice arena. Punishment, retaliation, stripes, non-contact visits only succeed in creating a bitter and angry imprisoned population, which helps no one and puts the community at risk.

Mahalo for this opportunity to testify.



THE SEX ABUSE TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

DATE: March 19, 2015

Advisory Board

TO: The Honorable Gregg Takayama, Chair
The Honorable Kyle Yamashita, Vice Chair
House Committee on Public Safety

President
Mimi Beams

Vice President
Peter Van Zile

FROM: Adriana Ramelli, Executive Director
The Sex Abuse Treatment Center

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

RE: Testimony in Opposition to Senate Bill 1331, Senate Draft 2
Relating to Public Safety

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Phyllis Muraoka

Gidget Ruscetta

I would like to thank the Committee for this opportunity to provide testimony on behalf of The Sex Abuse Treatment Center (the SATC), a program of Kapi'olani Medical Center for Women & Children, in opposition to Senate Bill 1331, Senate Draft 2 (S.B. 1331, S.D. 2).

Sexual assault is a crime that has far-reaching effects on survivors and their loved ones. The impact goes beyond physical injuries to include less obvious emotional and psychological wounds. The release of a perpetrator from custody can further provoke a wide range of emotional responses: devastation, feelings of re-victimization, symptoms of posttraumatic stress disorder, fear for personal safety, and anxiety about the safety of others. Perpetrators of sexual offenses who are granted release from custody also sometimes use their freedom as an opportunity to commit further crimes.

It is therefore crucially important that decisions to grant bail or other release from custody to violent criminals who have already been arrested are made carefully and deliberately, and are based on sound information.

In relevant part, S.B. 1331, S.D. 2, in Section 4 (proposing amendments to Haw. Rev. Stat. Sec. 804-7.1), makes a pretrial risk assessment score rendered through application of the Ohio Risk Assessment Survey-Pretrial Assessment Tool (ORAS-PAT) determinative of whether an arrested defendant is entitled to release. Absent a pretrial risk assessment score that reflects high risk of flight or commission of a new criminal offense, the court is mandated to allow the defendant to be released on bail, recognizance, or supervised release.

It is the SATC's strong belief, based on our research of ORAS-PAT, that using the pretrial risk assessment score in this way with regard to defendant sex offenders is not appropriate:

- "Creation and Validation of the Ohio Risk Assessment System, Final Report," the validation report for the ORAS-PAT which evaluated the tool as a predictor of recidivism and risk of flight, specifically cites sex offenders as an example of cases

that were underrepresented in the population of defendants it studied. Only a small number of these offenders were present in the sample. This means that, with respect to sex offenders, the ORAS-PAT tool has not been specifically validated to be an accurate or reliable predictor of recidivism and risk of flight.

- The University of Cincinnati, which created the ORAS-PAT tool under contract for the Ohio Department of Rehabilitation and Correction, specifically provides in training materials for the tool that professional discretion should be used to override the tool's risk assessment scoring with respect to specialized case loads, including sex offenders. The training further advises that users of the tool should consider using other, additional assessments for such specialized populations.

As such, it seems that S.B. 1331, S.D. 2 in its present form mandates release determinations based on of a tool that has not been validated to work with respect to sex offenders, and the creators of the tool specifically caution against using it on its own for that specialized population.

Out of a concern for the safety of survivors of sexual offenses and the people of the State of Hawai'i in general, the SATC respectfully request that the members of this committee please oppose the passage of S.B. 1331, S.D. 2 at this time.

yamashita1-Marianne

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 8:09 PM
To: pbstestimony
Cc: maukalani78@hotmail.com
Subject: Submitted testimony for SB1331 on Mar 19, 2015 10:05AM

SB1331

Submitted on: 3/17/2015

Testimony for PBS on Mar 19, 2015 10:05AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileana Funakoshi	Individual	Support	No

Comments: Dear Chair Takayama, Vice Chair Yamashita and Committee Members of PBS: I strongly support SB 1331 SD2 JRI – RISK ASSESSMENTS, BAIL. Previous testimony was given in the PSM committee. Thank you for the opportunity to submit my testimony and your favorable consideration of SB 1331 SD2. Aloha, e. ileina funakoshi

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 18, 2015

TO: Honorable Gregg Takayama, Chair
House Committee on Public Safety

Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: Councilmember Gladys C. Baisa

A handwritten signature in cursive script that reads "Gladys C. Baisa".

SUBJECT: **HEARING MARCH 19, 2015; SUPPORT OF SB 1331 S.D. 2, RELATING TO PUBLIC SAFETY**

Thank you for the opportunity to testify in **support** on this important measure. The purpose of this measure requires pretrial assessments, pretrial bail reports, and arraignments to be completed within an unspecified number of working days after an arrest. Obligates the intake service centers to interview lay sponsors within an unspecified number of days of their identification and allows the court to order defendants released on bail, recognizance, or supervised release to report to lay sponsors for supervision. Prohibits judicial officers from denying bail absent a pretrial risk assessment score that reflects a high risk of flight or commission of a new criminal offense. Prohibits judicial officers from relying on a bail schedule or bail amount that would have been necessary to prevent release of a defendant during jail overcrowding

I **support** this measure for the following reasons:

1. SB 1331 SD1 is part of the Justice Reinvestment Initiative, which if fully implemented correctly, will save Hawai'i millions of dollars. As in other jurisdictions that have embraced Justice Reinvestment, the prosecutors have strenuously objected to any reforms that would reduce the imprisoned population.
2. This measure that amends Section 353-10, HRS will facilitate the implementation of Justice Reinvestment. We urge the Legislature to continue to push for the implementation of the Justice Reinvestment Initiative that has proven to be effective in reducing incarcerated

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populations, crime and saving millions of dollars in the jurisdictions where it was truly embraced.

3. Sadly, Hawai'i's implementation of Justice Reinvestment has been less than lackluster. We can change that, if we truly want a system that corrects behavior rather than one that has succeeded in creating an increasing criminal underclass. Please support data-driven, cost-effective strategies in the criminal justice arena. Punishment, retaliation, stripes, non-contact visits only succeed in creating a bitter and angry imprisoned population, which helps no one.

For the foregoing reasons, I **support** this measure.