



*The Judiciary, State of Hawai‘i*

**Senate Committee on Public Safety, Intergovernmental, and Military Affairs**

Senator Clarence K. Nishihara, Chair

Senator Glenn Wakai, Vice-Chair

and

**Senate Committee on Judiciary**

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

Friday, February 8, 2019, 10:05a.m.  
State Capitol, Conference Room 016

**WRITTEN TESTIMONY ONLY**

By

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit  
Reporter, Criminal Pretrial Task Force

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**Bill No. and Title:** Senate Bill No. 1422, Relating to Law Enforcement.

**Purpose:** Senate Bill No. 1422 specifies that law enforcement officers have the discretion to issue citations, in lieu of making an arrest, for non-violent class C felonies, misdemeanors, petty misdemeanors, and violations.

**Judiciary's Position:**

The Judiciary respectfully supports Senate Bill No. 1422, which adopts the recommendation of the Criminal Pretrial Procedures Task Force to allow law enforcement officers broader discretion to issue citations.

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



Senate Bill No. 1422, Relating to Law Enforcement  
Senate Committee of Public Safety, Intergovernmental, and Military Affairs  
Friday, February 8, 2019, 10:05 a.m.  
Page 2

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, 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 803-6 of the Hawaii Revised Statutes to allow law enforcement officers to issue citations in lieu of arrest for certain offenses, including non-violent Class C felonies. The Judiciary respectfully supports Senate Bill No. 1422 in so far as it adopts the recommendation of the Criminal Pretrial Task Force.

Thank you for the opportunity to submit testimony.

**SB-1422**

Submitted on: 2/7/2019 9:33:54 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Bagasol	Testifying for Office of the Public Defender	Support	No

## Comments:

SB 1422 appears to be subsumed within the Omnibus Pretrial Reform Bill, SB 1421. Please refer to our testimony in support that was submitted under SB 1421. Thank you for the opportunity to respond to this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN  
CHAIR

JOYCE K. MATSUMORI-HOSHIJO  
MICHAEL A. TOWN  
ANNELLE C. AMARAL  
FITUINA F. TUA  
MEMBERS

TOMMY JOHNSON  
ADMINISTRATOR

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1422  
A BILL FOR AN ACT RELATING TO LAW ENFORCEMENT  
BY  
HAWAII PAROLING AUTHORITY  
Edmund "Fred" Hyun, Chairman

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair

AND

Senate Committee on Judiciary  
Senator Karl Rhoads, Chair

Friday, February 8, 2019, 10:05 a.m.  
State Capitol, Conference Room 016

Chair Nishihara, Chair Rhoads, and Members of both Committees:

The Hawaii Paroling Authority (HPA) opposes Senate Bill 1422, which seeks to expand the discretion of law enforcement officers to include issuing citations to appear for non-violent class C felonies in certain circumstances.

**While the intent is well meaning**, it does not distinguish an ordinary citizen from a convicted felon on probation, parole, or on a federal release program. Issuing a citation to appear in court to an offender for a new felony level offense puts the public at continued risk for victimization. Doing so in the case of parolees is particularly problematic as it increases the likelihood of the parolee absconding. Also, there is no guidance provided on how the supervision agency would be notified of the issuance of a citation.

As written, Senate Bill 1422 does not provide any guidance on how the Police Officer would come to a reasonable determination that the person issued the citation would appear in court at the time designated. For these critically important reasons, the HPA opposes this measure.

Thank you for the opportunity to provided testimony on Senate Bill 1422.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96813

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Thank you for the opportunity to provided testimony on Senate Bill 1422.





**SB1422/SB1423**

**RELATING TO LAW ENFORCEMENT/RELATING TO PAYMENT OF BAIL**

Ke Kōmike Palekana Lehulehu, Pilina O Nā Aupuni, a me Nā Kuleana Pū'ali Koa  
Ke Kōmike Ho'okolokolo

Pepeluali 8, 2019

10:05 a.m.

Lumi 016

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **SUPPORT** SB1422 and SB1423, measures which would effectuate two of the recommendations of the HCR134 Task Force on Pretrial Reform: reinforcing law enforcement authority to cite low-level defendants in lieu of arresting them, and allowing for bail posting on a 24-hour-a-day/7-day-a-week basis. OHA, as a member of the Task Force, has endorsed each of these recommendations.

Unfortunately, our current bail system is overwhelmed, inefficient, ineffective, and has resulted in harmful, unnecessary socioeconomic impacts<sup>1</sup> on low-income individuals and their families, a disproportionate number of whom may be Native Hawaiian. The intended purpose of bail is not to punish the accused, but rather to permit their pretrial release while ensuring their return to court. Presently, our bail system, overwhelmed by a historically increasing volume of arrests, is fraught with delays and frequently does not provide sufficient information to judges and attorneys seeking timely and appropriate pretrial release determinations. Moreover, mounting evidence demonstrates that overreliance on cash-secured bail punishes poor individuals and their families before any trial, much less conviction. In Hawai'i, indigent defendants must often decide between posting hefty cash bail or bond amounts that impose considerable financial hardship, or pretrial incarceration that threatens their employment and housing. Notably, detaining individuals for weeks or months before their trial simply because they are too poor to post bail also represents a substantial cost to taxpayers,<sup>2</sup> and further exacerbates the overcrowding in our detention facilities.<sup>3</sup>

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<sup>1</sup> Socioeconomic effects include daily costs of detaining each inmate, family separations, child and welfare interventions, loss of family income, reduction of labor supply, forgone output, loss of tax revenue, increased housing instability, and destabilization of community networks. See, e.g., MELISSA S. KEARNEY THE ECONOMIC CHALLENGES OF CRIME & INCARCERATION IN THE UNITED STATES THE BROOKINGS INSTITUTION (2014) available at <https://www.brookings.edu/opinions/the-economic-challenges-of-crime-incarceration-in-the-united-states/>.

<sup>2</sup> On average, it costs \$182 per day—\$66,439 per year—to incarcerate an inmate in Hawai'i. STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY: FISCAL YEAR 2018 ANNUAL REPORT 16 (2018) available at <https://dps.hawaii.gov/wp-content/uploads/2018/12/PSD-ANNUAL-REPORT-2018.pdf>.

<sup>3</sup> All four of the state-operated jail facilities—where pretrial defendants are detained—are assigned populations between 166-250% of the capacities for which they were designed and hold populations

Criminal justice experts have identified the pressing need for comprehensive reform of our pretrial system to adequately address the inherent and systemic inefficiency, ineffectiveness, and inequity in our bail system. The HCR134 Task Force, composed of experts and representatives from a broad collection of agencies and organizations who interface with the pretrial system, spent one and a half years examining the breadth and depth of Hawai'i's bail system and, in its 2018 report, made specific recommendations in many areas marked for improvement. The OHA representative to the HCR134 Task Force endorsed nearly all of these recommendations and OHA generally supports efforts to reduce the State's reliance on cash bail, increase resources and reduce inefficiency in administrative operations and judicial proceedings, improve access to robust and relevant information related to pretrial release determinations, and reduce unnecessary pretrial detention and its impacts on families and communities.

Specifically, OHA emphasizes the Task Force recommendation addressed in SB1422, which would **reinforce law enforcement authority and discretion to cite low-level defendants instead of arresting them, to reduce pretrial procedural volume and the pretrial incarcerated population**. OHA further emphasizes the Task Force recommendation addressed in SB1423, which would **expand the timeframe in which defendants may post bail beyond normal business days and hours, to similarly reduce the pretrial procedural volume and incarcerated population resulting from defendants who are unable to post timely cash bail**. OHA supports these and other efforts to reduce the harms arising from the State's overreliance on cash bail, and to maximize pretrial release.

For the reasons set forth above, OHA respectfully urges the Committees to **PASS** SB1422 and SB1423. Mahalo piha for the opportunity to testify on these important measures.

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amounting to 127-171% of their modified operational capacities. STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY, END OF MONTH POPULATION REPORT, NOVEMBER 30, 2018 *available at* <https://dps.hawaii.gov/wp-content/uploads/2018/12/Pop-Reports-EOM-2018-11-30.pdf>.

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

DWIGHT K. NADAMOTO  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE CLARANCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS**

**THE HONORABLE KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY**

**Thirtieth State Legislature  
Regular Session of 2019  
State of Hawai`i**

February 8, 2019

**RE: S.B. 1422; RELATING TO LAW ENFORCEMENT.**

Chair Nishihara, Chair Rhoads, Vice-Chair Wakai and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 1422.

The purpose of S.B. 1422 is to examine the current criminal pretrial procedures involving the discretion of law enforcement as it relates to citations for non-violent class C felonies. While the Department appreciates the Committee's good intentions of improving upon current procedures, we agree with the H.C.R. 134 Task Force's recommendation from the informational briefing on January 22, 2019, when it suggested that the prudent next step would be data collection following current changes implemented by various stakeholders, since the conclusion of H.C.R. 134.

The Department expresses strong concerns to the fact that S.B. 1422 creates a broad range of eligible offenses (non-violent Class C felony, any misdemeanor or petty misdemeanor offenses) while limiting excludable offenses to a static list (domestic violence, sexual assault, robbery and offenses contained in chapter 707 of the H.R.S.), thereby failing to take into account the plethora of charges classified as non-violent Class C felony, misdemeanor and petty



misdemeanor offenses that are not excluded from being citation eligible. This includes but is not limited to Habitual OVUII (§291E-61.5, H.R.S.), Promoting Pornography for Minors (§712-1215, H.R.S.), and Solicitation of a Minor for Prostitution (§712-1209.1, H.R.S.), Harassment by Stalking (§711-1106.1, H.R.S.), and Violation of an Injunction Against Harassment (§604-10.5, H.R.S.). In addition, this bill fails to outline a court procedure or mechanism for initiating a case as it relates to individuals who are only issued a citation for a class C felony offense.

Although the Task Force report provided twenty-five various recommendations for pre-trial reform, many recommendations have already been applied without statutory requirements or mandates. Since the completion of the Task Force, it is our understanding that each agency has re-evaluated their policies and procedures and reassessed their approach to the current pretrial issues. As previously noted, we would strongly encourage the Committee to allow time for appropriate data collection and analysis as recommended by the Task Force at the informational briefing on January 22, 2019, before making any further statutory changes.

For all the reasons above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 1422. Thank you for the opportunity to testify on this matter.



*Dedicated to safe, responsible, humane and effective drug policies since 1993*

TO: Senate Committees on Public Safety, Intergovernmental and Military Affairs;  
Judiciary

FROM: Carl Bergquist, Executive Director

HEARING DATE: February 8, 2019, 10:05AM

RE: SB1422, RELATING TO LAW ENFORCEMENT, **SUPPORT**

Dear Chairs Nishihara & Rhoads, Vice Chair Wakai and Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to add non-violent class C felonies to the list of offenses for which a law enforcement officer can issue a citation in lieu of carrying out an arrest. This would free up police resources while allowing the individual to go about their business and have a better chance of preparing their defense. Minimizing incarceration, including being detained pretrial unable to bail for a class C felony, is healthier for both the person and the community.

As the bill's findings indicate, other states are contemplating similar measures. According to the National Conference on State Legislatures, "[f]our states—Alaska, Louisiana, Minnesota, and Oregon—permit citations for some felonies."<sup>1</sup> *Those laws are highlighted after this testimony.* We note that the Alaska law in particular, was part of a broader criminal justice package passed in 2016.<sup>2</sup> Among other measures in that package is reducing drug possession offenses to misdemeanors. That policy is currently before your committees via [SB1367](#). We humbly submit that this bill and SB1367 work in concert, and respectfully request that you vote to send both to the full Senate for consideration.

Mahalo for the opportunity to testify.

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<sup>1</sup> <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.

<sup>2</sup> [https://www.pewtrusts.org/~media/assets/2016/12/alaskas\\_criminal\\_justice\\_reforms.pdf](https://www.pewtrusts.org/~media/assets/2016/12/alaskas_criminal_justice_reforms.pdf).

<b>State &amp; Statute</b>	<b>For What Offenses Can a Citation be Issued?</b>	<b>Exceptions</b>	<b>Presumption of Citation</b>	<b>When is Citation Issued?</b>	<b>Who Issues Citation?</b>
<b>Alaska</b> §12.25.180 (a)	Class C felonies, misdemeanors, municipal ordinances	Offenses involving violence to property or person; when there is probable cause that domestic abuse was involved.	No	Prior to arrest	Peace officers
<b>Louisiana</b> C. Crim. Proc. Art. 211	Misdemeanors; felony theft or illegal possession of stolen items worth \$500-\$1000; writing worthless checks; driving without license in possession	None identified.	No (Yes—driving without license in possession)	Prior to arrest	Peace officers
<b>Minnesota</b> Crim. Proc. R. 6.01, subd. 2	Felonies and gross misdemeanors without warrant	Aggravated DWI. (§ 169A.40)	No	After arrest	Peace officer, officer in charge of police or sheriff station
<b>Oregon</b> §§ 133.055; 133.070	Misdemeanors; felonies authorized by law to be reduced to a misdemeanor; certain ordinances	Domestic disturbance with probable cause to believe that: an assault occurred	No	Not specified	Peace officers

Source: <http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.

# COMMUNITY ALLIANCE ON PRISONS

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

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



## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

## COMMITTEE ON JUDICIARY

Sen. Karl Rhoads, Chair

Sen. Glenn Wakai, Vice Chair

Friday, February 8, 2019

10:05 am

Room 016

## STRONG SUPPORT for SB 1422 - LAW ENFORCEMENT DISCRETION

Aloha Chairs Nishihara and Rhoads, Dual Vice Chair Wakai and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 1422 specifies that law enforcement officers have the discretion to issue citations, in lieu of making an arrest, for non-violent class C felonies, misdemeanors, petty misdemeanors, and violations.

Community Alliance on Prisons is in strong support of this measure. We have been working with the LEAD (Law Enforcement Assisted Diversion) program alongside the Honolulu Police Department and it has been an incredible partnership.

I serve as the Policy Chair of the LEAD Hawai'i Hui and as we were meeting to put together the list of offenses that could be eligible for LEAD participation, the Hui felt strongly that Class C drug felonies should be included, as they are in other jurisdictions.

Law enforcement officers know many of the people in their district and, after working with several LEAD officers, Community Alliance on Prisons trusts that these police officers want what is best for the community and for the individual needing assistance.

I want to give a special shout out to Captain Mike Lambert, who is the LEAD leader! He has shown that the police can truly be PEACE OFFICERS!

Mahalo for this opportunity to testify.

## TESTIMONY IN SUPPORT OF SB 1422

TO: Senate Judiciary Committee  
Senate Public Safety, Intergovernmental, and Military Affairs Committee

FROM: Nikos Leverenz, Grants & Development Manager

DATE: February 8, 2019 (10:15 AM)

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Chair Rhoads, Vice Chair Wakai, and Members of the Senate Judiciary Committee:

Chair Nishihara, Vice Chair Wakai, and Members of the Senate Public Safety, Intergovernmental & Military Affairs Committee:

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** SB 1422, which would expand the discretion of law enforcement officers to include citations for non-violent Class C felonies. We support the legislative finding that "citation issuance is a viable alternative to arrest for low-risk [individuals] who have not demonstrated a risk of non-appearance in court while still protecting the public from the risk of further crime."

HHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems related to substance use and underlying mental health conditions. Incarceration for any length of time for those with undiagnosed or undertreated behavioral health conditions compounds their suffering and is neither wise nor compassionate public policy.

We commend Senator Nishihara for introducing an important reform that is supported by his active participation on the HCR 85 Task Force on Prison Reform. The Department of Safety relayed a critical data point to the Task Force during its work: *only 26% of the combined jail and prison population is incarcerated for class A or B felony, while the remaining 74% are incarcerated for a class C felony or lower (misdemeanor, petty misdemeanor, technical offense, or violation).*

The final report of the HCR 85 Task Force noted the significant consequences of even a short jail stay:

Jail is often the beginning of a long journey through the criminal justice system. A study by the Vera Institute of Justice found that "just a few days in jail can increase the likelihood of a sentence of incarceration and the harshness of that sentence, reduce economic viability, promote future criminal behavior, and worsen the health of those who enter—making jail a gateway to deeper and more lasting involvement in the criminal justice system, at considerable costs to the people involved and to society at large." (["Creating Better Outcomes, Safer Communities: Final Report of the House Concurrent Resolution Task Force on Prison Reform to the Hawai'i Legislature 2019 Regular Session"](#) at xvii. December 2018)

The Task Force specifically notes that "issuing citations for low-level offenses instead of arrest and jail" is one innovative way to help reduce the jail population. (*Id.*)

To the extent that this bill will provide law enforcement officers with the discretion to issue citations in lieu of arrest and jail, this can help Hawai'i to move away from away from an established framework that advances the further stigmatization, criminalization, and maltreatment of those who are best served by a therapeutic model providing low-barrier services and medical care to advance their health and well-being.

Thank you for the opportunity to testify on this measure.



**SB-1422**

Submitted on: 2/6/2019 4:17:59 PM

Testimony for PSM on 2/8/2019 10:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Support	No

Comments:

**SB-1422**

Submitted on: 2/4/2019 9:22:08 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

Comments:

I strongly support this bill to saving the court's time and saving the expense of housing these type of offenses.

Thank you for your consideration and humbly ask for your support.

**SB-1422**

Submitted on: 2/7/2019 6:30:59 AM

Testimony for PSM on 2/8/2019 10:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	No

Comments:

I strongly support SB1422 to add the police option of issuing a citation rather than arresting a person for a nonviolent Class C felony under certain conditions.

Somehow, our society has moved from "innocent until found guilty" to "guilty until found innocent" and punishment begins upon arrest, by jailing the person and establishing an arrest record that will follow them from then on, whether innocent or guilty.

We need to avoid establishing an arrest record on a person who has not been found guilty unless there is a threat to public safety. Allowing police to issue a citation instead of arrest keeps a person's record clean and eliminates the stigma now attached to arrest--even when the person arrested is later found innocent.

I do have a concern about the many homeless people who already have arrest records due to the tightening county and state laws restricting where they can sleep. This bill will change nothing for them, even for those who do not pose any risk to society. And they will continue to clog our jails and courts and continue to cost unnecessary amounts of public money. If there is a way to amend this bill to cover them, I encourage it.

Please pass SB1422