WHEREAS, the United States Supreme Court declared in *United States v. Salerno*, 481 U.S. 739, 755 (1986), that "[i]n our society, liberty is the norm, and detention prior to or without trial is the carefully limited exception"; and

WHEREAS, Article I, section 12, of the Hawaii State Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed", and further provides, "The court may dispense with bail if reasonably satisfied that the defendant or witness will appear when directed, except for a defendant charged with an offense punishable by life imprisonment"; and

WHEREAS, section 804-9, Hawaii Revised Statutes, provides that "[t]he amount of bail rests in the discretion of the justice or judge or the officers named in section 804-5; but should be so determined as not to suffer the wealthy to escape by the payment of a pecuniary penalty, nor to render the privilege useless to the poor. In all cases, the officer letting to bail should consider the punishment to be inflicted on conviction, and the pecuniary circumstances of the party accused"; and

WHEREAS, House Concurrent Resolution No. 85 (2016) requested that the Chief Justice establish a task force to study effective incarceration policies; and

WHEREAS, the Chief Justice has established the task force, which issued an interim report in December 2016, in which it...
proclaimed, "Hawaii must chart a new course and transition from a punitive to a rehabilitative correctional model"; and

WHEREAS, the task force has referenced a Vera Institute of Justice conclusion 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"; and

WHEREAS, the American Bar Association Criminal Justice Section Standards for Criminal Justice: Pretrial Release sections 10-1.2, 10-1.4, and 10-5.3 (2007) provide that "the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person", and financial conditions "should not be employed to respond to concerns for public safety", nor should financial conditions result "in the pretrial detention of the defendant solely due to an inability to pay"; and

WHEREAS, the American Council of Chief Defenders Policy Statement on Fair and Effective Pretrial Justice Practices (June 4, 2011) explains standards that "require public defenders to present judicial officers with the facts and legal criteria to support release, and where release is not obtained, to pursue modification of the conditions of release"; and

WHEREAS, the National District Attorneys Association's National Prosecution Standards, Third Edition, with Revised Commentary, provides that "[a] prosecutor should not seek a bail amount or other release conditions that are greater than necessary to ensure the safety of others and the community and to ensure the appearance of the defendant at trial" and "[t]hese provisions recognize a respect for the presumption of innocence and therefore state a clear preference for release of defendants pending trial"; and

WHEREAS, research suggests that pretrial services should include adequate and timely pretrial assessments of the accused that are focused on assessing risk of not appearing and risk to
public safety, and that the criminal justice system include viable options of appropriate supervision for different types and levels of risks; and

WHEREAS, in recent years, several other states have undertaken significant reforms to their criminal pretrial practices and procedures, including Alaska, Arizona, Colorado, Kentucky, Maryland, Nevada, New Jersey, New Mexico, and Utah; and

WHEREAS, the Hawaii State Bar Association, through its Judicial Administration Committee, conducted a Criminal Law Forum in September 2016, during which it thoroughly discussed criminal pretrial issues among a diverse group of judges, prosecutors, and criminal defense attorneys, and featured speakers from the Honolulu Police Department, Intake Service Center of the Department of Public Safety, National Institute of Corrections, United States Pretrial Services Office of the District of Hawaii, and Arizona Administrative Office of the Courts; and

WHEREAS, the Judicial Administration Committee recommended establishment of a criminal pretrial task force to examine and make recommendations regarding criminal pretrial practices and procedures; and

WHEREAS, an examination of potential revisions to criminal pretrial practices, procedures, and laws would improve public safety while protecting state and federal constitutional principles regarding the presumption of innocence, liberty, and right to non-excessive bail, and lower costs throughout the criminal justice system; and

WHEREAS, the task force will make recommendations regarding the future of a jail facility on Oahu and best practices for pretrial release, and any such recommendations should be considered by or coordinated with the Criminal Pretrial Task Force; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017, the Senate concurring, that the Judiciary is requested to convene a Criminal Pretrial Task Force to:
(1) Examine and, as needed, recommend legislation and revisions to criminal pretrial practices and procedures to increase public safety while maximizing pretrial release of those who do not pose a danger or a flight risk; and

(2) Identify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate time intervals; and

BE IT FURTHER RESOLVED that the task force be comprised of members that represent the various perspectives of public officials with significant roles in the criminal pretrial system and include:

(1) The Chief Justice or the Chief Justice's designee, who shall serve as the chairperson of the task force;

(2) A judicial officer representative of each Circuit Court;

(3) A member of the House of Representatives, appointed by the Speaker of the House of Representatives;

(4) A member of the Senate, appointed by the President of the Senate;

(5) A court administrator representative of each Circuit Court;

(6) A representative of the Department of the Attorney General;

(7) A representative from one of the various Intake Services Center of the Department of Public Safety;

(8) A representative of the Prosecuting Attorney's Office of each county;

(9) A representative of the Office of the Public Defender for the State of Hawaii;
(10) Four representatives appointed by the Hawaii Association of Criminal Defense Lawyers, including one representative from each county;

(11) A representative of each county police department;

(12) A representative of the Department of Health;

(13) The Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, or the Chairperson's designee; and

(14) A member of the public who has knowledge and expertise with the criminal pretrial system appointed by the Director of Public Safety; and

BE IT FURTHER RESOLVED that no member be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the task force; and

BE IT FURTHER RESOLVED that the Judiciary and the Department of Public Safety are requested to provide administrative support to the task force; and

BE IT FURTHER RESOLVED that the task force, with the assistance of the Legislative Reference Bureau, is requested to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2019; and

BE IT FURTHER RESOLVED that, upon request of the task force, the Legislative Reference Bureau is requested to assist in the preparation of the report; provided that the task force submits a draft, including any other information and materials deemed necessary by the Bureau, to the Bureau no later than August 1, 2018, for the preparation of the report; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chief Justice of the Hawaii Supreme Court, Attorney General, Public Defender of the State of Hawaii, Director of Health, Director of Public Safety, Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, Chief of Police of each county police department,
Prosecuting Attorney of each county, and the Hawaii Association of Criminal Defense Lawyers.