

---

---

## A BILL FOR AN ACT

RELATING TO PRETRIAL RELEASE.

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

1           SECTION 1. The legislature finds that Hawaii's current  
2 bail system needs to be reformed to address the disproportionate  
3 number of pretrial inmates under state custody. In 2016,  
4 approximately forty-one per cent of the total inmate population  
5 in the Oahu community correctional system were pretrial inmates.

6           The legislature further finds that the majority of  
7 individuals detained until case disposition are detained due to  
8 an inability to afford bail. The New York Times found that in  
9 cases where bail is \$500 or less, only fifteen per cent of  
10 defendants are able to come up with enough money to avoid jail.  
11 In addition to the loss of liberty, pretrial detainees who  
12 cannot afford bail often suffer the loss of employment, custody  
13 of minors, housing, vehicles, and standing within the community  
14 regardless of innocence.

15           The purpose of this Act is to reform Hawaii's criminal  
16 justice system by:



- 1           (1) Requiring courts to order any person charged with a
- 2                   criminal offense to be released on personal
- 3                   recognizance or on the execution of an unsecured bond,
- 4                   unless the person is unlikely to appear for trial;
- 5           (2) Requiring the judiciary to establish a statewide court
- 6                   appearance reminder system for criminal cases; and
- 7           (3) Establishing requirements for any pretrial risk
- 8                   assessment tool used by the judiciary.

9           SECTION 2. Chapter 601, Hawaii Revised Statutes, is  
10 amended by adding two new sections to be appropriately  
11 designated and to read as follows:

12           "§601-    Court appearance reminder system.    The judiciary  
13 shall establish a statewide court appearance reminder system to  
14 notify any person charged with a criminal offense of the date,  
15 time, and place at which the person to whom the notice was  
16 issued shall appear in court.

17           §601-    Risk assessment.    (a) Any risk assessment tool  
18 used by the judiciary in determining whether to release a person  
19 pursuant to chapter 804, shall:



- 1        (1) Be locally validated and regularly revalidated to  
2            assess the tool's appropriateness for Hawaii and to  
3            evaluate its impact on racial and ethnic disparities;
- 4        (2) Have minimal or no impact on racial and ethnic  
5            disparities;
- 6        (3) Be transparent about the data collected and scoring  
7            system;
- 8        (4) Not replace individualized determinations of release;
- 9        (5) Clearly and unequivocally define the risk factors and  
10           assessment terms used to ensure consistent evaluations  
11           and, if possible, distinguish between willful and non-  
12           willful failure to appear;
- 13        (6) Separate all risk factors and assessments;
- 14        (7) Provide statistical analysis for comparisons between  
15           similarly situated persons;
- 16        (8) If possible, avoid using a person's likelihood of  
17           future arrest as a basis for establishing  
18           dangerousness; and
- 19        (9) Be subject to independent and community review,  
20           including review by researchers and stakeholders who



1           do not have proprietary interests in the tool's  
2           success.

3           (b) The judiciary shall properly train court personnel  
4 with the implementation of any risk assessment tool.

5           (c) The risk assessment of any person charged with a  
6 criminal offense shall be provided to all parties as part of the  
7 pretrial bail report. The State and person charged with the  
8 criminal offense, or the person's counsel, shall be allowed to  
9 discuss and challenge the conclusion of a risk assessment tool."

10           SECTION 3. Section 804-3, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "§804-3 [Bailable] Pretrial release; bailable offenses.

13 ~~[(a) For purposes of this section, "serious crime" means murder~~  
14 ~~or attempted murder in the first degree, murder or attempted~~  
15 ~~murder in the second degree, or a class A or B felony, except~~  
16 ~~forgery in the first degree and failing to render aid under~~  
17 ~~section 291C-12, and "bail" includes release on one's own~~  
18 ~~recognizance, supervised release, and conditional release.~~

19           ~~(b) Any person charged with a criminal offense shall be~~  
20 ~~bailable by sufficient sureties; provided that bail may be~~  
21 ~~denied where the charge is for a serious crime, and:~~



- 1       ~~(1) There is a serious risk that the person will flee;~~
- 2       ~~(2) There is a serious risk that the person will obstruct~~  
3       ~~or attempt to obstruct justice, or therefore, injure,~~  
4       ~~or intimidate, or attempt to thereafter, injure, or~~  
5       ~~intimidate, a prospective witness or juror;~~
- 6       ~~(3) There is a serious risk that the person poses a danger~~  
7       ~~to any person or the community; or~~
- 8       ~~(4) There is a serious risk that the person will engage in~~  
9       ~~illegal activity.~~
- 10       ~~(c) Under subsection (b) (1) a rebuttable presumption~~  
11       ~~arises that there is a serious risk that the person will flee or~~  
12       ~~will not appear as directed by the court where the person is~~  
13       ~~charged with a criminal offense punishable by imprisonment for~~  
14       ~~life without possibility of parole. For purposes of subsection~~  
15       ~~(b) (3) and (4) a rebuttable presumption arises that the person~~  
16       ~~poses a serious danger to any person or community or will engage~~  
17       ~~in illegal activity where the court determines that:~~
- 18       ~~(1) The defendant has been previously convicted of a~~  
19       ~~serious crime involving violence against a person~~  
20       ~~within the ten year period preceding the date of the~~  
21       ~~charge against the defendant;~~



1       ~~(2) The defendant is already on bail on a felony charge~~  
2           ~~involving violence against a person; or~~

3       ~~(3) The defendant is on probation or parole for a serious~~  
4           ~~crime involving violence to a person.]~~

5       (a) Any person charged with a criminal offense shall be  
6       ordered released by a court of competent jurisdiction on the  
7       person's personal recognizance or on the execution of an  
8       unsecured bond, unless the court determines by clear and  
9       convincing evidence that unconditional release will not  
10       reasonably assure the appearance of the person when required.  
11       There shall be a rebuttable presumption that any person charged  
12       with a criminal offense will appear when required. The State  
13       shall bear the burden of proof of establishing that release will  
14       not reasonably assure the appearance of the person when  
15       required. The court shall issue a written order documenting its  
16       reasons for denying any person's release under this subsection.

17       (b) If, after a hearing the court finds that the release  
18       described in subsection (a) will not reasonably assure the  
19       appearance of the person when required, the court may order the  
20       release of the person subject to any of the conditions  
21       authorized under section 804-7.1.



1        (c) If, after a hearing the court finds that the release  
2 described in subsection (a) or (b) will not reasonably assure  
3 the appearance of the person when required, the person shall be  
4 bailable by sufficient sureties.

5        (d) If, after a hearing the court finds that no condition  
6 or combination of conditions will reasonably assure the  
7 appearance of the person when required or that release will not  
8 reasonably assure the safety of any other person or community,  
9 bail may be denied. For the purposes of this subsection, "bail"  
10 includes release on one's own recognizance, supervised release,  
11 and conditional release."

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. The



1 judicial officer shall issue a written order documenting the  
2 reasons for denying the defendant's release.

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

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

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

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

16 (4) Requiring the defendant to report regularly to and  
17 remain under the supervision of an officer of the  
18 court;

19 (5) Requiring the defendant to maintain employment, or, if  
20 unemployed, to actively seek employment, or attend an  
21 educational or vocational institution;





- 1           (6)    Requiring the defendant to comply with a specified
- 2                    curfew;
- 3           (7)    Requiring the defendant to seek and maintain mental
- 4                    health treatment or testing, including treatment for
- 5                    drug or alcohol dependency, or to remain in a
- 6                    specified institution for that purpose;
- 7           (8)    Requiring the defendant to remain in the jurisdiction
- 8                    of the judicial circuit in which the charges are
- 9                    pending unless approval is obtained from a court of
- 10                   competent jurisdiction to leave the jurisdiction of
- 11                   the court;
- 12           (9)    Requiring the defendant to satisfy any other condition
- 13                    reasonably necessary to assure the appearance of the
- 14                    person as required and to assure the safety of any
- 15                    other person or community; or
- 16           (10)   Imposing any combination of conditions listed
- 17                    above [-];
- 18   provided that no defendant shall be required to submit to
- 19   substance abuse testing as a condition for release unless the
- 20   defendant is charged with a crime involving possession or use,
- 21   not including to distribute or manufacture as defined in section



1 712-1240, of any dangerous drug, detrimental drug, harmful drug,  
2 intoxicating compound, marijuana, or marijuana concentrate, as  
3 defined in section 712-1240, methamphetamine trafficking as  
4 provided in section 712-1240.7, or involving possession or use  
5 of drug paraphernalia under section 329-43.5; provided further  
6 that the court shall order the least restrictive condition or  
7 combination of conditions that the court determines will  
8 reasonably assure the appearance of the defendant when required.

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

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

14       "§804-9 Amount. The amount of bail rests in the  
15 discretion of the justice or judge or the officers named in  
16 section 804-5; but should be so determined as not to suffer the  
17 wealthy to escape by the payment of a pecuniary penalty, nor to  
18 render the privilege useless to the poor. In all cases, the  
19 officer letting to bail should consider the punishment to be  
20 inflicted on conviction, and the pecuniary circumstances of the  
21 party accused. Under no circumstances shall a justice, judge,





# H.B. NO. 1436

**Report Title:**

Pretrial Release; Court Appearance Reminder System; Risk Assessment

**Description:**

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 statewide court appearance reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

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

