
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 PART I

2 SECTION 1. The legislature finds that independent
3 oversight of the State's correctional system ensures personnel
4 and fiscal accountability, supports safe conditions for
5 employees, inmates, and detainees, and provides positive reform
6 to a rehabilitative and therapeutic correctional system.

7 The legislature further finds that an increasing number of
8 states are calling for independent oversight of their
9 correctional systems with at least eight states already having
10 established independent oversight mechanisms to monitor and
11 improve their correctional systems.

12 The legislature further finds that the reentry commission
13 and the corrections population management commission have
14 overlapping responsibilities and consolidating the commissions
15 into a single, independent oversight commission led by an
16 oversight coordinator and guided by an experienced group of



1 commission members will promote efficiency and provide greater
2 opportunities for member participation.

3 The purpose of this part is to support best practices for
4 an effective correctional system by:

- 5 (1) Establishing the Hawaii correctional system oversight
6 commission; and
- 7 (2) Consolidating the reentry commission and corrections
8 population management commission into the Hawaii
9 correctional system oversight commission and
10 transferring the rights, powers, functions, and duties
11 of the consolidated commissions to the Hawaii
12 correctional system oversight commission.

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

16 "CHAPTER

17 HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

18 § -1 Hawaii correctional system oversight commission;
19 membership; appointment; chairperson; reimbursement of expenses.

20 (a) There is established within the office of the governor for
21 administrative purposes only a Hawaii correctional system



1 oversight commission consisting of five members who shall be
2 residents of this State and appointed as follows:

- 3 (1) One member shall be appointed by the governor;
- 4 (2) One member shall be appointed by the president of the
5 senate;
- 6 (3) One member shall be appointed by the speaker of the
7 house of representatives;
- 8 (4) One member shall be appointed by the chief justice;
9 and
- 10 (5) One member shall be appointed by the chairperson of
11 the board of trustees of the Office of Hawaiian
12 Affairs.

13 The commission members shall annually elect one of the
14 members to serve as chairperson of the commission.

15 (b) Preferred qualifications for commission members shall
16 be possessing knowledge in:

- 17 (1) Criminal justice or correctional systems;
- 18 (2) Native Hawaiian culture-based practices with an
19 emphasis on healing and reducing recidivism;
- 20 (3) Best practices for effective correctional systems; or
- 21 (4) Crime victim specialization.



1 (c) Any member of the commission may be removed from
2 office by the governor for cause upon notice and opportunity to
3 be heard at a public hearing.

4 (d) The members of the commission shall receive
5 reimbursement for expenses, including travel expenses, that are
6 necessary for the performance of their duties. No member of the
7 commission shall be made subject to the financial disclosure
8 requirements of sections 84-13 and 84-17 solely because of that
9 member's participation as a member of the commission. The terms
10 of the commissioners shall be as provided in section 26-34.

11 § -2 Oversight coordinator; appointment; term. (a) The
12 governor shall appoint an oversight coordinator from a list of
13 three nominees submitted by the commission. The oversight
14 coordinator shall be a person qualified by training and
15 experience to administer the Hawaii correctional system
16 oversight commission and shall be well-versed in criminal
17 justice reform and maintain a firm commitment to the
18 correctional system's transition from a punitive model to a
19 rehabilitative and therapeutic model. The oversight coordinator
20 shall serve a two-year term.



1 (b) Effective December 1, 2019, the oversight coordinator
2 of the commission shall be paid a salary set at one hundred per
3 cent of the salary of the director of human resources
4 development. The oversight coordinator shall be exempt from
5 chapters 76 and 89, but shall be a member of the state
6 employees' retirement system and shall be eligible to receive
7 benefits of any state employee benefits program generally
8 applicable to officers and employees of the State, including
9 those under chapter 87A.

10 (c) The oversight coordinator shall devote the oversight
11 coordinator's entire time and attention to the administration of
12 the Hawaii correctional system oversight commission and shall
13 not be engaged in any other profession or occupation.

14 (d) The oversight coordinator may employ persons not
15 subject to chapters 76 and 78 to perform and execute the
16 functions of the commission.

17 **§ -3 Hawaii correctional system oversight commission;**
18 **powers and duties.** (a) The commission shall meet with the
19 oversight coordinator not less than once each quarter to make
20 recommendations and set policy, receive reports from the



1 oversight coordinator, and transact other business properly
2 brought before the commission.

3 (b) The commission shall:

- 4 (1) Oversee the State's correctional system and have
5 jurisdiction over investigating complaints at
6 correctional facilities and facilitating a
7 correctional system transition from a punitive model
8 to a rehabilitative and therapeutic model;
- 9 (2) Establish maximum inmate population limits for each
10 correctional facility and formulate policies and
11 procedures to prevent the inmate population from
12 exceeding the capacity of each correctional facility;
- 13 (3) Work with the department of public safety in
14 monitoring and reviewing the comprehensive offender
15 reentry program, including facility educational and
16 treatment programs, rehabilitative services, work
17 furloughs, and the Hawaii paroling authority's
18 oversight of parolees. The commission may make
19 recommendations to the department of public safety,
20 the Hawaii paroling authority, and the legislature
21 regarding reentry and parole services; and



1 (4) Ensure that the comprehensive offender reentry system
2 under chapter 353H is working properly to provide
3 programs and services that result in the timely
4 release of inmates on parole when the maximum terms
5 have been served instead of delaying the release for
6 lack of programs and services.

7 To achieve these ends, the commission shall authorize the
8 oversight coordinator to adopt rules in accordance with chapter
9 91.

10 § -4 Powers and duties of the oversight coordinator. In
11 addition to any other powers and duties authorized in this
12 chapter, the oversight coordinator shall:

13 (1) Supervise and administer the operation of the
14 commission in accordance with this chapter and the
15 rules adopted under this chapter, subject to the
16 continuous duty to take into account the particularly
17 sensitive and responsible nature of the commission's
18 functions;

19 (2) Enforce this chapter and the rules adopted under this
20 chapter. The oversight coordinator shall receive
21 allegations of any violations of the laws of this



- 1 State or rules pertaining to the correctional system
2 or conduct of the commission;
- 3 (3) Be authorized to hire staff necessary to accomplish
4 the purpose of this chapter, including a minimum of
5 two researchers and one clerical assistant. Employees
6 of the oversight coordinator's office shall be exempt
7 from chapter 76 and shall not be considered civil
8 service employees but shall be entitled to any
9 employee benefit plans normally inuring to civil
10 service employees;
- 11 (4) Act as secretary and executive officer of the
12 commission;
- 13 (5) Confer regularly as necessary or desirable and not
14 less than once every quarter with the commission on
15 the operation and administration of the commission;
- 16 (6) Make available for inspection by the commission, upon
17 request, all books, records, files, and other
18 information and documents of the commission;
- 19 (7) Advise the commission and recommend matters as are
20 necessary and advisable to improve the operation and
21 administration of the commission; and



1 (8) Within thirty days after receiving an allegation of a
2 violation of the laws of this State or rules
3 pertaining to the correctional system or conduct of
4 the commission by a complainant and evidence
5 substantiating the allegation, determine in
6 proceedings in accordance with chapter 91, whether
7 there has been a violation of the rules and whether
8 referral for a criminal investigation is warranted.

9 § -5 Access to records by oversight coordinator and
10 commission. The department of public safety shall provide full
11 access to all information requested by the oversight coordinator
12 and commission.

13 § -6 Monthly reports; annual reports. (a) The
14 oversight coordinator shall submit a monthly report to the
15 commission, the governor, and the legislature. The monthly
16 report shall include actions taken by the commission and
17 expenses for the preceding month.

18 (b) The commission shall submit an annual report to the
19 governor and the legislature no less than twenty days before the
20 convening of each regular session. The annual report shall
21 include a full and complete statement of actions taken by the



1 commission for the preceding years, and recommendations,
2 including any proposed legislation, that the commission deems
3 necessary or desirable.

4 **§ -7 Studies and investigations; procedures.** (a) The
5 oversight coordinator shall conduct an ongoing study and
6 investigation of the correctional system for the following
7 purposes:

- 8 (1) To ascertain any provisions in this chapter or rules
9 adopted pursuant to this chapter through which any
10 abuses in the administration and operation of the
11 correctional system or any evasion of this chapter or
12 its rules may arise or be practiced;
- 13 (2) To formulate recommendations for changes to this
14 chapter; and
- 15 (3) To ensure that this chapter and rules adopted pursuant
16 to this chapter are formalized and are administered to
17 serve the true purposes of this chapter.
- 18 (b) The oversight coordinator shall conduct an ongoing
19 study and investigation of the operation and the administration
20 of correctional system laws in effect in other states or
21 countries, any literature on the subject that may be published



1 or available, any federal laws that may affect the operation of
2 the correctional system, and the reaction of residents to
3 existing and potential features of the correctional system in
4 order to recommend or effect changes that will tend to serve the
5 purposes of this chapter.

6 (c) In an investigation, the oversight coordinator may
7 make inquiries and obtain information as the oversight
8 coordinator thinks fit, enter without notice to inspect the
9 premises of an agency or correctional facility, and hold private
10 hearings in accordance with chapter 91.

11 (d) The oversight coordinator shall be required to
12 maintain confidentiality in respect to all matters and the
13 identities of the complainants or witnesses coming before the
14 oversight coordinator except so far as disclosures may be
15 necessary to enable the oversight coordinator to carry out the
16 oversight coordinator's duties and to support the oversight
17 coordinator's recommendations."

18 SECTION 3. Act 24, Special Session Laws of Hawaii 2009, as
19 amended by section 4 of Act 76, Session Laws of Hawaii 2012, as
20 amended by section 1 of Act 66, Session Laws of Hawaii 2013, as
21 amended by section 1 of Act 15, Session Laws of Hawaii 2015, is



1 amended by amending section 3, subsection (d) to read as
2 follows:

3 "(d) The commission shall cease to exist on [~~December 1,~~
4 ~~2019.~~] January 1, 2020."

5 SECTION 4. Chapter 353F, Hawaii Revised Statutes, is
6 repealed.

7 SECTION 5. The chairpersons of the reentry commission and
8 corrections population management commission and the oversight
9 coordinator shall create a plan to ensure a smooth transition
10 for the consolidation of commissions and the transfer of all
11 rights, powers, functions, and duties prior to the repeal of the
12 reentry commission and corrections populations management
13 commission on January 1, 2020.

14 SECTION 6. All rights, powers, functions, and duties of
15 the reentry commission are transferred to the Hawaii
16 correctional system oversight commission.

17 SECTION 7. All appropriations, records, equipment,
18 machines, files, supplies, contracts, books, papers, documents,
19 maps, and other personal property heretofore made, used,
20 acquired, or held by the reentry commission relating to the
21 functions transferred to the Hawaii correctional system



1 oversight commission shall be transferred with the functions to
2 which they relate.

3 SECTION 8. All rights, powers, functions, and duties of
4 the corrections population management commission are transferred
5 to the Hawaii correctional system oversight commission.

6 SECTION 9. All appropriations, records, equipment,
7 machines, files, supplies, contracts, books, papers, documents,
8 maps, and other personal property heretofore made, used,
9 acquired, or held by the corrections population management
10 commission relating to the functions transferred to the Hawaii
11 correctional system oversight commission shall be transferred
12 with the functions to which they relate.

13 SECTION 10. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ or so much
15 thereof as may be necessary for fiscal year 2019-2020 and the
16 same sum or so much thereof as may be necessary for fiscal year
17 2020-2021 for the operations of the Hawaii correctional system
18 oversight commission.

19 The sums appropriated shall be expended by the office of
20 the governor for the purposes of this part.



PART II

SECTION 11. (a) The legislature finds that House Concurrent Resolution No. 134, House Draft 1 (2017), requested the judiciary 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.

Accordingly, the judiciary convened a criminal pretrial task force that consisted of twenty-nine members from various agencies and organizations with a broad spectrum of knowledge and experience. The task force membership included judges from circuit and district courts; the chair of the senate committee on public safety, intergovernmental, and military affairs; the chair of the house of representatives committee on judiciary; court administrator representatives from each circuit court; a



1 representative from the department of the attorney general; a
2 representative from the department of health; a representative
3 from the department of public safety; a representative of the
4 office of Hawaiian affairs; the police chiefs of the counties of
5 Hawaii, Kauai, Maui, and the city and county of Honolulu; the
6 prosecuting attorneys for the counties of Hawaii, Kauai, and
7 Maui; a representative of the prosecuting attorney for the city
8 and county of Honolulu; a representative of the office of the
9 public defender; representatives of the criminal defense bar
10 from each of the four counties; and a member of the public. Six
11 subcommittees were formed, and each subcommittee met or
12 otherwise exchanged information numerous times to facilitate the
13 work of the task force. The task force met in plenary session a
14 total of twelve times between August 11, 2017, and July 6, 2018.
15 The task force submitted its report to the Legislature on
16 December 14, 2018. The report contains twenty-five
17 recommendations, some of which were accompanied by proposed
18 legislation that was authored by the task force.

19 (b) The purpose of parts III through IX of this Act is to
20 implement the recommendations of the criminal pretrial task
21 force as follows:



1 (1) Parts III and IV of this Act implement recommendations
2 of the task force that were accompanied by proposed
3 legislation authored by the task force, with
4 amendments; and

5 (2) Parts V through IX of this Act implement
6 recommendations of the task force for which no
7 proposed legislation was provided; however, these
8 parts incorporate much of the substantive language
9 contained in the task force's recommendations.

10 PART III

11 SECTION 12. The purpose of this part is to improve clarity
12 and consistency in the criminal pretrial system by requiring
13 that intake service centers:

14 (1) Conduct pretrial risk assessments and prepare bail
15 reports within five working days of the offender's
16 admission to a community correctional center;

17 (2) Inquire and report on the offender's financial
18 circumstances;

19 (3) Evaluate the offender's risk of violence;

20 (4) Include the fully executed pretrial risk assessment as
21 part of the bail report; and



1 (5) Periodically review and further validate the pretrial
 2 risk assessment tool at least every five years to
 3 evaluate the effectiveness of the tool and the
 4 procedures associated with its administration, and
 5 publicly report the findings of periodic reviews.

6 SECTION 13. Section 353-10, Hawaii Revised Statutes, is
 7 amended by amending subsection (b) to read as follows:

8 "(b) The centers shall:

- 9 (1) Provide orientation, guidance, and technical services;
- 10 (2) Provide social-medical-psychiatric-psychological
 11 diagnostic evaluation;
- 12 (3) Conduct internal pretrial risk assessments on adult
 13 offenders within [~~three~~] five working days of
 14 admission to a community correctional center [~~which~~
 15 ~~shall then be provided to the court for its~~
 16 ~~consideration~~]; provided that this paragraph shall not
 17 apply to persons subject to county or state
 18 detainers [~~7~~] or holds, [~~or~~] persons detained without
 19 bail, persons detained for probation violation,
 20 persons facing revocation of bail or supervised
 21 release, and persons who have had a pretrial risk



1 assessment completed prior to admission to a community
2 correctional center. For purposes of this
3 [†]paragraph[†], "pretrial risk assessment" means an
4 objective, research-based, validated assessment tool
5 that measures [~~a defendant's~~] an offender's risk of
6 flight, [and] risk of criminal conduct, and risk of
7 violence or harm to any person or the general public
8 while on pretrial release pending adjudication[†].

9 The pretrial risk assessment tool and procedures
10 associated with its administration shall be
11 periodically reviewed and subject to further
12 validation at least every five years to evaluate the
13 effectiveness of the tool and the procedures
14 associated with its administration. The findings of
15 periodic reviews shall be publicly reported;

- 16 (4) Provide correctional prescription program planning and
17 security classification;
- 18 (5) Provide other personal and correctional services as
19 needed for both detained and committed persons;
- 20 (6) Monitor and record the progress of persons assigned to
21 correctional facilities who undergo further treatment



1 or who participate in prescribed correctional
2 programs;

3 (7) Provide continuing supervision and control of persons
4 ordered to be placed on pretrial supervision by the
5 court and persons ordered by the director; ~~and~~

6 (8) Make inquiry with the offender concerning the
7 offender's financial circumstances and include this
8 information in the bail report; provided that the
9 department of public safety's pretrial services
10 officers shall be provided limited access for the
11 purpose of viewing other state agencies' relevant data
12 related to an offender's employment wages and taxes;

13 ~~[(8)]~~ (9) Provide pretrial bail reports to the courts on
14 adult offenders, within five working days of admission
15 of the offender to a community correctional center,
16 that are ~~consented to by the defendant or that are~~
17 ordered by the court ~~[-]~~ or consented to by the
18 offender. A complete copy of the executed pretrial
19 risk assessment delineating the scored items, the
20 total score, any administrative scoring overrides
21 applied, and written explanations for administrative



1 scoring overrides, shall be included in the pretrial
2 bail report. The pretrial bail reports shall be
3 confidential and shall not be deemed to be public
4 records. A copy of a pretrial bail report shall be
5 provided only:

- 6 (A) To the [~~defendant~~] offender or [~~defendant's~~] the
7 offender's counsel;
8 (B) To the prosecuting attorney;
9 (C) To the department of public safety;
10 (D) To any psychiatrist, psychologist, or other
11 treatment practitioner who is treating the
12 [~~defendant~~] offender pursuant to a court order;
13 (E) Upon request, to the adult client services
14 branch; and
15 (F) In accordance with applicable laws, persons, or
16 entities doing research. The research entity
17 must be approved and contracted by the department
18 of public safety to protect the confidentiality
19 of the information, insofar as the information is
20 not a public record."



PART IV

SECTION 14. The purpose of this part is to amend chapter 804, Hawaii Revised Statutes, to:

- (1) Require monetary bail to be set in reasonable amounts based on all available information, including information concerning the defendant's financial circumstances;
- (2) Permit monetary bail to be posted with the police, other law enforcement agency, or the county correctional center where the defendant is held, on a twenty-four hours a day, seven days a week basis;
- (3) Require a prompt bail hearing after a defendant is formally charged; and
- (4) Require the release of a defendant under the least restrictive conditions required to ensure:
 - (A) The defendant's appearance; and
 - (B) The protection of the public.

SECTION 15. Chapter 804, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



1 "§804- Right to a prompt hearing; release or detention.

2 (a) For the purposes of this section, "prompt hearing" means a
3 hearing that occurs at the time of the defendant's arraignment.

4 (b) Upon formal charge and detention, a defendant shall
5 have the right to a prompt hearing concerning:

6 (1) Release or detention; and

7 (2) Whether any condition or combination of conditions
8 will reasonably ensure:

9 (A) The defendant's appearance as required; and

10 (B) The safety of any other person and the community.

11 (c) At the hearing, the defendant shall have the right to
12 be represented by counsel and, if financially unable to obtain
13 representation, to have counsel appointed. The defendant shall
14 be afforded an opportunity to testify at the hearing. The
15 defendant and the prosecution shall both be afforded an
16 opportunity to present information by proffer or otherwise.

17 (d) The rules concerning the admissibility of evidence in
18 criminal trials shall not apply to the presentation and
19 consideration of information at the hearing.

20 (e) The defendant may be detained pending completion of
21 the hearing."



1 SECTION 16. Section 804-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§804-4 When a matter of right. (a) If the charge is for
4 an offense for which bail is allowable under section 804-3, the
5 defendant may be admitted to bail before conviction as a matter
6 of right[-] and under the least restrictive conditions required
7 to ensure the defendant's appearance and to protect the public.
8 Except for section 712-1207(7), bail shall be allowed for any
9 person charged under section 712-1207 only subject to the
10 mandatory condition that the person observe geographic
11 restrictions that prohibit the defendant from entering or
12 remaining on public property, in Waikiki and other areas in the
13 State designated by county ordinance during the hours from 6
14 p.m. to 6 a.m.; and provided further that nothing contained in
15 this subsection shall be construed as prohibiting the imposition
16 of stricter geographic restrictions under section 804-7.1. The
17 right to bail shall continue after conviction of a misdemeanor,
18 petty misdemeanor, or violation, and release on bail may
19 continue, in the discretion of the court, after conviction of a
20 felony until the final determination of any motion for a new
21 trial, appeal, habeas corpus, or other proceedings that are



1 made, taken, issued, or allowed for the purpose of securing a
2 review of the rulings, verdict, judgment, sentence, or other
3 proceedings of any court or jury in or by which the defendant
4 has been arraigned, tried, convicted, or sentenced; provided
5 that:

- 6 (1) No bail shall be allowed after conviction and prior to
7 sentencing in cases where bail was not available under
8 section 804-3, or where bail was denied or revoked
9 before conviction;
- 10 (2) No bail shall be allowed pending appeal of a felony
11 conviction where a sentence of imprisonment has been
12 imposed; and
- 13 (3) No bail shall be allowed pending appeal of a
14 conviction for a violation of section 712-1207, unless
15 the court finds, based on the defendant's record, that
16 the defendant may be admitted to bail subject to the
17 mandatory condition that the person observe geographic
18 restrictions that prohibit the defendant from entering
19 or walking along the public streets or sidewalks of
20 Waikiki or other areas in the State designated by



1 county ordinance pursuant to section 712-1207 during
2 the hours from 6 p.m. to 6 a.m.

3 Notwithstanding any other provision of law to the contrary, any
4 person who violates these bail restrictions shall have the
5 person's bail revoked after hearing and shall be imprisoned
6 forthwith.

7 (b) The court shall order that a person who has been found
8 guilty of an offense and sentenced to a term of imprisonment,
9 and who has filed an appeal or a petition for a writ of
10 certiorari, be detained, unless the court finds:

11 (1) By clear and convincing evidence that the person is
12 not likely to flee or pose a danger to the safety of
13 any other person or the community if released; and

14 (2) That the appeal is not for purpose of delay and raises
15 a substantial question of law or fact likely to result
16 in reversal or an order for a new trial.

17 If the court makes these findings, the court shall order the
18 release of the person in accordance with section 804-7.1[-]
19 under the least restrictive conditions required to ensure the
20 defendant's appearance and to protect the public. No defendant
21 entitled to bail, whether bailed or not, shall be subject,



1 without the defendant's written consent, to the operation of any
2 sentence passed upon the defendant, while any proceedings to
3 procure a review of any action of the trial court or jury in the
4 premises are pending and undetermined, except as provided in
5 section 641-14(a) or section 712-1207."

6 SECTION 17. Section 804-5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§804-5 By whom allowed. In cases where the punishment
9 for the offense charged may be imprisonment for life not subject
10 to parole, or imprisonment for a term more than ten years with
11 or without fine, a judge or justice of a court of record,
12 including a district judge, shall be competent to admit the
13 accused to bail, in conformity with sections 804-3 to 804-6. In
14 all other cases, the accused may be so admitted to bail by any
15 judge or justice of a court of record, including a district
16 judge, and in cases, except under section 712-1207, where the
17 punishment for the offense charged may not exceed two years'
18 imprisonment with or without fine, the sheriff, the sheriff's
19 deputy, the chief of police or any person named by the chief of
20 police, or the sheriff of Kalawao, regardless of the circuit
21 within which the alleged offense was committed, may admit the



1 accused person to bail. The court shall impose conditions of
2 release or bail that are the least restrictive conditions
3 required to ensure the accused's appearance and to protect the
4 public."

5 SECTION 18. Section 804-7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§804-7 Release after bail. [~~When bail is offered and~~
8 ~~taken the prisoner shall be discharged from custody or~~
9 ~~imprisonment.] Any person for whom a monetary amount of bail
10 has been set by the police, other law enforcement agency, or the
11 court shall be permitted to post the bail amount at the police
12 department, law enforcement agency, or community correctional
13 center where the person is detained. The monetary bail shall be
14 payable on a twenty-four hours a day, seven days a week basis.
15 Upon posting or payment of bail, the person, the person's
16 representative, or the person's agent shall be provided a bail
17 receipt, and the person shall be released from custody
18 forthwith."~~

19 SECTION 19. Section 804-7.1, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§804-7.1 Conditions of release on bail, recognizance, or
2 supervised release. Upon a showing that there exists a danger
3 that the defendant will commit a serious crime or will seek to
4 intimidate witnesses, or will otherwise unlawfully interfere
5 with the orderly administration of justice, the judicial officer
6 named in section 804-5 may deny the defendant's release on bail,
7 recognizance, or supervised release.

8 Upon the defendant's release on bail, recognizance, or
9 supervised release, however, the court may enter an order:

- 10 (1) Prohibiting the defendant from approaching or
11 communicating with particular persons or classes of
12 persons, except that no such order should be deemed to
13 prohibit any lawful and ethical activity of
14 defendant's counsel;
- 15 (2) Prohibiting the defendant from going to certain
16 described geographical areas or premises;
- 17 (3) Prohibiting the defendant from possessing any
18 dangerous weapon, engaging in certain described
19 activities, or indulging in intoxicating liquors or
20 certain drugs;



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



1 (10) Imposing any combination of conditions listed
 2 above ~~[]~~ ;
 3 provided that the court shall impose the least restrictive non-
 4 financial conditions required to ensure the defendant's
 5 appearance and to protect the public.

6 The judicial officer may revoke a defendant's bail upon
 7 proof that the defendant has breached any of the conditions
 8 imposed."

9 SECTION 20. Section 804-9, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "**§804-9 Amount.** The amount of bail rests in the
 12 discretion of the justice or judge or the officers named in
 13 section 804-5 ~~[, but]~~ and shall be set in a reasonable amount
 14 based upon all available information, including the offense
 15 alleged, the possible punishment upon conviction, and the
 16 offender's financial ability to afford bail. The bail amount
 17 should be so determined as not to suffer the wealthy to escape
 18 by the payment of a pecuniary penalty, nor to render the
 19 privilege useless to the poor. ~~[In all cases, the officer~~
 20 ~~letting to bail should consider the punishment to be inflicted~~



1 ~~on conviction, and the pecuniary circumstances of the party~~
2 ~~accused.] "~~

3 PART V

4 SECTION 21. The purpose of this part is to afford pretrial
5 detainees greater and continuing opportunities to be released
6 by:

- 7 (1) Requiring the relevant community correctional centers
8 to conduct regular reviews and surveys of the jail
9 population to identify pretrial defendants who may be
10 appropriate for pretrial release or supervision; and
11 (2) Providing the results of these reviews to the courts
12 who may then consider modifying the previously issued
13 bail order.

14 SECTION 22. Chapter 353, Hawaii Revised Statutes, is
15 amended by adding a new section to part I to be appropriately
16 designated and to read as follows:

17 "§353- Community correctional centers; periodic reviews
18 of pretrial detainees. (a) The relevant community correctional
19 centers, on a periodic basis but no less frequently than every
20 three months, shall conduct reviews of pretrial detainees to
21 reassess whether a detainee should remain in custody or whether



1 new information or a change in circumstances warrants
2 reconsideration of a detainee's pretrial release or supervision.

3 (b) For each review conducted pursuant to subsection (a),
4 the relevant community correctional center shall transmit its
5 findings and recommendations to the appropriate court,
6 prosecuting attorney, and defense counsel.

7 (c) If a motion to modify bail is filed pursuant to a
8 recommendation made pursuant to subsection (b), a hearing shall
9 be scheduled at which the court shall consider the motion."

10 PART VI

11 SECTION 23. The purpose of this part is as follows:

12 (1) Under the office of the chief justice, create a
13 permanently funded criminal justice research institute
14 that is dedicated to examining all aspects of the
15 criminal justice system;

16 (2) Appropriate funds for the establishment and staffing
17 of the criminal justice research institute, including
18 the hiring of necessary staff and for the securing of
19 any necessary facilities or equipment; and

20 (3) Create a centralized statewide criminal pretrial
21 justice data reporting and collection system.



1 SECTION 24. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 32 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 CRIMINAL JUSTICE RESEARCH INSTITUTE

6 § -1 Definitions. As used in this chapter, unless the
7 context otherwise requires:

8 "Board" means the board of directors of the criminal
9 justice research institute.

10 "Institute" means the criminal justice research institute.

11 § -2 Establishment of the criminal justice research
12 institute. (a) There is established within the office of the
13 chief justice a criminal justice research institute dedicated to
14 examining all aspects of the criminal justice system, for the
15 purpose of assisting the State in understanding the system in a
16 more comprehensive way and ensuring the protection of individual
17 rights, increasing efficiencies, and controlling costs. The
18 institute shall have the authority to examine all areas of the
19 criminal justice system, including police, prosecutors, defense
20 counsel, courts, pretrial services, probation and parole, jails,
21 and prisons, as well as examine the manner in which related



1 areas, including mental health services and drug treatment
2 services, intersect with the criminal justice system.

3 (b) The institute's duties and functions shall include:

4 (1) Collecting data to monitor the overall functioning of
5 the criminal justice system;

6 (2) Monitoring evidence-based practices;

7 (3) Conducting cost-benefit analysis on various areas of
8 operation;

9 (4) Monitoring national trends in criminal justice; and

10 (5) Issuing public reports to inform all criminal justice
11 stakeholders and the public about the functioning of
12 the criminal justice system.

13 (c) The institute shall be overseen by a board of
14 directors, which shall consist of the chief justice, a
15 representative of the office of the governor, a member of the
16 legislature, and the director of public safety.

17 (d) The chief justice shall appoint as director of the
18 institute a researcher with a doctoral degree and experience in
19 the criminal justice field. The director shall hire staff
20 necessary to accomplish the purposes of this chapter, including
21 a minimum of two assistant researchers and one clerical



1 assistant. The institute may seek the assistance of the
2 University of Hawaii or another appropriate entity when
3 conducting large or complex research projects that require more
4 staff.

5 (e) Employees of the institute shall be exempt from
6 chapter 76 and shall not be considered civil service employees,
7 but shall be entitled to any employee benefit plan normally
8 inuring to civil service employees.

9 § -3 Centralized statewide criminal pretrial justice
10 data reporting and collection system. (a) The institute shall
11 establish and maintain a centralized statewide criminal pretrial
12 justice data reporting and collection system.

13 (b) In establishing the system, the institute shall take
14 all necessary and appropriate steps, including:

15 (1) Identifying all current databases utilized by various
16 state agencies to track criminal pretrial information;

17 (2) Determining the administrative and technological
18 feasibility of aggregating and sharing current data;
19 and

20 (3) Identifying critical gaps in data and information
21 collection that are required for a robust assessment



- 1 of criminal pretrial justice matters, which may
2 include information relating to:
- 3 (A) Arrests;
 - 4 (B) Monetary and non-monetary conditions of release;
 - 5 (C) Bail amounts;
 - 6 (D) Risk assessments;
 - 7 (E) Risk assessment scores;
 - 8 (F) Bail report recommendations;
 - 9 (G) Information gathered in risk assessments or bail
10 reports;
 - 11 (H) Bail hearings;
 - 12 (I) Judicial decisions to release and conditions
13 imposed on release;
 - 14 (J) Judicial decisions to detain;
 - 15 (K) Concordance between the bail report
16 recommendation and decision, length of stay, and
17 pretrial supervision; and
 - 18 (L) The degree to which a defendant's assessed risk
19 correlates with the defendant's actual risk,
20 including an assessment of whether the defendant
21 appears in court, commits other crimes, or



1 engages in violent conduct when released from
2 custody.

3 (c) The institute shall develop and track performance
4 indicators that accurately reflect the effectiveness of the
5 State's criminal pretrial system. Performance indicators may
6 include but shall not be limited to:

7 (1) The percentage of supervised defendants who make all
8 scheduled court appearances;

9 (2) The percentage of supervised defendants who are not
10 charged with a new offense during the pretrial stage;

11 (3) The ratio of defendants whose supervision level or
12 detention status corresponds with each respective
13 defendant's assessed risk of pretrial misconduct;

14 (4) The percentage of released defendants who:

15 (A) Do not have their release revoked for technical
16 violations of the conditions of their release;

17 (B) Appear for all scheduled court appearances; and

18 (C) Are not charged with a new offense during
19 pretrial supervision;



- 1 (5) The average length of stay in jail for pretrial
2 detainees who are eligible by statute for pretrial
3 release;
- 4 (6) The percentage of defendants who remain arrest-free
5 during the pretrial release period; and
- 6 (7) The percentage of defendants who remain on release at
7 the conclusion of their pretrial period without a
8 pending request for removal or revocation due to non-
9 compliance.
- 10 (d) The institute shall compile an annual report that
11 reviews and analyzes data from the system to evaluate the
12 effectiveness of the State's criminal pretrial system and
13 identify possible improvements. The institute shall submit the
14 report, including any proposed legislation, to the legislature
15 no later than twenty days prior to the convening of each regular
16 session.
- 17 (e) As used in this section, unless the context otherwise
18 requires, "system" means the centralized statewide criminal
19 pretrial justice data reporting and collection system
20 established by this section."



1 SECTION 25. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2019-2020 and the
4 same sum or so much thereof as may be necessary for fiscal year
5 2020-2021 for the establishment and staffing of the criminal
6 justice research institute pursuant to this part, including the
7 hiring of one full-time equivalent (1.0 FTE) director, two full-
8 time equivalent (2.0 FTE) assistant researchers and one full-
9 time equivalent (1.0 FTE) clerical assistant, and for any
10 necessary facilities and equipment.

11 The sums appropriated shall be expended by the judiciary
12 for the purposes this part.

13 PART VII

14 SECTION 26. The purpose of this part is to implement and
15 expand alternatives to pretrial detention by:

- 16 (1) Expressly including electronic monitoring and home
17 detention as alternatives to incarceration in chapter
18 804, Hawaii Revised Statutes;
- 19 (2) Requiring the judiciary, in consultation with the
20 department of public safety, to develop and adopt a
21 policy for courts to use when assessing whether a



1 defendant's risk of non-appearance or recidivism may
2 be mitigated by home detention or electronic
3 monitoring;

4 (3) Making appropriations to the department of public
5 safety to support pretrial defendants released from
6 detention on a supervised basis;

7 (4) Making appropriations to the department of public
8 safety for the electronic monitoring of pretrial
9 defendants, including the acquisition, operation, and
10 upkeep of electronic monitoring devices; and

11 (5) Requiring the department of public safety to submit a
12 report to the legislature prior to the convening of
13 the regular session of 2020 detailing the department's
14 expenditure plan for the funding appropriated pursuant
15 to this part.

16 SECTION 27. Section 804-7.1, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§804-7.1 Conditions of release on bail, recognizance, or
19 supervised release. Upon a showing that there exists a danger
20 that the defendant will commit a serious crime or will seek to
21 intimidate witnesses, or will otherwise unlawfully interfere



1 with the orderly administration of justice, the judicial officer
2 named in section 804-5 may deny the defendant's release on bail,
3 recognizance, or supervised release.

4 Upon the defendant's release on bail, recognizance, or
5 supervised release, however, the court may enter an order:

- 6 (1) Prohibiting the defendant from approaching or
7 communicating with particular persons or classes of
8 persons, except that no such order should be deemed to
9 prohibit any lawful and ethical activity of
10 defendant's counsel;
- 11 (2) Prohibiting the defendant from going to certain
12 described geographical areas or premises;
- 13 (3) Prohibiting the defendant from possessing any
14 dangerous weapon, engaging in certain described
15 activities, or indulging in intoxicating liquors or
16 certain drugs;
- 17 (4) Requiring the defendant to report regularly to and
18 remain under the supervision of an officer of the
19 court;



- 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 submit to the use of
16 electronic monitoring and surveillance;
- 17 (10) Requiring the confinement of the defendant in the
18 defendant's residence;
- 19 [~~9~~] (11) Requiring the defendant to satisfy any other
20 condition reasonably necessary to assure the



1 appearance of the person as required and to assure the
 2 safety of any other person or community; or
 3 ~~[-(10)]~~ (12) Imposing any combination of conditions listed
 4 above.

5 The judicial officer may revoke a defendant's bail upon
 6 proof that the defendant has breached any of the conditions
 7 imposed."

8 SECTION 28. The judiciary, in consultation with the
 9 department of public safety, shall develop and adopt a policy
 10 for courts to use when assessing whether a defendant's risk of
 11 non-appearance or recidivism may be mitigated by home detention
 12 or electronic monitoring. The policy shall include:

- 13 (1) Specific criteria for the court to consider when
- 14 making this decision; and
- 15 (2) A requirement for a court to provide specific findings
- 16 explaining the court's determination that home
- 17 detention or electronic monitoring is not appropriate
- 18 for a defendant.

19 SECTION 29. There is appropriated out of the general
 20 revenues of the State of Hawaii the sum of \$ or so much
 21 thereof as may be necessary for fiscal year 2019-2020 and the



1 same sum or so much thereof as may be necessary for fiscal year
2 2020-2021 for the intake service centers to support pretrial
3 defendants released from detention on a supervised basis through
4 the establishment or expansion of any of the following support
5 services:

- 6 (1) Residential and outpatient treatment programs for
7 substance abuse and mental health disorders;
- 8 (2) Housing with support services for homeless defendants;
- 9 (3) Day-reporting centers for defendants who may have
10 difficulty complying with regular supervised release;
- 11 (4) Electronic monitoring, including the acquisition,
12 operation, and upkeep of electronic monitoring
13 devices; and
- 14 (5) Any other alternative programs implemented by the
15 department of public safety pursuant to section
16 353-10.5, Hawaii Revised Statutes;

17 provided that the department of public safety may contract with
18 private service providers for the foregoing services.

19 The sums appropriated shall be expended by the department
20 of public safety for the purposes of this part.



1 SECTION 30. The department of public safety shall submit a
2 report to the legislature, no later than twenty days prior to
3 the convening of the regular session of 2020, detailing the
4 department's expenditure plan for the funding appropriated
5 pursuant to this part.

6 PART VIII

7 SECTION 31. The purpose of this part is to integrate
8 victims' rights into the criminal pretrial system by requiring
9 that intake service centers consider victims' concerns when
10 making pretrial release recommendations.

11 SECTION 32. (a) No later than December 31, 2020, the
12 department of public safety shall revise the pretrial risk
13 assessment processes currently used by its intake service
14 centers with respect to offenses committed against persons,
15 including offenses involving domestic violence and violation of
16 restraining orders and protective orders, to ensure integration
17 of victims' rights into the criminal pretrial system by
18 requiring consideration of the following factors in making
19 pretrial release recommendations:

20 (1) Whether the defendant has a history of involvement
21 with the victim of the offense, including any prior



1 police contact that involved both the victim and the
2 defendant, and the status of the relationship between
3 the victim and the defendant, if any;

4 (2) Whether the defendant has any prior criminal history;

5 (3) Whether there is a risk that the defendant will re-
6 victimize, stalk, or otherwise harm the victim; and

7 (4) Any concerns raised by the victim with respect to the
8 defendant's potential release from custody.

9 (b) The department shall submit a report to the
10 legislature, no later than twenty days prior to the convening of
11 the regular session of 2021, on the progress made in revising
12 the pretrial risk assessment processes, as required by
13 subsection (a).

14 PART IX

15 SECTION 33. The purpose of this part is to appropriate
16 moneys to the department of public safety to provide intake
17 service centers with necessary funding, personnel, training,
18 facilities, access, information, and technical support to meet
19 current and projected future responsibilities in conducting
20 timely risk assessments, efficiently disseminating bail reports,
21 and supervising pretrial defendants.



1 SECTION 34. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so much
 3 thereof as may be necessary for fiscal year 2019-2020 and the
 4 same sum or so much thereof as may be necessary for fiscal year
 5 2020-2021 for necessary personnel, training, facilities, access,
 6 information, and technical support for intake service centers to
 7 meet current and projected responsibilities in conducting timely
 8 risk assessments, efficiently disseminating bail reports, and
 9 supervising pretrial defendants.

10 The sums appropriated shall be expended by the department
 11 of public safety for the purposes of this part.

PART X

13 SECTION 35. This Act does not affect rights and duties
 14 that matured, penalties that were incurred, and proceedings that
 15 were begun before its effective date.

16 SECTION 36. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 37. This Act shall take effect on January 28,
 19 2081; provided that:

20 (1) Section 3 shall take effect on November 30, 2019;

21 (2) Section 4 shall take effect on January 1, 2020; and



1 (3) Parts II through IX shall take effect on July 1, 2019;
2 provided further that sections 15 and 18 shall take
3 effect on January 1, 2020.



Report Title:

Hawaii Correctional System Oversight Commission; Oversight Coordinator; Reentry Commission; Corrections Population Management Commission; Criminal Pretrial Reform; Criminal Pretrial Practices and Procedures; Criminal Pretrial Task Force

Description:

Part I: Establishes the Hawaii Correctional System Oversight Commission. Creates a position for an Oversight Coordinator for the Commission. Extends the sunset date of the Reentry Commission to 1/1/2020. Repeals the Reentry Commission and Corrections Population Management Commission on 1/1/2020 and transfers all rights, powers, functions, and duties of those commissions to the Hawaii Correctional System Oversight Commission. Parts II through IX: Implements certain recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. Effective 1/28/2018. (SD2)

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