

JAN 24 2019

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# A BILL FOR AN ACT

RELATING TO BAIL.

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

1           SECTION 1. The legislature finds that federal courts have  
2 held that a defendant's financial circumstances and possible  
3 alternative release conditions must be considered prior to  
4 detention. Existing State law instructs all officers setting  
5 bail to consider the pecuniary circumstances of the accused  
6 party. The legislature believes that existing law should make  
7 clear that information regarding a defendant's financial  
8 circumstance, when available, should be considered when setting  
9 bail.

10           The legislature further finds that under the current  
11 pretrial system, bail amounts are not set uniformly across the  
12 circuits and, in some cases, bail amounts are not set on an  
13 individual, case-by-case basis. In any pretrial system that  
14 employs money bail, it is imperative that bail is set in amounts  
15 that the defendant is able to afford. While state and county  
16 law enforcement officers have the discretion to set appropriate  
17 amounts of bail, it is reasonable to order relatively similar



1 bail amounts for similarly situated defendants statewide.  
2 Recent anecdotal observations in the first circuit suggest a  
3 possible trend of bail settings in felony cases in amounts  
4 similar to those on the neighbor islands. These observations  
5 are encouraging and may be evidence of an evolving recognition  
6 and commitment by police and prosecutors to set bail in  
7 reasonable amounts that reflect the defendant's ability to post.

8 Accordingly, the purpose of this Act is to require monetary  
9 bail to be set in reasonable amounts based upon all available  
10 information, including the defendant's financial circumstances.

11 SECTION 2. Section 804-9, Hawaii Revised Statutes, is  
12 amended to read as follows:

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



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1 ~~consider the punishment to be inflicted on conviction, and the~~  
2 ~~pecuniary circumstances of the party accused.] "~~

3 SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 4. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.

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# S.B. NO. 1538

**Report Title:**

Bail; Reasonable Amounts; Financial Circumstances

**Description:**

Requires bail to be set in reasonable amounts based upon all available information, including the alleged offense, possible punishment upon conviction, and the offender's financial ability to afford bail. Repeals the requirement of an officer letting to bail to consider the punishment to be inflicted on conviction and the pecuniary circumstances of the party accused.

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

