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# A BILL FOR AN ACT

RELATING TO CRIMINAL PRETRIAL REFORM.

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

PART I

SECTION 1. (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



1 circuit and district courts; the chair of the senate committee  
2 on public safety, intergovernmental, and military affairs; the  
3 chair of the house of representatives committee on judiciary;  
4 court administrator representatives from each circuit court; a  
5 representative from the department of the attorney general; a  
6 representative from the department of health; a representative  
7 from the department of public safety; a representative of the  
8 office of Hawaiian affairs; the police chiefs of the counties of  
9 Hawaii, Kauai, Maui, and the city and county of Honolulu; the  
10 prosecuting attorneys for the counties of Hawaii, Kauai, and  
11 Maui; a representative of the prosecuting attorney for the city  
12 and county of Honolulu; a representative of the office of the  
13 public defender; representatives of the criminal defense bar  
14 from each of the four counties; and a member of the public. Six  
15 subcommittees were formed, and each subcommittee met or  
16 otherwise exchanged information numerous times to facilitate the  
17 work of the task force. The task force met in plenary session a  
18 total of twelve times between August 11, 2017, and July 6, 2018.  
19 The task force submitted its report to the Legislature on  
20 December 14, 2018. The report contains twenty-five



1 recommendations, some of which were accompanied by proposed  
2 legislation that was authored by the task force.

3 (b) The purpose of this Act is to implement the  
4 recommendations of the criminal pretrial task force as follows:

5 (1) Parts II, III, and IV of this Act implement  
6 recommendations of the task force that were  
7 accompanied by proposed legislation authored by the  
8 task force, with only technical, nonsubstantive  
9 changes to the task force's language for the purposes  
10 of clarity, consistency, and style; and

11 (2) Parts V, VI, VII, VIII, and IX of this Act implement  
12 recommendations of the task force for which no  
13 proposed legislation was provided; however, these  
14 parts incorporate, as much as possible, substantive  
15 language contained in the task force's  
16 recommendations.

17 PART II

18 SECTION 2. The purpose of this part is to improve clarity  
19 and consistency in the criminal pretrial system by requiring  
20 that intake service centers:



- 1 (1) Conduct pretrial risk assessments and prepare bail  
2 reports within two working days of the offender's  
3 admission to a community correctional center;
- 4 (2) Inquire and report on the offender's financial  
5 circumstances;
- 6 (3) Evaluate the offender's risk of violence;
- 7 (4) Include the fully executed pretrial risk assessment as  
8 part of the bail report; and
- 9 (5) Periodically review and further validate the pretrial  
10 risk assessment tool at least every five years to  
11 evaluate the effectiveness of the tool and the  
12 procedures associated with its administration, and  
13 publicly report the findings of periodic reviews.

14 SECTION 3. Section 353-10, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

- 16 "(b) The centers shall:
- 17 (1) Provide orientation, guidance, and technical services;
- 18 (2) Provide social-medical-psychiatric-psychological  
19 diagnostic evaluation;
- 20 (3) Conduct internal pretrial risk assessments on adult  
21 offenders within [~~three~~] two working days of admission



1 to a community correctional center [~~which shall then~~  
2 ~~be provided to the court for its consideration~~];  
3 provided that this paragraph shall not apply to  
4 persons subject to county or state detainers[~~7~~] or  
5 holds, [~~or~~] persons detained without bail, persons  
6 detained for probation violation, persons facing  
7 revocation of bail or supervised release, and persons  
8 who have had a pretrial risk assessment completed  
9 prior to admission to a community correctional center.  
10 For purposes of this [~~+~~]paragraph[~~+~~], "pretrial risk  
11 assessment" means an objective, research-based,  
12 validated assessment tool that measures [a  
13 ~~defendant's~~] an offender's risk of flight, [and] risk  
14 of criminal conduct, and risk of violence or harm to  
15 any person or the general public while on pretrial  
16 release pending adjudication[~~7~~]. The pretrial risk  
17 assessment tool and procedures associated with its  
18 administration shall be periodically reviewed and  
19 subject to further validation at least every five  
20 years to evaluate the effectiveness of the tool and  
21 the procedures associated with its administration.



- 1           The findings of periodic reviews shall be publicly  
2           reported;
- 3           (4) Provide correctional prescription program planning and  
4           security classification;
- 5           (5) Provide other personal and correctional services as  
6           needed for both detained and committed persons;
- 7           (6) Monitor and record the progress of persons assigned to  
8           correctional facilities who undergo further treatment  
9           or who participate in prescribed correctional  
10          programs;
- 11          (7) Provide continuing supervision and control of persons  
12          ordered to be placed on pretrial supervision by the  
13          court and persons ordered by the director; [~~and~~]
- 14          (8) Make inquiry with the offender concerning the  
15          offender's financial circumstances and include this  
16          information in the bail report; provided that the  
17          department of public safety's pretrial services  
18          officers shall be provided limited access for the  
19          purpose of viewing other state agencies' relevant data  
20          related to an offender's employment wages and taxes;



1       ~~[(8)]~~ (9) Provide pretrial bail reports to the courts on  
2       adult offenders, within two working days of admission  
3       of the offender to a community correctional center,  
4       that are ~~[consented to by the defendant or that are]~~  
5       ordered by the court ~~[-]~~ or consented to by the  
6       offender. A complete copy of the executed pretrial  
7       risk assessment delineating the scored items, the  
8       total score, any administrative scoring overrides  
9       applied, and written explanations for administrative  
10       scoring overrides, shall be included in the pretrial  
11       bail report. The pretrial bail reports shall be  
12       confidential and shall not be deemed to be public  
13       records. A copy of a pretrial bail report shall be  
14       provided only:  
15       (A) To the ~~[defendant]~~ offender or ~~[defendant's]~~ the  
16       offender's counsel;  
17       (B) To the prosecuting attorney;  
18       (C) To the department of public safety;  
19       (D) To any psychiatrist, psychologist, or other  
20       treatment practitioner who is treating the  
21       ~~[defendant]~~ offender pursuant to a court order;



- 1 (E) Upon request, to the adult client services
- 2 branch; and
- 3 (F) In accordance with applicable laws, persons, or
- 4 entities doing research. The research entity must
- 5 be approved and contracted by the Department of
- 6 Public Safety to protect the confidentiality of
- 7 the information, insofar as the information is
- 8 not a public record."

9 PART III

10 SECTION 4. The purpose of this part is to provide viable

11 alternatives to arrest for low-risk defendants who have not

12 demonstrated a risk of non-appearance in court while still

13 protecting the public from the risk of further crime by:

- 14 (1) Reinforcing that police and other law enforcement
- 15 officers have the discretion to issue citations for
- 16 traffic offenses, violations, petty misdemeanors, and
- 17 misdemeanors; and
- 18 (2) Providing discretion to law enforcement officers to
- 19 issue citations in lieu of arrest for appropriate non-
- 20 violent class C felonies.





1 SECTION 5. Section 803-6, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) In any case in which it is lawful for a police  
4 officer to arrest a person without a warrant for a non-violent  
5 class C felony, any misdemeanor, any petty misdemeanor, or  
6 violation, the police officer may~~[, but need not,]~~ exercise  
7 discretion and issue a citation in lieu of the requirements of  
8 ~~[+]subsection[+]~~ (a), if the police officer finds and is  
9 reasonably satisfied that ~~[the person]~~:

10 (1) ~~[Will]~~ The person will appear in court at the time  
11 designated;

12 (2) ~~[Has]~~ The person has no outstanding arrest warrants  
13 ~~[which]~~ that would justify the person's detention or  
14 give indication that the person might fail to appear  
15 in court; ~~[and]~~

16 (3) ~~[That the]~~ The offense is of such nature that there  
17 will be no further police contact on or about the date  
18 in question, or in the immediate future~~[-]~~; and

19 (4) The offense does not involve domestic violence, sexual  
20 assault, robbery, or any other offense enumerated in  
21 chapter 707."



PART IV

SECTION 6. 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 prompt bail hearings after a defendant is formally charged;
- (4) With certain exceptions, eliminate the use of monetary bail and require defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses;
- (5) Create rebuttable presumptions regarding both release and detention and to specify circumstances in which these presumptions apply; and



1 (6) Require the release of a defendant under the least  
2 restrictive conditions required to ensure:

3 (A) The defendant's appearance; and

4 (B) The protection of the public.

5 SECTION 7. Chapter 804, Hawaii Revised Statutes, is  
6 amended by adding two new sections to be appropriately  
7 designated and to read as follows:

8 "§804-A Right to a prompt hearing; release or detention.

9 (a) For the purposes of this section, "prompt hearing" means as  
10 soon as possible, but within five days of arrest.

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

13 (1) Release or detention; and

14 (2) Whether any condition or combination of conditions  
15 will reasonably ensure:

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

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

18 (c) At the hearing, the defendant shall have the right to  
19 be represented by counsel and, if financially unable to obtain  
20 representation, to have counsel appointed. The defendant shall  
21 be afforded an opportunity to testify, to present witnesses, to



1 cross-examine witnesses who appear at the hearing, and to  
2 present information by proffer or otherwise.

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

6 (e) The defendant may be detained pending completion of  
7 the hearing.

8 **§804-B Monetary bail; non-violent offenders.** (a) Any  
9 defendant arrested and charged with a traffic offense, a  
10 violation, a non-violent petty misdemeanor offense, or a non-  
11 violent misdemeanor offense shall be released on the defendant's  
12 own recognizance conditioned upon:

13 (1) The defendant's appearance in court; and

14 (2) Any other least restrictive, non-financial condition  
15 necessary to:

16 (A) Ensure the defendant's appearance in court; and

17 (B) Protect the public.

18 (b) This section shall not apply if:

19 (1) The offense involves:

20 (A) Assault;

21 (B) Terroristic threatening;



- 1            (C) Sexual assault;
- 2            (D) Abuse of family or household members;
- 3            (E) Violation of a temporary restraining order;
- 4            (F) Violation of an order for protection;
- 5            (G) Operating a vehicle under the influence of an  
6            intoxicant;
- 7            (H) Negligent homicide; or
- 8            (I) Any other crime of violence; or
- 9            (2) One or more of the following apply:
- 10           (A) The defendant has a history of non-appearance in  
11           the last twenty-four months;
- 12           (B) The defendant has at least one prior conviction  
13           for a misdemeanor crime of violence or felony  
14           crime of violence within the last twenty years;
- 15           (C) The defendant was pending trial or sentencing at  
16           the time of arrest;
- 17           (D) The defendant was on probation, parole, or  
18           conditional release at the time of arrest;
- 19           (E) The defendant is also concurrently charged with a  
20           violent petty misdemeanor, a violent misdemeanor,



1           or any felony offense arising from the same or  
2           separate incident; or  
3           (F) The defendant presents a risk of danger to any  
4           other person or to the community.

5           (c) If any of the exceptions in subsection (b) apply, bail  
6 may be set in a reasonable amount. If the defendant is unable  
7 to post the amount of bail, the defendant shall be entitled to a  
8 prompt hearing under section 804-A. If the defendant is unable  
9 to post bail in the amount of \$99 or less, the director of  
10 public safety shall be authorized to release the defendant;  
11 provided that electronic defendant monitoring devices are used."

12           SECTION 8. Section 804-3, Hawaii Revised Statutes, is  
13 amended by amending subsections (a) through (c) to read as  
14 follows:

15           "(a) For purposes of this section~~[, "serious crime"]~~;  
16           "Serious crime" means murder or attempted murder in the  
17 first degree, murder or attempted murder in the second degree,  
18 [er] a class A [er B] felony, [except forgery in the first  
19 degree and failing to render aid under section 291C-12, and  
20 "bail"] or a class B or C felony involving violence or threat of  
21 violence to any person.



1        "Bail" includes release on one's own recognizance,  
2 supervised release, and conditional release.

3        (b) ~~[Any person charged with a criminal offense shall be~~  
4 ~~bailable by sufficient sureties; provided that bail may be~~  
5 ~~denied where the charge is for a serious crime, and:]~~ There  
6 shall be a rebuttable presumption that a person charged with a  
7 criminal offense, other than a serious crime, shall be released  
8 or admitted to bail under the least restrictive conditions  
9 required to ensure the person's appearance and to protect the  
10 public, unless the prosecution demonstrates by clear and  
11 convincing evidence that:

12        (1) There is a serious risk that the person will flee;

13        (2) There is a serious risk that the person will obstruct  
14 or attempt to obstruct justice, or ~~[therefore,~~  
15 injure~~]~~ or intimidate, or attempt to thereafter~~]~~  
16 injure~~]~~ or intimidate, a prospective witness or  
17 juror;

18        (3) There is a serious risk that the person poses a danger  
19 to any person or the community; or

20        (4) There is a serious risk that the person will engage in  
21 illegal activity.



1 If the prosecution demonstrates by clear and convincing evidence  
 2 that one or more of the foregoing serious risks exists, the  
 3 person shall be detained if the court finds that no condition or  
 4 combination of conditions is sufficient to reasonably eliminate,  
 5 reduce, or mitigate the risks presented.

6 (c) Under subsection (b) (1) a rebuttable presumption  
 7 arises that there is a serious risk that the person will flee or  
 8 will not appear as directed by the court where the person is  
 9 charged with a criminal offense punishable by imprisonment for  
 10 life with or without possibility of parole. For purposes of  
 11 subsection (b) (3) and (4) a rebuttable presumption arises that  
 12 the person poses a serious danger to any person or community or  
 13 will engage in illegal activity where the court determines that:

14 (1) The [~~defendant~~] person has been previously convicted  
 15 of a serious crime involving violence or threat of  
 16 violence against a person within the ten-year period  
 17 preceding the date of the charge against the  
 18 defendant;

19 (2) The [~~defendant~~] person is [~~already on bail on~~] pending  
 20 trial or sentencing for a felony charge involving  
 21 violence or threat of violence against a person; or





1           (3) The [~~defendant~~] person is on probation or parole for a  
2           serious crime involving violence or threat of violence  
3           to a person."

4           SECTION 9. Section 804-4, Hawaii Revised Statutes, is  
5 amended to read as follows:

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



1 continue, in the discretion of the court, after conviction of a  
 2 felony until the final determination of any motion for a new  
 3 trial, appeal, habeas corpus, or other proceedings that are  
 4 made, taken, issued, or allowed for the purpose of securing a  
 5 review of the rulings, verdict, judgment, sentence, or other  
 6 proceedings of any court or jury in or by which the defendant  
 7 has been arraigned, tried, convicted, or sentenced; provided  
 8 that:

9 (1) No bail shall be allowed after conviction and prior to  
 10 sentencing in cases where bail was not available under  
 11 section 804-3, or where bail was denied or revoked  
 12 before conviction;

13 (2) No bail shall be allowed pending appeal of a felony  
 14 conviction where a sentence of imprisonment has been  
 15 imposed; and

16 (3) No bail shall be allowed pending appeal of a  
 17 conviction for a violation of section 712-1207, unless  
 18 the court finds, based on the defendant's record, that  
 19 the defendant may be admitted to bail subject to the  
 20 mandatory condition that the person observe geographic  
 21 restrictions that prohibit the defendant from entering



1 or walking along the public streets or sidewalks of  
2 Waikiki or other areas in the State designated by  
3 county ordinance pursuant to section 712-1207 during  
4 the hours from 6 p.m. to 6 a.m.

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

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

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

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

19 If the court makes these findings, the court shall order the  
20 release of the person in accordance with section 804-7.1[-]  
21 under the least restrictive conditions required to ensure the



1 defendant's appearance and to protect the public. No defendant  
2 entitled to bail, whether bailed or not, shall be subject,  
3 without the defendant's written consent, to the operation of any  
4 sentence passed upon the defendant, while any proceedings to  
5 procure a review of any action of the trial court or jury in the  
6 premises are pending and undetermined, except as provided in  
7 section 641-14(a) or section 712-1207."

8 SECTION 10. Section 804-5, Hawaii Revised Statutes, is  
9 amended to read as follows:

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



1 police, or the sheriff of Kalawao, regardless of the circuit  
2 within which the alleged offense was committed, may admit the  
3 accused person to bail. The court shall impose conditions of  
4 release or bail that are the least restrictive conditions  
5 required to ensure the accused's appearance and to protect the  
6 public."

7 SECTION 11. Section 804-7, Hawaii Revised Statutes, is  
8 amended to read as follows:

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



1 SECTION 12. Section 804-7.1, Hawaii Revised Statutes, is  
2 amended to read as follows:

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

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

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



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



1 of the ~~[person]~~ defendant as required and to ~~[assure]~~  
2 ensure the safety of any other person or community; or  
3 (10) Imposing any combination of conditions listed  
4 above ~~[+]~~ i  
5 provided that the court shall impose the least restrictive non-  
6 financial conditions required to ensure the defendant's  
7 appearance and to protect the public.

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

11 SECTION 13. 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 a reasonable amount  
16 based upon all available information, including the offense  
17 alleged, the possible punishment upon conviction, and the  
18 offender's financial ability to afford bail. The bail amount  
19 should be so determined as not to suffer the wealthy to escape  
20 by the payment of a pecuniary penalty, nor to render the  
21 privilege useless to the poor. ~~[In all cases, the officer~~





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

4 PART V

5 SECTION 14. The purpose of this part is to afford pretrial  
6 detainees greater and continuing opportunities to be released  
7 by:

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

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

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



1 reassess whether a detainee should remain in custody or whether  
2 new information or a change in circumstances warrants  
3 reconsideration of a detainee's pretrial release or supervision.

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

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

11 PART VI

12 SECTION 16. The purpose of this part is as follows:

- 13 (1) Under the office of the chief justice, create a  
14 permanently funded criminal justice research institute  
15 that is dedicated to examining all aspects of the  
16 criminal justice system;
- 17 (2) Appropriate funds for the establishment and staffing  
18 of the criminal justice research institute, including  
19 the hiring of necessary staff and for the securing of  
20 any necessary facilities or equipment; and



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

3 SECTION 17. The Hawaii Revised Statutes is amended by  
4 adding a new chapter to title 32 to be appropriately designated  
5 and to read as follows:

6 "CHAPTER

7 CRIMINAL JUSTICE RESEARCH INSTITUTE

8 § -1 Definitions. As used in this chapter, unless the  
9 context otherwise requires:

10 "Board" means the board of directors of the criminal  
11 justice research institute.

12 "Institute" means the criminal justice research institute.

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



1 counsel, courts, pretrial services, probation and parole, jails,  
2 and prisons, as well as examine the manner in which related  
3 areas, including mental health services and drug treatment  
4 services, intersect with the criminal justice system.

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

- 6 (1) Collecting data to monitor the overall functioning of  
7 the criminal justice system;  
8 (2) Monitoring evidence-based practices;  
9 (3) Conducting cost-benefit analysis on various areas of  
10 operation;  
11 (4) Monitoring national trends in criminal justice; and  
12 (5) Issuing public reports to inform all criminal justice  
13 stakeholders and the public about the functioning of  
14 the criminal justice system.

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

19 (d) The chief justice shall appoint as director of the  
20 institute a researcher with a doctoral degree and experience in  
21 the criminal justice field. The director shall hire staff



1 necessary to accomplish the purposes of this chapter, including  
2 a minimum of two assistant researchers and one clerical  
3 assistant. The institute may seek the assistance of the  
4 University of Hawaii or another appropriate entity when  
5 conducting large or complex research projects that require more  
6 staff.

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

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

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

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

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

21 and



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



1 including an assessment of whether the defendant  
2 appears in court, commits other crimes, or  
3 engages in violent conduct when released from  
4 custody.

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

- 9 (1) The percentage of supervised defendants who make all  
10 scheduled court appearances;
- 11 (2) The percentage of supervised defendants who are not  
12 charged with a new offense during the pretrial stage;
- 13 (3) The ratio of defendants whose supervision level or  
14 detention status corresponds with each respective  
15 defendant's assessed risk of pretrial misconduct;
- 16 (4) The percentage of released defendants who:
- 17 (A) Do not have their release revoked for technical  
18 violations of the conditions of their release;
- 19 (B) Appear for all scheduled court appearances; and
- 20 (C) Are not charged with a new offense during  
21 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. (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 26. 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 27. 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.

12 PART X

13 SECTION 28. 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 29. In codifying the new sections added by section  
 17 7 of this Act, the revisor of statutes shall substitute  
 18 appropriate section numbers for the letters used in designating  
 19 the new sections in this Act.



1 SECTION 30. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 31. This Act shall take effect on July 1, 2019,  
4 provided that the amendments made by sections 7 and 11 of this  
5 Act shall take effect on January 1, 2020.



**Report Title:**

Criminal Pretrial Reform; Criminal Pretrial Practices and Procedures; Criminal Pretrial Task Force

**Description:**

Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. (HB1289 HD2)

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