

JAN 24 2019

A BILL FOR AN ACT

RELATING TO CRIMINAL PRETRIAL REFORM.

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

PART I

1
2 SECTION 1. (a) The legislature finds that house
3 concurrent resolution no. 134, house draft 1 (2017), requested
4 the judiciary to convene a criminal pretrial task force to:

5 (1) Examine and, as needed, recommend legislation and
6 revisions to criminal pretrial practices and
7 procedures to increase public safety while maximizing
8 pretrial release of those who do not pose a danger or
9 a flight risk; and

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

14 Accordingly, the judiciary convened a criminal pretrial
15 task force that consisted of twenty-nine members from various
16 agencies and organizations with a broad spectrum of knowledge
17 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[~~+~~]. 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; and
- 17 ~~[(8)]~~ (9) Provide pretrial bail reports to the courts on
18 adult offenders, within two working days of admission
19 of the offender to a community correctional center,
20 that are ~~[consented to by the defendant or that are]~~
21 ordered by the court~~[.]~~ or consented to by the



1 offender. A complete copy of the executed pretrial
2 risk assessment delineating the scored items, the
3 total score, any administrative scoring overrides
4 applied, and written explanations for administrative
5 scoring overrides, shall be included in the pretrial
6 bail report. The pretrial bail reports shall be
7 confidential and shall not be deemed to be public
8 records. A copy of a pretrial bail report shall be
9 provided only:

- 10 (A) To the [~~defendant~~] offender or [~~defendant's~~] the
11 offender's counsel;
- 12 (B) To the prosecuting attorney;
- 13 (C) To the department of public safety;
- 14 (D) To any psychiatrist, psychologist, or other
15 treatment practitioner who is treating the
16 [~~defendant~~] offender pursuant to a court order;
- 17 (E) Upon request, to the adult client services
18 branch; and
- 19 (F) In accordance with applicable laws, persons, or
20 entities doing research."



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

PART III

SECTION 4. The purpose of this part is to provide viable alternatives to arrest for low-risk defendants who have not demonstrated a risk of non-appearance in court while still protecting the public from the risk of further crime by:

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

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

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

- 1 (1) ~~[Will]~~ The person will appear in court at the time
- 2 designated;
- 3 (2) ~~[Has]~~ The person has no outstanding arrest warrants
- 4 ~~[which]~~ that would justify the person's detention or
- 5 give indication that the person might fail to appear
- 6 in court; ~~[and]~~
- 7 (3) ~~[That the]~~ The offense is of such nature that there
- 8 will be no further police contact on or about the date
- 9 in question, or in the immediate future~~[-]~~; and
- 10 (4) The offense does not involve domestic violence, sexual
- 11 assault, robbery, or any other offense enumerated in
- 12 chapter 707."

PART IV

14 SECTION 6. The purpose of this part is to amend chapter
15 804, Hawaii Revised Statutes, to:

- 16 (1) Require monetary bail to be set in reasonable amounts
- 17 based on all available information, including
- 18 information concerning the defendant's financial
- 19 circumstances;
- 20 (2) Permit monetary bail to be posted with the police,
- 21 other law enforcement agency, or the county



1 correctional center where the defendant is held, on a
2 twenty-four hours a day, seven days a week basis;

3 (3) Require prompt bail hearings after a defendant is
4 formally charged;

5 (4) With certain exceptions, eliminate the use of monetary
6 bail and require defendants to be released on their
7 own recognizance for traffic offenses, violations,
8 non-violent petty misdemeanor offenses, and non-
9 violent misdemeanor offenses;

10 (5) Create rebuttable presumptions regarding both release
11 and detention and to specify circumstances in which
12 these presumptions apply; and

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

15 (A) The defendant's appearance; and

16 (B) The protection of the public.

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



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

2 (a) Upon formal charge and detention, a defendant shall have
3 the right to a prompt hearing concerning:

4 (1) Release or detention; and

5 (2) Whether any condition or combination of conditions
6 will reasonably ensure:

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

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

9 (b) At the hearing, the defendant shall have the right to
10 be represented by counsel and, if financially unable to obtain
11 representation, to have counsel appointed. The defendant shall
12 be afforded an opportunity to testify, to present witnesses, to
13 cross-examine witnesses who appear at the hearing, and to
14 present information by proffer or otherwise.

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

18 (d) The defendant may be detained pending completion of
19 the hearing.

20 **§804-B Monetary bail; non-violent offenders.** (a) Any
21 defendant arrested and charged with a traffic offense, a



1 violation, a non-violent petty misdemeanor offense, or a non-
2 violent misdemeanor offense shall be released on the defendant's
3 own recognizance conditioned upon:

- 4 (1) The defendant's appearance in court; and
- 5 (2) Any other least restrictive, non-financial condition
6 necessary to:
 - 7 (A) Ensure the defendant's appearance in court; and
 - 8 (B) Protect the public.

9 (b) This section shall not apply if:

- 10 (1) The offense involves:
 - 11 (A) Assault;
 - 12 (B) Terroristic threatening;
 - 13 (C) Sexual assault;
 - 14 (D) Abuse of family or household members;
 - 15 (E) Violation of a temporary restraining order;
 - 16 (F) Violation of an order for protection;
 - 17 (G) Operating a vehicle under the influence of an
18 intoxicant;
 - 19 (H) Negligent homicide; or
 - 20 (I) Any other crime of violence; or
- 21 (2) One or more of the following apply:



1 (A) The defendant has a history of non-appearance in
2 the last twenty-four months;

3 (B) The defendant has at least one prior conviction
4 for a misdemeanor crime of violence or felony
5 crime of violence;

6 (C) The defendant was pending trial or sentencing at
7 the time of arrest;

8 (D) The defendant was on probation, parole, or
9 conditional release at the time of arrest;

10 (E) The defendant is also concurrently charged with a
11 violent petty misdemeanor, a violent misdemeanor,
12 or any felony offense arising from the same or
13 separate incident; or

14 (F) The defendant presents a risk of danger to any
15 other person or to the community.

16 (c) If any of the exceptions in subsection (b) apply, bail
17 may be set in a reasonable amount. If the defendant is unable
18 to post the amount of bail, the defendant shall be entitled to a
19 prompt hearing under section 804-A."



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

4 "(a) For purposes of this section~~[, "serious crime"]~~:

5 "Serious crime" means murder or attempted murder in the
6 first degree, murder or attempted murder in the second degree,
7 ~~[or] a class A [or B] felony, [except forgery in the first~~
8 ~~degree and failing to render aid under section 291C 12, and~~
9 ~~"bail"]~~ or a class B or C felony involving violence or threat of
10 violence to any person.

11 "Bail" includes release on one's own recognizance,
12 supervised release, and conditional release.

13 (b) ~~[Any person charged with a criminal offense shall be~~
14 ~~bailable by sufficient sureties; provided that bail may be~~
15 ~~denied where the charge is for a serious crime, and:]~~ There
16 shall be a rebuttable presumption that a person charged with a
17 criminal offense, other than a serious crime, shall be released
18 or admitted to bail under the least restrictive conditions
19 required to ensure the person's appearance and to protect the
20 public, unless the prosecution demonstrates by clear and
21 convincing evidence that:



- 1 (1) There is a serious risk that the person will flee;
- 2 (2) There is a serious risk that the person will obstruct
- 3 or attempt to obstruct justice, or [~~therefore~~]
- 4 injure[~~7~~] or intimidate, or attempt to thereafter[~~7~~]
- 5 injure[~~7~~] or intimidate, a prospective witness or
- 6 juror;
- 7 (3) There is a serious risk that the person poses a danger
- 8 to any person or the community; or
- 9 (4) There is a serious risk that the person will engage in
- 10 illegal activity.

11 If the prosecution demonstrates by clear and convincing evidence
12 that one or more of the foregoing serious risks exists, the
13 person shall be detained if the court finds that no condition or
14 combination of conditions is sufficient to reasonably eliminate,
15 reduce, or mitigate the risks presented.

16 (c) Under subsection (b)(1) a rebuttable presumption
17 arises that there is a serious risk that the person will flee or
18 will not appear as directed by the court where the person is
19 charged with a criminal offense punishable by imprisonment for
20 life with or without possibility of parole. For purposes of
21 subsection (b)(3) and (4) a rebuttable presumption arises that



1 the person poses a serious danger to any person or community or
2 will engage in illegal activity where the court determines that:

3 (1) The [~~defendant~~] person has been previously convicted
4 of a serious crime involving violence or threat of
5 violence against a person within the ten-year period
6 preceding the date of the charge against the
7 defendant;

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

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

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

16 **"§804-4 When a matter of right.** (a) If the charge is for
17 an offense for which bail is allowable under section 804-3, the
18 defendant may be admitted to bail before conviction as a matter
19 of right[-] and under the least restrictive conditions required
20 to ensure the defendant's appearance and to protect the public.

21 Except for section 712-1207(7), bail shall be allowed for any



1 person charged under section 712-1207 only subject to the
2 mandatory condition that the person observe geographic
3 restrictions that prohibit the defendant from entering or
4 remaining on public property, in Waikiki and other areas in the
5 State designated by county ordinance during the hours from 6
6 p.m. to 6 a.m.; and provided further that nothing contained in
7 this subsection shall be construed as prohibiting the imposition
8 of stricter geographic restrictions under section 804-7.1. The
9 right to bail shall continue after conviction of a misdemeanor,
10 petty misdemeanor, or violation, and release on bail may
11 continue, in the discretion of the court, after conviction of a
12 felony until the final determination of any motion for a new
13 trial, appeal, habeas corpus, or other proceedings that are
14 made, taken, issued, or allowed for the purpose of securing a
15 review of the rulings, verdict, judgment, sentence, or other
16 proceedings of any court or jury in or by which the defendant
17 has been arraigned, tried, convicted, or sentenced; provided
18 that:

19 (1) No bail shall be allowed after conviction and prior to
20 sentencing in cases where bail was not available under



1 section 804-3, or where bail was denied or revoked
2 before conviction;

3 (2) No bail shall be allowed pending appeal of a felony
4 conviction where a sentence of imprisonment has been
5 imposed; and

6 (3) No bail shall be allowed pending appeal of a
7 conviction for a violation of section 712-1207, unless
8 the court finds, based on the defendant's record, that
9 the defendant may be admitted to bail subject to the
10 mandatory condition that the person observe geographic
11 restrictions that prohibit the defendant from entering
12 or walking along the public streets or sidewalks of
13 Waikiki or other areas in the State designated by
14 county ordinance pursuant to section 712-1207 during
15 the hours from 6 p.m. to 6 a.m.

16 Notwithstanding any other provision of law to the contrary, any
17 person who violates these bail restrictions shall have the
18 person's bail revoked after hearing and shall be imprisoned
19 forthwith.

20 (b) The court shall order that a person who has been found
21 guilty of an offense and sentenced to a term of imprisonment,



1 and who has filed an appeal or a petition for a writ of
2 certiorari, be detained, unless the court finds:

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

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

9 If the court makes these findings, the court shall order the
10 release of the person in accordance with section 804-7.1[-]
11 under the least restrictive conditions required to ensure the
12 defendant's appearance and to protect the public. No defendant
13 entitled to bail, whether bailed or not, shall be subject,
14 without the defendant's written consent, to the operation of any
15 sentence passed upon the defendant, while any proceedings to
16 procure a review of any action of the trial court or jury in the
17 premises are pending and undetermined, except as provided in
18 section 641-14(a) or section 712-1207."

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



1 "§804-5 By whom allowed. In cases where the punishment
2 for the offense charged may be imprisonment for life not subject
3 to parole, or imprisonment for a term more than ten years with
4 or without fine, a judge or justice of a court of record,
5 including a district judge, shall be competent to admit the
6 accused to bail, in conformity with sections 804-3 to 804-6. In
7 all other cases, the accused may be so admitted to bail by any
8 judge or justice of a court of record, including a district
9 judge, and in cases, except under section 712-1207, where the
10 punishment for the offense charged may not exceed two years'
11 imprisonment with or without fine, the sheriff, the sheriff's
12 deputy, the chief of police or any person named by the chief of
13 police, or the sheriff of Kalawao, regardless of the circuit
14 within which the alleged offense was committed, may admit the
15 accused person to bail. The court shall impose conditions of
16 release or bail that are the least restrictive conditions
17 required to ensure the accused's appearance and to protect the
18 public."

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



1 "**§804-7 Release after bail.** [~~When bail is offered and~~
2 ~~taken the prisoner shall be discharged from custody or~~
3 ~~imprisonment.]~~ Any person for whom a monetary amount of bail
4 has been set by the police, other law enforcement agency, or the
5 court shall be permitted to post the bail amount at the police
6 department, law enforcement agency, or community correctional
7 center where the person is detained. The monetary bail shall be
8 payable on a twenty-four hours a day, seven days a week basis.
9 Upon posting or payment of bail, the person, the person's
10 representative, or the person's agent shall be provided a bail
11 receipt, and the person shall be released from custody
12 forthwith."

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

15 "**§804-7.1 Conditions of release on bail, recognizance, or**
16 **supervised release.** Upon a showing that there exists a danger
17 that the defendant will commit a serious crime or will seek to
18 intimidate witnesses, or will otherwise unlawfully interfere
19 with the orderly administration of justice, the judicial officer
20 named in section 804-5 may deny the defendant's release on bail,
21 recognizance, or supervised release.



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

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

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

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

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

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

20 (6) Requiring the defendant to comply with a specified
21 curfew;



- 1 (7) Requiring the defendant to seek and maintain mental
2 health treatment or testing, including treatment for
3 drug or alcohol dependency, or to remain in a
4 specified institution for that purpose;
- 5 (8) Requiring the defendant to remain in the jurisdiction
6 of the judicial circuit in which the charges are
7 pending unless approval is obtained from a court of
8 competent jurisdiction to leave the jurisdiction of
9 the court;
- 10 (9) Requiring the defendant to satisfy any other condition
11 reasonably necessary to [~~assure~~] ensure the appearance
12 of the [~~person~~] defendant as required and to [~~assure~~]
13 ensure the safety of any other person or community; or
- 14 (10) Imposing any combination of conditions listed
15 above[~~-~~];
- 16 provided that the court shall impose the least restrictive non-
17 financial conditions required to ensure the defendant's
18 appearance and to protect the public.

19 The judicial officer may revoke a defendant's bail upon
20 proof that the defendant has breached any of the conditions
21 imposed. "



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

3 **"§804-9 Amount.** The amount of bail rests in the
4 discretion of the justice or judge or the officers named in
5 section 804-5[~~, but~~] and shall be set in a reasonable amount
6 based upon all available information, including the offense
7 alleged, the possible punishment upon conviction, and the
8 offender's financial ability to afford bail. The bail amount
9 should be so determined as not to suffer the wealthy to escape
10 by the payment of a pecuniary penalty, nor to render the
11 privilege useless to the poor. [~~In all cases, the officer~~
12 ~~letting to bail should consider the punishment to be inflicted~~
13 ~~on conviction, and the pecuniary circumstances of the party~~
14 ~~accused.~~"]

15 PART V

16 SECTION 14. The purpose of this part is to afford pretrial
17 detainees greater and continuing opportunities to be released
18 by:

- 19 (1) Requiring the intake service centers to conduct
20 regular reviews and surveys of the jail population to



1 identify pretrial defendants who may be appropriate
2 for pretrial release or supervision; and
3 (2) Providing the results of these reviews to the courts
4 who may then consider modifying the previously issued
5 bail order.

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

9 **"§353- Intake service centers; periodic reviews of**
10 **pretrial detainees.** (a) The intake service centers, on a
11 periodic basis but no less frequently than , shall conduct
12 reviews of pretrial detainees to reassess whether a detainee
13 should remain in custody or whether new information or a change
14 in circumstances warrants reconsideration of a detainee's
15 pretrial release or supervision.

16 (b) For each review conducted pursuant to subsection (a),
17 the intake service center shall transmit its findings and
18 recommendations to the appropriate court, prosecuting attorney,
19 and defense counsel.



1 "CHAPTER

2 CRIMINAL JUSTICE RESEARCH INSTITUTE

3 § -1 Definitions. As used in this chapter, unless the
4 context otherwise requires:

5 "Board" means the board of directors of the criminal
6 justice research institute.

7 "Institute" means the criminal justice research institute.

8 § -2 Establishment of the criminal justice research

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

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



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

10 (c) The institute shall be overseen by a board of

11 directors, which shall consist of the chief justice, a

12 representative of the office of the governor, a member of the

13 legislature, and the director of public safety.

14 (d) The chief justice shall appoint as director of the

15 institute a researcher with a doctoral degree and experience in

16 the criminal justice field. The director shall hire staff

17 necessary to accomplish the purposes of this chapter, including

18 a minimum of two assistant researchers and one clerical

19 assistant. The institute may seek the assistance of the

20 University of Hawaii or another appropriate entity when



1 conducting large or complex research projects that require more
2 staff.

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

7 **§ -3 Centralized statewide criminal pretrial justice**

8 **data reporting and collection system.** (a) The institute shall
9 establish and maintain a centralized statewide criminal pretrial
10 justice data reporting and collection system.

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

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

15 (2) Determining the administrative and technological
16 feasibility of aggregating and sharing current data;

17 and

18 (3) Identifying critical gaps in data and information
19 collection that are required for a robust assessment
20 of criminal pretrial justice matters, which may
21 include information relating to:



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



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

5 (1) The percentage of supervised defendants who make all
6 scheduled court appearances;

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

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

12 (4) The percentage of released defendants who:

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

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

16 (C) Are not charged with a new offense during
17 pretrial supervision;

18 (5) The average length of stay in jail for pretrial
19 detainees who are eligible by statute for pretrial
20 release;



1 (6) The percentage of defendants who remain arrest-free
2 during the pretrial release period; and

3 (7) The percentage of defendants who remain on release at
4 the conclusion of their pretrial period without a
5 pending request for removal or revocation due to non-
6 compliance.

7 (d) The institute shall compile an annual report that
8 reviews and analyzes data from the system to evaluate the
9 effectiveness of the State's criminal pretrial system and
10 identify possible improvements. The institute shall submit the
11 report, including any proposed legislation, to the legislature
12 no later than twenty days prior to the convening of each regular
13 session.

14 (e) As used in this section, unless the context otherwise
15 requires, "system" means the centralized statewide criminal
16 pretrial justice data reporting and collection system
17 established by this section."

18 SECTION 18. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2019-2020 and the
21 same sum or so much thereof as may be necessary for fiscal year



1 2020-2021 for the establishment and staffing of the criminal
2 justice research institute pursuant to this part, including the
3 hiring of one full-time equivalent (1.0 FTE) director, two full-
4 time equivalent (2.0 FTE) assistant researchers and one full-
5 time equivalent (1.0 FTE) clerical assistant, and for any
6 necessary facilities and equipment.

7 The sums appropriated shall be expended by the judiciary
8 for the purposes this part.

9 PART VII

10 SECTION 19. The purpose of this part is to implement and
11 expand alternatives to pretrial detention by:

- 12 (1) Expressly including electronic monitoring and home
13 detention as alternatives to incarceration in chapter
14 804, Hawaii Revised Statutes;
- 15 (2) Requiring the judiciary, in consultation with the
16 department of public safety, to develop and adopt a
17 policy for courts to use when assessing whether a
18 defendant's risk of non-appearance or recidivism may
19 be mitigated by home detention or electronic
20 monitoring;



- 1 (3) Making appropriations to the department of public
2 safety to support pretrial defendants released from
3 detention on a supervised basis;
- 4 (4) Making appropriations to the department of public
5 safety for the electronic monitoring of pretrial
6 defendants, including the acquisition, operation, and
7 upkeep of electronic monitoring devices; and
- 8 (5) Requiring the department of public safety to submit a
9 report to the legislature prior to the convening of
10 the regular session of 2020 detailing the department's
11 expenditure plan for the funding appropriated pursuant
12 to this part.

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

15 "**§804-7.1 Conditions of release on bail, recognizance, or**
16 **supervised release.** Upon a showing that there exists a danger
17 that the defendant will commit a serious crime or will seek to
18 intimidate witnesses, or will otherwise unlawfully interfere
19 with the orderly administration of justice, the judicial officer
20 named in section 804-5 may deny the defendant's release on bail,
21 recognizance, or supervised release.



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

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

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

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

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

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

20 (6) Requiring the defendant to comply with a specified
21 curfew;



- 1 (7) Requiring the defendant to seek and maintain mental
2 health treatment or testing, including treatment for
3 drug or alcohol dependency, or to remain in a
4 specified institution for that purpose;
- 5 (8) Requiring the defendant to remain in the jurisdiction
6 of the judicial circuit in which the charges are
7 pending unless approval is obtained from a court of
8 competent jurisdiction to leave the jurisdiction of
9 the court;
- 10 (9) Requiring the defendant to submit to the use of
11 electronic monitoring and surveillance;
- 12 (10) Requiring the confinement of the defendant in the
13 defendant's residence;
- 14 ~~(9)~~ (11) Requiring the defendant to satisfy any other
15 condition reasonably necessary to assure the
16 appearance of the person as required and to assure the
17 safety of any other person or community; or
- 18 ~~(10)~~ (12) Imposing any combination of conditions listed
19 above.



1 The judicial officer may revoke a defendant's bail upon
2 proof that the defendant has breached any of the conditions
3 imposed."

4 SECTION 21. The judiciary, in consultation with the
5 department of public safety, shall develop and adopt a policy
6 for courts to use when assessing whether a defendant's risk of
7 non-appearance or recidivism may be mitigated by home detention
8 or electronic monitoring. The policy shall include:

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

15 SECTION 22. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so
17 much thereof as may be necessary for fiscal year 2019-2020 and
18 the same sum or so much thereof as may be necessary for fiscal
19 year 2020-2021 for the intake service centers to support
20 pretrial defendants released from detention on a supervised



1 basis through the establishment or expansion of any of the
2 following support services:

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

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

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

18 SECTION 23. The department of public safety shall submit a
19 report to the legislature, no later than twenty days prior to
20 the convening of the regular session of 2020, detailing the



1 department's expenditure plan for the funding appropriated
2 pursuant to this part.

3 PART VIII

4 SECTION 24. The purpose of this part is to integrate
5 victims' rights into the criminal pretrial system by requiring
6 that intake service centers consider victims' concerns when
7 making pretrial release recommendations.

8 SECTION 25. (a) No later than December 31, 2019, the
9 department of public safety shall revise the pretrial risk
10 assessment processes currently used by its intake service
11 centers with respect to offenses committed against persons,
12 including offenses involving domestic violence and violation of
13 restraining orders and protective orders, to ensure integration
14 of victims' rights into the criminal pretrial system by
15 requiring consideration of the following factors in making
16 pretrial release recommendations:

- 17 (1) Whether the defendant has a history of involvement
18 with the victim of the offense, including any prior
19 police contact that involved both the victim and the
20 defendant, and the status of the relationship between
21 the victim and the defendant, if any;



- 1 (2) Whether the defendant has any prior criminal history;
- 2 (3) Whether there is a risk that the defendant will re-
- 3 victimize, stalk, or otherwise harm the victim; and
- 4 (4) Any concerns raised by the victim with respect to the
- 5 defendant's potential release from custody.
- 6 (b) The department shall submit a report to the
- 7 legislature, no later than twenty days prior to the convening of
- 8 the regular session of 2020, on the progress made in revising
- 9 the pretrial risk assessment processes, as required by
- 10 subsection (a).

11 PART IX

12 SECTION 26. The purpose of this part is to appropriate

13 moneys to the department of public safety to provide intake

14 service centers with necessary funding, personnel, training,

15 facilities, access, information, and technical support to meet

16 current and projected future responsibilities in conducting

17 timely risk assessments, efficiently disseminating bail reports,

18 and supervising pretrial defendants.

19 SECTION 27. 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 necessary personnel, training, facilities, access,
 3 information, and technical support for intake service centers to
 4 meet current and projected responsibilities in conducting timely
 5 risk assessments, efficiently disseminating bail reports, and
 6 supervising pretrial defendants.

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

9 PART X

10 SECTION 28. This Act does not affect rights and duties
 11 that matured, penalties that were incurred, and proceedings that
 12 were begun before its effective date.

13 SECTION 29. In codifying the new sections added by section
 14 7 of this Act, the revisor of statutes shall substitute
 15 appropriate section numbers for the letters used in designating
 16 the new sections in this Act.

17 SECTION 30. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 31. This Act shall take effect on July 1, 2019.

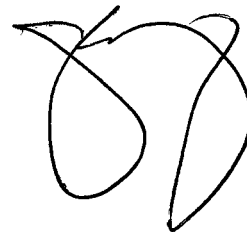
20

INTRODUCED BY: Clarena W. Rushikera
Kal Rhand

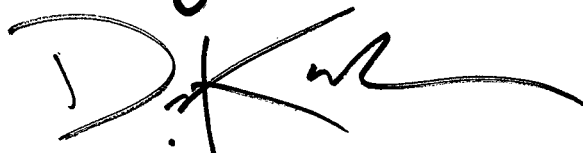
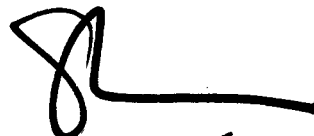
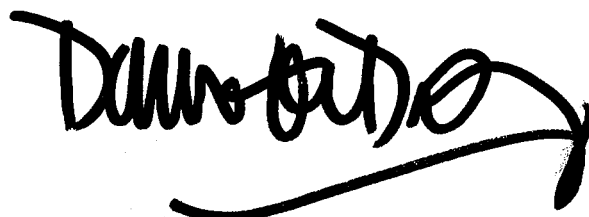


S.B. NO. 1421

Rosely de Baker



Breene Hunt



Francine A. Murray



S.B. NO. 1421

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.

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

