
A BILL FOR AN ACT

RELATING TO CRIMINAL PRETRIAL REFORM.

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

1 SECTION 1. The legislature finds that there is a need to
2 address the substantial and continued overcrowding of facilities
3 used to house pretrial defendants through the adoption of
4 certain recommendations made by the criminal pretrial task force
5 regarding pretrial detention and release.

6 The legislature further finds that House Concurrent
7 Resolution No. 134, H.D. 1 (2017), requested the judiciary to
8 convene a criminal pretrial task force to:

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

14 (2) Identify and define best practices metrics to measure
15 the relative effectiveness of the criminal pretrial
16 system and establish ongoing procedures to take such
17 measurements at appropriate time intervals.



1 Accordingly, the judiciary convened a criminal pretrial
2 task force that consisted of twenty-nine members from various
3 agencies and organizations with a broad spectrum of knowledge
4 and experience. The task force met between August 11, 2017, and
5 July 6, 2018, and submitted its report to the legislature on
6 December 14, 2018. The report contained twenty-five
7 recommendations, some of which were accompanied by proposed
8 legislation that was authored by the task force.

9 Although a substantial number of the task force's
10 recommendations were subsequently enacted by Act 179, Session
11 Laws of Hawaii 2019 (Act 179), two critical recommendations were
12 not included. These recommendations would substantially change
13 the process for pretrial determinations and would offer the
14 greatest potential to maximize pretrial release. Act 179
15 instead focused on those recommendations which would most
16 improve fairness and administrative efficiency. However, this
17 approach has failed to substantially reduce the pretrial
18 population in Hawai'i's jails, and the continued overcrowding
19 that was a primary contributing factor in the large-scale
20 coronavirus disease 2019 outbreak at the Oahu community
21 correctional center during the summer of 2020.



1 The legislature accordingly intends to implement certain
2 recommendations of the criminal pretrial task force that were
3 accompanied by proposed legislation authored by the task force
4 but not adopted in Act 179.

5 The purpose of this Act is to amend chapter 804, Hawaii
6 Revised Statutes, to:

- 7 (1) With certain exceptions, eliminate the use of monetary
8 bail and require defendants to be released on their
9 own recognizance for traffic offenses, violations,
10 nonviolent petty misdemeanor offenses, and nonviolent
11 misdemeanor offenses; and
- 12 (2) Create rebuttable presumptions regarding both release
13 and detention for certain offenses and specify
14 circumstances in which these presumptions apply.

15 SECTION 2. Chapter 804, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§804- Monetary bail; nonviolent offenders. (a) Any
19 defendant arrested and charged with a traffic offense,
20 violation, nonviolent petty misdemeanor offense, or nonviolent



1 misdemeanor offense shall be released on the defendant's own
2 recognizance conditioned upon:

- 3 (1) The defendant's appearance in court; and
4 (2) Any other least restrictive, non-financial condition
5 necessary to:

- 6 (A) Ensure the defendant's appearance in court; and
7 (B) Protect the public.

8 (b) This section shall not apply if:

9 (1) The offense involves:

- 10 (A) Assault;
11 (B) Terroristic threatening;
12 (C) Sexual assault;
13 (D) Abuse of family or household members;
14 (E) Violation of a temporary restraining order;
15 (F) Violation of an order for protection;
16 (G) Violation of a restraining order or injunction;
17 (H) Operating a vehicle under the influence of an
18 intoxicant;
19 (I) Negligent homicide; or
20 (J) 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 within the last ten years;
- 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 804-7.5. If the defendant is
20 unable to post bail in the amount of \$99 or less, the director
21 of public safety shall be authorized to release the defendant."



1 SECTION 3. 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"~~]:

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 has been previously convicted of a
4 serious crime involving violence or threat of violence
5 against a person within the ten-year period preceding
6 the date of the charge against the defendant;

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

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

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

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on May 6, 2137.



Report Title:

Bail; Rebuttable Presumptions; Release; Detention

Description:

Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions. Creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply. Effective 5/6/2137. (SD1)

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