
A BILL FOR AN ACT

RELATING TO CRIMINAL JUSTICE REFORM.

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

1 SECTION 1. The legislature finds that the justice system
2 should be truly reflective of the equal protection and due
3 process rights enshrined in the federal and state constitutions
4 and of the fundamental concept of presumption of innocence until
5 guilt is proven. Accordingly, courts should presume that
6 defendants in criminal cases who have not been found guilty of a
7 crime should be entitled to release unless release would be
8 inappropriate for a particular defendant because no condition or
9 combination of conditions of release will assure the person's
10 return to court when required, or the safety of other persons.

11 The legislature further finds that pretrial drug testing
12 programs started appearing regularly in the late 1970s and early
13 1980s, following research that supported drug testing and
14 treatment as ways to reduce recidivism among people convicted of
15 a crime. However, research on the impact of drug testing on
16 pretrial court appearances and arrest-free rates has found that
17 there is no clear correlation between drug testing and improved



1 pretrial outcomes; the impact of noncompliance with drug testing
2 on the likelihood of pretrial failure is uncertain; cost-benefit
3 considerations must be made; and drug testing can lead to poorer
4 pretrial outcomes among people assessed as more likely to
5 succeed. Therefore, the denial of pretrial release based solely
6 on a defendant's positive test for drug use should be
7 prohibited.

8 The legislature also finds that pretrial incarceration is
9 the primary driver of severe overcrowding in community
10 correctional centers, which becomes a health and safety issue
11 for defendants in custody as well as staff who work in
12 correctional facilities. Further, prolonged pretrial detention
13 gives the illusion that justice is being served by keeping an
14 alleged offender behind bars, but often has the unjust effect of
15 forcing a defendant to plead guilty even when the defendant may
16 have prevailed at trial, for the sake of hastening the
17 defendant's release from custody and return to normal life.

18 Accordingly, the purpose of this Act is to introduce
19 meaningful reforms to the manner of determining eligibility for
20 pretrial release and promote greater fairness and equity in the
21 criminal courts by:



- 1 (1) Requiring that copies of bail reports be provided to
2 the parties, including the defendant's counsel, as
3 soon as available;
- 4 (2) Requiring that any bail set by the court be in an
5 amount that the defendant is able to afford, under
6 certain conditions;
- 7 (3) Prohibiting the denial of pretrial release based
8 solely upon certain factors, such as the defendant
9 having recently had one positive test for drug use;
- 10 (4) Requiring the automatic issuance of no-contact orders
11 in assaultive cases;
- 12 (5) Prohibiting a defendant from being arrested for a
13 violation of conditions of release solely because the
14 defendant recently had one positive test for drug use;
- 15 (6) Providing that with respect to sanctions for
16 violations of conditions of release, the prosecution
17 must prove, by a preponderance of the evidence, that
18 the defendant intentionally or knowingly violated
19 reasonable conditions of release; and
- 20 (7) Requiring the court, in certain cases when revoking a
21 defendant's release, to enter findings that no



1 conditions can be imposed that would ensure the
2 defendant's appearance and the safety of the public
3 and that the revocation is therefore necessary as an
4 action of last resort.

5 SECTION 2. Section 353-10, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The centers shall:

8 (1) Provide orientation, guidance, and technical services;

9 (2) Provide social-medical-psychiatric-psychological
10 diagnostic evaluation;

11 (3) Conduct internal pretrial risk assessments on adult
12 offenders within three working days of admission to a
13 community correctional center; provided that this
14 paragraph shall not apply to persons subject to county
15 or state detainers or holds, persons detained without
16 bail, persons detained for probation violation,
17 persons facing revocation of bail or supervised
18 release, and persons who have had a pretrial risk
19 assessment completed [~~prior to~~] before admission to a
20 community correctional center. For purposes of this
21 paragraph, "pretrial risk assessment" means an



1 objective, research-based, validated assessment tool
2 that measures an offender's risk of flight, risk of
3 criminal conduct, and risk of violence or harm to any
4 person or the general public while on pretrial release
5 pending adjudication. The pretrial risk assessment
6 tool and procedures associated with its administration
7 shall be periodically reviewed and subject to further
8 validation at least every five years to evaluate the
9 effectiveness of the tool and the procedures
10 associated with its administration. The findings of
11 periodic reviews shall be publicly reported;

12 (4) Provide correctional prescription program planning and
13 security classification;

14 (5) Provide other personal and correctional services as
15 needed for both detained and committed persons;

16 (6) Monitor and record the progress of persons assigned to
17 correctional facilities who undergo further treatment
18 or who participate in prescribed correctional
19 programs;



- 1 (7) Provide continuing supervision and control of persons
2 ordered to be placed on pretrial supervision by the
3 court and persons ordered by the director;
- 4 (8) Make inquiry with the offender concerning the
5 offender's financial circumstances and include this
6 information in the bail report; provided that the
7 department of public safety's pretrial services
8 officers shall be provided limited access for the
9 purpose of viewing other state agencies' relevant data
10 related to an offender's employment wages and taxes;
11 and
- 12 (9) Provide pretrial bail reports to the courts on adult
13 offenders, within three working days of admission of
14 the offender to a community correctional center, that
15 are ordered by the court or consented to by the
16 offender. A complete copy of the executed pretrial
17 risk assessment delineating the scored items, the
18 total score, any administrative scoring overrides
19 applied, and written explanations for administrative
20 scoring overrides, shall be included in the pretrial
21 bail report. The pretrial bail reports shall be



1 confidential and shall not be deemed to be public
2 records. A copy of a pretrial bail report shall be
3 provided as soon as available to only:

4 (A) [~~Te the~~] The defendant or defendant's counsel;

5 (B) [~~Te the~~] The prosecuting attorney;

6 (C) [~~Te the~~] The department of public safety;

7 (D) [~~Te any~~] Any psychiatrist, psychologist, or other
8 treatment practitioner who is treating the
9 defendant pursuant to a court order;

10 (E) Upon request, [~~te~~] the adult client services
11 branch; and

12 (F) In accordance with applicable laws, persons[~~r~~] or
13 entities doing research[~~. The~~]; provided that
14 the research entity [~~must~~] shall be approved and
15 contracted by the department of public safety to
16 protect the confidentiality of the information,
17 insofar as the information is not a public
18 record."

19 SECTION 3. Section 804-3, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§804-3 ~~[Bailable]~~ Pretrial release; bailable offenses.

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

3 "Bail" includes release on one's own recognizance,
4 supervised release, and conditional release.

5 "Serious crime" means [~~murder or attempted murder~~]:

6 (1) Failing to render aid under section 291C-14;

7 (2) Murder in the first degree [~~,"murder or attempted~~
8 murder] under section 707-701;

9 (3) Murder in the second degree [~~,"~~ under section
10 707-701.5;

11 (4) Attempted murder in the first or second degree; or [a]

12 (5) Any other class A or B felony, except forgery in the
13 first degree [~~and failing to render aid under section~~
14 291C-12, and "bail" includes release on one's own
15 recognizance, supervised release, and conditional
16 release.] under section 708-851.

17 (b) Any person charged with a criminal offense shall be
18 bailable by sufficient sureties; provided that bail may be
19 denied [~~where~~] if the charge is for a serious crime, and [~~+~~] one
20 or more of the following criteria apply:



- 1 (1) There is a serious risk that the person will [~~flee~~]
2 willfully abscond;
- 3 (2) There is a serious risk that the person will obstruct
4 or attempt to obstruct justice, or therefore, injure,
5 or intimidate, or attempt to thereafter, injure, or
6 intimidate, a prospective witness or juror[+] with the
7 purpose of obstructing or attempting to obstruct
8 justice;
- 9 (3) There is a serious risk that the person poses a
10 significant danger to [any] a specific or reasonably
11 identifiable person or persons, based upon an
12 articulable risk to a specific person or the
13 community; or
- 14 (4) There is a serious risk that the person will engage in
15 illegal activity.
- 16 (c) [~~Under~~] There shall be a rebuttable presumption under
17 subsection (b) (1) [a rebuttable presumption arises] that there
18 is a serious risk that the person will [~~flee~~] willfully abscond
19 or [~~will~~] not appear as directed by the court where the person
20 is charged with a criminal offense punishable by imprisonment
21 for life without possibility of parole. [~~For purposes of~~] There



1 shall be a rebuttable presumption under subsection (b) (3) and
2 (4) [~~a rebuttable presumption arises~~] that the person poses a
3 serious danger to any person or community or will engage in
4 illegal activity [~~where~~] if the court determines that[+] the
5 defendant:

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

10 (2) [~~The defendant is~~] Is already on bail on a felony
11 charge involving violence against a person; or

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

14 (d) If[~~, after~~] the court finds pursuant to a hearing [~~the~~
15 ~~court finds~~] that no condition or combination of conditions will
16 reasonably assure the appearance of the person when required or
17 the safety of any other person, persons, or community, bail may
18 be denied[~~-~~]; provided that the court shall enter on the record
19 its findings with respect to the detention decision.

20 (e) Any bail set by the court shall be in an amount that
21 the person is able to afford, based upon information in the bail



1 report or the person's sworn affidavit or testimony, subject to
2 any rebuttable evidence the prosecution may introduce, at the
3 release hearing; provided that in setting bail, the court shall
4 exclude from consideration any income derived from public
5 benefits, including supplemental security income, social
6 security disability insurance, and temporary assistance for
7 needy families funds, and any income that is at or below the
8 federal poverty level. If the person has no source of income
9 other than public benefits or has a household income that is at
10 or below the federal poverty level, the person shall be deemed
11 unable to pay bail in any amount. If the person has a household
12 income that is above the federal poverty level and that is not
13 derived from public benefits, the court shall consider an amount
14 that the person could reasonably afford to pay within forty
15 hours of the person's arrest."

16 SECTION 4. 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.** (a) Upon a showing that there exists a
20 danger that the defendant will commit a serious crime as defined
21 in section 804-3(a) [~~or will~~], seek to intimidate witnesses, or



1 ~~will~~ otherwise unlawfully interfere with the orderly
2 administration of justice, the judicial officer named in section
3 804-5 may deny the defendant's release on bail, recognizance, or
4 supervised release~~-~~; provided that denial of release on bail,
5 recognizance, or supervised release shall not be based solely
6 upon the defendant having:

- 7 (1) Recently had one positive test for drug use;
- 8 (2) A prior criminal history, if the history contains only
9 arrests but no convictions; or
- 10 (3) A prior revocation of release on bail, recognizance,
11 or supervised release, regardless of whether in a
12 prior criminal case or in the instant case.

13 (b) Upon the defendant's release on bail, recognizance, or
14 supervised release, ~~however,~~ the court may enter an order:

- 15 (1) Prohibiting the defendant from approaching or
16 communicating with particular persons or classes of
17 persons, ~~except~~ including the complainant; provided
18 that when the alleged offense involves physical or
19 sexual assault, a written no-contact order prohibiting
20 the defendant from having contact in any form with the
21 complainant or with any other witness shall

1 automatically issue unless the complainant requests
2 otherwise, and the defendant shall be advised of the
3 no-contact order while on the record; provided further
4 that no [~~such~~] no-contact order [~~should~~] issued under
5 this paragraph shall be deemed to prohibit any lawful
6 and ethical activity of defendant's counsel;
7 (2) Prohibiting the defendant from going to certain
8 described geographical areas or premises;
9 (3) Prohibiting the defendant from possessing any
10 dangerous weapon, engaging in certain described
11 activities, or indulging in intoxicating liquors or
12 certain drugs;
13 (4) Requiring the defendant to report regularly to and
14 remain under the supervision of an officer of the
15 court;
16 (5) Requiring the defendant to maintain employment, or, if
17 unemployed, to actively seek employment, or attend an
18 educational or vocational institution;
19 (6) Requiring the defendant to comply with a specified
20 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 (11) Requiring the defendant to satisfy any other condition
15 reasonably necessary to ensure the appearance of the
16 defendant as required and to ensure the safety of any
17 other person, persons, or community; or
- 18 (12) Imposing any combination of conditions listed above;
19 provided that the court shall impose the least restrictive
20 non-financial conditions required to ensure the defendant's
21 appearance and to protect the public.



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

4 SECTION 5. Section 804-7.2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§804-7.2 Violations of conditions of release on bail,**
7 **recognizance, or supervised release.** (a) [~~Upon~~] Subject to the
8 limitation set out in subsection (d), upon verified application
9 by the prosecuting attorney alleging that a defendant has
10 intentionally violated the conditions of release on bail,
11 recognizance, or supervised release, the judicial officer named
12 in section 804-5 shall issue a warrant directing the defendant
13 be arrested and taken forthwith before the court of record for
14 hearing.

15 (b) [~~Upon~~] Subject to the limitation set out in subsection
16 (d), upon verified application by a pretrial officer of the
17 intake service center that a defendant has intentionally
18 violated the conditions of release on bail, recognizance, or
19 supervised release, the court may issue an order pertaining to
20 bail to secure the defendant's appearance before the court or a



1 warrant directing that the defendant be arrested and taken
2 forthwith before the court of record for hearing.

3 (c) [A] Subject to the limitation set out in subsection
4 (d), a law enforcement officer having reasonable grounds to
5 believe that a released felony defendant has violated the
6 conditions of release on bail, recognizance, or supervised
7 release, may, where it would be impracticable to secure a
8 warrant, arrest the defendant and take the defendant forthwith
9 before the court of record.

10 (d) No defendant shall be arrested under this section
11 solely because the defendant had one positive test for drug
12 use."

13 SECTION 6. Section 804-7.3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§804-7.3 Sanctions for violation of conditions of release**
16 **on bail, recognizance, or supervised release.** After hearing,
17 and upon finding that the defendant has intentionally or
18 knowingly violated reasonable conditions imposed on release on
19 bail, recognizance, or supervised release, the court may impose
20 different or additional conditions upon the defendant's release
21 or revoke the defendant's release on bail, recognizance, or



1 supervised release[-]; provided that the burden of proof shall
2 be upon the prosecution to establish a violation, by a
3 preponderance of the evidence, based upon representations made
4 by an officer of the court. If the court revokes the
5 defendant's release and the revocation is based upon the
6 violation of a condition of release that did not involve the
7 defendant's commission or alleged commission of a new offense or
8 the defendant's failure to appear in court in the instant case,
9 the court shall enter findings into the record that no other
10 conditions may be imposed that would ensure the defendant's
11 appearance and the safety of the public and that the revocation
12 is therefore necessary as an action of last resort."

13 SECTION 7. 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 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.



H.B. NO. 1603

1 SECTION 9. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Dan Carno

JAN 16 2024



H.B. NO. 1603

Report Title:

Courts; Corrections; Arrests; Pretrial Release; Bail

Description:

Amends various provisions related to pretrial release.

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