
A BILL FOR AN ACT

RELATING TO PRETRIAL RELEASE.

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

1 SECTION 1. The legislature finds that the right to
2 physical liberty is one of the foundational principles of the
3 United States Constitution. In *United States v. Salerno*, 481
4 U.S. 739 (1987), the United States Supreme Court unequivocally
5 stated that "[i]n our society, liberty is the norm, and
6 detention prior to trial or without trial is the carefully
7 limited exception".

8 As outlined in the 2018 final report of the criminal
9 pretrial task force, convened by the Hawaii state judiciary
10 pursuant to House Concurrent Resolution No. 134, H.D. 1, Regular
11 Session of 2017, the right to liberty is also supported by the
12 most basic constitutional principles of presumption of
13 innocence, due process, equal protection, the right to counsel,
14 and the right to confrontation.

15 The legislature finds that the current use of cash bail is
16 widely understood to disadvantage poor people who are unable to
17 secure their liberty while awaiting trial.



1 The legislature also recognizes that, in Hawaii, the
2 consequences of pretrial detention fall disproportionately on
3 Native Hawaiians, Pacific Islanders, and other people of color,
4 who are more likely to be arrested, detained, and unable to
5 afford bail. The right to liberty should not be threatened
6 because of an individual's ethnicity or socioeconomic status.

7 The legislature further finds that reducing pretrial
8 incarceration would help address severe overcrowding in Hawaii's
9 jails. In October 2022, the Hawaii Correctional System
10 Oversight Commission reported that seventy-eight per cent of all
11 people in jails are awaiting trial. Reducing pretrial
12 incarceration rates would also reduce the State's expenses. It
13 costs the State approximately \$250 per day, or \$91,250 per year,
14 to incarcerate each adult.

15 The purpose of this Act is to improve the State's system of
16 pretrial justice by considering the need to evaluate risks to
17 public safety, individual constitutional rights, and the fiscal
18 and human harms that arise from overcrowded prisons.
19 Specifically, this Act requires:



1 (1) The court to enter on the record its written findings
2 regarding the necessity of the conditions imposed on a
3 defendant's release; and

4 (2) Bail to be set in an amount that the defendant can
5 afford based on certain factors.

6 SECTION 2. Section 804-4, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) If the charge is for an offense for which bail is
9 allowable under section 804-3, the defendant may be admitted to
10 bail before conviction as a matter of right and under the least
11 restrictive conditions required to ensure the defendant's
12 appearance and to protect the public. The court shall enter on
13 the record its written findings regarding why the conditions
14 imposed on the defendant are necessary to ensure defendant's
15 appearance, or to protect the public, or both.

16 Except for section 712-1207(7), bail shall be allowed for
17 any person charged under section 712-1207 only subject to the
18 mandatory condition that the person observe geographic
19 restrictions that prohibit the defendant from entering or
20 remaining on public property, in Waikiki and other areas in the
21 State designated by county ordinance during the hours from 6



1 p.m. to 6 a.m.; ~~[and]~~ provided ~~[further]~~ that nothing contained
2 in this subsection shall be construed as prohibiting the
3 imposition of stricter geographic restrictions under section
4 804-7.1. The right to bail shall continue after conviction of a
5 misdemeanor, petty misdemeanor, or violation, and release on
6 bail may continue, in the discretion of the court, after
7 conviction of a felony until the final determination of any
8 motion for a new trial, appeal, habeas corpus, or other
9 proceedings that are made, taken, issued, or allowed for the
10 purpose of securing a review of the rulings, verdict, judgment,
11 sentence, or other proceedings of any court or jury in or by
12 which the defendant has been arraigned, tried, convicted, or
13 sentenced; provided that ~~[+]~~ no bail shall be allowed:

14 (1) ~~[No bail shall be allowed after]~~ After conviction and
15 ~~[prior to]~~ before sentencing in cases where bail was
16 not available under section 804-3, or where bail was
17 denied or revoked before conviction;

18 (2) ~~[No bail shall be allowed pending]~~ Pending appeal of a
19 felony conviction where a sentence of imprisonment has
20 been imposed; and



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

11 Notwithstanding any other provision of law to the contrary, any
12 person who violates these bail restrictions shall have the
13 person's bail revoked after hearing and shall be imprisoned
14 forthwith."

15 SECTION 3. Section 804-9, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§804-9 Amount.** The amount of bail rests in the
18 discretion of the justice or judge or the officers named in
19 section 804-5 and shall be set in a reasonable amount based upon
20 all available information, including the offense alleged, the



1 possible punishment upon conviction, and the defendant's
2 financial ability to afford bail.

3 Any bail amount set, whether secured or unsecured, shall be
4 in an amount that the person is able to afford based on the
5 person's affidavit or testimony at the release hearing, subject
6 to any rebuttal evidence from the prosecution. In the setting
7 of bail, the following shall apply:

- 8 (1) The court shall exclude from consideration any income
9 derived from public benefits; including supplemental
10 security income, social security disability insurance,
11 and temporary assistance for needy families; and any
12 income below the federal poverty level;
- 13 (2) If the person has no income other than public benefits
14 or is a member of a household having a household
15 income below one hundred fifty per cent of the federal
16 poverty level, the court shall presume that the person
17 is unable to pay any bail amount; and
- 18 (3) If the person's household income, exclusive of any
19 income derived from public benefits, is above one
20 hundred fifty per cent of the federal poverty level,
21 the court shall consider what the individual could



1 reasonably pay within forty hours of arrest, subject
2 to the exclusions in paragraph (1).

3 The bail amount should be so determined as not to suffer
4 the wealthy to escape by the payment of a pecuniary penalty, nor
5 to render the privilege useless to the poor."

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

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2025.

12

INTRODUCED BY: *Dan Barnes*

JAN 14 2025



Report Title:

Pretrial Release; Bail

Description:

Requires the court to enter on the record its written findings regarding the necessity of the conditions imposed on a defendant's release. Requires bail to be set in an amount that the defendant can afford based on certain factors.

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