

ACT 179

H.B. NO. 1552

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that independent oversight of the State's correctional system ensures transparency, supports safe conditions for employees, inmates, and detainees, and provides positive reform towards a rehabilitative and therapeutic correctional system.

The legislature further finds that an increasing number of states are calling for independent oversight of their correctional systems with at least eight states already having established independent oversight mechanisms to monitor and improve their correctional systems.

The legislature further finds that the reentry commission and the corrections population management commission have overlapping responsibilities and consolidating the commissions into a single, independent oversight commission led by an oversight coordinator and guided by an experienced group of commission members will promote efficiency and provide greater opportunities for member participation.

The purpose of this part is to support best practices for an effective correctional system by:

- (1) Establishing the Hawaii correctional system oversight commission; and
- (2) Consolidating the reentry commission and corrections population management commission into the Hawaii correctional system oversight commission and transferring the rights, powers, functions, and duties of the consolidated commissions to the Hawaii correctional system oversight commission.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION**

§ -1 Hawaii correctional system oversight commission; membership; appointment; chairperson; reimbursement of expenses. (a) There is established within the department of the attorney general for administrative purposes only a Hawaii correctional system oversight commission consisting of five members who shall be residents of this State and appointed as follows:

- (1) One member shall be appointed by the governor;
- (2) One member shall be appointed by the president of the senate;
- (3) One member shall be appointed by the speaker of the house of representatives;
- (4) One member shall be appointed by the chief justice; and
- (5) One member shall be appointed by the chairperson of the board of trustees of the Office of Hawaiian Affairs.

The commission members shall annually elect one of the members to serve as chairperson of the commission.

(b) Preferred qualifications for commission members shall be possessing knowledge in:

- (1) Criminal justice or correctional systems;
- (2) Native Hawaiian culture-based practices with an emphasis on healing and reducing recidivism;
- (3) Best practices for effective correctional systems; or
- (4) Crime victim specialization.

(c) Any member of the commission may be removed from office by the governor for cause upon notice and opportunity to be heard at a public hearing.

(d) The members of the commission shall receive reimbursement for expenses, including travel expenses, that are necessary for the performance of their duties. No member of the commission shall be made subject to the financial disclosure requirements of sections 84-13 and 84-17 solely because of that member's participation as a member of the commission. The terms of the commissioners shall be as provided in section 26-34.

§ -2 Oversight coordinator; appointment; term. (a) The governor shall appoint an oversight coordinator from a list of three nominees submitted by the commission. The oversight coordinator shall be a person qualified by training and experience to administer the Hawaii correctional system oversight commission and shall be well-versed in criminal justice reform and maintain a firm commitment to the correctional system's transition to a rehabilitative and therapeutic model. The oversight coordinator shall serve a two-year term.

(b) Effective December 1, 2019, the oversight coordinator of the commission shall be paid a salary set at one hundred per cent of the salary of the director of human resources development. The oversight coordinator shall be exempt from chapters 76 and 89, but shall be a member of the state employees' retirement system and shall be eligible to receive benefits of any state employee benefits program generally applicable to officers and employees of the State, including those under chapter 87A.

(c) The oversight coordinator shall devote the oversight coordinator's entire time and attention to the administration of the Hawaii correctional system oversight commission and shall not be engaged in any other profession or occupation.

(d) The oversight coordinator may employ persons not subject to chapter 76 to perform and execute the functions of the commission.

§ -3 Hawaii correctional system oversight commission; powers and duties. (a) The commission shall meet with the oversight coordinator not less than once each quarter to make recommendations and set policy, receive reports from the oversight coordinator, and transact other business properly brought before the commission.

(b) The commission shall:

- (1) Oversee the State's correctional system and have jurisdiction over investigating complaints at correctional facilities and facilitating a correctional system transition to a rehabilitative and therapeutic model;
- (2) Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility;
- (3) Work with the department of public safety in monitoring and reviewing the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawaii paroling authority's oversight of parolees. The commission may make recommendations to the department of public safety, the Hawaii paroling authority, and the legislature regarding reentry and parole services; and
- (4) Ensure that the comprehensive offender reentry system under chapter 353H is working properly to provide programs and services that result in the timely release of inmates on parole when the maximum terms have been served instead of delaying the release for lack of programs and services.

To achieve these ends, the commission shall authorize the oversight coordinator to adopt rules in accordance with chapter 91.

§ -4 Powers and duties of the oversight coordinator. In addition to any other powers and duties authorized in this chapter, the oversight coordinator shall:

- (1) Supervise and administer the operation of the commission in accordance with this chapter and the rules adopted under this chapter, subject to the continuous duty to take into account the particularly sensitive and responsible nature of the commission's functions;
- (2) Enforce this chapter and the rules adopted under this chapter. The oversight coordinator shall receive allegations of any violations of the laws of this State or rules pertaining to the correctional system or conduct of the commission;
- (3) Be authorized to hire staff necessary to accomplish the purpose of this chapter, including a minimum of two researchers and one clerical assistant. Employees of the oversight coordinator's office shall be exempt from chapter 76 and shall not be considered civil service employees but shall be entitled to any employee benefit plans normally inuring to civil service employees;
- (4) Act as secretary and executive officer of the commission;
- (5) Confer regularly as necessary or desirable and not less than once every quarter with the commission on the operation and administration of the commission;
- (6) Make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the commission; and

- (7) Advise the commission and recommend matters as are necessary and advisable to improve the operation and administration of the commission.

§ -5 **Access to records by oversight coordinator and commission.** The department of public safety shall provide full access to all information requested by the oversight coordinator and commission.

§ -6 **Monthly reports; annual reports.** (a) The oversight coordinator shall submit a monthly report to the commission, the governor, and the legislature. The monthly report shall include actions taken by the commission and expenses for the preceding month.

(b) The commission shall submit an annual report to the governor and the legislature no less than twenty days before the convening of each regular session. The annual report shall include a full and complete statement of actions taken by the commission for the preceding years, and recommendations, including any proposed legislation, that the commission deems necessary or desirable.

§ -7 **Studies and investigations; procedures.** (a) The oversight coordinator shall conduct an ongoing study and investigation of the correctional system for the following purposes:

- (1) To ascertain any provisions in this chapter or rules adopted pursuant to this chapter through which any abuses in the administration and operation of the correctional system or any evasion of this chapter or its rules may arise or be practiced;
- (2) To formulate recommendations for changes to this chapter; and
- (3) To ensure that this chapter and rules adopted pursuant to this chapter are formalized and are administered to serve the true purposes of this chapter.

(b) The oversight coordinator shall conduct an ongoing study and investigation of the operation and the administration of correctional system laws in effect in other states or countries, any literature on the subject that may be published or available, any federal laws that may affect the operation of the correctional system, and the reaction of residents to existing and potential features of the correctional system in order to recommend or effect changes that will tend to serve the purposes of this chapter.

(c) In an investigation, the oversight coordinator may make inquiries and obtain information as the oversight coordinator thinks fit, enter without notice to inspect the premises of an agency or correctional facility, and hold private hearings in accordance with chapter 91.

(d) The oversight coordinator shall be required to maintain confidentiality in respect to all matters and the identities of the complainants or witnesses coming before the oversight coordinator except so far as disclosures may be necessary to enable the oversight coordinator to carry out the oversight coordinator's duties and to support the oversight coordinator's recommendations."

SECTION 3. Act 24, Special Session Laws of Hawaii 2009, as amended by section 4 of Act 76, Session Laws of Hawaii 2012, as amended by section 1 of Act 66, Session Laws of Hawaii 2013, as amended by section 1 of Act 15, Session Laws of Hawaii 2015, is amended by amending section 3, subsection (d) to read as follows:

"(d) The commission shall cease to exist on [~~December 1, 2019.~~] January 1, 2020."

SECTION 4. Chapter 353F, Hawaii Revised Statutes, is repealed.

SECTION 5. The chairpersons of the reentry commission and corrections population management commission and the oversight coordinator shall create a plan to ensure a smooth transition for the consolidation of commissions and the transfer of all rights, powers, functions, and duties prior to the repeal of the reentry commission and corrections population management commission on January 1, 2020.

SECTION 6. All rights, powers, functions, and duties of the reentry commission are transferred to the Hawaii correctional system oversight commission.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the reentry commission relating to the functions transferred to the Hawaii correctional system oversight commission shall be transferred with the functions to which they relate.

SECTION 8. All rights, powers, functions, and duties of the corrections population management commission are transferred to the Hawaii correctional system oversight commission.

SECTION 9. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the corrections population management commission relating to the functions transferred to the Hawaii correctional system oversight commission shall be transferred with the functions to which they relate.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$158,946 or so much thereof as may be necessary for fiscal year 2019-2020 and \$330,000 or so much thereof as may be necessary for fiscal year 2020-2021 for the operations of the Hawaii correctional system oversight commission.

The sums appropriated shall be expended by the department of the attorney general for the purposes of this part.

PART II

SECTION 11. (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 circuit and district courts; the chair of the senate committee

on public safety, intergovernmental, and military affairs; the chair of the house of representatives committee on judiciary; court administrator representatives from each circuit court; a representative from the department of the attorney general; a representative from the department of health; a representative from the department of public safety; a representative of the office of Hawaiian affairs; the police chiefs of the counties of Hawaii, Kauai, Maui, and the city and county of Honolulu; the prosecuting attorneys for the counties of Hawaii, Kauai, and Maui; a representative of the prosecuting attorney for the city and county of Honolulu; a representative of the office of the public defender; representatives of the criminal defense bar from each of the four counties; and a member of the public. Six subcommittees were formed, and each subcommittee met or otherwise exchanged information numerous times to facilitate the work of the task force. The task force met in plenary session a total of twelve times between August 11, 2017, and July 6, 2018. The task force submitted its report to the legislature on December 14, 2018. The report contains twenty-five recommendations, some of which were accompanied by proposed legislation that was authored by the task force.

(b) The purpose of parts III through IX of this Act is to implement the recommendations of the criminal pretrial task force as follows:

- (1) Parts III and IV of this Act implement recommendations of the task force that were accompanied by proposed legislation authored by the task force, with amendments; and
- (2) Parts V through IX of this Act implement recommendations of the task force for which no proposed legislation was provided; however, these parts incorporate much of the substantive language contained in the task force’s recommendations.

PART III

SECTION 12. The purpose of this part is to improve clarity and consistency in the criminal pretrial system by requiring that intake service centers:

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

SECTION 13. Section 353-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Conduct internal pretrial risk assessments on adult offenders within three working days of admission to a community correctional center ~~[which shall then be provided to the court for its consideration]~~; provided that this paragraph shall not apply to persons subject to county or state detainers[;] ~~or~~ holds, ~~[or]~~ persons detained without

bail, persons detained for probation violation, persons facing revocation of bail or supervised release, and persons who have had a pretrial risk assessment completed prior to admission to a community correctional center. For purposes of this ~~[[~~paragraph~~]]~~, “pretrial risk assessment” means an objective, research-based, validated assessment tool that measures ~~[a defendant’s]~~ an offender’s risk of flight, ~~[and]~~ risk of criminal conduct, and risk of violence or harm to any person or the general public while on pretrial release pending adjudication~~;~~. The pretrial risk assessment tool and procedures associated with its administration shall be periodically reviewed and subject to further validation at least every five years to evaluate the effectiveness of the tool and the procedures associated with its administration. The findings of periodic reviews shall be publicly reported;

- (4) Provide correctional prescription program planning and security classification;
- (5) Provide other personal and correctional services as needed for both detained and committed persons;
- (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs;
- (7) Provide continuing supervision and control of persons ordered to be placed on pretrial supervision by the court and persons ordered by the director; ~~[and]~~
- (8) Make inquiry with the offender concerning the offender’s financial circumstances and include this information in the bail report; provided that the department of public safety’s pretrial services officers shall be provided limited access for the purpose of viewing other state agencies’ relevant data related to an offender’s employment wages and taxes;
- ~~(8)~~ (9) Provide pretrial bail reports to the courts on adult offenders, within three working days of admission of the offender to a community correctional center, that are ~~[consented to by the defendant or that are]~~ ordered by the court~~[-]~~ or consented to by the offender. A complete copy of the executed pretrial risk assessment delineating the scored items, the total score, any administrative scoring overrides applied, and written explanations for administrative scoring overrides, shall be included in the pretrial bail report. The pretrial bail reports shall be confidential and shall not be deemed to be public records. A copy of a pretrial bail report shall be provided only:
 - (A) To the defendant or defendant’s counsel;
 - (B) To the prosecuting attorney;
 - (C) To the department of public safety;
 - (D) To any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order;
 - (E) Upon request, to the adult client services branch; and
 - (F) In accordance with applicable laws, persons, or entities doing research. The research entity must be approved and contracted by the department of public safety to protect the confidentiality of the information, insofar as the information is not a public record.”

PART IV

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

- (1) Require a prompt bail hearing that occurs at the time of the defendant's arraignment, or as soon as practicable;
- (2) Require the release of a defendant under the least restrictive conditions required to ensure:
 - (A) The defendant's appearance; and
 - (B) The protection of the public;
- (3) Require monetary bail to be set in reasonable amounts based on all available information, including information concerning the defendant's financial circumstances; and
- (4) Establish a statewide program that permits the posting of monetary bail twenty-four hours a day, seven days a week for defendants for whom a monetary amount of bail has been set by the police, other law enforcement agency, or the court. For defendants in the custody of the department of public safety, the judiciary shall contract with a single vendor to post bail seven days a week.

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

“§804- Right to a prompt hearing; release or detention. (a) For the purposes of this section, “prompt hearing” means a hearing that occurs at the time of the defendant's arraignment, or as soon as practicable.

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

- (1) Release or detention; and
- (2) Whether any condition or combination of conditions will reasonably ensure:
 - (A) The defendant's appearance as required; and
 - (B) The safety of any other person and the community.

(c) At the hearing, the defendant shall have the right to be represented by counsel and, if financially unable to obtain representation, to have counsel appointed. The defendant shall be afforded an opportunity to testify at the hearing. The defendant and the prosecution shall both be afforded an opportunity to present information by proffer or otherwise.

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

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

SECTION 16. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

“§804-4 When a matter of right. (a) If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right[-] and under the least restrictive conditions required to ensure the defendant's appearance and to protect the public. Except for section 712-1207(7), bail shall be allowed for any person charged under section 712-1207 only subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m.; and provided further that nothing contained in this subsection shall be construed as prohibiting the

imposition of stricter geographic restrictions under section 804-7.1. The right to bail shall continue after conviction of a misdemeanor, petty misdemeanor, or violation, and release on bail may continue, in the discretion of the court, after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings that are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; provided that:

- (1) No bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction;
- (2) No bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed; and
- (3) No bail shall be allowed pending appeal of a conviction for a violation of section 712-1207, unless the court finds, based on the defendant's record, that the defendant may be admitted to bail subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki or other areas in the State designated by county ordinance pursuant to section 712-1207 during the hours from 6 p.m. to 6 a.m.

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

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

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

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

SECTION 17. Section 804-5, Hawaii Revised Statutes, is amended to read as follows:

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

circuit within which the alleged offense was committed, may admit the accused person to bail. The court shall impose conditions of release or bail that are the least restrictive conditions required to ensure the accused's appearance and to protect the public."

SECTION 18. Section 804-7, Hawaii Revised Statutes, is amended to read as follows:

"§804-7 Release after bail. ~~[When bail is offered and taken the prisoner shall be discharged from custody or imprisonment.]~~ The judiciary, in consultation with the department of public safety and the department of the attorney general, shall establish and administer a statewide program that permits the posting of monetary bail seven-days-a-week for defendants who remain in the custody of the director of public safety. This program shall be made available to any defendant for whom a monetary amount of bail has been set by the police, other law enforcement agency, or the court. The judiciary may contract with a single vendor to administer the program. The vendor may charge users of the program a service fee. Upon posting of bail, the defendant shall be released from custody forthwith."

SECTION 19. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

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

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

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;
- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;
- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;
- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to satisfy any other condition reasonably necessary to ~~[assure]~~ ensure the appearance of the ~~[person]~~ defen-

defendant as required and to ~~[assure]~~ ensure the safety of any other person or community; or

(10) Imposing any combination of conditions listed above~~[-];~~ provided that the court shall impose the least restrictive non-financial conditions required to ensure the defendant's appearance and to protect the public.

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

SECTION 20. Section 804-9, Hawaii Revised Statutes, is amended to read as follows:

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

PART V

SECTION 21. The purpose of this part is to afford pretrial detainees greater and continuing opportunities to be released by:

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

SECTION 22. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§353- Community correctional centers; periodic reviews of pretrial detainees. (a) The relevant community correctional centers, on a periodic basis but no less frequently than every three months, shall conduct reviews of pretrial detainees to reassess whether a detainee should remain in custody or whether new information or a change in circumstances warrants reconsideration of a detainee's pretrial release or supervision.

(b) For each review conducted pursuant to subsection (a), the relevant community correctional center shall transmit its findings and recommendations by correspondence or electronically to the appropriate court, prosecuting attorney, and defense counsel.

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

PART VI

SECTION 23. The purpose of this part is as follows:

- (1) Under the office of the chief justice, create a permanently funded criminal justice research institute that is dedicated to examining all aspects of the criminal justice system;

- (2) Appropriate funds for the establishment and staffing of the criminal justice research institute, including the hiring of necessary staff and for the securing of any necessary facilities or equipment; and
- (3) Create a centralized statewide criminal pretrial justice data reporting and collection system.

SECTION 24. The Hawaii Revised Statutes is amended by adding a new chapter to title 32 to be appropriately designated and to read as follows:

**“CHAPTER
CRIMINAL JUSTICE RESEARCH INSTITUTE**

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

“Board” means the board of directors of the criminal justice research institute.

“Institute” means the criminal justice research institute.

§ -2 Establishment of the criminal justice research institute. (a) There is established within the office of the chief justice a criminal justice research institute dedicated to examining all aspects of the criminal justice system, for the purpose of assisting the State in understanding the system in a more comprehensive way and ensuring the protection of individual rights, increasing efficiencies, and controlling costs. The institute shall have the authority to examine all areas of the criminal justice system, including police, prosecutors, defense counsel, courts, pretrial services, probation and parole, jails, and prisons, as well as examine the manner in which related areas, including mental health services and drug treatment services, intersect with the criminal justice system.

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

- (1) Collecting data to monitor the overall functioning of the criminal justice system;
- (2) Monitoring evidence-based practices and reporting on the effectiveness of practices and policies implemented as a result of the recommendations of the criminal pretrial task force established by House Concurrent Resolution No. 134, House Draft 1 (2017);
- (3) Conducting cost-benefit analysis on various areas of operation;
- (4) Monitoring national trends in criminal justice; and
- (5) Issuing public reports to inform all criminal justice stakeholders and the public about the functioning of the criminal justice system.

(c) The institute shall be overseen by a board of directors, which shall consist of the chief justice, or the chief justice’s designee, a representative of the office of the governor, an appointee of the senate president and an appointee of the speaker of the house, and the director of public safety. The board of directors shall be chaired by the chief justice, or the chief justice’s designee.

(d) The chief justice shall appoint as director of the institute a researcher with a doctoral degree and experience in the criminal justice field. The director shall hire staff necessary to accomplish the purposes of this chapter, including a minimum of two assistant researchers and one clerical assistant. The institute may seek the assistance of the University of Hawaii or another appropriate entity when conducting large or complex research projects that require more staff.

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

(f) The board of directors shall meet with the director not less than once each quarter to receive reports from the director and make recommendations and set policy. The initial report shall include suggestions, if any, for additional duties and functions of the institute.

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

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

- (1) Identifying all current databases utilized by various state agencies to track criminal pretrial information;
- (2) Determining the administrative and technological feasibility of aggregating and sharing current data; and
- (3) Identifying critical gaps in data and information collection that are required for a robust assessment of criminal pretrial justice matters, which may include information relating to:
 - (A) Arrests;
 - (B) Monetary and non-monetary conditions of release;
 - (C) Bail amounts;
 - (D) Risk assessments;
 - (E) Risk assessment scores;
 - (F) Bail report recommendations;
 - (G) Information gathered in risk assessments or bail reports;
 - (H) Bail hearings;
 - (I) Judicial decisions to release and conditions imposed on release;
 - (J) Judicial decisions to detain;
 - (K) Concordance between the bail report recommendation and decision, length of stay, and pretrial supervision; and
 - (L) The degree to which a defendant's assessed risk correlates with the defendant's actual risk, including an assessment of whether the defendant appears in court, commits other crimes, or engages in violent conduct when released from custody.

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

- (1) The percentage of supervised defendants who make all scheduled court appearances;
- (2) The percentage of supervised defendants who are not charged with a new offense during the pretrial stage;
- (3) The ratio of defendants whose supervision level or detention status corresponds with each respective defendant's assessed risk of pretrial misconduct;
- (4) The percentage of released defendants who:
 - (A) Do not have their release revoked for technical violations of the conditions of their release;
 - (B) Appear for all scheduled court appearances; and
 - (C) Are not charged with a new offense during pretrial supervision;
- (5) The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release;
- (6) The percentage of defendants who remain arrest-free during the pretrial release period; and

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

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

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

SECTION 25. There is appropriated out of the general revenues of the State of Hawaii the sum of \$181,388 or so much thereof as may be necessary for fiscal year 2019-2020 and \$314,376 or so much thereof as may be necessary for fiscal year 2020-2021 for the establishment and staffing of the criminal justice research institute pursuant to this part, including the hiring of one full-time equivalent (1.0 FTE) director, two full-time equivalent (2.0 FTE) assistant researchers, and one full-time equivalent (1.0 FTE) clerical assistant, and for any necessary facilities and equipment.

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

PART VII

SECTION 26. The purpose of this part is to implement and expand alternatives to pretrial detention by:

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

SECTION 27. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

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

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

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant's counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;

- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;
- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;
- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to submit to the use of electronic monitoring and surveillance;
- (10) Requiring the confinement of the defendant in the defendant's residence;
- [~~9~~] (11) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or
- [~~40~~] (12) Imposing any combination of conditions listed above.

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

SECTION 28. The judiciary, in consultation with the department of public safety, shall develop and adopt a policy for courts to use when assessing whether a defendant's risk of non-appearance or recidivism may be mitigated by home detention or electronic monitoring. The policy shall include:

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

PART VIII

SECTION 29. The purpose of this part is to integrate victims' rights into the criminal pretrial system by requiring that intake service centers consider victims' concerns when making pretrial release recommendations.

SECTION 30. (a) No later than December 31, 2020, and in accordance with section 353-10(b)(3), Hawaii Revised Statutes, the department of public safety shall revise the pretrial risk assessment processes currently used by its intake service centers with respect to offenses committed against persons, including offenses involving domestic violence and violation of restraining orders and protective orders, to ensure integration of victims' rights into the criminal pretrial system by requiring consideration of the following factors in making pretrial release recommendations:

- (1) Whether the defendant has a history of involvement with the victim of the offense, including any prior police contact that involved both

the victim and the defendant, and the status of the relationship between the victim and the defendant, if any;

- (2) Whether the defendant has any prior criminal history;
- (3) Whether there is a risk that the defendant will re-victimize, stalk, or otherwise harm the victim; and
- (4) Any concerns raised by the victim with respect to the defendant’s potential release from custody.

(b) The department shall submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2021, on the progress made in revising the pretrial risk assessment processes, as required by subsection (a).

PART IX

SECTION 31. The purpose of this part is to appropriate moneys to the department of public safety to provide intake service centers with necessary funding, personnel, training, facilities, access, information, and technical support to meet current and projected future responsibilities in conducting timely risk assessments, efficiently disseminating bail reports, and supervising pretrial defendants.

SECTION 32. There is appropriated out of the general revenues of the State of Hawaii the sum of \$305,138 or so much thereof as may be necessary for fiscal year 2019-2020 and \$502,476 or so much thereof as may be necessary for fiscal year 2020-2021 for necessary personnel, training, facilities, access, information, and technical support for intake service centers to meet current and projected responsibilities in conducting timely risk assessments, efficiently disseminating bail reports, and supervising pretrial defendants.

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

PART X

SECTION 33. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 34. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 35. This Act shall take effect upon its approval; provided that:

- (1) Section 3 shall take effect on November 30, 2019;
- (2) Section 4 shall take effect on January 1, 2020;
- (3) Section 10 shall take effect on July 1, 2019;
- (4) Parts II through VIII shall take effect on January 1, 2020; provided further that section 25 of part VI shall take effect on July 1, 2019; and
- (5) Part IX shall take effect on July 1, 2019.

(Approved July 2, 2019.)

Note

1. Edited pursuant to HRS §23G-16.5.