

JAN 29 2015

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. In 2012, as part of Hawaii's justice
2 reinvestment efforts, the legislature found that the State's
3 pretrial population had increased due to longer lengths of stay.
4 The legislature attempted to address the issue by requiring that
5 an objective assessment be conducted within the first three
6 working days of a person's commitment to a community
7 correctional center to allow the courts to more quickly exercise
8 discretion in determining whether to release a pretrial
9 offender.

10 To accomplish this mandate, Hawaii's intake services center
11 selected the Ohio Risk Assessment Survey-Pretrial Assessment
12 Tool, which involves a brief face-to-face interview with the
13 defendant. The assessment tool consists of seven risk variables
14 in criminal history, employment and residential stability, and
15 drug use, and categorizes detainees into groups based on their
16 likelihood of reoffending or failing to appear in court during
17 the pretrial period.



1 The Ohio Risk Assessment Survey-Pretrial Assessment Tool
2 was recently validated in Hawaii, and the researcher concluded
3 that the tool can be used in Hawaii to safely and predictably
4 allocate detention and pretrial resources based on assessed
5 level of risk. The risk assessment data is just one piece of
6 information that intake services center staff provide in the
7 bail report, which is delivered to the court within five days of
8 an individual's admission to jail.

9 The legislature finds that despite the advancement in
10 pretrial assessment since 2012, pretrial lengths of stay for
11 those who are ultimately released before trial have remained
12 very long and even increased, averaging almost seventy days.
13 Pretrial length of stay in Hawaii remains about four times as
14 long as the national average. Reentry intake service centers
15 have addressed their mandate to conduct more timely assessments,
16 but this alone has not produced more timely processing of cases
17 or affected release decisions. The result, incarcerating
18 defendants before they are ultimately released on bail,
19 recognizance, or supervision, and before they plead or are found
20 guilty, is costly for the State.



1 Therefore, the purpose of this Act is to require timely
2 processing and quality information for appropriate pretrial
3 release decisions.

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

6 "(b) The centers shall:

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

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

10 (3) Conduct ~~[internal]~~ pretrial risk assessments on adult
11 ~~[offenders]~~ defendants within ~~[three]~~ five working
12 days of ~~[admission to a community correctional center]~~
13 arrest, which shall then be provided to the court for
14 its consideration~~[+]~~ and to those who may receive a
15 pretrial bail report under paragraph (9); provided
16 that this paragraph shall not apply to persons subject
17 to county or state detainers, holds, or persons
18 detained without bail, persons detained for probation
19 violation, persons facing revocation of bail or
20 supervised release, and persons who have had a
21 pretrial risk assessment completed prior to admission



1 to a community correctional center. For purposes of
2 this [†]paragraph[†], "pretrial risk assessment" means
3 an objective, research-based, validated assessment
4 tool that measures a defendant's risk of flight and
5 risk of criminal conduct while on pretrial release
6 pending adjudication; provided that the pretrial risk
7 assessment shall be confidential and shall not be
8 deemed to be a public record;

- 9 (4) Provide correctional prescription program planning and
10 security classification;
- 11 (5) Provide other personal and correctional services as
12 needed for both detained and committed persons;
- 13 (6) Monitor and record the progress of persons assigned to
14 correctional facilities who undergo further treatment
15 or who participate in prescribed correctional
16 programs;
- 17 (7) Provide continuing supervision and control of persons
18 ordered to be placed on pretrial supervision by the
19 court and persons ordered by the director; ~~and~~



1 (8) Interview prospective lay sponsors within seven
2 working days of their identification, by scheduling
3 interviews during evening and weekend hours; and

4 [+8+] (9) Provide pretrial bail reports to the courts on
5 adult [offenders that are consented to by the
6 defendant or that are ordered by the court.]
7 defendants who are eligible for release under sections
8 804-3 and 804-4, within five working days of arrest.
9 Any recommendation for financial bail shall comply
10 with section 804-9, and any recommendation shall link
11 assessments of the risk of flight and of public safety
12 to appropriate release options designed to respond to
13 the specific risk and supervision needs identified.

14 The pretrial bail reports shall be confidential and
15 shall not be deemed to be public records. A copy of a
16 pretrial bail report shall be provided only:

- 17 (A) To the defendant or defendant's counsel;
18 (B) To the prosecuting attorney;
19 (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."

SECTION 3. Section 804-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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, without unnecessary delay, an arraignment conducted no more than five days after arrest. 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



1 the imposition of stricter geographic restrictions under section
2 804-7.1. The right to bail shall continue after conviction of a
3 misdemeanor, petty misdemeanor, or violation, and release on
4 bail may continue, in the discretion of the court, after
5 conviction of a felony until the final determination of any
6 motion for a new trial, appeal, habeas corpus, or other
7 proceedings that are made, taken, issued, or allowed for the
8 purpose of securing a review of the rulings, verdict, judgment,
9 sentence, or other proceedings of any court or jury in or by
10 which the defendant has been arraigned, tried, convicted, or
11 sentenced; provided that:

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

16 (2) No bail shall be allowed pending appeal of a felony
17 conviction where a sentence of imprisonment has been
18 imposed; and

19 (3) No bail shall be allowed pending appeal of a
20 conviction for a violation of section 712-1207, unless
21 the court finds, based on the defendant's record, that



1 the defendant may be admitted to bail subject to the
2 mandatory condition that the person observe geographic
3 restrictions that prohibit the defendant from entering
4 or walking along the public streets or sidewalks of
5 Waikiki or other areas in the State designated by
6 county ordinance pursuant to section 712-1207 during
7 the hours from 6 p.m. to 6 a.m.

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

12 SECTION 4. Section 804-7.1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§804-7.1 Conditions of release on bail, recognizance, or**
15 **supervised release.** (a) Upon a showing that there exists a
16 danger that the defendant will commit a serious crime or will
17 seek to intimidate witnesses, or will otherwise unlawfully
18 interfere with the orderly administration of justice, the
19 judicial officer named in section 804-5 may deny the defendant's
20 release on bail, recognizance, or supervised release. A
21 pretrial risk assessment score that reflects high risk of flight



1 or commission of a new criminal offense shall be sufficient to
2 satisfy this showing. Absent such a score, the judicial officer
3 shall not deny the defendant's release on bail, recognizance, or
4 supervised release.

5 (b) Upon the defendant's release on bail, recognizance, or
6 supervised release, ~~[however,]~~ the court may enter an order:

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

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

14 (3) Prohibiting the defendant from possessing any
15 dangerous weapon, engaging in certain described
16 activities, or indulging in intoxicating liquors or
17 certain drugs;

18 (4) Requiring the defendant to report regularly to and
19 remain under the supervision of an officer of the
20 court[+] or a lay sponsor approved by the intake
21 service center;



(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 the appearance of the person as required and to assure the safety of any other person or community; or

(10) Imposing any combination of conditions listed above.



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 804-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§804-9 Amount.** The amount of bail rests in the
7 discretion of the justice or judge or the officers named in
8 section 804-5; but should be so determined as not to suffer the
9 wealthy to escape by the payment of a pecuniary penalty, nor to
10 render the privilege useless to the poor. In all cases, the
11 officer letting to bail should consider the punishment to be
12 inflicted on conviction, and the pecuniary circumstances of the
13 party accused. The officer shall not rely upon a bail schedule
14 or upon an amount of bail that would have been necessary to
15 prevent the release of a defendant during jail overcrowding."

16 SECTION 6. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



S.B. NO. 1331

1 SECTION 8. This Act shall take effect on July 1, 2015.

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INTRODUCED BY:

Will Zygo

Matt

~~Don~~ A.C. Keith-Allen

Gregg H. Bell

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S.B. NO. 1331

Report Title:

Pretrial Risk Assessment; Pretrial Release; Bail

Description:

Requires pretrial risk assessments, pretrial bail reports, and arraignments to be completed within five working days after an arrest. Obligates the intake service centers to interview lay sponsors within seven days of their identification and allows the court to order defendants released on pretrial release to report to lay sponsors for supervision. Prohibits judicial officers from denying bail absent a pretrial risk assessment score that reflects a high risk of flight or commission of a new criminal offense. Prohibits judicial officers from relying on a bail schedule or bail amount that would have been necessary to prevent release of a defendant during jail overcrowding.

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

