

JAN 19 2018

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 Hawaii's current
2 bail system needs to be reformed to address the disproportionate
3 number of pretrial inmates under state custody. In 2016,
4 approximately forty-one per cent of the total inmate population
5 in the Oahu community correctional system were pretrial inmates.

6 The legislature further finds that the majority of
7 individuals detained until case disposition are detained due to
8 an inability to afford bail. The New York Times found that in
9 cases where bail is \$500 or less, only fifteen per cent of
10 defendants are able to come up with enough money to avoid jail.
11 In addition to the loss of liberty, pretrial detainees who
12 cannot afford bail often suffer the loss of employment, custody
13 of minors, housing, vehicles, and standing within the community
14 regardless of innocence.

15 The purpose of this Act is to reform Hawaii's criminal
16 justice system by:



- 1 (1) Requiring courts to order any person charged with a
2 criminal offense to be released on personal
3 recognizance or on the execution of an unsecured bond,
4 unless the person is unlikely to appear for trial;
5 (2) Requiring the judiciary to establish a statewide court
6 appearance reminder system for criminal cases; and
7 (3) Establishing requirements for any pretrial risk
8 assessment tool used by the judiciary.

9 SECTION 2. Chapter 601, Hawaii Revised Statutes, is
10 amended by adding two new sections to be appropriately
11 designated and to read as follows:

12 "§601- Court appearance reminder system. The judiciary
13 shall establish a statewide court appearance reminder system to
14 notify any person charged with a criminal offense of the date,
15 time, and place at which the person to whom the notice was
16 issued shall appear in court.

17 §601- Risk Assessment. (a) Any risk assessment tool
18 used by the judiciary in determining whether to release a person
19 pursuant to chapter 804, shall:



- 1 (1) Be locally validated and regularly revalidated to
2 assess the tool's appropriateness for Hawaii and to
3 evaluate its impact on racial and ethnic disparities;
- 4 (2) Have minimal or no impact on racial and ethnic
5 disparities;
- 6 (3) Be transparent about the data collected and scoring
7 system;
- 8 (4) Not replace individualized determinations of release;
- 9 (5) Clearly and unequivocally define the risk factors and
10 assessment terms used to ensure consistent evaluations
11 and, if possible, distinguish between willful and non-
12 willful failure to appear;
- 13 (6) Separate all risk factors and assessments;
- 14 (7) Provide statistical analysis for comparisons between
15 similarly situated persons;
- 16 (8) If possible, avoid using a person's likelihood of
17 future arrest as a basis for establishing
18 dangerousness; and
- 19 (9) Be subject to independent and community review,
20 including review by researchers and stakeholders who



1 do not have proprietary interests in the tool's
2 success.

3 (b) The judiciary shall properly train court personnel
4 with the implementation of any risk assessment tool.

5 (c) The risk assessment of any person charged with a
6 criminal offense shall be provided to all parties as part of the
7 pretrial bail report. The State and person charged with the
8 criminal offense, or the person's counsel, shall be allowed to
9 discuss and challenge the conclusion of a risk assessment tool."

10 SECTION 3. Section 353-36, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) No person who is incarcerated under any of the
13 following circumstances shall be eligible for release pursuant
14 to this section:

15 (1) The person has been denied bail or whose bail has been
16 set at more than \$5,000 pursuant to chapter 804;

17 (2) The person is charged with or convicted of or is on
18 probation or parole for ~~[a serious crime, as defined~~
19 ~~in section 804-3,]~~ murder or attempted murder in the
20 first degree, murder or attempted murder in the second
21 degree, or a class A or B felony, except forgery in



1 the first degree and failing to render aid under
2 section 291C-12;

3 (3) The person has been arrested or convicted for abuse of
4 family or household members, as defined in section
5 709-906; or

6 (4) Other than the offense for which release is
7 contemplated under this section, the person has been
8 previously convicted of any offense, as defined in
9 title 37, that involves injury or threat of injury to
10 the person of another, including but not limited to
11 sexual harassment in the fourth degree, harassment by
12 stalking, violation of an order of protection, or
13 violation of a temporary restraining order."

14 SECTION 4. Section 804-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§804-3** [~~Bailable~~] Pretrial release; bailable offenses.

17 ~~[(a) For purposes of this section, "serious crime" means murder~~
18 ~~or attempted murder in the first degree, murder or attempted~~
19 ~~murder in the second degree, or a class A or B felony, except~~
20 ~~forgery in the first degree and failing to render aid under~~



~~section 291C-12, and "bail" includes release on one's own
recognizance, supervised release, and conditional release.~~

~~(b) Any person charged with a criminal offense shall be
bailable by sufficient sureties; provided that bail may be
denied where the charge is for a serious crime, and:~~

~~(1) There is a serious risk that the person will flee;~~

~~(2) There is a serious risk that the person will obstruct
or attempt to obstruct justice, or therefore, injure,
or intimidate, or attempt to thereafter, injure, or
intimidate, a prospective witness or juror;~~

~~(3) There is a serious risk that the person poses a danger
to any person or the community; or~~

~~(4) There is a serious risk that the person will engage in
illegal activity.~~

~~(c) Under subsection (b) (1) a rebuttable presumption
arises that there is a serious risk that the person will flee or
will not appear as directed by the court where the person is
charged with a criminal offense punishable by imprisonment for
life without possibility of parole. For purposes of subsection
(b) (3) and (4) a rebuttable presumption arises that the person~~



~~poses a serious danger to any person or community or will engage in illegal activity where the court determines that:~~

~~(1) The defendant has been previously convicted of a serious crime involving violence against a person within the ten year period preceding the date of the charge against the defendant;~~

~~(2) The defendant is already on bail on a felony charge involving violence against a person; or~~

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

(a) Any person charged with a criminal offense shall be ordered released by a court of competent jurisdiction on the person's personal recognizance or on the execution of an unsecured bond, unless the court determines by clear and convincing evidence that unconditional release will not reasonably assure the appearance of the person when required. There shall be a rebuttable presumption that any person charged with a criminal offense will appear when required. The State shall bear the burden of proof of establishing that release will not reasonably assure the appearance of the person when



1 required. The court shall issue a written order documenting its
2 reasons for denying any person's release under this subsection.

3 (b) If, after a hearing the court finds that the release
4 described in subsection (a) will not reasonably assure the
5 appearance of the person when required, the court may order the
6 release of the person subject to any of the conditions
7 authorized under section 804-7.1.

8 (c) If, after a hearing the court finds that the release
9 described in subsection (a) or (b) will not reasonably assure
10 the appearance of the person when required, the person shall be
11 bailable by sufficient sureties.

12 (d) If, after a hearing the court finds that no condition
13 or combination of conditions will reasonably assure the
14 appearance of the person when required or that release will not
15 reasonably assure the safety of any other person or community,
16 bail may be denied. For the purposes of this subsection, "bail"
17 includes release on one's own recognizance, supervised release,
18 and conditional release."

19 SECTION 5. Section 804-7.1, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§804-7.1 Conditions of release on bail, recognizance, or
2 supervised release. (a) Upon a showing that there exists a
3 danger that the defendant will commit a serious crime or will
4 seek to intimidate witnesses, or will otherwise unlawfully
5 interfere with the orderly administration of justice, the
6 judicial officer named in section 804-5 may deny the defendant's
7 release on bail, recognizance, or supervised release. The
8 judicial officer shall issue a written order documenting its
9 reasons for denying the defendant's release.

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

12 (1) Prohibiting the defendant from approaching or
13 communicating with particular persons or classes of
14 persons, except that no such order should be deemed to
15 prohibit any lawful and ethical activity of
16 defendant's counsel;

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

19 (3) Prohibiting the defendant from possessing any
20 dangerous weapon, engaging in certain described



1 activities, or indulging in intoxicating liquors or
2 certain drugs;

3 (4) Requiring the defendant to report regularly to and
4 remain under the supervision of an officer of the
5 court;

6 (5) Requiring the defendant to maintain employment, or, if
7 unemployed, to actively seek employment, or attend an
8 educational or vocational institution;

9 (6) Requiring the defendant to comply with a specified
10 curfew;

11 (7) Requiring the defendant to seek and maintain mental
12 health treatment or testing, including treatment for
13 drug or alcohol dependency, or to remain in a
14 specified institution for that purpose;

15 (8) Requiring the defendant to remain in the jurisdiction
16 of the judicial circuit in which the charges are
17 pending unless approval is obtained from a court of
18 competent jurisdiction to leave the jurisdiction of
19 the court;

20 (9) Requiring the defendant to satisfy any other condition
21 reasonably necessary to assure the appearance of the



1 person as required and to assure the safety of any
2 other person or community; or

3 (10) Imposing any combination of conditions listed
4 above[-];

5 provided that no defendant shall be required to submit to
6 substance abuse testing as a condition for release unless the
7 defendant is charged with a crime involving possession or use,
8 not including to distribute or manufacture as defined in section
9 712-1240, of any dangerous drug, detrimental drug, harmful drug,
10 intoxicating compound, marijuana, or marijuana concentrate, as
11 defined in section 712-1240, methamphetamine trafficking as
12 provided in section 712-1240.7, or involving possession or use
13 of drug paraphernalia under section 329-43.5; provided further
14 that the court shall order the least restrictive condition or
15 combination of conditions that the court determines will
16 reasonably assure the appearance of the defendant when required.

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

20 SECTION 6. Section 804-9, Hawaii Revised Statutes, is
21 amended to read as follows:




1 "§804-9 Amount. The amount of bail rests in the
2 discretion of the justice or judge or the officers named in
3 section 804-5; but should be so determined as not to suffer the
4 wealthy to escape by the payment of a pecuniary penalty, nor to
5 render the privilege useless to the poor. In all cases, the
6 officer letting to bail should consider the punishment to be
7 inflicted on conviction, and the pecuniary circumstances of the
8 party accused. Under no circumstances shall a justice, judge,
9 or officer utilize a bail schedule as a standard to set bail in
10 lieu of the discretion accorded by this section."

11 SECTION 7. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on July 1, 2018.

17
INTRODUCED BY:



S.B. NO. 2482

Report Title:

Pretrial Release; Court Appearance Reminder System; Risk Assessment

Description:

Requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Requires the Judiciary to establish statewide court appearance reminder system. Establishes requirements for any pretrial risk assessment tool used by the Judiciary.

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

