

JAN 24 2018

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# 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~~



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

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

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

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

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

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

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



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

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

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

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

11 (a) Any person charged with a criminal offense shall be  
12 ordered released by a court of competent jurisdiction on the  
13 person's personal recognizance or on the execution of an  
14 unsecured bond, unless the court determines by clear and  
15 convincing evidence that unconditional release will not  
16 reasonably assure the appearance of the person when required.  
17 There shall be a rebuttable presumption that any person charged  
18 with a criminal offense will appear when required. The State  
19 shall bear the burden of proof of establishing that release will  
20 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



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 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:

Will Fer Clarence W. Irishman  
Randy de Bel



# S.B. NO. 2860

**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.*

