

JAN 24 2018

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# A BILL FOR AN ACT

RELATING TO BAIL.

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

1       SECTION 1. The legislature finds that the safety of  
2       Hawaii's residents is of the utmost importance in matters  
3       relating to bail requests of criminal offenders, especially from  
4       those who are charged with violent criminal offenses or have  
5       been previously convicted of a violent criminal offense. The  
6       legislature also recognizes that the rights of defendants and  
7       the public must be balanced and weighed carefully when  
8       determining the appropriate bail amounts.

9       In most cases, the issue of whether a defendant can be  
10      safely released on bail does not raise controversy. However,  
11      recent criminal cases have garnered media coverage regarding  
12      defendants who have extensive criminal histories that include  
13      convictions of violent criminal offenses and the commission of  
14      additional crimes while free on bail. For example, a defendant  
15      was arrested and charged with attempted manslaughter, firearm  
16      possession, and terroristic threatening in 2016. At the time of  
17      the arrest, the defendant was awaiting trial for numerous other



1 criminal offenses, including kidnapping, robbery, and auto  
2 theft. In addition, the defendant was charged or convicted of a  
3 number of other criminal offenses, including drug-related  
4 offenses, firearm possession, domestic violence, assaulting a  
5 police officer, and violating probation over a fifteen-year  
6 period.

7 The legislature further finds that while a judge is  
8 authorized under state law to exercise discretion in granting  
9 bail, it is in the best interest of the public's safety to  
10 ensure that defendants who are charged with a violent offense or  
11 who have a history of violent offense convictions be denied  
12 bail.

13 The purpose of this Act is to:

- 14 (1) Require that a defendant be denied bail when the  
15 charge is for a violent crime or the defendant has  
16 been previously convicted of a violent crime; and  
17 (2) Distinguish between a serious crime for which the  
18 judge has the discretion to grant bail and a violent  
19 crime for which bail must be denied.

20 SECTION 2. Section 804-3, Hawaii Revised Statutes, is  
21 amended to read as follows:



1       "§804-3 Bailable offenses. (a) For purposes of this  
2 section[, ~~"serious~~]:

3       "Bail" includes release on one's own recognizance,  
4 supervised release, and conditional release.

5       "Serious crime" means [~~murder or attempted murder in the~~  
6 ~~first degree, murder or attempted murder in the second degree,~~  
7 ~~or~~] a class A or B felony, except [~~forgery in the first degree~~  
8 ~~and failing~~]:

9       (1) Failing to render aid under section 291C-12[, ~~and~~

10       ~~"bail" includes release on one's own recognizance,~~  
11       ~~supervised release, and conditional release.];~~

12       (2) Murder in the first degree under section 707-701;

13       (3) Murder in the second degree under section 707-701.5;

14       (4) Manslaughter under section 707-702;

15       (5) Negligent homicide in the first degree under section  
16       707-702.5;

17       (6) Assault in the first degree under section 707-710;

18       (7) Kidnapping under section 707-720;

19       (8) Sexual assault in the first degree under section  
20       707-730;



(9) Sexual assault in the second degree under section 707-731;

(10) Forgery in the first degree under section 708-851; and

(11) Sex trafficking under section 712-1202.

"Violent crime" means any crime enumerated under section 351-32.

(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



1 charged with a criminal offense punishable by imprisonment for  
2 life without possibility of parole. For purposes of subsection  
3 (b) (3) and (4) a rebuttable presumption arises that the person  
4 poses a serious danger to any person or community or will engage  
5 in illegal activity where the court determines that:

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

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

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

14 (d) Bail shall be denied where the charge is for a violent  
15 crime or the defendant has been previously convicted of a  
16 violent crime.

17 [~~(d)~~] (e) If, after a hearing the court finds that no  
18 condition or combination of conditions will reasonably assure  
19 the appearance of the person when required or the safety of any  
20 other person or community, bail may be denied."



# S.B. NO. 2881

1       SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4       SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 5. This Act shall take effect upon its approval.

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# S.B. NO. 2881

**Report Title:**

Criminal Procedure; Bail; Bailable Offenses; Serious Crimes;  
Violent Crimes

**Description:**

Requires that a defendant be denied bail when the charge is for a violent crime or the defendant has been previously convicted of a violent crime. Distinguishes between a serious crime for which the judge has the discretion to grant bail and a violent crime for which bail must be denied.

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