
A BILL FOR AN ACT

RELATING TO CRIMINAL PRETRIAL REFORM.

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

PART I

1
2 SECTION 1. (a) The legislature finds that house
3 concurrent resolution no. 134, house draft 1 (2017), requested
4 the judiciary to convene a criminal pretrial task force to:

5 (1) Examine and, as needed, recommend legislation and
6 revisions to criminal pretrial practices and
7 procedures to increase public safety while maximizing
8 pretrial release of those who do not pose a danger or
9 a flight risk; and

10 (2) Identify and define best practices metrics to measure
11 the relative effectiveness of the criminal pretrial
12 system, and establish ongoing procedures to take such
13 measurements at appropriate time intervals.

14 Accordingly, the judiciary convened a criminal pretrial
15 task force that consisted of twenty-nine members from various
16 agencies and organizations with a broad spectrum of knowledge
17 and experience. The task force membership included judges from



1 circuit and district courts; the chair of the senate committee
2 on public safety, intergovernmental, and military affairs; the
3 chair of the house of representatives committee on judiciary;
4 court administrator representatives from each circuit court; a
5 representative from the department of the attorney general; a
6 representative from the department of health; a representative
7 from the department of public safety; a representative of the
8 office of Hawaiian affairs; the police chiefs of the counties of
9 Hawaii, Kauai, Maui, and the city and county of Honolulu; the
10 prosecuting attorneys for the counties of Hawaii, Kauai, and
11 Maui; a representative of the prosecuting attorney for the city
12 and county of Honolulu; a representative of the office of the
13 public defender; representatives of the criminal defense bar
14 from each of the four counties; and a member of the public. Six
15 subcommittees were formed, and each subcommittee met or
16 otherwise exchanged information numerous times to facilitate the
17 work of the task force. The task force met in plenary session a
18 total of twelve times between August 11, 2017, and July 6, 2018.
19 The task force submitted its report to the legislature on
20 December 14, 2018. The report contains twenty-five



1 recommendations, some of which were accompanied by proposed
2 legislation that was authored by the task force.

3 (b) The purpose of this Act is to implement the
4 recommendations of the criminal pretrial task force as follows:

- 5 (1) Parts II, III, and IV, except section 12, of this Act
6 implement recommendations of the task force that were
7 accompanied by proposed legislation authored by the
8 task force, with only technical, nonsubstantive
9 changes to the task force's language for the purposes
10 of clarity, consistency, and style;
- 11 (2) Section 12 of this Act implements recommendations of
12 the task force that were accompanied by proposed
13 legislation and recommendations that were
14 unaccompanied by proposed legislation;
- 15 (3) Parts V, VI, VII, VIII, and IX of this Act implement
16 recommendations of the task force for which no
17 proposed legislation was provided; however, these
18 parts incorporate, as much as possible, substantive
19 language contained in the task force's
20 recommendations.

21 PART II



1 SECTION 2. The purpose of this part is to improve clarity
2 and consistency in the criminal pretrial system by requiring
3 that intake service centers:

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

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

19 "(b) The centers shall:

- 20 (1) Provide orientation, guidance, and technical services;



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

3 (3) Conduct internal pretrial risk assessments on adult
4 offenders within ~~[three]~~ two working days of admission
5 to a community correctional center ~~[which shall then~~
6 ~~be provided to the court for its consideration]~~ ;
7 provided that this paragraph shall not apply to
8 persons subject to county or state detainers ~~[7]~~ or
9 holds, ~~[e]~~ persons detained without bail, persons
10 detained for probation violation, persons facing
11 revocation of bail or supervised release, and persons
12 who have had a pretrial risk assessment completed
13 prior to admission to a community correctional center.
14 For purposes of this ~~[t]~~paragraph~~[t]~~, "pretrial risk
15 assessment" means an objective, research-based,
16 validated assessment tool that measures ~~[a~~
17 ~~defendant's]~~ an offender's risk of flight [and], risk
18 of criminal conduct, and risk of violence or harm to
19 any person or the general public while on pretrial
20 release pending adjudication[7]. The pretrial risk
21 assessment tool and procedures associated with its



1 administration shall be periodically reviewed and
2 subject to further validation at least every five
3 years to evaluate the effectiveness of the tool and
4 the procedures associated with its administration.
5 The findings of periodic reviews shall be publicly
6 reported;

7 (4) Provide correctional prescription program planning and
8 security classification;

9 (5) Provide other personal and correctional services as
10 needed for both detained and committed persons;

11 (6) Monitor and record the progress of persons assigned to
12 correctional facilities who undergo further treatment
13 or who participate in prescribed correctional
14 programs;

15 (7) Provide continuing supervision and control of persons
16 ordered to be placed on pretrial supervision by the
17 court and persons ordered by the director; [~~and~~]

18 (8) Make inquiry with the offender concerning the
19 offender's financial circumstances and include this
20 information in the bail report; and



1 ~~[(8)]~~ (9) Provide pretrial bail reports to the courts on
2 adult offenders, within two working days of admission
3 of the offender to a community correctional center,
4 ~~that are [consented to by the defendant or that are]~~
5 ordered by the court[-] or consented to by the
6 offender. A complete copy of the executed pretrial
7 risk assessment delineating the scored items, the
8 total score, any administrative scoring overrides
9 applied, and written explanations for administrative
10 scoring overrides, shall be included in the pretrial
11 bail report. The pretrial bail reports shall be
12 confidential and shall not be deemed to be public
13 records. A copy of a pretrial bail report shall be
14 provided only:

- 15 (A) To the ~~[defendant]~~ offender or ~~[defendant's]~~ the
16 offender's counsel;
17 (B) To the prosecuting attorney;
18 (C) To the department of public safety;
19 (D) To any psychiatrist, psychologist, or other
20 treatment practitioner who is treating the
21 ~~[defendant]~~ offender pursuant to a court order;



- 1 (E) Upon request, to the adult client services
2 branch; and
- 3 (F) In accordance with applicable laws, persons, or
4 research entities [doing research] that have been
5 approved by and entered into a contract with the
6 department."

PART III

8 SECTION 4. The purpose of this part is to provide viable
9 alternatives to arrest for low-risk defendants who have not
10 demonstrated a risk of non-appearance in court while still
11 protecting the public from the risk of further crime by:

- 12 (1) Reinforcing that police officers have the discretion
13 to issue citations for traffic offenses, violations,
14 petty misdemeanors, and misdemeanors; and
- 15 (2) Providing discretion to police officers to issue
16 citations in lieu of arrest for appropriate non-
17 violent class C felonies.

18 SECTION 5. Section 803-6, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) In any case in which it is lawful for a police
21 officer to arrest a person without a warrant for a non-violent



1 class C felony, any misdemeanor, any petty misdemeanor, or
2 violation, the police officer may~~[, but need not,]~~ exercise
3 discretion and issue a citation in lieu of the requirements of
4 ~~[+]subsection[+]~~ (a), if the police officer finds and is
5 reasonably satisfied that ~~[the person]~~:

- 6 (1) ~~[Will]~~ The person will appear in court at the time
7 designated;
- 8 (2) ~~[Has]~~ The person has no outstanding arrest warrants
9 ~~[which]~~ that would justify the person's detention or
10 give indication that the person might fail to appear
11 in court; ~~[and]~~
- 12 (3) ~~[That the]~~ The offense is of such nature that there
13 will be no further police contact on or about the date
14 in question, or in the immediate future~~[-]~~; and
- 15 (4) The offense does not involve domestic violence, sexual
16 assault, robbery, or any other offense enumerated in
17 chapter 707."

18 PART IV

19 SECTION 6. The purpose of this part is to amend chapter
20 804, Hawaii Revised Statutes, to:



- 1 (1) Require monetary bail to be set in reasonable amounts
2 based on all available information, including
3 information concerning the defendant's financial
4 ability to afford bail;
- 5 (2) Permit monetary bail to be posted with the police,
6 other law enforcement agency, or the community
7 correctional center where the defendant is held, on a
8 twenty-four hours a day, seven days a week basis;
- 9 (3) Require prompt bail hearings after a defendant is
10 formally charged;
- 11 (4) With certain exceptions, eliminate the use of monetary
12 bail and require defendants to be released on their
13 own recognizance for traffic offenses, violations,
14 non-violent petty misdemeanor offenses, and non-
15 violent misdemeanor offenses;
- 16 (5) Create rebuttable presumptions regarding both release
17 and detention and to specify circumstances in which
18 these presumptions apply; and
- 19 (6) Require the release of a defendant under the least
20 restrictive conditions required to ensure:
21 (A) The defendant's appearance; and



1 (B) The protection of the public.

2 SECTION 7. Chapter 804, Hawaii Revised Statutes, is
3 amended by adding two new sections to be appropriately
4 designated and to read as follows:

5 "§804-A Right to a prompt hearing; release or detention.

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

8 (1) Release or detention; and

9 (2) Whether any condition or combination of conditions
10 will reasonably ensure:

11 (A) The defendant's appearance as required; and

12 (B) The safety of any other person and the community.

13 (b) At the hearing, the defendant shall have the right to
14 be represented by counsel and, if financially unable to obtain
15 representation, to have counsel appointed. The defendant shall
16 be afforded an opportunity to testify, present witnesses, cross-
17 examine witnesses who appear at the hearing, and present
18 information by proffer or otherwise.

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



1 (d) The defendant may be detained pending completion of
2 the hearing.

3 §804-B Monetary bail; non-violent offenders. (a) Any
4 defendant arrested and charged with a traffic offense, a
5 violation, a non-violent petty misdemeanor offense, or a non-
6 violent misdemeanor offense shall be released on the defendant's
7 own recognizance conditioned upon:

8 (1) The defendant's appearance in court; and

9 (2) Any other least restrictive, non-financial condition
10 necessary to:

11 (A) Ensure the defendant's appearance in court; and

12 (B) Protect the public.

13 (b) This section shall not apply if:

14 (1) The offense involves:

15 (A) Assault;

16 (B) Terroristic threatening;

17 (C) Sexual assault;

18 (D) Abuse of family or household members;

19 (E) Violation of a temporary restraining order;

20 (F) Violation of an order for protection;



- 1 (G) Operating a vehicle under the influence of an
- 2 intoxicant;
- 3 (H) Negligent homicide; or
- 4 (I) Any other crime of violence; or
- 5 (2) One or more of the following apply:
- 6 (A) The defendant has a history of non-appearance in
- 7 the last twenty-four months;
- 8 (B) The defendant has at least one prior conviction
- 9 for a misdemeanor crime of violence or felony
- 10 crime of violence;
- 11 (C) The defendant was pending trial or sentencing at
- 12 the time of arrest;
- 13 (D) The defendant was on probation, parole, or
- 14 conditional release at the time of arrest;
- 15 (E) The defendant is concurrently charged with a
- 16 violent petty misdemeanor, a violent misdemeanor,
- 17 or any felony offense arising from the same or
- 18 separate incident; or
- 19 (F) The defendant presents a risk of danger to any
- 20 other person or the community.



1 (c) If any of the exceptions in subsection (b) apply, bail
2 may be set in a reasonable amount. If the defendant is unable
3 to post the amount of bail, the defendant shall be entitled to a
4 prompt hearing under section 804-A."

5 SECTION 8. Section 804-3, Hawaii Revised Statutes, is
6 amended by amending subsections (a) through (c) to read as
7 follows:

8 "(a) For purposes of this section[, "~~serious crime~~"]:
9 "Bail" includes release on one's own recognizance,
10 supervised release, and conditional release.

11 "Serious crime" means murder or attempted murder in the
12 first degree, murder or attempted murder in the second degree,
13 [~~or~~] a class A [~~or B~~] felony, [~~except forgery in the first~~
14 ~~degree and failing to render aid under section 291C 12, and~~
15 ~~"bail" includes release on one's own recognizance, supervised~~
16 ~~release, and conditional release.] or a class B or C felony~~
17 involving violence or threat of violence to any person.

18 (b) [~~Any person charged with a criminal offense shall be~~
19 ~~bailable by sufficient sureties, provided that bail may be~~
20 ~~denied where the charge is for a serious crime, and:] There
21 shall be a rebuttable presumption that a person charged with a~~



1 criminal offense, other than a serious crime, shall be released
2 or admitted to bail under the least restrictive conditions
3 required to ensure the person's appearance and to protect the
4 public, unless the prosecution demonstrates by clear and
5 convincing evidence that:

- 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~~]
9 injure[~~7~~] or intimidate, or attempt to thereafter[~~7~~]
10 injure[~~7~~] or intimidate, a prospective witness or
11 juror;
12 (3) There is a serious risk that the person poses a danger
13 to any person or the community; or
14 (4) There is a serious risk that the person will engage in
15 illegal activity.

16 If the prosecution demonstrates by clear and convincing evidence
17 that one or more of the foregoing serious risks exists, the
18 person shall be detained if the court finds that no condition or
19 combination of conditions is sufficient to reasonably eliminate,
20 reduce, or mitigate the risks presented.



1 (c) Under subsection (b)(1) a rebuttable presumption
2 arises that there is a serious risk that the person will flee or
3 will not appear as directed by the court where the person is
4 charged with a criminal offense punishable by imprisonment for
5 life with or without possibility of parole. For purposes of
6 subsection (b)(3) and (4) a rebuttable presumption arises that
7 the person poses a serious danger to any person or community or
8 will engage in illegal activity where the court determines that:

9 (1) The [~~defendant~~] person has been previously convicted
10 of a serious crime involving violence or threat of
11 violence against a person within the ten-year period
12 preceding the date of the charge against the
13 [~~defendant~~] person;

14 (2) The [~~defendant~~] person is [~~already on bail on~~] pending
15 trial or sentencing for a felony charge involving
16 violence or threat of violence against a person; or

17 (3) The [~~defendant~~] person is on probation or parole for a
18 serious crime involving violence or threat of violence
19 to a person."

20 SECTION 9. Section 804-4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§804-4 When a matter of right. (a) If the charge is for
2 an offense for which bail is allowable under section 804-3, the
3 defendant may be admitted to bail before conviction as a matter
4 of right[-] and under the least restrictive conditions required
5 to ensure the defendant's appearance and to protect the public.
6 Except for section 712-1207(7), bail shall be allowed for any
7 person charged under section 712-1207 only subject to the
8 mandatory condition that the person observe geographic
9 restrictions that prohibit the defendant from entering or
10 remaining on public property, in Waikiki and other areas in the
11 State designated by county ordinance during the hours from 6
12 p.m. to 6 a.m.; and provided further that nothing contained in
13 this subsection shall be construed as prohibiting the imposition
14 of stricter geographic restrictions under section 804-7.1. The
15 right to bail shall continue after conviction of a misdemeanor,
16 petty misdemeanor, or violation, and release on bail may
17 continue, in the discretion of the court, after conviction of a
18 felony until the final determination of any motion for a new
19 trial, appeal, habeas corpus, or other proceedings that are
20 made, taken, issued, or allowed for the purpose of securing a
21 review of the rulings, verdict, judgment, sentence, or other



1 proceedings of any court or jury in or by which the defendant
2 has been arraigned, tried, convicted, or sentenced; provided
3 that:

4 (1) No bail shall be allowed after conviction and prior to
5 sentencing in cases where bail was not available under
6 section 804-3, or where bail was denied or revoked
7 before conviction;

8 (2) No bail shall be allowed pending appeal of a felony
9 conviction where a sentence of imprisonment has been
10 imposed; and

11 (3) No bail shall be allowed pending appeal of a
12 conviction for a violation of section 712-1207, unless
13 the court finds, based on the defendant's record, that
14 the defendant may be admitted to bail subject to the
15 mandatory condition that the person observe geographic
16 restrictions that prohibit the defendant from entering
17 or walking along the public streets or sidewalks of
18 Waikiki or other areas in the State designated by
19 county ordinance pursuant to section 712-1207 during
20 the hours from 6 p.m. to 6 a.m.



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

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

9 (1) By clear and convincing evidence that the person is
10 not likely to flee or pose a danger to the safety of
11 any other person or the community if released; and

12 (2) That the appeal is not for purpose of delay and raises
13 a substantial question of law or fact likely to result
14 in reversal or an order for a new trial.

15 If the court makes these findings, the court shall order the
16 release of the person in accordance with section 804-7.1[-]
17 under the least restrictive conditions required to ensure the
18 defendant's appearance and to protect the public. No defendant
19 entitled to bail, whether bailed or not, shall be subject,
20 without the defendant's written consent, to the operation of any
21 sentence passed upon the defendant, while any proceedings to



1 procure a review of any action of the trial court or jury in the
2 premises are pending and undetermined, except as provided in
3 section 641-14(a) or section 712-1207."

4 SECTION 10. Section 804-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§804-5 By whom allowed. In cases where the punishment
7 for the offense charged may be imprisonment for life not subject
8 to parole, or imprisonment for a term more than ten years with
9 or without fine, a judge or justice of a court of record,
10 including a district judge, shall be competent to admit the
11 accused to bail, in conformity with sections 804-3 to 804-6. In
12 all other cases, the accused may be so admitted to bail by any
13 judge or justice of a court of record, including a district
14 judge, and in cases, except under section 712-1207, where the
15 punishment for the offense charged may not exceed two years'
16 imprisonment with or without fine, the sheriff, the sheriff's
17 deputy, the chief of police or any person named by the chief of
18 police, or the sheriff of Kalawao, regardless of the circuit
19 within which the alleged offense was committed, may admit the
20 accused person to bail. The court shall impose conditions of
21 release or bail that are the least restrictive conditions



1 required to ensure the accused's appearance and to protect the
2 public."

3 SECTION 11. Section 804-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§804-7 Release after bail.** [~~When bail is offered and~~
6 ~~taken the prisoner shall be discharged from custody or~~
7 ~~imprisonment.] Any person for whom a monetary amount of bail has
8 been set by the police, other law enforcement agency, or the
9 court shall be permitted to post the bail amount at the police
10 department, law enforcement agency, or community correctional
11 center where the person is detained. The monetary bail shall be
12 payable on a twenty-four hours a day, seven days a week basis.
13 Upon posting or payment of bail, the person, the person's
14 representative, or the person's agent shall be provided a bail
15 receipt, and the person shall be released from custody
16 forthwith."~~

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

19 **"§804-7.1 Conditions of release on bail, recognizance, or**
20 **supervised release.** Upon a showing that there exists a danger
21 that the defendant will commit a serious crime or will seek to



1 intimidate witnesses, or will otherwise unlawfully interfere
2 with the orderly administration of justice, the judicial officer
3 named in section 804-5 may deny the defendant's release on bail,
4 recognizance, or supervised release.

5 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;



- 1 (5) Requiring the defendant to maintain employment, or, if
2 unemployed, to actively seek employment, or attend an
3 educational or vocational institution;
- 4 (6) Requiring the defendant to comply with a specified
5 curfew;
- 6 (7) Requiring the defendant to seek and maintain mental
7 health treatment or testing, including treatment for
8 drug or alcohol dependency, or to remain in a
9 specified institution for that purpose;
- 10 (8) Requiring the defendant to remain in the jurisdiction
11 of the judicial circuit in which the charges are
12 pending unless approval is obtained from a court of
13 competent jurisdiction to leave the jurisdiction of
14 the court;
- 15 (9) Requiring the defendant to submit to the use of
16 electronic monitoring and surveillance;
- 17 (10) Requiring the confinement of the defendant in the
18 defendant's residence;
- 19 [+9+] (11) Requiring the defendant to satisfy any other
20 condition reasonably necessary to [assure] ensure the



1 appearance of the person as required and to [assure]
2 ensure the safety of any other person or community; or
3 ~~[-(10)-]~~ (12) Imposing any combination of conditions listed
4 above ~~[-]~~ ;
5 provided that the court shall impose the least restrictive non-
6 financial conditions required to ensure the defendant's
7 appearance and to protect the public.

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

11 SECTION 13. Section 804-9, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§804-9 Amount.** The amount of bail rests in the
14 discretion of the justice or judge or the officers named in
15 section 804-5 ~~[-but]~~ and shall be set in a reasonable amount
16 based upon all available information, including the offense
17 alleged, possible punishment upon conviction, and offender's
18 financial ability to afford bail. The bail amount should be so
19 determined as not to suffer the wealthy to escape by the payment
20 of a pecuniary penalty, nor to render the privilege useless to
21 the poor. ~~[In all cases, the officer letting to bail should~~



1 ~~consider the punishment to be inflicted on conviction, and the~~
2 ~~pecuniary circumstances of the party accused.] "~~

3 PART V

4 SECTION 14. The purpose of this part is to afford pretrial
5 detainees greater and continuing opportunities to be released
6 by:

- 7 (1) Requiring the intake service centers to conduct
8 regular reviews and surveys of the jail population to
9 identify pretrial defendants who may be appropriate
10 for pretrial release or supervision; and
11 (2) Providing the results of these reviews to the courts
12 who may then consider modifying the previously issued
13 bail order.

14 SECTION 15. Chapter 353, Hawaii Revised Statutes, is
15 amended by adding a new section to part I to be appropriately
16 designated and to read as follows:

17 "§353- Relevant community correctional center; periodic
18 reviews of pretrial detainees. (a) The relevant community
19 correctional centers, on a periodic basis but no less frequently
20 than once every three months, shall conduct reviews of pretrial
21 detainees to reassess whether a detainee should remain in



1 custody or whether new information or a change in circumstances
2 warrants reconsideration of a detainee's pretrial release or
3 supervision.

4 (b) For each review conducted pursuant to subsection (a),
5 the relevant community correctional center shall transmit its
6 findings and recommendations to the appropriate court,
7 prosecuting attorney, and defense counsel.

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

11 PART VI

12 SECTION 16. The purpose of this part is as follows:

- 13 (1) Under the office of the chief justice, create a
14 permanently funded criminal justice research institute
15 that is dedicated to examining all aspects of the
16 criminal justice system;
- 17 (2) Appropriate funds for the establishment and staffing
18 of the criminal justice research institute, including
19 the hiring of necessary staff and for the securing of
20 any necessary facilities or equipment; and



1 (3) Create a centralized statewide criminal pretrial
2 justice data reporting and collection system.

3 SECTION 17. The Hawaii Revised Statutes is amended by
4 adding a new chapter to title 32 to be appropriately designated
5 and to read as follows:

6 "CHAPTER

7 CRIMINAL JUSTICE RESEARCH INSTITUTE

8 § -1 Definitions. As used in this chapter, unless the
9 context otherwise requires:

10 "Board" means the board of directors of the criminal
11 justice research institute.

12 "Institute" means the criminal justice research institute.

13 § -2 Establishment of the criminal justice research

14 institute. (a) There is established within the office of the
15 chief justice a criminal justice research institute dedicated to
16 examining all aspects of the criminal justice system, for the
17 purpose of assisting the State in understanding the system in a
18 more comprehensive way and ensuring the protection of individual
19 rights, increasing efficiencies, and controlling costs. The
20 institute shall have the authority to examine all areas of the
21 criminal justice system, including police, prosecutors, defense



1 counsel, courts, pretrial services, probation and parole, jails,
2 and prisons, as well as examine the manner in which related
3 areas, including mental health services and drug treatment
4 services, intersect with the criminal justice system.

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

- 6 (1) Collecting data to monitor the overall functioning of
7 the criminal justice system;
- 8 (2) Monitoring evidence-based practices;
- 9 (3) Conducting cost-benefit analysis on various areas of
10 operation;
- 11 (4) Monitoring national trends in criminal justice; and
- 12 (5) Issuing public reports to inform all criminal justice
13 stakeholders and the public about the functioning of
14 the criminal justice system.

15 (c) The institute shall be overseen by a board of
16 directors, which shall consist of the chief justice, a
17 representative of the office of the governor, a member of the
18 legislature, and the director of public safety.

19 (d) The chief justice shall appoint as director of the
20 institute a researcher with a doctoral degree and experience in
21 the criminal justice field. The director shall hire staff



1 necessary to accomplish the purposes of this chapter, including
2 a minimum of two assistant researchers and one clerical
3 assistant. The institute may seek the assistance of the
4 University of Hawaii or another appropriate entity when
5 conducting large or complex research projects that require more
6 staff.

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

11 § -3 Centralized statewide criminal pretrial justice
12 data reporting and collection system. (a) The institute shall
13 establish and maintain a centralized statewide criminal pretrial
14 justice data reporting and collection system.

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

17 (1) Identifying all current databases utilized by various
18 state agencies to track criminal pretrial information;

19 (2) Determining the administrative and technological
20 feasibility of aggregating and sharing current data;

21 and



- 1 (3) Identifying critical gaps in data and information
2 collection that are required for a robust assessment
3 of criminal pretrial justice matters, which may
4 include information relating to:
- 5 (A) Arrests;
 - 6 (B) Monetary and non-monetary conditions of release;
 - 7 (C) Bail amounts;
 - 8 (D) Risk assessments;
 - 9 (E) Risk assessment scores;
 - 10 (F) Bail report recommendations;
 - 11 (G) Information gathered in risk assessments or bail
12 reports;
 - 13 (H) Bail hearings;
 - 14 (I) Judicial decisions to release and conditions
15 imposed on release;
 - 16 (J) Judicial decisions to detain;
 - 17 (K) Concordance between the bail report
18 recommendation and decision, length of stay, and
19 pretrial supervision; and
 - 20 (L) The degree to which a defendant's assessed risk
21 correlates with the defendant's actual risk,



1 including an assessment of whether the defendant
2 appears in court, commits other crimes, or
3 engages in violent conduct when released from
4 custody.

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

- 9 (1) The percentage of supervised defendants who make all
10 scheduled court appearances;
- 11 (2) The percentage of supervised defendants who are not
12 charged with a new offense during the pretrial stage;
- 13 (3) The ratio of defendants whose supervision level or
14 detention status corresponds with each respective
15 defendant's assessed risk of pretrial misconduct;
- 16 (4) The percentage of released defendants who:
- 17 (A) Do not have their release revoked for technical
18 violations of the conditions of their release;
- 19 (B) Appear for all scheduled court appearances; and
- 20 (C) Are not charged with a new offense during
21 pretrial supervision;



1 (5) The average length of stay in jail for pretrial
2 detainees who are eligible by statute for pretrial
3 release;

4 (6) The percentage of defendants who remain arrest-free
5 during the pretrial release period; and

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

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

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



1 SECTION 18. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2019-2020 and
4 the same sum or so much thereof as may be necessary for fiscal
5 year 2020-2021 for the establishment and staffing of the
6 criminal justice research institute pursuant to this part,
7 including the hiring of one full-time equivalent (1.0 FTE)
8 director, two full-time equivalent (2.0 FTE) assistant
9 researchers and one full-time equivalent (1.0 FTE) clerical
10 assistant, and for any necessary facilities and equipment.

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

13 PART VII

14 SECTION 19. The purpose of this part is to implement and
15 expand alternatives to pretrial detention by:

- 16 (1) Expressly including electronic monitoring and home
17 detention as alternatives to incarceration in chapter
18 804, Hawaii Revised Statutes;
- 19 (2) Requiring the judiciary, in consultation with the
20 department of public safety, to develop and adopt a
21 policy for courts to use when assessing whether a



1 defendant's risk of non-appearance or recidivism may
2 be mitigated by home detention or electronic
3 monitoring;

4 (3) Making appropriations to the department of public
5 safety to support pretrial defendants released from
6 detention on a supervised basis;

7 (4) Making appropriations to the department of public
8 safety for the electronic monitoring of pretrial
9 defendants, including the acquisition, operation, and
10 upkeep of electronic monitoring devices; and

11 (5) Requiring the department of public safety to submit a
12 report to the legislature prior to the convening of
13 the regular session of 2020 detailing the department's
14 expenditure plan for the funding appropriated pursuant
15 to this part.

16 SECTION 20. The judiciary, in consultation with the
17 department of public safety, shall develop and adopt a policy
18 for courts to use when assessing whether a defendant's risk of
19 non-appearance or recidivism may be mitigated by home detention
20 or electronic monitoring. The policy shall include:



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

7 SECTION 21. There is appropriated out of the general

8 revenues of the State of Hawaii the sum of \$ or so

9 much thereof as may be necessary for fiscal year 2019-2020 and

10 the same sum or so much thereof as may be necessary for fiscal

11 year 2020-2021 for the intake service centers to support

12 pretrial defendants released from detention on a supervised

13 basis through the establishment or expansion of any of the

14 following support services:

- 15 (1) Residential and outpatient treatment programs for
- 16 substance abuse and mental health disorders;
- 17 (2) Housing with support services for homeless defendants;
- 18 (3) Day-reporting centers for defendants who may have
- 19 difficulty complying with regular supervised release;



1 SECTION 24. The department shall submit the validation
2 study of the Ohio Risk Assessment System's Pretrial Assessment
3 Tool to the legislature no later than December 31, 2019.

4 PART IX

5 SECTION 25. The purpose of this part is to appropriate
6 moneys to the department of public safety to provide intake
7 service centers with necessary funding, personnel, training,
8 facilities, access, information, and technical support to meet
9 current and projected future responsibilities in conducting
10 timely risk assessments, efficiently disseminating bail reports,
11 and supervising pretrial defendants.

12 SECTION 26. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2019-2020 and
15 the same sum or so much thereof as may be necessary for fiscal
16 year 2020-2021 for necessary personnel, training, facilities,
17 access, information, and technical support for intake service
18 centers to meet current and projected responsibilities in
19 conducting timely risk assessments, efficiently disseminating
20 bail reports, and supervising pretrial defendants.



Report Title:

Criminal Pretrial Reform; Criminal Pretrial Practices and Procedures; Criminal Pretrial Task Force; Reporting Requirement; Appropriation

Description:

Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. Takes effect 7/1/2050. Appropriates funds. (SD1)

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