

JAN 27 2021

---

# A BILL FOR AN ACT

RELATING TO PRETRIAL SERVICES PROVIDED BY THE INTAKE SERVICE CENTERS, DEPARTMENT OF PUBLIC SAFETY.

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

1           SECTION 1. The COVID-19 coronavirus pandemic has placed  
2           unprecedented pressures on the economy of the State of Hawaii,  
3           forcing State government to severely restrict its operating  
4           budget. Act 179, Session Laws of Hawaii 2019, enacted bail  
5           reform initiatives that added duties and responsibilities to the  
6           pretrial services required of the Intake Service Centers (ISC)  
7           of the department of public safety. The department incorporated  
8           the necessary positions and funds into its budget for the fiscal  
9           biennium 2021-2023, however, these budget items were not  
10          approved, rendering the department unable to provide the  
11          legislatively required services. The purpose of this bill is to  
12          repeal sections of Act 179, Session Laws of Hawaii 2019,  
13          pertaining to the bail reform initiatives that added duties and  
14          responsibilities to the department of public safety's Intake  
15          Service Centers.

16          SECTION 2. Section 353-6.2, Hawaii Revised Statutes, is  
17          repealed.

S .B. NO. 1189

1           "~~§353-6.2 Community correctional centers; periodic~~  
2 ~~reviews of pretrial detainees.~~ (a) The relevant community  
3 ~~correctional centers, on a periodic basis but no less frequently~~  
4 ~~than every three months, shall conduct reviews of pretrial~~  
5 ~~detainees to reassess whether a detainee should remain in~~  
6 ~~custody or whether new information or a change in circumstances~~  
7 ~~warrants reconsideration of a detainee's pretrial release or~~  
8 ~~supervision.~~

9           ~~(b) For each review conducted pursuant to subsection (a),~~  
10 ~~the relevant community correctional center shall transmit its~~  
11 ~~findings and recommendations by correspondence or electronically~~  
12 ~~to the appropriate court, prosecuting attorney, and defense~~  
13 ~~counsel.~~

14           ~~(c) If a motion to modify bail is filed pursuant to a~~  
15 ~~recommendation made pursuant to subsection (b), a hearing shall~~  
16 ~~be scheduled at which the court shall consider the motion.]~~

17           SECTION 3. Section 353-10, Hawaii Revised Statutes, is  
18 amended by amending the following subsections:

19           ~~§353-10 Intake service centers.~~ (b) The centers shall:  
20           (1) Provide orientation, guidance, and technical services;  
21           (2) Provide social-medical-psychiatric-psychological  
22           diagnostic evaluation;

S .B. NO. 1189

1 (3) Conduct internal pretrial risk assessments on adult  
2 offenders within [~~three~~] seven working days of admission to  
3 a community correctional center; provided that this  
4 paragraph shall not apply to persons subject to county or  
5 state detainers or holds, persons detained without bail,  
6 persons detained for probation violation, persons facing  
7 revocation of bail or supervised release, and persons who  
8 have had a pretrial risk assessment completed prior to  
9 admission to a community correctional center. For purposes  
10 of this paragraph, "pretrial risk assessment" means an  
11 objective, research-based, validated assessment tool that  
12 measures an offender's risk of flight and[~~7~~] risk of  
13 criminal conduct [~~7 and risk of violence or harm to any~~  
14 ~~person or the general public~~] while on pretrial release  
15 pending adjudication. [~~The pretrial risk assessment tool~~  
16 ~~and procedures associated with its administration shall be~~  
17 ~~periodically reviewed and subject to further validation at~~  
18 ~~least every five years to evaluate the effectiveness of the~~  
19 ~~tool and the procedures associated with its administration.~~  
20 ~~The findings of periodic reviews shall be publicly~~  
21 ~~reported;~~]

S .B. NO. 1189

1 (4) Provide correctional prescription program planning and  
2 security classification;

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

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

8 (7) Provide continuing supervision and control of persons  
9 ordered to be placed on pretrial supervision by the court  
10 and persons ordered by the director;

11 ~~[(8) Make inquiry with the offender concerning the  
12 offender's financial circumstances and include this  
13 information in the bail report; provided that the  
14 department of public safety's pretrial services officers  
15 shall be provided limited access for the purpose of viewing  
16 other state agencies' relevant data related to an  
17 offender's employment wages and taxes;]~~

18 ~~[(9)]~~ (8) Provide pretrial bail reports to the courts on  
19 adult offenders, within ~~[three]~~ seven working days of  
20 admission of the offender to a community correctional  
21 center, that are ordered by the court or consented to by  
22 the offender. ~~[A complete copy of the executed pretrial~~

S .B. NO. 1189

1 ~~risk assessment delineating the scored items, the total~~  
2 ~~score, any administrative scoring overrides applied, and~~  
3 ~~written explanations for administrative scoring overrides,~~  
4 ~~shall be included in the pretrial bail report.]~~ The

5 pretrial bail reports shall be confidential and shall not  
6 be deemed to be public records. A copy of a pretrial bail  
7 report shall be provided only:

- 8 (A) To the defendant or defendant's counsel;
- 9 (B) To the prosecuting attorney;
- 10 (C) To the department of public safety;
- 11 (D) To any psychiatrist, psychologist, or other treatment  
12 practitioner who is treating the defendant pursuant to  
13 a court order;
- 14 (E) Upon request, to the adult client services branch; and
- 15 (F) In accordance with applicable laws, persons, or  
16 entities doing research. The research entity must be  
17 approved and contracted by the department of public  
18 safety to protect the confidentiality of the  
19 information insofar as the information is not a public  
20 record.

21 SECTION 4. Section 804-7.1 is amended by amending the  
22 following subsections: [**§804-7.1 Conditions of release on**

S.B. NO. 1189

1 **bail, recognizance, or supervised release.** Upon a showing that  
2 there exists a danger that the defendant will commit a serious  
3 crime or will seek to intimidate witnesses, or will otherwise  
4 unlawfully interfere with the orderly administration of justice,  
5 the judicial officer named in section 804-5 may deny the  
6 defendant's release on bail, recognizance, or supervised  
7 release, however, the court may enter an order:

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

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

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

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

20 (5) Requiring the defendant to maintain employment, or, if  
21 unemployed, to actively seek employment, or attend an  
22 educational or vocational institution;

S.B. NO. 1189

1 (6) Requiring the defendant to comply with a specified  
2 curfew;

3 (7) Requiring the defendant to seek and maintain mental  
4 health treatment or testing, including treatment for drug  
5 or alcohol dependency, or to remain in a specified  
6 institution for that purpose;

7 (8) Requiring the defendant to remain in the jurisdiction  
8 of the judicial circuit in which the charges are pending  
9 unless approval is obtained from a court of competent  
10 jurisdiction to leave the jurisdiction of the court;

11 ~~[(9) Requiring the defendant to submit to the use of  
12 electronic monitoring or surveillance;~~

13 ~~[(10) Requiring the confinement of the defendant in the  
14 defendant's residence;]~~

15 ~~[(11)]~~ (9) Requiring the defendant to satisfy any other  
16 condition reasonably necessary to ensure the appearance of  
17 the defendant as required and to ensure the safety of any  
18 other person or community; or

19 ~~[(12)]~~ (10) Imposing any combination of conditions listed  
20 above;

S.B. NO. 1189

1        Provided that the court shall impose the least restrictive  
2        non-financial conditions required to ensure the defendant's  
3        appearance and to protect the public.

4                The judicial officer may revoke a defendant's bail  
5        upon proof that the defendant has breached any of the  
6        conditions imposed.

7        SECTION 5. Act 179, Section 30, State of Hawaii  
8        Legislature 2019, is amended by deleting the section:

9        [~~SECTION 30. (a) No later than December 31, 2020, and in~~  
10       ~~accordance with section 353-10(b) (3), Hawaii Revised Statutes,~~  
11       ~~the department of public safety shall revised the pretrial risk~~  
12       ~~assessment processes currently used by its intake service~~  
13       ~~centers with respect to offenses committed against persons,~~  
14       ~~including offenses involving domestic violence and violation of~~  
15       ~~restraining orders and protective orders, to ensure integration~~  
16       ~~of victims' rights into the criminal pretrial system by~~  
17       ~~requiring consideration of the following factors in making~~  
18       ~~pretrial release recommendations:~~

19                ~~(1) Whether the defendant has a history of involvement~~  
20        ~~with the victim of the offense, including any prior police~~  
21        ~~contact that involved both the victim and the defendant,~~

S.B. NO. 1189

1 ~~and the status of the relationship between the victim and~~  
2 ~~the defendant, if any;~~

3 ~~(2) Whether the defendant has any prior criminal history;~~

4 ~~(3) Whether there is a risk that the defendant will~~  
5 ~~revictimize, stalk, or otherwise harm the victim; and~~

6 ~~(4) Any concerns raised by the victim with respect to the~~  
7 ~~defendant's potential release from custody.~~

8 ~~(b) The department shall submit a report to the~~  
9 ~~legislature, no later than twenty days prior to the~~  
10 ~~convening of the regular session of 2021, on the progress~~  
11 ~~made in revising the pretrial processes, as required by~~  
12 ~~subsection (a).]~~

13 SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New material is underscored.

15 SECTION 7. This Act, upon its approval, shall take effect  
16 on July 1, 2021.

17

18

19

INTRODUCED BY:



BY REQUEST

S .B. NO. 1189

**Report Title:**

Intake Service Centers Pretrial Services.

**Description:**

Amends Section 353-6.2, Section 353-10, and Section 804-7.1, Hawaii Revised Statutes, enacted as part of Act 179, Session Laws of Hawaii 2019, to delete the additional duties and responsibilities of the Intake Service Centers (ISC), Department of Public Safety, in providing augmented bail reports under the Act's bail reform initiatives, due to the imposition of budget restrictions for the fiscal biennium 2021-23 that defunded the ISC positions responsible for this work.

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

JUSTIFICATION SHEET

DEPARTMENT: Public Safety

TITLE: A BILL FOR AN ACT RELATING TO PRETRIAL SERVICES PROVIDED BY THE INTAKE SERVICE CENTERS, DEPARTMENT OF PUBLIC SAFETY.

PURPOSE: The purpose of this bill is to repeal sections of Act 179 (SLH 2019) related to bail reform measures due to the State's budgetary constraints.

MEANS: Amend Sections 353-6.2, 353-10, 804-7.1, Hawaii Revised Statutes and Act 179, Section 30, Session Laws of Hawaii 2019.

JUSTIFICATION: The amendments and/or repeal of the above sections are necessary due to the State's budgetary restrictions' negative impacts on the augmented pretrial services specified in Act 179 SLH 2019. The Department of Public Safety requires sufficient resources and staffing allocations to fulfill the requirements of Act 179. As the funding and positions will terminate on June 30, 2021, the department will be unable to manage the Pretrial Bail Reform objectives of Act 179 going forward.

If the department does not receive additional funding for FY 2022, the provisions of Act 179 will have to be repealed, or PSD will be noncompliant with the law.

Impact on the public: This bill will ensure that statutory requirements for managing pretrial bail reform are achievable, as Act 179 failed to allocate permanent funding for staffing and resources. When combined with the State's current budgetary constraints due to COVID-19, the length of incarceration may be negatively impacted for pretrial individuals.

Impact on the department and other agencies:  
The lack of sufficient funding will result in time delays in the Intake Service Centers' completion of pretrial risk assessments, bail reports, and limit release options, slowing the provision of needed information to the Judiciary, the Office of the Public Defender, Defense Attorneys, and the Prosecutor's Office, thereby limiting options for alternatives to incarceration.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: PSD 900.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General, the Judiciary, Office of the Public Defender, and Offices of the Prosecuting Attorneys on all islands.

EFFECTIVE DATE: July 1, 2021.