

JAN 27 2021

A BILL FOR AN ACT

RELATING TO THE MODERNIZATION OF CRIMINAL JUSTICE.

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

1 PART I

2 SECTION 1. The legislature finds that there is an urgent
3 need to comprehensively reform and modernize the State's
4 criminal justice system. Though there have been valiant efforts
5 during the last decade to reform the criminal justice system,
6 these reforms have not been thorough enough to end the State's
7 practice of mass incarceration.

8 The legislature also finds that House Concurrent Resolution
9 No. 134 was passed during the Regular Session of 2017 to
10 establish a task force to recommend reforms to Hawaii's criminal
11 pretrial practices and procedures. The task force submitted its
12 final report to the legislature prior to the Regular Session of
13 2019, and the legislature subsequently enacted Act 179, Session
14 Laws of Hawaii 2019, to formalize many of the task force's
15 recommendations. The intent of Act 179 was to maximize public
16 safety while protecting state and federal constitutional
17 principles regarding the presumption of innocence, liberty, and



1 the right to non-excessive bail, while also reducing the State's
2 jail population and lowering costs throughout the judicial
3 system.

4 However, the legislature also finds that Act 179, Session
5 Laws of Hawaii 2019, failed to substantially reduce the State's
6 pretrial detained population, despite that law's reforms. In
7 fact, major changes in the State's jail population did not occur
8 until the judiciary took collaborative action in response to the
9 coronavirus disease 2019 pandemic; however, the Hawaii
10 correctional system oversight commission has found that this
11 reduction was largely due to a reduction in the non-pretrial
12 detainee population and that the pretrial detainee population
13 has remained constant or increased. This data indicates the
14 need to revisit pretrial reform efforts with a more aggressive
15 approach.

16 The legislature further finds that Act 179, Session Laws of
17 Hawaii 2019, did not incorporate two key recommendations of the
18 House Concurrent Resolution No. 134 task force. Recommendation
19 number 20 would have nearly eliminated the use of monetary bail
20 for low-level, non-violent offenses except for exceptional cases
21 for individuals having a history of non-appearance or violence.



1 Recommendation number 21 would have created, in cases of non-
2 serious felony offenses, a rebuttable presumption in favor of
3 release under the "least restrictive conditions" necessary to
4 ensure appearance and public safety. Under this construction,
5 defendants would only be detained if there were clear and
6 convincing evidence of a serious risk that the defendant would
7 flee, obstruct justice, tamper with a witness, endanger themself
8 or another, or engage in illegal activity. Recommendation 21
9 would also have established a rebuttable presumption that such a
10 serious risk would exist if the defendant had a previous
11 conviction for a crime of violence or if the defendant was
12 already pending trial or sentencing or was on probation or
13 parole for a crime of violence at the time of arrest. Only if a
14 defendant presented a serious risk of non-appearance or danger
15 and when no condition or combination of conditions would
16 reasonably eliminate or mitigate those risks would detention be
17 appropriate under these proposals.

18 The Hawaii correctional system oversight commission's 2020
19 annual report urged the legislature to revisit pretrial reform
20 efforts to reduce unnecessary, costly, and dangerous pretrial
21 incarceration by enacting recommendations 20 and 21 of the House



1 Concurrent Resolution No. 134 task force. The commission also
2 recommended that the legislature enact two additional reforms:
3 one that would establish a list of conditions that would exclude
4 an individual from the proposed process favoring release on a
5 person's own recognizance, and another that would authorize the
6 director of public safety to release a defendant if the
7 defendant were unable to post a bail amount of \$99 or less. The
8 legislature concurs with these recommendations of the Hawaii
9 correctional system oversight commission.

10 Finally, the legislature finds that in order to adequately
11 address jail and prison overcrowding and ensure that the State's
12 criminal justice system is effectively rehabilitating inmates,
13 the State must also examine other aspects of the criminal
14 justice system beyond pretrial procedures. Specifically, the
15 legislature finds that the State must scrutinize the Hawaii
16 penal code, which is the fundamental document by which the State
17 addresses crime, in a full and deliberative manner to ensure
18 that the code remains effective in achieving the objectives of
19 the State's criminal justice system.

20 Accordingly, the purpose of this Act is to modernize the
21 State's criminal justice system by:



- 1 (1) With certain exceptions, eliminating the use of
2 monetary bail and requiring defendants to be released
3 on their own recognizance for traffic offenses,
4 violations, non-violent petty misdemeanor offenses,
5 and non-violent misdemeanor offenses;
- 6 (2) Creating a rebuttable presumption regarding both
7 release and detention for certain offenses and to
8 specify the circumstances in which these presumptions
9 apply; and
- 10 (3) Requiring the judicial council to appoint a committee
11 to review the Hawaii penal code and recommend to the
12 legislature revisions to the code that the committee
13 concludes are fair and proportionate to the crime
14 committed, with particular attention to:
- 15 (A) Whether mandatory sentencing provisions,
16 particularly those for repeat offenders, should
17 remain incorporated in the Hawaii Penal Code;
- 18 (B) Whether certain drug offenses should be
19 decriminalized; and



1 (C) Additional sentencing options and alternatives
2 that the committee concludes will aid in the
3 enforcement of the Hawaii Penal Code.

4 PART II

5 SECTION 2. Chapter 804, Hawaii Revised Statutes, is
6 amended by adding a new section to part I to be appropriately
7 designated and to read as follows:

8 "§804- Monetary bail; non-violent offenders. (a) Any
9 defendant arrested and charged with a traffic offense, a
10 violation, a non-violent petty misdemeanor offense, or a non-
11 violent misdemeanor offense shall be released on the defendant's
12 own recognizance conditioned upon:

13 (1) The defendant's appearance in court; and
14 (2) Any other least restrictive, non-financial condition
15 necessary to:

16 (A) Ensure the defendant's appearance in court; and
17 (B) Protect the public.

18 (b) This section shall not apply if:

19 (1) The offense involves:
20 (A) Assault;
21 (B) Terroristic threatening;



- 1 (C) Sexual assault;
- 2 (D) Abuse of a family or household member;
- 3 (E) Violation of a temporary restraining order;
- 4 (F) Violation of an order for protection;
- 5 (G) Operation of a vehicle under the influence of an
- 6 intoxicant;
- 7 (H) Negligent homicide; or
- 8 (I) Any other crime of violence; or
- 9 (2) One or more of the following apply:
- 10 (A) The defendant has a history of non-appearance in
- 11 the last twenty-four months;
- 12 (B) The defendant has at least one prior conviction
- 13 for a misdemeanor crime of violence or felony
- 14 crime of violence within the last ten years;
- 15 (C) The defendant was pending trial or sentencing at
- 16 the time of arrest;
- 17 (D) The defendant was on probation, parole, or
- 18 conditional release at the time of arrest;
- 19 (E) The defendant is also concurrently charged with a
- 20 violent petty misdemeanor, a violent misdemeanor,



1 or any felony offense arising from the same or
2 separate incident; or

3 (F) The defendant presents a risk of danger to any
4 other person or to the community.

5 (c) If any of the exceptions in subsection (b) apply, bail
6 may be set in a reasonable amount. If the defendant is unable
7 to post the amount of bail, the defendant shall be entitled to a
8 prompt hearing under section 804-7.5. If the defendant is
9 unable to post bail in the amount of \$99 or less, the director
10 of public safety may release the defendant."

11 SECTION 3. Section 804-3, Hawaii Revised Statutes, is
12 amended by amending subsections (a) through (c) to read as
13 follows:

14 "(a) For purposes of this section[~~, "serious crime"~~]:
15 "Serious crime" means murder or attempted murder in the
16 first degree, murder or attempted murder in the second degree,
17 [~~or~~] a class A [~~or B~~] felony, [~~except forgery in the first~~
18 degree and failing to render aid under section 291C-12, and
19 "bail"] or a class B or C felony involving violence or threat of
20 violence to any person.



1 "Bail" includes release on one's own recognizance,
2 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:]~~ There
6 shall be a rebuttable presumption that a person charged with a
7 criminal offense, other than a serious crime, shall be released
8 or admitted to bail under the least restrictive conditions
9 required to ensure the person's appearance and to protect the
10 public, unless the prosecution demonstrates by clear and
11 convincing evidence that:

- 12 (1) There is a serious risk that the person will flee;
- 13 (2) There is a serious risk that the person will obstruct
14 or attempt to obstruct justice, or therefore, injure,
15 or intimidate, or attempt to thereafter, injure, or
16 intimidate, a prospective witness or juror;
- 17 (3) There is a serious risk that the person poses a danger
18 to any person or the community; or
- 19 (4) There is a serious risk that the person will engage in
20 illegal activity.



1 If the prosecution demonstrates by clear and convincing evidence
2 that one or more of the foregoing serious risks exist, the
3 person shall be detained if the court finds that no condition or
4 combination of conditions is sufficient to reasonably eliminate,
5 reduce, or mitigate the risks presented.

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

14 (1) The defendant has been previously convicted of a
15 serious crime involving violence or a threat of
16 violence against a person within the ten-year period
17 preceding the date of the charge against the
18 defendant;

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



1 (3) The defendant is on probation or parole for a serious
2 crime involving violence or a threat of violence to a
3 person."

4 PART III

5 SECTION 4. (a) The judicial council established pursuant
6 to section 601-4, Hawaii Revised Statutes, shall appoint a
7 committee to review the Hawaii penal code and recommend to the
8 legislature revisions to the code that the committee concludes
9 are fair and proportionate to the crime committed, with
10 particular attention to:

- 11 (1) Whether mandatory sentencing provisions, particularly
12 those for repeat offenders, should remain incorporated
13 in the Hawaii penal code;
- 14 (2) Whether certain drug offenses should be
15 decriminalized; and
- 16 (3) Additional sentencing options and alternatives that
17 the committee concludes will aid in the enforcement of
18 the Hawaii penal code.

19 (b) The committee appointed by the judicial council shall
20 include:

- 21 (1) Representatives of the judiciary;



- 1 (2) A member of the senate committee on judiciary;
- 2 (3) A member of the house of representatives committee on
- 3 judiciary and Hawaiian affairs;
- 4 (4) The attorney general or the attorney general's
- 5 designee;
- 6 (5) The prosecuting attorney from each county or the
- 7 prosecuting attorney's designee;
- 8 (6) A representative from the office of the public
- 9 defender;
- 10 (7) A representative from the police department of each
- 11 county;
- 12 (8) Public or private sector economists, who shall be
- 13 invited by the judicial council;
- 14 (9) Psychologists or social workers, who shall be invited
- 15 by the judicial council;
- 16 (10) The administrator of the office of Hawaiian affairs or
- 17 the administrator's designee;
- 18 (11) Private citizens interested in criminal law and civil
- 19 liberties, who shall be invited by the judicial
- 20 council;



- 1 (12) Licensed Hawaii attorneys in private practice who
2 handle criminal cases, who shall be invited by the
3 judicial council;
- 4 (13) A representative from the intake services center
5 division of the corrections division of the department
6 of public safety;
- 7 (14) Representatives from advocacy groups for incarcerated
8 individuals, who shall be invited by the judicial
9 council; and
- 10 (15) Representatives from victim advocacy groups, who shall
11 be invited by the judicial council.
- 12 (c) The committee may:
- 13 (1) Accept grants, gifts, and other appropriations of
14 funds to defray the costs of its work;
- 15 (2) Request assistance from the faculty and students of
16 the William S. Richardson school of law of the
17 university of Hawaii in performing its duties under
18 this section; and
- 19 (3) Request the legislative reference bureau to assist the
20 committee with the drafting of proposed legislation as
21 needed.



1 (d) The members of the committee shall serve without
2 compensation but shall be reimbursed for expenses, including
3 travel expenses, necessary for the performance of their duties.

4 (e) No member of the committee shall be made subject to
5 chapter 84, Hawaii Revised Statutes, solely because of that
6 member's participation on the task force.

7 (f) The judicial council shall submit a report of its
8 findings and recommendations, including any proposed
9 legislation, to the governor and legislature no later than
10 twenty days prior to the convening of the regular session of
11 2022.

12 (g) The committee shall cease to exist on June 30, 2022.

13 PART IV

14 SECTION 5. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect upon its approval.

20

INTRODUCED BY: Clarence K. Nishikawa



S.B. NO. 1244

Report Title:

Criminal Justice Reform; Pretrial Procedures; Bail; Judicial Council; Penal Code Review

Description:

Eliminates the use of monetary bail, with certain exceptions, and requires defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses. Creates a rebuttable presumption regarding both release and detention for certain offenses and specifies circumstances in which these presumptions apply. Requires the judicial council to appoint a committee to review and recommend changes to the Hawaii penal code.

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

