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# 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 request  
10 the judiciary to establish a task force to recommend reforms to  
11 Hawaii's criminal pretrial practices and procedures. The task  
12 force submitted its final report to the legislature prior to the  
13 Regular Session of 2019, and the legislature subsequently  
14 enacted Act 179, Session Laws of Hawaii 2019, to formalize many  
15 of the task force's recommendations. The intent of Act 179 was  
16 to maximize public safety while protecting state and federal  
17 constitutional principles regarding the presumption of



1 innocence, liberty, and the right to non-excessive bail, while  
2 also reducing the State's jail population and lowering costs  
3 throughout the judicial 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       Finally, the legislature finds that in order to adequately  
17 address jail and prison overcrowding and ensure that the State's  
18 criminal justice system is effectively rehabilitating inmates,  
19 the State must also examine other aspects of the criminal  
20 justice system beyond pretrial procedures. Specifically, the  
21 legislature finds that the State must scrutinize the Hawaii



1 penal code, which is the fundamental document by which the State  
2 addresses crime, in a full and deliberative manner to ensure  
3 that the code remains effective in achieving the objectives of  
4 the State's criminal justice system.

5 Accordingly, the purpose of this Act is to:

6 (1) Define serious crime as murder or attempted murder in  
7 the first degree or class A felony, or a class B or C  
8 felony involving violence or threat of violence;

9 (2) Allow the court to determine if bail may be denied  
10 where the charge is for a serious crime. Requires the  
11 judicial council to appoint a committee to review and  
12 recommend changes to the Hawaii penal code; and

13 (3) Require the judicial council to appoint a committee to  
14 review the Hawaii penal code and recommend to the  
15 legislature revisions to the code that the committee  
16 concludes are fair and proportionate to the crime  
17 committed, with particular attention to:

18 (A) Whether mandatory sentencing provisions,  
19 particularly those for repeat offenders, should  
20 remain incorporated in the Hawaii Penal Code;



- 1 (B) Whether certain drug offenses should be
- 2 decriminalized; and
- 3 (C) Additional sentencing options and alternatives
- 4 that the committee concludes will aid in the
- 5 enforcement of the Hawaii Penal Code.

6 PART II

7 SECTION 2. Section 804-3, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) through (c) to read as  
9 follows:

10 "(a) For purposes of this section [~~7~~, "~~serious crime~~"]:  
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"] or a class B or C felony involving violence or threat of  
16 violence to any person.

17 "Bail" includes release on one's own recognizance,  
18 supervised release, and conditional release.

19 (b) Any person charged with a criminal offense shall be  
20 bailable by sufficient sureties; provided that bail may be



1 denied where the charge is for a serious crime, and[+] the court  
2 determines that:

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

4 (2) There is a serious risk that the person will obstruct  
5 or attempt to obstruct justice, or therefore, injure,  
6 or intimidate, or attempt to thereafter, injure, or  
7 intimidate, a prospective witness or juror;

8 (3) There is a serious risk that the person poses a danger  
9 to any person or the community; or

10 (4) There is a serious risk that the person will engage in  
11 illegal activity.

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

20 (1) The defendant has been previously convicted of a  
21 serious crime [~~involving violence against a person~~]



1 within the ten-year period preceding the date of the  
2 charge against the defendant;

3 (2) The defendant is [~~already on bail on~~] pending trial or  
4 sentencing for a felony charge [~~involving violence~~  
5 ~~against a person~~]; or

6 (3) The defendant is on probation or parole for a [~~serious~~  
7 ~~crime involving violence to a person.~~] felony charge."

8 PART III

9 SECTION 3. (a) The judicial council established pursuant  
10 to section 601-4, Hawaii Revised Statutes, shall appoint a  
11 committee to review the Hawaii penal code and recommend to the  
12 legislature revisions to the code that the committee concludes  
13 are fair and proportionate to the crime committed, with  
14 particular attention to:

15 (1) Whether mandatory sentencing provisions, particularly  
16 those for repeat offenders, should remain incorporated  
17 in the Hawaii penal code;

18 (2) Whether certain drug offenses should be  
19 decriminalized; and



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

4 (b) The committee appointed by the judicial council shall  
5 include:

6 (1) Representatives of the judiciary;

7 (2) A member of the senate committee on judiciary;

8 (3) A member of the house of representatives committee on  
9 judiciary and Hawaiian affairs;

10 (4) The attorney general or the attorney general's  
11 designee;

12 (5) The prosecuting attorney from each county or the  
13 prosecuting attorney's designee;

14 (6) A representative from the office of the public  
15 defender;

16 (7) A representative from the police department of each  
17 county;

18 (8) Public or private sector economists, who shall be  
19 invited by the judicial council;

20 (9) Psychologists or social workers, who shall be invited  
21 by the judicial council;



- 1       (10) The administrator of the office of Hawaiian affairs or  
2           the administrator's designee;
- 3       (11) Private citizens interested in criminal law and civil  
4           liberties, who shall be invited by the judicial  
5           council;
- 6       (12) Licensed Hawaii attorneys in private practice who  
7           handle criminal cases, who shall be invited by the  
8           judicial council;
- 9       (13) A representative from the intake services center  
10           division of the corrections division of the department  
11           of public safety;
- 12       (14) Representatives from advocacy groups for incarcerated  
13           individuals, who shall be invited by the judicial  
14           council; and
- 15       (15) Representatives from victim advocacy groups, who shall  
16           be invited by the judicial council.
- 17       (c) The committee may:
  - 18           (1) Accept grants, gifts, and other appropriations of  
19                funds to defray the costs of its work;
  - 20           (2) Request assistance from the faculty and students of  
21                the William S. Richardson school of law of the





1 university of Hawaii in performing its duties under  
2 this section; and

3 (3) Request the legislative reference bureau to assist the  
4 committee with the drafting of proposed legislation as  
5 needed.

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

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

12 (f) The judicial council shall submit a report of its  
13 findings and recommendations, including any proposed  
14 legislation, to the governor and legislature no later than  
15 twenty days prior to the convening of the regular session of  
16 2022.

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

18 PART IV

19 SECTION 4. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



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

3 SECTION 6. This Act shall take effect on July 1, 2025.



**Report Title:**

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

**Description:**

Defines serious crime as murder or attempted murder in the first degree or class A felony, or a class B or C felony involving violence or threat of violence. Allows the court to determine if bail may be denied where the charge is for a serious crime. Requires the judicial council to appoint a committee to review and recommend changes to the Hawaii penal code. Takes effect 7/1/25. (SD1)

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

