

JAN 21 2022

A BILL FOR AN ACT

RELATING TO PRETRIAL RELEASE.

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

1 SECTION 1. The legislature finds that the criminal justice
2 system should advance fairness, justice and equity. The current
3 use of cash bail is widely understood to disadvantage poor
4 people who are unable to secure their liberty while awaiting
5 trial. The legislature also recognizes that in Hawaii, the
6 consequences of pretrial detention fall disproportionately on
7 Native Hawaiians, Pacific Islanders, and Black people, who are
8 more likely to be arrested, detained, and unable to afford the
9 funds required for bail.

10 The legislature finds that the justice system should be
11 consistent with the equal protection and due process rights
12 enshrined in our federal and state constitutions, as well as the
13 fundamental concept of the presumption of innocence until guilt
14 is proven. Accordingly, courts should presume that criminal
15 defendants who have not yet been found guilty of a crime should
16 be given unconditional release. If the State objects to the
17 unconditional of any criminal defendant, the State should be



1 required to prove, by clear and convincing evidence, that there
2 is no set of non-financial conditions that would allow for
3 release and that unconditional release should be denied in order
4 to ensure the criminal defendant's return to court and the
5 protection of public safety. The legislature notes that this
6 principal aligns with the pretrial release standards of the
7 American Bar Association, the National Association of Pretrial
8 Services Agencies, and Uniform Pretrial Release and Detention
9 Act (October 13, 2020). The legislature also notes that the
10 federal system and other jurisdictions, including New Jersey;
11 Minnesota; Kentucky; Washington, D.C.; and Illinois; have
12 successfully implemented similar pretrial reforms. These
13 jurisdictions, along with pilot evaluation projects in Colorado
14 and Kentucky, have also shown that non-financial methods,
15 including texting reminders for court dates, release on
16 recognizance, and unsecured bonds are more effective at ensuring
17 that defendants appear in court.

18 The legislature also finds that pretrial incarceration is
19 the primary driver of severe overcrowding in the State's jails,
20 which are exceeding design and operational capacity. This



1 results in unnecessary, costly, and dangerous pretrial
2 conditions. It currently costs the state \$219 per day, or
3 \$79,935.00 per year, to incarcerate an adult. Cost savings from
4 a reduced pretrial population should be reinvested into
5 strategies that have proven to decrease crime and reduce
6 recidivism.

7 The legislature believes that, with the cooperation and
8 support of all branches of government and criminal legal system
9 stakeholders, including the criminal justice research institute
10 and the Hawaii correctional systems oversight Commission, reform
11 will help the State shift away from a pretrial system that
12 detains a significant number of persons based on monetary bail
13 to a system that focuses on alternatives and evidence-based
14 decisions on individualized risk to public safety. Further,
15 reform will ensure fairness in the criminal legal pretrial
16 system and reduce severe overcrowding in the State's jails.

17 Accordingly, the purpose of this Act is to improve the
18 State's system of pretrial justice by balancing the public's
19 need for safety with an individual's constitutional rights.



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

3 "§804-3 [Bailable] Pretrial release; bailable offenses.

4 (a) For purposes of this section, "serious crime" means murder
5 or attempted murder in the first degree, murder or attempted
6 murder in the second degree, or a class A or B felony, except
7 forgery in the first degree and failing to render aid under
8 section 291C-12, and "bail" includes release on one's own
9 recognizance, supervised release, ~~[and]~~ conditional release~~[-]~~,
10 unsecured bail, and unsecured financial bond.

11 (b) ~~[Any person charged with a criminal offense shall be~~
12 ~~bailable by sufficient sureties; provided that bail]~~ Bail may be
13 denied to any person charged with a criminal offense where the
14 charge is for a serious crime, and:

15 (1) There is a serious risk that the person will ~~[flee;]~~
16 abscond;

17 (2) There is a serious risk that the person will obstruct
18 or attempt to obstruct justice, or therefore, injure,
19 or intimidate, or attempt to thereafter, injure, or
20 intimidate, a prospective witness or juror[+] with the



1 purpose of obstructing or attempting to obstruct
2 justice;

3 (3) There is a serious risk that the person poses a
4 significant danger to [any] a specific person or
5 reasonably identifiable person or persons based on an
6 articulable risk to a specific person or the
7 community; [e] and

8 (4) ~~[There is a serious risk that the person will engage~~
9 ~~in illegal activity.]~~ The risks cannot be mitigated by
10 any set of release conditions.

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



1 ~~(1) The defendant has been previously convicted of a~~
2 ~~serious crime involving violence against a person~~
3 ~~within the ten year period preceding the date of the~~
4 ~~charge against the defendant;~~

5 ~~(2) The defendant is already on bail on a felony charge~~
6 ~~involving violence against a person; or~~

7 ~~(3) The defendant is on probation or parole for a serious~~
8 ~~crime involving violence to a person.~~

9 ~~(d)]~~ entitled to unconditional release, also known as
10 release on recognizance, and that that the person will appear in
11 court when required. Before a court grants unconditional
12 release, a hearing shall be held within forty hours after the
13 person's arrest. The burden of proof shall be upon the State to
14 establish, by clear and convincing evidence, that unconditional
15 release under this subsection is inappropriate based on the
16 criteria in subsection (b).

17 (d) If the court finds than an unconditional release will
18 not reduce the risk of absconding, and if bail is recommended by
19 the State, the court shall first consider release with
20 conditions to bail that would allow release while ensuring the



1 person's return to court and the protection of a specific or
2 reasonably identifiable person. These conditions shall restrict
3 the person's liberty only to the extent necessary.

4 (e) If the court finds that the release described in
5 subsection (d) will not reasonably assure the appearance of the
6 person when required, the person shall be bailable by posting of
7 unsecured bond or sufficient sureties, except as provided in
8 subsection (f).

9 (f) If, after a hearing the court finds that no condition
10 or combination of conditions will reasonably assure the
11 appearance of the person when required or the safety of any
12 [~~other~~] person or [~~community,~~] persons, bail may be denied[-];
13 provided that the court enters on the record its findings with
14 respect to the detention decision. The burden of proof shall be
15 upon the State to establish, by clear and convincing evidence,
16 that there is no condition or combination of conditions that
17 will reasonably assure the appearance of the person when
18 required or the safety of any other person or persons.

19 (g) Any bail amount set, whether secured or unsecured,
20 shall be in an amount that the person is able to afford based on



1 person's affidavit or testimony at the release hearing, subject
2 to any rebuttal evidence from the prosecution. In the setting
3 of bail, the following shall apply:

4 (1) The court shall exclude from consideration any income
5 derived from public benefits; including supplemental
6 security income, social security disability insurance,
7 and temporary assistance for needy families; and any
8 income below the federal poverty level;

9 (2) If the person has no income other than public benefits
10 or is a member of a household having a household
11 income below the federal poverty level, the court
12 shall presume that the person is unable to pay any
13 bail amount; and

14 (3) If the person's household income, exclusive of any
15 income derived from public benefits, is above the
16 federal poverty level, the court shall consider what
17 the individual could reasonably pay within forty hours
18 of arrest, subject to the exclusions in paragraph

19 (1)."



S.B. NO. 2871

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 on July 1, 2022.

7

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "J. A. P.", written over a horizontal line.

S.B. NO. 2871

Report Title:

Crime; Unconditional Release; Bail

Description:

Establishes a presumption that a person charged with a crime is entitled to unconditional release unless proven otherwise. Requires the consideration of nonfinancial conditions of release before bail is ordered.

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