
A BILL FOR AN ACT

RELATING TO CRIMINAL JUSTICE REFORM.

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

1 PART I

2 SECTION 1. The legislature finds that arrests are commonly
3 made at the initiation of a criminal case, but sometimes occur
4 needlessly when the issuance of a citation to appear in court
5 would have sufficed. Arrests consume a significant portion of
6 the limited resources of understaffed police departments,
7 increase the number of people held in custody before trial, and
8 contribute to overcrowding in correctional facilities. Given
9 Hawaii's high cost of living and the significant percentage of
10 families who live paycheck to paycheck, many arrestees cannot
11 afford to post bail before trial.

12 The legislature also finds that arrests are highly
13 disruptive to a person's life. Despite the fundamental
14 principle of the presumption of innocence on which the justice
15 system is built, arrests cause embarrassment and, in some cases,
16 trauma when they occur in the presence of family members,
17 neighbors, or coworkers or are publicized in news media.



1 Further, an arrest can significantly jeopardize the arrestee's
2 housing and employment and set into motion a chain of economic
3 and logistical hardships for the arrestee's family, especially
4 when the arrestee is the main source of household income and has
5 multiple dependents.

6 The purpose of this part is to reduce the number of
7 unnecessary arrests made in criminal cases by permitting:

- 8 (1) Law enforcement officers to issue a citation in lieu
9 of making an arrest, with certain exceptions; and
- 10 (2) The granting of a forty-eight hour grace period after
11 a missed initial court appearance before the court may
12 issue an arrest warrant.

13 SECTION 2. Chapter 805, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 **"§805-A Initial court appearance; failure to appear; grace**
17 **period.** A person who fails to appear in court for the initial
18 appearance in a case may be granted a grace period of forty-
19 eight hours before the court may issue an arrest warrant for the
20 person's non-appearance. During the grace period, the person
21 may voluntarily appear at court without the need to provide



1 advance notice to the court. If the forty-eight hour grace
2 period is scheduled to expire on a Saturday, Sunday, or state
3 holiday, the expiration shall be extended to the same time on
4 the next business day."

5 SECTION 3. Chapter 806, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 **"§806-A Initial court appearance; failure to appear; grace**
9 **period.** A person who fails to appear in court for the initial
10 appearance in a case may be granted a grace period of forty-
11 eight hours before the court may issue an arrest warrant for the
12 person's non-appearance. During the grace period, the person
13 may voluntarily appear at court without the need to provide
14 advance notice to the court. If the forty-eight hour grace
15 period is scheduled to expire on a Saturday, Sunday, or state
16 holiday, the expiration shall be extended to the same time on
17 the next business day."

18 SECTION 4. Section 803-6, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending its title to read:



1 "§803-6 Arrest, how made[-]; citation in lieu of arrest;
2 failure to appear."

3 2. By amending subsection (b) to read:

4 "(b) In any case in which it is lawful for a [~~police~~] law
5 enforcement officer to arrest a person without a warrant for a
6 felony, misdemeanor, petty misdemeanor, or violation, the
7 [~~police~~] officer may, but need not, issue a citation in lieu of
8 [~~the requirements of~~] making an arrest under [{}subsection[{}]
9 (a), if the police officer finds and is reasonably satisfied
10 that the person:

- 11 ~~[-(1) Will appear in court at the time designated;~~
- 12 ~~-(2)]~~ (1) Has no outstanding arrest warrants which would
13 justify the person's detention or give indication that
14 the person might fail to appear in court; [~~and~~
- 15 ~~-(3) That the offense is of such nature that there will be~~
16 ~~no further police contact on or about the date in~~
17 ~~question, or in the immediate future.]~~ or
- 18 (2) The person poses a significant danger to a specific or
19 reasonably identifiable person or persons, based upon
20 an articulable risk to a specific person or the
21 community, as evidenced by the circumstances of the



1 release would be inappropriate for a particular defendant
2 because there is no condition or combination of conditions of
3 release that will assure the person's return to court when
4 required or the safety of other persons.

5 The legislature further finds that pretrial drug testing
6 programs started appearing regularly in the late 1970s and early
7 1980s, following research that supported drug testing and
8 treatment as ways to reduce recidivism among people convicted of
9 a crime. However, research on the impact of drug testing on
10 pretrial court appearance and arrest-free rates has found that
11 there is no clear association between drug testing and improved
12 pretrial outcomes, the impact of noncompliance with drug testing
13 on the likelihood of pretrial failure is uncertain, cost-benefit
14 considerations must be made, and drug testing can lead to poorer
15 pretrial outcomes among people assessed as more likely to
16 succeed. Therefore, the denial of pretrial release based solely
17 on a defendant's positive test for drug use should be
18 prohibited.

19 The legislature also finds that pretrial incarceration is
20 the primary driver of severe overcrowding in community
21 correctional centers, which becomes a health and safety issue



1 for defendants in custody as well as staff who work in
2 correctional facilities. Further, prolonged pretrial detention
3 gives the illusion that justice is being served by keeping an
4 alleged offender behind bars, but often has the unjust effect of
5 forcing a defendant to plead guilty even when the defendant may
6 have prevailed at trial, for the sake of hastening the
7 defendant's release from custody and return to a normal life.

8 The purpose of this part is to introduce meaningful reforms
9 to the manner of determining eligibility for pretrial release
10 and promote greater fairness and equity in the criminal courts
11 by:

- 12 (1) Requiring that copies of the bail report be provided
13 to the parties, including the defendant's counsel, no
14 later than the commencement of the bail hearing;
- 15 (2) Establishing a rebuttable presumption that a defendant
16 is entitled to release, unless that release of a
17 defendant would be inappropriate based on certain
18 specified criteria;
- 19 (3) Requiring that any bail set by the court shall be in
20 an amount that the defendant is able to afford, under
21 certain conditions;



- 1 (4) Prohibiting the denial of pretrial release based
- 2 solely upon certain factors, such as the defendant's
- 3 positive test for drug use;
- 4 (5) Requiring the automatic issuance of no-contact orders
- 5 in assaultive cases upon request by the prosecution,
- 6 complainant, or witness;
- 7 (6) Providing that with respect to a revocation of release
- 8 on bail, recognizance, or supervised release, the
- 9 prosecution must prove, by a preponderance of the
- 10 evidence, that the defendant intentionally or
- 11 knowingly violated a condition of release and that the
- 12 condition was reasonable under the totality of the
- 13 circumstances; and
- 14 (7) Requiring the court, in certain cases when revoking a
- 15 defendant's release, to enter a finding that no
- 16 conditions can be imposed that would reasonably ensure
- 17 the defendant's appearance and the safety of the
- 18 public and that the revocation is therefore necessary
- 19 as an action of last resort.

20 SECTION 7. Section 353-10, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) The centers shall:

2 (1) Provide orientation, guidance, and technical services;

3 (2) Provide social-medical-psychiatric-psychological

4 diagnostic evaluation;

5 (3) Conduct internal pretrial risk assessments on adult

6 offenders within three working days of admission to a

7 community correctional center; provided that this

8 paragraph shall not apply to persons subject to county

9 or state detainers or holds, persons detained without

10 bail, persons detained for probation violation,

11 persons facing revocation of bail or supervised

12 release, and persons who have had a pretrial risk

13 assessment completed prior to admission to a community

14 correctional center. For purposes of this paragraph,

15 "pretrial risk assessment" means an objective,

16 research-based, validated assessment tool that

17 measures an offender's risk of flight, risk of

18 criminal conduct, and risk of violence or harm to any

19 person or the general public while on pretrial release

20 pending adjudication. The pretrial risk assessment

21 tool and procedures associated with its administration



- 1 shall be periodically reviewed and subject to further
2 validation at least every five years to evaluate the
3 effectiveness of the tool and the procedures
4 associated with its administration. The findings of
5 periodic reviews shall be publicly reported;
- 6 (4) Provide correctional prescription program planning and
7 security classification;
- 8 (5) Provide other personal and correctional services as
9 needed for both detained and committed persons;
- 10 (6) Monitor and record the progress of persons assigned to
11 correctional facilities who undergo further treatment
12 or who participate in prescribed correctional
13 programs;
- 14 (7) Provide continuing supervision and control of persons
15 ordered to be placed on pretrial supervision by the
16 court and persons ordered by the director;
- 17 (8) Make inquiry with the offender concerning the
18 offender's financial circumstances and include this
19 information in the bail report; provided that the
20 department of public safety's pretrial services
21 officers shall be provided limited access for the



1 purpose of viewing other state agencies' relevant data
2 related to an offender's employment wages and taxes;
3 and

4 (9) Provide pretrial bail reports to the courts on adult
5 offenders, within three working days of admission of
6 the offender to a community correctional center, that
7 are ordered by the court or consented to by the
8 offender. A complete copy of the executed pretrial
9 risk assessment delineating the scored items, the
10 total score, any administrative scoring overrides
11 applied, and written explanations for administrative
12 scoring overrides, shall be included in the pretrial
13 bail report. The pretrial bail reports shall be
14 confidential and shall not be deemed to be public
15 records. A copy of a pretrial bail report shall be
16 provided no later than the commencement of the bail
17 hearing and shall be provided only:

18 (A) To the defendant or defendant's counsel;

19 (B) To the prosecuting attorney;

20 (C) To the department of public safety;



- 1 (D) To any psychiatrist, psychologist, or other
- 2 treatment practitioner who is treating the
- 3 defendant pursuant to a court order;
- 4 (E) Upon request, to the adult client services
- 5 branch; and
- 6 (F) In accordance with applicable laws, persons, or
- 7 entities doing research. The research entity
- 8 must be approved and contracted by the department
- 9 of public safety to protect the confidentiality
- 10 of the information, insofar as the information is
- 11 not a public record."

12 SECTION 8. Section 804-3, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§804-3 [~~Bailable~~] Pretrial release; bailable offenses.**

15 (a) For purposes of this section, "serious crime" means murder
16 or attempted murder in the first degree, murder or attempted
17 murder in the second degree, or a class A or B felony, except
18 forgery in the first degree and failing to render aid under
19 section 291C-12, and "bail" includes release on one's own
20 recognizance, supervised release, and conditional release.



1 (b) Any person charged with a criminal offense shall be
2 bailable by sufficient sureties; provided that bail may be
3 denied where the charge is for a serious crime, and[+] one or
4 more of the following criteria apply:

5 (1) There is a serious risk that the person will flee[+] or
6 wilfully abscond;

7 (2) There is a serious risk that the person will obstruct
8 or attempt to obstruct justice, or therefore, injure,
9 or intimidate, or attempt to thereafter, injure, or
10 intimidate, a prospective witness or juror[+] with the
11 purpose of obstructing or attempting to obstruct
12 justice;

13 (3) There is a serious risk that the person poses a
14 significant danger to [any] a specific or reasonably
15 identifiable person or persons, based upon an
16 articulable risk to a specific person or the
17 community; or

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

20 (c) Under subsection (b) (1) a rebuttable presumption
21 arises that there is a serious risk that the person will flee or



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

7 (1) The defendant has been previously convicted of a
8 serious crime involving violence against a person
9 within the ten-year period preceding the date of the
10 charge against the defendant;

11 (2) The defendant is already on bail on a felony charge
12 involving violence against a person; or

13 (3) The defendant is on probation or parole for a serious
14 crime involving violence to a person.

15 (d) There shall be a rebuttable presumption that the
16 person is entitled to release on recognizance or to supervised
17 release and that the person will appear in court when required.
18 The burden of proof shall be upon the prosecution to establish,
19 by a preponderance of the evidence at the defendant's initial
20 appearance or bail hearing, whichever occurs sooner, based upon



1 representations made by an officer of the court that the person
2 is not entitled to release under this section.

3 ~~[(d)]~~ (e) If[, after] the court finds pursuant to a
4 hearing [the court finds] that no condition or combination of
5 conditions will reasonably assure the appearance of the person
6 when required or the safety of any other person, persons, or
7 community, bail may be denied[-]; provided that the court enters
8 on the record its findings with respect to the detention
9 decision.

10 (f) Any bail set by the court shall be in an amount that
11 the person is able to afford, based upon information in the bail
12 report or the person's sworn affidavit or testimony, subject to
13 any rebuttal evidence the prosecution may introduce, at the
14 release hearing; provided that in setting bail, the court shall
15 exclude from consideration any income derived from public
16 benefits, including supplemental security income, social
17 security disability insurance, and temporary assistance for
18 needy families, and any income that is at or below the federal
19 poverty level. If the person has no source of income other than
20 public benefits or has a household income that is at or below
21 the federal poverty level, the person shall be deemed unable to



1 pay bail in any amount. If the person has a household income
2 that is above the federal poverty level and that is not derived
3 from public benefits, the court shall consider an amount that
4 the person could reasonably afford to pay within forty hours of
5 the person's arrest."

6 SECTION 9. Section 804-7.1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§804-7.1 Conditions of release on bail, recognizance, or**
9 **supervised release. (a)** Upon a showing that there exists a
10 danger that the defendant will commit a serious crime as defined
11 in section 804-3(a) or will seek to intimidate witnesses, or
12 will otherwise unlawfully interfere with the orderly
13 administration of justice, the judicial officer named in
14 section 804-5 may deny the defendant's release on bail,
15 recognizance, or supervised release~~[=]~~; provided that denial of
16 release on bail, recognizance, or supervised release shall not
17 be based solely upon the defendant having:

- 18 (1) Recently tested positive for drug use;
19 (2) A prior criminal history, if the history contains only
20 arrests but no convictions; or



1 (3) A prior revocation of release on bail, recognizance,
2 or supervised release, regardless of whether in a
3 prior criminal case or in the instant case.

4 (b) Upon the defendant's release on bail, recognizance, or
5 supervised release, however, the court may enter an order:

6 (1) Prohibiting the defendant from approaching or
7 communicating with particular persons or classes of
8 persons, [~~except~~] including the complainant; provided
9 that when the alleged offense involves physical
10 assault or sexual assault, a written no-contact order
11 prohibiting the defendant from having contact in any
12 form with the complainant or with any other witness
13 shall automatically issue unless the complainant
14 requests otherwise, and the defendant shall be advised
15 of the no-contact order while on the record; provided
16 further that no such order should be deemed to
17 prohibit any lawful and ethical activity of
18 defendant's counsel;

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



- 1 (3) Prohibiting the defendant from possessing any
2 dangerous weapon, engaging in certain described
3 activities, or indulging in intoxicating liquors or
4 certain drugs;
- 5 (4) Requiring the defendant to report regularly to and
6 remain under the supervision of an officer of the
7 court;
- 8 (5) Requiring the defendant to maintain employment, or, if
9 unemployed, to actively seek employment, or attend an
10 educational or vocational institution;
- 11 (6) Requiring the defendant to comply with a specified
12 curfew;
- 13 (7) Requiring the defendant to seek and maintain mental
14 health treatment or testing, including treatment for
15 drug or alcohol dependency, or to remain in a
16 specified institution for that purpose;
- 17 (8) Requiring the defendant to remain in the jurisdiction
18 of the judicial circuit in which the charges are
19 pending unless approval is obtained from a court of
20 competent jurisdiction to leave the jurisdiction of
21 the court;



- 1 (9) Requiring the defendant to submit to the use of
- 2 electronic monitoring and surveillance;
- 3 (10) Requiring the confinement of the defendant in the
- 4 defendant's residence;
- 5 (11) Requiring the defendant to satisfy any other condition
- 6 reasonably necessary to ensure the appearance of the
- 7 defendant as required and to ensure the safety of any
- 8 other person, persons, or community; or
- 9 (12) Imposing any combination of conditions listed above;
- 10 provided that the court shall impose the least restrictive
- 11 non-financial conditions required to ensure the defendant's
- 12 appearance and to protect the public.

13 (c) The judicial officer may revoke a defendant's bail
 14 upon proof that the defendant has breached any of the conditions
 15 imposed."

16 SECTION 10. Section 804-7.2, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "**§804-7.2 Violations of conditions of release on bail,**
 19 **recognizance, or supervised release.** (a) ~~Upon~~ Subject to the
 20 limitation set out in subsection (d), upon verified application
 21 by the prosecuting attorney alleging that a defendant has



1 intentionally violated the conditions of release on bail,
2 recognizance, or supervised release, the judicial officer named
3 in section 804-5 shall issue a warrant directing the defendant
4 be arrested and taken forthwith before the court of record for
5 hearing.

6 (b) [~~Upon~~] Subject to the limitation set out in subsection
7 (d), upon verified application by a pretrial officer of the
8 intake service center that a defendant has intentionally
9 violated the conditions of release on bail, recognizance, or
10 supervised release, the court may issue an order pertaining to
11 bail to secure the defendant's appearance before the court or a
12 warrant directing that the defendant be arrested and taken
13 forthwith before the court of record for hearing.

14 (c) [A] Subject to the limitation set out in subsection
15 (d), a law enforcement officer having reasonable grounds to
16 believe that a released felony defendant has violated the
17 conditions of release on bail, recognizance, or supervised
18 release, may, where it would be impracticable to secure a
19 warrant, arrest the defendant and take the defendant forthwith
20 before the court of record.



1 (d) A defendant shall not be arrested under this section
2 solely because the defendant has tested positive for drug use."

3 SECTION 11. Section 804-7.3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§804-7.3 Sanctions for violation of conditions of release**
6 **on bail, recognizance, or supervised release.** After hearing,
7 and upon finding that the defendant has intentionally or
8 knowingly violated reasonable conditions imposed on release on
9 bail, recognizance, or supervised release, the court may impose
10 different or additional conditions upon defendant's release or
11 revoke defendant's release on bail, recognizance, or supervised
12 release[-]; provided that the burden of proof shall be upon the
13 prosecution to establish, by a preponderance of the evidence,
14 based upon representations made by an officer of the court. If
15 the court revokes the defendant's release and the revocation is
16 based upon the violation of a condition of release that did not
17 involve the defendant's commission or alleged commission of a
18 new offense or the defendant's failure to appear in court in the
19 instant case, the court shall enter findings into the record
20 that no other conditions can be imposed that would ensure the



1 defendant's appearance and the safety of the public and that the
2 revocation is therefore necessary as an action of last resort."

3 PART III

4 SECTION 12. The legislature finds that existing state laws
5 relating to certain violations of community supervision have
6 resulted in skyrocketing rates of incarceration and severe
7 overcrowding in state correctional facilities. The legislature
8 recognizes that use of alcohol and illicit substances by
9 probationers and parolees is often rooted in the complex issue
10 of addiction and not simply due to a deliberate choice to
11 disregard the law or the terms of probation or parole.
12 Subjecting a probationer or parolee to arrest and potential
13 revocation of community supervision is disruptive to the
14 person's overall efforts and progress in leading a pro-social
15 life - and is also costly for the State. The State currently
16 spends \$219 per day, or \$79,935 per year, to incarcerate just
17 one person. Research shows that, in contrast, community-based
18 services are a fraction of the cost of incarceration.

19 The legislature believes that instead of expending funds to
20 arrest a probationer or parolee who has tested positive for drug
21 use and holding a hearing on whether probation or parole should



1 be revoked based on the positive test, funds should be
2 reinvested in employment, housing, social services, and
3 community-based treatment programs that more effectively reduce
4 recidivism.

5 The purpose of this part is to:

6 (1) Provide that at any time before trial, any party
7 representing the defendant or providing information to
8 the court concerning the defendant may request that
9 the court order the defendant to undergo a substance
10 abuse assessment and participate in any necessary
11 treatment;

12 (2) Prohibit the arrest of a probationer or parolee solely
13 due to the person having tested positive for drug use;
14 and

15 (3) Prohibit the revocation of probation or parole solely
16 due to the person having tested positive for drug use.

17 SECTION 13. Chapter 805, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§805-B Drug screening; request. At any time before
21 trial, any party representing the defendant, or providing



1 information to the court concerning the defendant, may request
2 that the court order the defendant to undergo a substance abuse
3 assessment and participate in any necessary treatment; provided
4 that this section shall not preclude a request of this nature
5 being made subsequent to trial or any conviction that results
6 therefrom."

7 SECTION 14. Chapter 806, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 **"§806-B Drug screening; request.** At any time before
11 trial, any party representing the defendant, or providing
12 information to the court concerning the defendant, may request
13 that the court order the defendant to undergo a substance abuse
14 assessment and participate in any necessary treatment; provided
15 that this section shall not preclude a request of this nature
16 being made subsequent to trial or any conviction that results
17 therefrom."

18 SECTION 15. Section 353-66, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (b) to read:



1 "(b) No parole shall be revoked and no credits forfeited
2 without cause, which [~~cause~~] must be stated in the order
3 revoking the parole[7] but shall not be based solely upon the
4 parolee having tested positive for drug use, or in the order
5 forfeiting the credits after notice to the paroled prisoner of
6 the paroled prisoner's alleged offense and an opportunity to be
7 heard; provided that when a person is convicted in the State of
8 a crime committed while on parole and is sentenced to
9 imprisonment, or when it is shown by personal investigation that
10 a parolee has left the State without permission from the
11 paroling authority and due effort is made to reach the parolee
12 by registered mail directed to the parolee's last known address,
13 no hearing shall be required to revoke the parolee's parole; and
14 provided further that when any duly licensed psychiatrist or
15 licensed psychologist finds that continuance on parole will not
16 be in the best interests of a parolee or the community, the
17 paroling authority, within the limitations of the sentence
18 imposed, shall order the detention and treatment of the prisoner
19 until such time as the prisoner shall be found by any duly
20 licensed psychiatrist or licensed psychologist to be eligible
21 for continuance on parole."



Report Title:

Courts; Corrections; Arrests; Bail; Bail Reports; Pretrial Release; Probation; Parole; Revocation

Description:

Part I: Authorizes officers to issue citations in lieu of making certain arrests. Authorizes a forty-eight hour grace period after a missed initial court appearance. Part II: Establishes a rebuttable presumption that a defendant is entitled to pretrial release. Requires the prosecution to prove by a preponderance of the evidence that release of a defendant would be inappropriate, based on certain specified criteria. Requires that bail be set in an amount that the defendant can afford, under certain circumstances. Prohibits the denial of pretrial release based solely upon certain factors, such as testing positive for drug use. Requires automatic issuance of no-contact orders in assaultive cases. Requires the prosecution, when seeking to revoke pretrial release, to prove by a preponderance of the evidence, based on certain specified criteria. Requires the court to enter certain findings into the record. Part III: Provides that a request that the defendant be ordered to undergo a substance abuse assessment may be made any time before trial. Prohibits the arrest of a probationer or parolee, or the revocation of probation or parole, solely due to the person having tested positive for drug use. Effective 6/30/3000. (HD1)

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

