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# A BILL FOR AN ACT

RELATING TO BAIL.

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

1           SECTION 1. The legislature finds that the right to  
2 physical liberty is one of the foundational principles of the  
3 United States Constitution. The United States Supreme Court has  
4 been unequivocal in stating that "[i]n our society, liberty is  
5 the norm, and detention prior to trial or without trial is the  
6 carefully limited exception."

7           The legislature recognizes that the use of cash bail is  
8 widely understood to disadvantage poor people, who are unable to  
9 secure their liberty while awaiting trial. The legislature also  
10 recognizes that, in Hawaii, the consequences of pretrial  
11 detention fall disproportionately on native Hawaiians, Pacific  
12 islanders, and other people of color, who are more likely to be  
13 arrested, detained, and unable to afford bail.

14           The legislature further finds that reducing pretrial  
15 incarceration would help address severe overcrowding in Hawaii's  
16 jails. The American Civil Liberties Union of Hawaii reported  
17 that almost half of the people in the State's jails remain



1 incarcerated because they are unable to afford bail while  
2 awaiting trial. Reducing pretrial incarceration rates would  
3 also help to reduce the State's expenses. It costs the State  
4 approximately \$238 per day, or \$86,870 per year, to incarcerate  
5 each adult.

6 The legislature notes that the federal system and other  
7 states and counties have successfully implemented pretrial  
8 reforms that reduce the need for cash bail.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Establish a rebuttable presumption that a person  
11 charged with a crime is entitled to unconditional  
12 release; and  
13 (2) Require the court to consider conditioning pre-trial  
14 release on nonfinancial conditions before ordering  
15 bail if unconditional release is inappropriate.

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

18 **"§804-3 ~~[Bailable]~~ Pretrial release; bailable offenses.**

- 19 (a) For purposes of this section, "serious crime" means murder  
20 or attempted murder in the first degree, murder or attempted  
21 murder in the second degree, or a class A or B felony, except



1 forgery in the first degree and failing to render aid under  
2 section 291C-12, and "bail" includes release on one's own  
3 recognizance, supervised release, ~~[and]~~ conditional release~~[,]~~,  
4 unsecured bail, and unsecured financial bond.

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

10 (1) There is a serious risk that the person will ~~[flee,]~~  
11 abscond;

12 (2) There is a serious risk that the person will  
13 ~~[obstruct];~~

14 (A) Obstruct or attempt to obstruct justice~~[, or~~  
15 ~~therefore injure,];~~ or

16 (B) Injure or intimidate, or attempt to ~~[thereafter,]~~  
17 injure~~[,]~~ or intimidate, a prospective witness or  
18 juror~~[,]~~ with the purpose of obstructing or  
19 attempting to obstruct justice; or

20 (3) There is a serious risk that the person poses a  
21 ~~[danger to any person or the community; or~~



1       ~~(4) There is a serious risk that the person will engage in~~  
2       ~~illegal activity.]~~ significant and articulable danger  
3       to a specific or reasonably identifiable person or  
4       persons; and

5       (4) The risks cannot be mitigated by any set of pretrial  
6       release conditions.

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

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

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



1       ~~(3) The defendant is on probation or parole for a serious~~  
2       ~~crime involving violence to a person.]~~ that the person  
3       is entitled to unconditional release, or release on  
4       the person's own recognizance, and that the person  
5       will appear in court when required. A hearing shall  
6       be held within forty-eight hours of the person's  
7       arrest and before a court grants unconditional  
8       release. If unconditional release under this section  
9       is inappropriate based on the criteria in subsection  
10       (b), the burden of proof shall be on the State to  
11       establish this by clear and convincing evidence.

12       (d) If the court finds that unconditional release will not  
13       reduce the person's risk of absconding and if bail is  
14       recommended by the State, the court shall first consider any  
15       nonfinancial conditions that would allow release while ensuring  
16       the person's return to court and the protection of a specific or  
17       reasonably identifiable person or persons. These conditions  
18       shall restrict the defendant's liberty only to the extent  
19       necessary.

20       (e) If the court finds that the conditional release  
21       described in subsection (d) will not reasonably assure the



1 appearance of the person when required, the person shall be  
2 bailable by posting an unsecured bond or sufficient sureties,  
3 except as provided in subsection (f).

4 ~~[(d)]~~ (f) If, after a hearing the court finds that no  
5 condition or combination of conditions will reasonably assure  
6 the appearance of the person when required or the safety of any  
7 other person or ~~[community,]~~ persons, bail may be denied~~[-];~~  
8 provided that the court shall enter on the record its findings  
9 with respect to the denial of bail. The burden of proof shall  
10 be on the State to establish, by clear and convincing evidence,  
11 that there is no condition or combination of conditions that  
12 would reasonably assure the appearance of the person when  
13 required or the safety of any other person or persons.

14 (g) Any bail set, whether secured or unsecured, shall be  
15 in an amount that the person is able to afford based on the  
16 person's affidavit or testimony at the release hearing and  
17 subject to any rebuttal evidence from the prosecution. In  
18 setting bail, the following conditions shall apply:

19 (1) The court shall exclude from consideration any income  
20 below the federal poverty level and any income derived  
21 from public benefits, including supplemental security



1 income, social security disability insurance, and  
2 temporary assistance for needy families;

3 (2) If the person has no income other than public benefits  
4 or has a household income below the federal poverty  
5 level, the court shall assume the person is unable to  
6 pay bail in any amount; and

7 (3) If the person's household income, excluding any income  
8 derived from public benefits, is above the federal  
9 poverty level, the court shall consider the amount of  
10 bail the person could reasonably pay within  
11 forty-eight hours of arrest, subject to the exclusions  
12 in paragraph (1)."

13 SECTION 3. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: Marty Hill  
JAN 25 2023



# H.B. NO. 1279

**Report Title:**

Crime; Unconditional Release; Pre-trial Release; Bail

**Description:**

Establishes a rebuttable presumption that a person charged with a crime is entitled to unconditional release. Requires the court to consider conditioning pre-trial release on nonfinancial conditions before ordering bail if unconditional release is inappropriate.

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