
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 right to
2 physical liberty is one of the foundational principles of the
3 United States Constitution. In *United States v. Salerno*, 481
4 U.S. 739 (1987), the United States Supreme Court unequivocally
5 stated that "[i]n our society, liberty is the norm, and
6 detention prior to trial or without trial is the carefully
7 limited exception".

8 As outlined in the 2018 final report of the criminal
9 pretrial task force, convened by the Hawaii state judiciary
10 pursuant to House Concurrent Resolution No. 134, H.D. 1, Regular
11 Session of 2017, the right to liberty is also supported by the
12 most basic constitutional principles of presumption of
13 innocence, due process, equal protection, the right to counsel,
14 and the right to confrontation.

15 The legislature further finds that the current use of cash
16 bail is widely understood to disadvantage poor people who are
17 unable to secure their liberty while awaiting trial.



1 The legislature also recognizes that, in the State, the
2 consequences of pretrial detention fall disproportionately on
3 Native Hawaiians, Pacific Islanders, and other people of color,
4 who are more likely to be arrested, detained, and unable to
5 afford bail. The right to liberty should not be threatened
6 because of an individual's ethnicity or socioeconomic status.

7 The legislature further finds that reducing pretrial
8 incarceration would help address severe overcrowding in the
9 State's jails. In October 2022, the Hawaii correctional system
10 oversight commission reported that seventy-eight per cent of all
11 people in jails are awaiting trial. Reducing pretrial
12 incarceration rates would also reduce the State's expenses. It
13 costs the State approximately \$250 per day, or \$91,250 per year,
14 to incarcerate each adult.

15 The purpose of this Act is to improve the State's system of
16 pretrial justice by considering the need to evaluate risks to
17 public safety, individual constitutional rights, and the fiscal
18 and human harms that arise from overcrowded prisons.
19 Specifically, this Act requires bail to be set in an amount that
20 the defendant can afford based on certain factors.



1 SECTION 2. Section 804-7.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§804-7.5[+] **Right to a prompt hearing; release or**
4 **detention.** (a) For the purposes of this section, "prompt
5 hearing" means a hearing that occurs at the time of the
6 defendant's arraignment, or as soon as practicable.

7 (b) Upon formal charge and detention, a defendant shall
8 have the right to a prompt hearing concerning:

9 (1) Release or detention; [~~and~~]

10 (2) Whether any condition or combination of conditions
11 will reasonably ensure:

12 (A) The defendant's appearance as required; and

13 (B) The safety of any other person and the
14 community[~~-~~]; and

15 (3) Whether monetary bail should be confirmed or set.

16 (c) At the hearing, the defendant shall have the right to
17 be represented by counsel and, if financially unable to obtain
18 representation, to have counsel appointed. The defendant shall
19 be afforded an opportunity to testify at the hearing. The
20 defendant and the prosecution shall both be afforded an
21 opportunity to present information by proffer or otherwise.



1 (d) If the court finds that monetary bail should be
2 confirmed or set, any bail amount confirmed or set, whether
3 secured or unsecured, shall be in an amount that the defendant
4 is able to afford based on the defendant's affidavit or
5 testimony at the release hearing, subject to any rebuttal
6 evidence from the prosecution. In the setting and confirming of
7 bail, the following shall apply:

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

13 (2) If the defendant has no income other than public
14 benefits or is a member of a household having a
15 household income below one hundred fifty per cent of
16 the federal poverty level, the court shall presume
17 that the defendant is unable to pay any bail amount;
18 and

19 (3) If the defendant's household income, exclusive of any
20 income derived from public benefits, is above one
21 hundred fifty per cent of the federal poverty level,



1 the court shall consider what the defendant could
2 reasonably pay within forty hours of arrest, subject
3 to the exclusions in paragraph (1).

4 (e) The court shall enter findings on the record regarding
5 its consideration and determination of subsection (d)(1) to (3).

6 ~~(d)~~ (f) The rules concerning the admissibility of
7 evidence in criminal trials shall not apply to the presentation
8 and consideration of information at the hearing.

9 ~~(e)~~ (g) The defendant may be detained pending completion
10 of the hearing.

11 (h) Bail may be considered at any time following the
12 prompt hearing upon the defendant's motion or the court's own
13 motion. In any subsequent hearing where bail is reviewed,
14 confirmed, or set, the court shall conduct the proceeding
15 pursuant to subsections (d) and (e); provided that the
16 subsequent hearing need not be prompt."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

Pretrial Release; Bail

Description:

Requires bail to be set in an amount that the defendant can afford based on certain factors. Effective 7/1/3000. (SD1)

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

