

JAN 17 2025

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 according to ACLU
2 Hawai'i, "research shows that money bail has no correlation with
3 public safety". When a defendant cannot afford bail, that
4 defendant is detained pretrial. A few days in jail can lead to
5 a defendant losing a job or housing, or missing school or
6 important payments. Pretrial detention should therefore be
7 employed only as necessary to ensure the safety of the public or
8 the defendant's appearance in court.

9 The legislature also finds that in 2019, the legislature
10 enacted Act 179, Session Laws of Hawaii 2019 (Act 179), which
11 aimed to address these concerns by overhauling the bail system.
12 Among other things, Act 179 required the release of a defendant
13 under the least restrictive conditions necessary to ensure the
14 defendant's appearance and the protection of the public and
15 required monetary bail to be set in reasonable amounts based on
16 all available information, including the defendant's ability to



1 pay. These reforms sought to produce a fairer criminal justice
2 system and to relieve overcrowding in the State's prisons.

3 The legislature further finds that over five years since
4 the enactment of Act 179, these reforms do not appear to have
5 had their intended effect. According to Jongwook "Wookie" Kim
6 and Samantha McNichols, *Criminal justice deep dive: a closer*
7 *look at Hawai'i bail statutes and practices*, 28 Hawaii Bar
8 Journal (2024), there has been "no significant reduction" in the
9 number of people detained pretrial since 2019. While the number
10 of pretrial detainees has remained static, the share of pretrial
11 detainees among the State's incarcerated population has risen by
12 over eight per cent. As of July 2024, "61.7 [per cent] of the
13 population detained at the Oahu Community Correctional Center
14 were pretrial detainees".

15 The legislature further finds that these outcomes have
16 largely remained unchanged because judicial procedures regarding
17 bail have remained the same since 2019, despite Act 179's
18 efforts to change them. In testimony on the bill that became
19 Act 179, the judiciary reported that "little, if any, inquiry is
20 made concerning the defendant's financial circumstances" during
21 bail hearings. As of 2024, according to Kim and McNichols, it



1 was still the case that "[a] person's ability to pay was not
2 assessed on the record". This failure to make findings on the
3 record is already causing downstream problems for the courts.
4 In *State v. Carter*, 546 P.3d 1210 (2024), the intermediate court
5 of appeals recently reversed the first circuit court for making
6 "no findings" assessing a defendant's ability to pay bail, or
7 explaining why a bail amount was reasonable based on all
8 available evidence of the defendant's financial circumstances.

9 The legislature further finds that stronger provisions are
10 necessary to ensure that Act 179 lives up to its full potential.
11 A handful of other jurisdictions - including Michigan;
12 Massachusetts; Cook County, Illinois; and Harris County, Texas -
13 have rules or judicial decisions which require judges to make
14 findings on the record regarding a defendant's ability to pay.

15 Accordingly, the purpose of this Act is to require judges
16 to make findings regarding a defendant's ability to afford bail,
17 thereby creating a fairer pretrial system and ensuring that a
18 sufficient record is developed to enable meaningful appellate
19 review of bail decisions.

20 SECTION 2. Section 804-9, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~S804-9~~ **Amount.** (a) The amount of bail rests in the
2 discretion of the [~~justice or judge or the officers named in~~
3 ~~section 804-5]~~ bail judge and shall be set in a reasonable
4 amount based upon all available information, including the
5 offense alleged, the possible punishment upon conviction, and
6 the defendant's financial ability to afford bail. The bail
7 amount should be so determined as not to suffer the wealthy to
8 escape by the payment of a pecuniary penalty, nor to render the
9 privilege useless to the poor.

10 (b) When the bail judge imposes monetary bail as a
11 condition of release, the judge shall make findings on the
12 record that:

13 (1) The judge has considered the defendant's financial
14 ability to afford bail and determined that the
15 defendant is able to pay the amount of monetary bail
16 required;

17 (2) The judge adopts or rejects the findings of the intake
18 service center made pursuant to section 353-10(b) (8)
19 regarding the defendant's financial ability to afford
20 bail; provided that if the judge rejects the findings,
21 the judge shall state on the record the specific



1 evidence the judge is relying upon to reject the
2 findings;

3 (3) Explain how the bail amount was calculated; and

4 (4) Explain why no alternative, less restrictive financial
5 or non-financial restrictions will suffice to ensure
6 the defendant's presence in court and the protection
7 of the public.

8 (c) If the bail judge sets the bail amount at an amount
9 that exceeds the defendant's ability to pay, the judge shall
10 explain on the record why the bond amount is the lowest amount
11 necessary to reasonably ensure the safety of the public and the
12 defendant's appearance in court.

13 (d) For the purposes of this section, "bail judge" means
14 the justice, judge, or officers named in section 804-5."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 725

Report Title:

Judges; Bail; Findings

Description:

Requires judges to make certain findings regarding a defendant's ability to afford bail.

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