

JAN 23 2026

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 State's existing
2 bail system lacks clarity of forfeiture and reinstatement
3 procedures. Additionally, the pretrial bail system would
4 benefit from revisions and updates to ensure equitable access to
5 bail for individuals accused of crimes in the State.

6 Accordingly, the purpose of this Act is to:

7 (1) Allow a court to consider relevant evidence and make a
8 determination to grant, deny, or set conditions of
9 bail;

10 (2) Require that a defendant is to be presumed entitled to
11 bail unless certain conditions are met;

12 (3) Require a court to set aside the forfeiture of bail if
13 the defendant voluntarily appears before the court or
14 is surrendered by the surety or bail agent within
15 ninety days after a failure to appear;

16 (4) Require a court to obtain the consent of the surety or
17 bail agent to reinstate bail;



(5) Clarify qualifications for bail agents, insurers, and sureties;

(6) Clarify the process for the discharge of bail agents, insurers, and sureties;

(7) Allow a court discretion to determine whether the forfeiture of bail is appropriate;

(8) Require a motion by the principal to set aside an order of forfeiture to provide the surety or insurer with prompt notice affording opportunity to join the motion; and

(9) Allow courts discretion to reinstate a bond or recognizance or return the bond or recognizance to the appropriate party after vacating a judgment of forfeiture.

SECTION 2. Chapter 804, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§804- Judicial discretion in bail proceedings. (a)

The court shall have discretion to consider relevant evidence and make a determination to grant, deny, or set conditions of



1 bail, including the form and amount as provided in section
2 804-9.

3 (b) A defendant shall be presumed entitled to bail unless
4 the court finds that:

5 (1) No condition or combination of conditions will
6 reasonably assure the defendant's appearance;

7 (2) The defendant poses a risk to:

8 (A) Public safety;

9 (B) The safety of a witness or other persons;

10 (C) Property; or

11 (D) The legal rights of others;

12 (3) The defendant previously breached the conditions of
13 bail in a prior case or in the instant case; or

14 (4) Bail is otherwise prohibited by law.

15 §804- Prompt return of a defendant; forfeiture set-

16 aside; reinstatement of bail. (a) When a defendant voluntarily
17 appears before the court or is surrendered by the surety or bail
18 agent within ninety days after a failure to appear, the court
19 shall enter an order setting aside the forfeiture.

20 (b) If, after voluntary appearance or surrender, the court
21 determines that the defendant may be released on bail, the



1 existing bond may be reinstated only with the consent of the
2 surety or bail agent provided in writing or on-record before the
3 court. Upon reinstatement, the surety shall remain liable on
4 the original bond.

5 (c) Nothing in this section shall limit the court's
6 authority to impose additional or different conditions of
7 release or to deny reinstatement."

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

10 ~~"§804-1 [Bail defined. Bail, or the giving of bail, is]~~
11 **Definitions.** As used in this chapter:

12 "Bail" or "the giving of bail" means the signing of the
13 recognizance by the defendant and the defendant's surety or
14 sureties, conditioned for the appearance of the defendant at the
15 session of a court of competent jurisdiction to be named in the
16 condition, and to abide by the judgment of the court.

17 "Bail agent" means a producer or agent who is licensed to
18 execute bail bonds and is legally authorized to act on behalf of
19 a surety and the court to locate and apprehend a defendant who
20 flees or otherwise fails to appear in court as ordered.



1 "Bail bond" means a written financial guarantee provided to
2 the court by a bail agent, defendant, or other party that may be
3 forfeited if the defendant fails to appear in court as ordered.

4 "Insurer" means a party who assumes the risk of default for
5 the benefit of a bail agent.

6 "Peace bond" means a court-required surety bond to
7 guarantee that a defendant will not violate a court order to
8 refrain from engaging in specified conduct, violating the law,
9 or breaching the peace.

10 "Surety" means a party who provides a line of credit to a
11 bail agent to deposit with the court as bailment that may be
12 forfeited if a defendant fails to appear as ordered as
13 consideration for payment of a risk premium."

14 SECTION 4. Section 804-10.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§804-10.5 [Sureties; qualification.]~~ Bail agents,
17 insurers, and sureties; qualifications. (a) In determining the
18 sufficiency of a bail agent, insurer, or surety [~~or sureties~~],
19 the court shall consider the bail agent's, insurer's, or
20 surety's [~~or sureties'~~]:

21 (1) Character;



(2) Reliability;

(3) Place of residence; and

(4) Financial and employment circumstances.

(b) No person or entity shall be a sufficient bail agent,
insurer, or surety who:

(1) Has been convicted of perjury for submitting a false
statement under section 804-11.5;

(2) Does not satisfy the requirements of section 804-11.5;
or

(3) Does not satisfy the requirements of article 9A,
chapter 431, if posting an insurance bond as defined
in section 431:1-210(1)."

SECTION 5. Section 804-14, Hawaii Revised Statutes, is
amended to read as follows:

"§804-14 Discharge of bail agents, insurers, or sureties.

~~[Those who may have become bail for anyone,~~ A bail agent acting
on behalf of a surety or insurer, or a surety or insurer acting
on their own behalf and on behalf of a bail agent, may at any
time discharge themselves, by surrendering ~~[him]~~ the defendant
to the custody of any sheriff or chief of police or ~~[his]~~ the



1 sheriff's or chief's authorized subordinate[+] and by filing a
2 motion with the court as follows:

3 (1) If the defendant has not breached the terms of bail or
4 pre-release, the bail agent, insurer, or surety may
5 move to discharge for other reasons; provided that all
6 fees and expenses charged are returned to the
7 defendant or other appropriate persons and reasonable
8 assistance is provided to the defendant to secure
9 alternate sources of bail;

10 (2) If the defendant breaches any condition of bail or
11 pre-release other than failure to appear, the bail
12 agent, insurer, or surety shall notify the court. The
13 court may order the bail agent, insurer, or surety to
14 surrender the defendant to law enforcement. Upon
15 return of the defendant to custody, the court may,
16 upon motion, grant discharge and determine if the
17 defendant may seek an alternate source of bail;

18 (3) If the defendant fails to appear for any hearing or
19 trial as ordered by the court, the bail agent,
20 insurer, or surety may move to seek discharge of their



1 obligations and duties after the defendant has been
2 returned to custody of law enforcement; or
3 (4) If the court increases the bail amount due to the
4 defendant's conduct, the bail agent, insurer, or
5 surety may decline the additional bail amount. If
6 equity dictates, the court may grant the bail agent,
7 insurer, or surety discharge and allow the defendant
8 to seek alternate sources of bail."

9 SECTION 6. Section 804-41, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**S804-41 Discharge of bail agent, insurer, or surety**[~~-~~]
12 who provide peace bonds. At any time before the breach of the
13 condition of the bond, the bail agent, insurer, or surety may
14 discharge [~~oneself~~] themselves from their collective obligations
15 by surrendering the principal into the hands of any sheriff or
16 the chief of police or the sheriff's or chief's authorized
17 subordinate[~~-~~] and by filing a motion with the court seeking
18 discharge for reasons other than breach; provided that the bail
19 agent, insurer, or surety shall provide the defendant with
20 reasonable assistance to secure alternate sources of bail before
21 a motion to discharge may be granted."



SECTION 7. Section 804-51, Hawaii Revised Statutes, is amended to read as follows:

"§804-51 Procedure. (a) Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court ~~[shall]~~ may, subject to the court's determination whether the forfeiture is appropriate in the instant case, immediately enter up judgment in favor of the State and against the principal or principals, surety or sureties, and surety insurer or surety insurers on the bond, jointly and severally, for the full amount of the penalty thereof, and, if the court determined that forfeiture is appropriate, shall cause execution to issue thereon immediately after the expiration of ~~[thirty]~~ ninety days from the date that notice is given via personal service or certified mail, return receipt requested, to the surety or sureties or the surety insurer or surety insurers on the bond, of the entry of the judgment in favor of the State, unless before the expiration of ~~[thirty]~~ ninety days from the date that notice is given to the surety or sureties or the surety insurer or surety insurers on the bond of the entry of the judgment in favor of the State, a motion or application of the principal or principals, surety or



1 sureties, surety insurer or surety insurers, or any of them,
2 showing good cause why execution should not issue upon the
3 judgment, is filed with the court[-]; provided that where a bond
4 has been ordered forfeited and the bail was secured by the
5 principal from a surety, and if applicable an insurer, any
6 motion by the principal to set aside an order of forfeiture
7 shall provide the surety or insurer with prompt notice affording
8 opportunity to join the motion. If the motion or application,
9 after a hearing held thereon, is sustained, the court shall
10 vacate the judgment of forfeiture and[~~if~~] may either:

11 (1) Reinstate the bond or recognizance pursuant to the
12 requirements of this chapter; or

13 (2) If the principal surrenders or is surrendered pursuant
14 to section 804-14 or section 804-41, return the bond
15 or recognizance to the principal, surety, or surety
16 insurer, whoever shall have given it, less the amount
17 of any cost, as established at the hearing, incurred
18 by the State as a result of the nonappearance of the
19 principal or other event on the basis of which the
20 court forfeited the bond or recognizance.



1 If the motion or application, after a hearing held thereon,
2 is overruled, execution shall forthwith issue and shall not be
3 stayed unless the order overruling the motion or application is
4 appealed from as in the case of a final judgment. If the motion
5 or application, after a hearing held thereon, is granted, the
6 State may appeal the order granting the motion or application as
7 in the case of a final judgment.

8 (b) This section shall be considered to be set forth in
9 full in words and figures in, and to form a part of, and to be
10 included in, each and every bond or recognizance given in a
11 criminal cause, whether actually set forth in the bond or
12 recognizance, or not."

13 SECTION 8. 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 9. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect upon its approval.

4

INTRODUCED BY: *Sen*



S.B. NO. 2762

Report Title:

Bail; Bond; Recognizance; Sureties; Bail Agents; Insurers;
Qualifications; Discharge; Forfeiture; Reinstatement

Description:

Allows a court to consider relevant evidence and make a determination to grant, deny, or set conditions of bail. Requires that a defendant is to be presumed entitled to bail unless certain conditions are met. Requires a court to set aside the forfeiture of bail if the defendant voluntarily appears before the court or is surrendered by the surety or bail agent within ninety days after a failure to appear. Requires a court to obtain the consent of the surety or bail agent to reinstate bail. Clarifies qualifications for bail agents, insurers, and sureties. Clarifies the process for the discharge of bail agents, insurers, and sureties. Allows a court discretion to determine whether the forfeiture of bail is appropriate. Requires a motion by the principal to set aside an order of forfeiture to provide the surety or insurer with prompt notice affording opportunity to join the motion. Allows courts discretion to reinstate a bond or recognizance or return the bond or recognizance to the appropriate party after vacating a judgment of forfeiture.

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