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# A BILL FOR AN ACT

RELATING TO PRETRIAL REFORM.

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

1           SECTION 1. The legislature finds that Hawaii has many  
2 defendants incarcerated pretrial - that is, before they have had  
3 an opportunity to defend themselves against the charges alleged.  
4 The legislature further finds that Hawaii has spent at least a  
5 decade analyzing and considering reforms to the pretrial system.  
6 These efforts have produced extensive recommendations and  
7 critiques; yet, by many accounts, too many individuals continue  
8 to be detained before trial.

9           Detaining an arrestee before a court has determined guilt  
10 contradicts the fundamental principle of "innocent until proven  
11 guilty". More than one hundred thirty years ago, the United  
12 States Supreme Court affirmed that "[t]he principle that there  
13 is a presumption of innocence in favor of the accused is the  
14 undoubted law, axiomatic and elementary, and its enforcement  
15 lies at the foundation of the administration of our criminal  
16 law" (*Coffin v. United States*, 156 U.S. 432, 453 (1895)).



1           The Supreme Court has also stated that "[i]n our society  
2 liberty is the norm, and detention prior to trial or without  
3 trial is the carefully limited exception" (*United States v.*  
4 *Salerno*, 481 U.S. 739, 755 (1987)). Pretrial detention may be  
5 imposed for arrestees charged with certain felonies only when  
6 the government demonstrates, by clear and convincing evidence  
7 after an adversarial hearing, that no release conditions "will  
8 reasonably assure . . . the safety of any other person and the  
9 community" (481 U.S. 739).

10           Drawing on these foundational cases, the Hawaii judiciary  
11 conducted the most comprehensive recent statewide efforts to  
12 improve the pretrial system, which culminated in the final  
13 report of the criminal pretrial task force in 2018. This two-  
14 hundred-fifty-page report outlined twenty-five recommendations  
15 to improve the pretrial system. For purposes of this  
16 legislation, one of the most significant recommendations states:

17           The use of monetary bail should be eliminated and  
18 defendants should be released on their own  
19 recognizance for traffic offenses, violations, non-  
20 violent petty misdemeanor and non-violent misdemeanor  
21 offenses with certain exceptions. Many jurisdictions



1 across the nation have shifted away from money bail  
2 systems and have instead adopted risk-based systems.  
3 Defendants are released based on the risks they  
4 present for non-appearance and recidivism, rather than  
5 their financial circumstances. At least for lower-  
6 level offenses, the Task Force recommends a shift away  
7 from money bail.

8 The legislature also finds that Act 179, Session Laws of  
9 Hawaii 2019, guided by task force recommendations, made  
10 significant changes to pretrial laws. However, little, if any,  
11 change has occurred in the number of defendants held pretrial.

12 Nationwide trends also show growing support for releasing  
13 nonviolent defendants without cash bail. In 2022, Illinois  
14 became the first state to eliminate all cash bail for all  
15 defendants. Other jurisdictions, including the District of  
16 Columbia and several major cities, have also eliminated cash  
17 bail for nonviolent misdemeanors and felonies.

18 Accordingly, the purpose of this Act is to reduce the  
19 number of pretrial defendants incarcerated in jails by:

20 (1) Eliminating the use of monetary bail and requiring  
21 release on recognizance for violations, traffic



1 offenses, nonviolent petty misdemeanor offenses,  
2 nonviolent misdemeanor offenses, and certain  
3 nonviolent class C felony offenses unless specified  
4 statutory exceptions apply;

5 (2) Creating a "wilful flight" standard that is fairer to  
6 the arrestee and focuses on ensuring safety and  
7 compliance, rather than penalizing an isolated failure  
8 to appear; and

9 (3) Requiring victim notification at each stage of the  
10 decision-making process in a case.

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

14 **"§804- Pretrial release; nonviolent offenders. (a)**  
15 Except as otherwise provided in this section, any defendant  
16 arrested, charged, and held for a violation, traffic offense,  
17 nonviolent petty misdemeanor offense, nonviolent misdemeanor  
18 offense, or nonviolent class C felony offense shall be ordered  
19 by the court to be released on the defendant's own recognizance  
20 at arraignment and plea, conditioned upon:



- 1        (1) The general conditions of release on bail set forth in
- 2            section 804-7.4; and
- 3        (2) Any other least restrictive, non-monetary condition
- 4            necessary to:
- 5            (A) Ensure the defendant's appearance in court; and
- 6            (B) Protect the public.
- 7        Conditions under section 804-7.1 may also be imposed at the
- 8        court's discretion.
- 9        (b) This section shall not apply if:
- 10        (1) The offense involves:
- 11            (A) Assault;
- 12            (B) Terroristic threatening;
- 13            (C) Sexual assault;
- 14            (D) Abuse of family or household members;
- 15            (E) Violation of a temporary restraining order;
- 16            (F) Violation of an order for protection;
- 17            (G) Violation of a restraining order or injunction;
- 18            (H) Operating a vehicle under the influence of an
- 19            intoxicant;
- 20            (I) Negligent homicide; or
- 21            (J) Stalking;



- 1        (2) The defendant presents a specific, real, and present
- 2        threat to any other person or to the community;
- 3        (3) The defendant has a high likelihood of wilful flight;
- 4        (4) The defendant was on parole at the time of arrest;
- 5        (5) The defendant is charged with a petty misdemeanor and
- 6        is pending an examination under section 704-404 or
- 7        704-421;
- 8        (6) The defendant or their counsel request monetary bail
- 9        to be set;
- 10       (7) The defendant was pending trial or sentencing at the
- 11       time of arrest;
- 12       (8) The defendant was on probation, deferral, or
- 13       conditional release at the time of arrest; or
- 14       (9) The defendant was arrested, charged, or held on
- 15       another offense, not otherwise subject to this
- 16       section, arising from the same or a separate incident.
- 17       (c) If the court releases the defendant on personal
- 18       recognizance, the court may require the defendant to sign a
- 19       written acknowledgement agreeing to comply with the conditions
- 20       of release, including the general conditions of release on bail



1 set forth in section 804-7.4. The defendant's address shall  
2 remain a matter of public record with the clerk of the court.

3 (d) Failure to appear as required shall constitute an  
4 offense subject to punishment at the court's discretion for  
5 violation of pretrial release conditions.

6 (e) If any of the exclusions in subsection (b) apply, bail  
7 may be set in a reasonable amount pursuant to section 804-9,  
8 based upon all of the available information, including the  
9 defendant's financial ability to afford bail.

10 (f) If the court decides to detain the defendant or set  
11 monetary bail, the court shall make written findings explaining  
12 why less restrictive conditions would not reasonably assure:

13 (1) The safety of any person or the community; or

14 (2) The defendant's appearance in court.

15 At each subsequent appearance, the court shall determine whether  
16 continued detention or the continued imposition of conditions  
17 remain necessary to avoid a specific, real, and present threat  
18 to any other person or to the community, or to ensure the  
19 defendant's appearance in court. The court may reconsider  
20 detention or conditions at any time without requiring new  
21 information or changed circumstances.



1        (g) This section shall neither preclude a law enforcement  
2 agency from setting an initial bail amount before arraignment,  
3 nor prevent a court from determining bail or conditions of  
4 release at arraignment if an initial bail amount was set by a  
5 law enforcement agency before arraignment.

6        (h) For the purposes of this section, "wilful flight"  
7 means intentional conduct undertaken with the purpose of  
8 thwarting the judicial process to avoid prosecution. "Wilful  
9 flight" may be evidenced by recurring or patterned conduct to  
10 evade prosecution or by a failure to take affirmative steps to  
11 communicate regarding or remedy missed court dates. "Wilful  
12 flight" does not include isolated instances of nonappearance in  
13 court where good cause is shown by the defendant for the  
14 nonappearance.

15        (i) Nothing in this section shall prohibit the prosecuting  
16 attorney or pretrial officer from filing a verified application  
17 of a violation of condition of release in accordance with  
18 section 804-7.2, imposing a sanction, or imposing financial  
19 conditions under section 804-7.3.

20        §804-        **Victim rights notification.** Notwithstanding  
21 chapter 801D, during all stages of a defendant's pretrial case,



1 the prosecution shall notify any victim of decisions made in the  
2 case."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

Bail; Pretrial Release; Nonviolent Offenders

**Description:**

Requires release on recognizance for defendants charged with violations, traffic offenses, nonviolent petty misdemeanors, nonviolent misdemeanors, and nonviolent class C felonies, subject to conditions. Establishes exclusions for specified offenses, threats to public safety, and certain other circumstances. Requires findings when bail or detention is imposed, ongoing review of continued detention or conditions, and a prompt hearing if bail cannot be posted. Requires prosecutors to notify victims of pretrial decisions. 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.*

