

JAN 21 2026

A BILL FOR AN ACT

RELATING TO FORFEITURE.

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

1 SECTION 1. The legislature finds that existing law
2 governing pretrial release and bail requires clarification to
3 ensure fair, consistent, and constitutional outcomes. The
4 legislature further finds that recent legislation and litigation
5 have created uncertainty around the role of sureties and bail
6 agents, the nature of secured and unsecured release, and the
7 scope of judicial discretion.

8 Accordingly, the purpose of this Act is to:

9 (1) Extend the filing period for a surety or bail agent to
10 move to set aside a bond or recognizance of forfeiture
11 from thirty days to ninety days;

12 (2) Ensure that proper notice of a bail forfeiture
13 judgment is provided to both the surety and bail
14 agent;

15 (3) Affirm that a judge may impose financial conditions of
16 release and maintain full discretion to consider
17 individual circumstances;



(4) Ensure that a surety or bail agent may apply to set aside a forfeiture, even if a prior motion has been filed; and

(5) Ensure that the bail bond forfeiture procedure is subject to Rule 60 of the Hawaii Rules of Civil Procedure.

SECTION 2. 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 immediately enter up judgment in favor of the State and against the principal or principals, surety or sureties, ~~[and]~~ surety insurer or surety insurers, and bail agent or bail agents on the bond, jointly and severally, for the full amount of the penalty thereof, and 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, or bail agent or bail agents on the bond, of the entry of the judgment in favor of the State, unless before the



1 expiration of [~~thirty~~] ninety days from the date that notice is
2 given to the surety or sureties, [~~or the~~] surety insurer or
3 surety insurers, or bail agent or bail agents on the bond of the
4 entry of the judgment in favor of the State, a motion or
5 application of the principal or principals, surety or sureties,
6 surety insurer or surety insurers, bail agent or bail agents, or
7 any of them, showing good cause why execution should not issue
8 upon the judgment, is filed with the court. Upon application,
9 the court may direct that the forfeiture be set aside, in whole
10 or in part, upon the conditions that the court may impose,
11 including but not limited to a showing of good cause, proof that
12 the defendant has been apprehended or has voluntarily
13 surrendered, or if it appears that justice does not require
14 enforcement of the forfeiture. If the motion or application,
15 after a hearing held thereon, is sustained, the court shall
16 vacate the judgment of forfeiture and, if the principal
17 surrenders or is surrendered pursuant to section 804-14 or
18 section 804-41, return the bond or recognizance to the
19 principal, surety, [~~or~~] surety insurer, or bail agent, whoever
20 shall have given it, less the amount of any cost, as established
21 at the hearing, incurred by the State as a result of the



1 nonappearance of the principal or other event on the basis of
2 which the court forfeited the bond or recognizance. If the
3 motion or application, after a hearing held thereon, is
4 overruled, execution shall forthwith issue and shall not be
5 stayed unless the order overruling the motion or application is
6 appealed from as in the case of a final judgment. If the motion
7 or application, after a hearing held thereon, is granted, the
8 State may appeal the order granting the motion or application as
9 in the case of a final judgment.

10 (b) An application may be filed by the defendant, surety
11 insurer named on the bond, defendant's attorney, surety, or bail
12 agent, and the filing of an application shall not preclude the
13 filing of another by a different party.

14 (c) A proceeding under this section shall be a civil
15 proceeding subject to rule 60 of the Hawaii rules of civil
16 procedure, and in addition to an application filed under this
17 section, the court shall retain jurisdiction to decide motions
18 in accordance with the Hawaii rules of civil procedure. The
19 court may also entertain a motion to set aside forfeiture beyond
20 the ninety-day period on the terms as justice requires in
21 accordance with the Hawaii rules of civil procedure.



1 (d) Forfeiture shall not be ordered in any felony case;
2 provided that a National Crime Information Center warrant has
3 not been issued and entered within thirty days of a defendant's
4 failure to appear. Notice of the forfeiture shall also be sent
5 to the surety, licensed bail agent, and the surety insurer named
6 on the bond.

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

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

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

15
INTRODUCED BY: 



S.B. NO. 2280

Report Title:

Forfeiture; Bond or Recognizance; Bail; Crimes and Criminal Proceedings

Description:

Extends the period during which a surety, surety insurer, or bail agent may file a motion or application to set aside the bond or recognizance forfeiture from thirty days to ninety days. Ensures that proper notice of a bail forfeiture judgment is provided to a surety or bail agent. Affirms that a judge may impose financial conditions of release and maintain full discretion to consider individual circumstances. Allows a surety or bail agent to apply to set aside a forfeiture, even if a prior motion has been filed. Subjects bail bond forfeiture proceedings to Rule 60 of the Hawaii Rules of Civil Procedure. Prohibits forfeiture from being ordered in any felony case.

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