THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

# S.B. NO. 3208

JAN 28 2026

# A BILL FOR AN ACT

RELATING TO PRETRIAL REFORM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The general conditions of release on bail set forth in section 804-7.4; and

(2) Any other least restrictive, non-monetary condition necessary to:

(A) Ensure the defendant's appearance in court; and

(B) Protect the public.

Conditions under section 804-7.1 may also be imposed at the court's discretion.

(b) This section shall not apply if:

(1) The offense involves:

(A) Assault;

(B) Terroristic threatening;

(C) Sexual assault;

(D) Abuse of family or household members;

(E) Violation of a temporary restraining order;

(F) Violation of an order for protection;

(G) Violation of a restraining order or injunction;

(H) Operating a vehicle under the influence of an intoxicant; or

(I) Negligent homicide;

(2) The defendant presents a specific, real, and present threat to any other person or to the community; or

(3) The defendant has a high likelihood of wilful flight.

(c) If the court releases the defendant on personal recognizance, the court may require the defendant to sign a written acknowledgement agreeing to comply with the conditions of release, including the general conditions of release on bail set forth in section 804-7.4. The defendant's address shall remain a matter of public record with the clerk of the court.

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

(e) If any of the exclusions in subsection (b) apply, bail may be set in a reasonable amount pursuant to section 804-9, based upon all of the available information including the defendant's financial ability to afford bail. If the defendant is unable to post the amount of bail set, the defendant shall be entitled to a prompt hearing as set forth in section 804-7.5.

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

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

(2) The defendant's appearance in court.

At each subsequent appearance, the court shall determine whether continued detention or the continued imposition of conditions remain necessary to avoid a specific, real, and present threat to any other person or to the community, or to prevent the wilful flight of the defendant. The court may reconsider detention or conditions at any time without requiring new information or changed circumstances.

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

(h) For the purposes of this section, "wilful flight" means intentional conduct undertaken with the purpose of thwarting the judicial process to avoid prosecution, as evidenced by recurring or patterned conduct to evade prosecution or by a failure to take affirmative steps to communicate regarding or remedy missed court dates. "Wilful flight" does not include isolated instances of nonappearance in court.

**§804- Victim rights notification.** Notwithstanding chapter 801D, during all stages of a defendant's pretrial case, the prosecution shall notify any victim of decisions made in the case."

SECTION 3. New statutory material is underscored.

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

INTRODUCED BY: Karl Rhoads

# S.B. NO. 3208

**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 wilful flight. 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.

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