

ACT 242

H.B. NO. 2558-80

A Bill for an Act Relating to Bail.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there has been great abuse of the privilege of bail by persons who have been previously convicted of felonies and that such persons pose a significant danger to the community due to their persistent choices not to conform their conduct to the law. The legislature also finds extensive abuse of the privilege of bail pending appeal and blunting of the deterrent effect of punishment due to delays caused by appeals.

SECTION 2. Section 804-3, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 804-3 Bailable offenses. (a) For purposes of this section, “serious crime” means a class A or B felony, except forgery in the first degree and failing to render aid under section 291C-12, and “bail” includes release on one’s own recognizance.

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; except that no bail shall be allowed where the charge is for a serious crime where the proof is evident and the presumption great, and

- (1) The offense is punishable by imprisonment for life not subject to parole; or
- (2) The defendant has been previously convicted of a serious crime within the ten-year period immediately preceding the date of the charge against him;

or

- (3) The defendant is already on bail on a felony charge.

(c) If a defendant has been admitted to bail on any charge, the prosecutor may move at any time for revocation of bail on the grounds set out in subsection (b) above, and bail shall be revoked upon proof thereof.”

SECTION 3. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 804-4 When a matter of right. If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right. The right to bail shall continue after conviction of a misdemeanor, petty misdemeanor or violation, and release on bail may continue, in

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the discretion of the court after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings which are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; except that no bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; and provided further that no bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed. No defendant entitled to bail, whether bailed or not, shall, without his written consent, be subject to the operation of any sentence passed upon him while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a).”

SECTION 4. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 804-7.1 Conditions of release on bail.** Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer named in section 804-5 may deny the defendant’s release on bail or, upon the defendant’s release on bail, may enter an order:

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant’s counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;
- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors or certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court; or
- (5) Imposing any combination of conditions listed above.

The judicial officer may revoke a defendant’s bail upon proof that the defendant has breached any of the conditions imposed.”

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 7. This Act shall take effect upon its approval.

(Approved June 7, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.