

ACT 139

S.B. NO. 800

A Bill for an Act Relating to Bail.

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

SECTION 1. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

**“§804-7.1 Conditions of release on bail[,], recognizance, or supervised release.** 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], recognizance, or supervised release. Upon the defendant’s release on bail, recognizance, or supervised release, however, the court 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 of<sup>1</sup> certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court; [or]
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;

- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;
- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or
- (10) 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 2. Section 804-7.2, Hawaii Revised Statutes, is amended to read as follows:

"[[§804-7.2]] Violations of conditions of release on bail[.], recognizance, or supervised release. Upon verified application by the prosecuting attorney alleging that a defendant has [wilfully] intentionally violated the conditions of release on bail, recognizance, or supervised release, the judicial officer named in section 804-5 shall issue a warrant directing the defendant be arrested and taken forthwith before the court<sup>1</sup> record for hearing. A law enforcement officer having reasonable grounds to believe that a released felony defendant has violated the conditions of release on bail, recognizance, or supervised release, may, where it would be impracticable to secure a warrant, arrest the defendant and take the defendant forthwith before the court of record."

SECTION 3. Section 804-7.3, Hawaii Revised Statutes, is amended to read as follows:

"[[§804-7.3]] Sanctions for violation of conditions of release on bail[.], recognizance, or supervised release. After hearing, and upon finding that the defendant has [wilfully] intentionally violated reasonable conditions imposed on release on bail, recognizance, or supervised release, the court may impose different or additional conditions upon defendant's release or revoke defendant's release on bail[.], recognizance, or supervised release."

SECTION 4. Section 804-1, Hawaii Revised Statutes, is amended to read as follows:

"**§804-1 Bail defined.** Bail, or the giving of bail, is the signing of the recognizance by the [person] defendant and the [person's] defendant's surety or sureties, conditioned for the appearance of the [prisoner] defendant at the session of a court of competent jurisdiction to be named in the condition, and to abide by the judgment of the court. [It is provided, that the prisoner, or any person in the prisoner's behalf, at any time after the amount of bail has been fixed by competent authority, instead of giving bail with sureties as above provided, may deposit with the clerk of the court, or with such other authority having jurisdiction to fix the amount of the bail as in this chapter provided, an amount of money or credit card authorization equal to the amount of bail fixed by such authority. The sum of money so deposited shall be held and dealt with, by the court having jurisdiction thereof, as security for the appearance of the prisoner for trial in the same manner as though the prisoner had entered into a recognizance for the prisoner's appearance as in this chapter provided.]"

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SECTION 5. Section 804-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (d) to read as follows:

“(a) For purposes of this section, “serious crime” means murder or attempted murder in the first degree, murder or attempted murder in the second degree, or 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, supervised release, and conditional release.

(d) If, after a hearing the court finds that no condition or combination of conditions will reasonably assure the appearance of the person when required [and] or that<sup>1</sup> safety of any other person or community, bail may be denied.”

SECTION 6.<sup>2</sup> Section 804-11, Hawaii Revised Statutes, is amended to read as follows:

“§804-11 One surety sufficient, when. A single surety is sufficient, if the surety [possesses and owns [unincumbered] unencumbered real property within the State to double the amount for which the surety is bound,]<sup>1</sup>offers cash, a credit card authorization, stocks, bonds, or real property in accordance with section 804-\_\_\_\_\_, otherwise there [must] shall be two or more[.] sureties.”

SECTION 7.<sup>2</sup> Section 804-10, Hawaii Revised Statutes, is repealed.

SECTION 8.<sup>2</sup> Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

“§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 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 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. The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ or<sup>1</sup> certiorari, be detain,<sup>1</sup> unless the court finds:

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes such findings, he shall order the release of the person in accordance with the provisions of section 804-7.1. No defendant entitled to bail, whether bailed or not, shall, without the defendant’s written consent, be subject to the operation of any sentence passed upon the defendant 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 9.<sup>2</sup> Chapter 804, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

1. **"§804- General conditions of release on bail.** (a) Any person released on bail, recognizance, supervised release or conditional release shall be released subject to the following conditions:

- (1) The person shall not commit a federal, state or local offense during the period of release;
- (2) The person shall appear for all court hearings unless notified by his attorney that his appearance is not required; and
- (3) The person shall remain in State of Hawaii unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court."

2. **"§804- Sureties; qualification.** (a) In determining the sufficiency of a surety or sureties, the court shall consider the surety's or sureties':

- (1) Character;
  - (2) Reliability;
  - (3) Place of residence; and
  - (4) Financial and employment circumstances.
- (b) No person shall be sufficient surety who:
- (1) Has been convicted of perjury for submitting a false statement under section 804- ; or
  - (2) Does not satisfy the requirements of section 804- ."

3. **"§804- Cash, credit card authorization, stocks, bonds, or real property as security for bail.** (a) Any person who is permitted to give bail in accordance with section 804- may secure the bail bond by a deposit, with the clerk of the appropriate court, of:

- (1) Cash or credit card authorization equal to the amount of the bail;
- (2) The unencumbered interest of which has market value of not less than the amount of the bail bond; or
- (3) Deeds for real property:
  - (A) Situated in this State;
  - (B) Not exempt from attachment or execution under section 651-92;
  - (C) Owned by the person depositing the bail; and
  - (D) Consisting of an unencumbered interest the value of which is at least double the amount of the bail bond.

(b) If the bail bond is secured by stocks and bonds the person giving the bail shall file with the bond a sworn schedule which shall be approved by the court and shall contain:

- (1) A list of the stocks and bonds deposited describing each in insufficient<sup>1</sup> detail that they may be identified;
- (2) The present market value of each stock and bond;
- (3) The total market value of the stocks and bonds listed;
- (4) A statement that the affiant is or affiants are the sole owner or owners of the stocks and bonds listed; and
- (5) A statement that the stocks and bonds are security for the appearance of the defendant in accordance with the conditions of release imposed by the court.

(c) If the bail bond is secured by real property the person giving the bail shall file with the bond a statement of value of the real property from the tax assessor of the county in which the real property is located and a sworn schedule which shall contain:

- (1) A legal description of the real property;
- (2) A description of any and all encumbrances on the real property including the amount of each and the holder thereof;
- (3) The market value of the unencumbered interest owned by the affiant or affiants;
- (4) A statement that the affiant is the sole owner, or in the case of jointly owned real property, that affiants are the sole owners of the unencumbered interest and that it is not exempt from execution under section 651-92; and
- (5) A statement that the real property is security for the appearance of the defendant in accordance with the conditions of release imposed by the court.

(d) The sworn schedule shall constitute a material part of the bail bond. An affiant commits the offense of perjury under section 710-1060 if in the sworn schedule the affiant makes a false statement which the affiant does not believe to be true.

(e) The clerk of the court requiring the bail bond shall immediately file a certified copy of the bail bond and schedule of real property in the office of the court clerk of the circuit in which the real property is situated. The bail bond and schedule of real property shall be accompanied by the necessary recording fee, which shall be paid by the affiant or affiants. The court clerk shall record the copies of the bail bond and schedule and thereupon the State shall have a lien on the real property from the date and time of recordation. The instruments described in this section shall be recorded with the bureau of conveyances.

(f) For the purposes of this section, an unencumbered interest in real property, stocks, or bonds, means that the interest is not encumbered by any lien or encumbrance or is not currently being used as security for a bail bond.

(g) In case the officer taking the bail doubts the sufficiency of the person giving bail, the officer may compel that person, either by oath or otherwise, to furnish proof of the person's sufficiency."

SECTION 10.<sup>2</sup> This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11.<sup>2</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 12.<sup>2</sup> This Act shall take effect upon its approval.

(Approved June 5, 1987.)

#### Notes

1. So in original.
2. Section designation corrected.
3. Edited pursuant to HRS §23G-16.5.