
A BILL FOR AN ACT

RELATING TO PRETRIAL RELEASE.

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

1 SECTION 1. According to the Bureau of Justice Statistics,
2 over sixty per cent of all jail inmates are awaiting court
3 action on a current charge. Another study found that five out
4 of six individuals detained until case disposition were detained
5 because they could not afford bail, not because they were found
6 to be dangerous or a flight risk.

7 The legislature finds that a growing number of
8 jurisdictions, including Arizona, Kentucky, and New Jersey, are
9 adopting risk assessment tools to help judges make accurate,
10 efficient, and evidence-based decisions about which defendants
11 should be detained prior to trial and which can be safely
12 released. These risk assessment tools, such as the Public
13 Safety Assessment developed by the Laura and John Arnold
14 Foundation, identify factors that best predict whether a
15 defendant will commit a new crime, commit a new violent crime,
16 or fail to return to court. The legislature further finds that
17 risk assessment tools are cost-effective and objective measures



1 of risk that help judges increase public safety while reducing
2 jail populations.

3 The legislature also finds that under Hawaii's bail system,
4 low-income individuals are more likely to remain in jail pending
5 trial compared to individuals with greater financial resources.
6 The purpose of this Act is to address bail reform and the
7 financial disparity imposed on low-income individuals by:

8 (1) Requiring courts to order any person charged with a
9 criminal offense to be released on personal
10 recognizance pending trial, unless the court
11 determines that the person is a flight risk, unlikely
12 to appear for trial, or a danger to others;

13 (2) Requiring the judiciary to establish and maintain a
14 pretrial services program to conduct pretrial risk
15 assessments for the purpose of making recommendations
16 to courts concerning appropriate pretrial release
17 decisions; and

18 (3) Repealing state laws relating to bail.

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:



1 "CHAPTER

2 PRETRIAL RELEASE

3 § -1 Definition. As used in this chapter:

4 "Verified and eligible defendant" means any person:

- 5 (1) Charged with a criminal offense;
- 6 (2) Who the pretrial services program is able to interview
- 7 and assess; and
- 8 (3) Whose identity the pretrial services program is able
- 9 to confirm through investigation.

10 § -2 Release on personal recognizance; conditions of

11 release. (a) Any person charged with a criminal offense shall

12 be ordered released by a court of competent jurisdiction pending

13 trial on the person's personal recognizance, unless the court

14 determines in the exercise of its discretion that such a release

15 will not reasonably assure the appearance of the person as

16 required, or the court determines the person is a flight risk or

17 danger to others; provided that bail shall not be allowed. In

18 making its determination, the court shall consider the pretrial

19 risk assessment for the verified and eligible defendant.

20 (b) If the verified and eligible defendant:

- 21 (1) Poses a low risk of flight;



1 (2) Is likely to appear for trial; and
2 (3) Is not likely to be a danger to others,
3 the court shall order the defendant released on the defendant's
4 own recognizance subject to such other non-monetary conditions
5 as the court may order.

6 (c) If the verified and eligible defendant:
7 (1) Poses a moderate risk of flight;
8 (2) Has a moderate risk of not appearing for trial; or
9 (3) Poses a moderate risk of danger to others,
10 the court shall release the defendant under the same conditions
11 as subsection (b); provided that the court shall also consider
12 entering an order pursuant to subsection (d).

13 (d) Upon the verified and eligible defendant's release,
14 the court may enter an order:
15 (1) Prohibiting the defendant from approaching or
16 communicating with particular persons or classes of
17 persons; provided that no such order should be deemed
18 to prohibit any lawful and ethical activity of
19 defendant's counsel;
20 (2) Prohibiting the defendant from going to certain
21 described geographical areas or premises;



- 1 (3) Prohibiting the defendant from possessing any
2 dangerous weapon, engaging in certain described
3 activities, or indulging in intoxicating liquors or
4 certain drugs;
- 5 (4) Requiring the defendant to report regularly to and
6 remain under the supervision of an officer of the
7 court;
- 8 (5) Requiring the defendant to maintain employment, or, if
9 unemployed, to actively seek employment, or attend an
10 educational or vocational institution;
- 11 (6) Requiring the defendant to comply with a specified
12 curfew;
- 13 (7) Requiring the defendant to seek and maintain mental
14 health treatment or testing, including treatment for
15 drug or alcohol dependency, or to remain in a
16 specified institution for that purpose;
- 17 (8) Requiring the defendant to remain in the jurisdiction
18 of the judicial circuit in which the charges are
19 pending unless approval is obtained from a court of
20 competent jurisdiction to leave the jurisdiction of
21 the court;



1 (9) Requiring the defendant to satisfy any other condition
2 reasonably necessary to assure the appearance of the
3 person as required and to assure the safety of any
4 other person or community; or

5 (10) Imposing any combination of conditions listed above.

6 **§ -3 Pretrial services program; pretrial risk assessment**
7 **instrument.** (a) The judiciary shall establish and maintain a
8 pretrial services program to:

9 (1) Conduct pretrial risk assessments on verified and
10 eligible defendants for the purpose of making
11 recommendations to the court concerning an appropriate
12 pretrial release decision, including whether the
13 defendant shall be:

14 (A) Released on the defendant's own personal
15 recognizance;

16 (B) Released on a non-monetary condition or
17 conditions; or

18 (C) Detained; and

19 (2) Monitor defendants who are released while awaiting
20 trial as ordered by the court.



1 (b) Pretrial risk assessments shall be conducted using a
2 risk assessment instrument approved by the judiciary that meets
3 the requirements of this subsection. The approved risk
4 assessment instrument shall be objective, standardized, and
5 developed based on analysis of empirical data and risk factors
6 relevant to the risk of:

- 7 (1) Flight;
- 8 (2) Failure to appear in court when required; and
- 9 (3) Danger to others."

10 SECTION 3. Chapter 804, Hawaii Revised Statutes, is
11 repealed.

12 SECTION 4. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

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



H.B. NO. 1996

1 SECTION 6. This Act shall take effect on July 1, 2019.

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INTRODUCED BY:

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JAN 19 2018



H.B. NO. 1996

Report Title:

Pretrial Release; Pretrial Risk Assessment; Bail

Description:

Requires courts to order any person charged with a criminal offense to be released on personal recognizance pending trial, unless the person is a flight risk, unlikely to appear for trial, or a danger to others. Requires the Judiciary to establish and maintain a Pretrial Services Program to conduct pretrial risk assessments. Repeals state laws relating to bail.

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