

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO CRIMINAL PRETRIAL REFORM.

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

1           SECTION 1. The legislature finds that there is a need to  
2 address the substantial and continued overcrowding of facilities  
3 used to house pretrial defendants through the adoption of  
4 certain recommendations made by the criminal pretrial task force  
5 regarding pretrial detention and release.

6           House Concurrent Resolution No. 134, H.D. 1 (2017),  
7 requested the judiciary to convene a criminal pretrial task  
8 force to:

9           (1) Examine and, as needed, recommend legislation and  
10           revisions to criminal pretrial practices and  
11           procedures to increase public safety while maximizing  
12           pretrial release of those who do not pose a danger or  
13           a flight risk; and

14           (2) Identify and define best practices metrics to measure  
15           the relative effectiveness of the criminal pretrial  
16           system and establish ongoing procedures to take such  
17           measurements at appropriate time intervals.



1           Accordingly, the judiciary convened a criminal pretrial  
2 task force that consisted of twenty-nine members from various  
3 agencies and organizations with a broad spectrum of knowledge  
4 and experience. The task force met between August 11, 2017, and  
5 July 6, 2018, and submitted its report to the legislature on  
6 December 14, 2018. The report contained twenty-five  
7 recommendations, some of which were accompanied by proposed  
8 legislation that was authored by the task force.

9           Although a substantial number of the task force's  
10 recommendations were subsequently enacted by Act 179, Session  
11 Laws of Hawaii 2019 (Act 179), two critical recommendations were  
12 not included. These recommendations would substantially change  
13 the process for pretrial determinations and would offer the  
14 greatest potential to maximize pretrial release. Act 179  
15 instead focused on those recommendations which would most  
16 improve fairness and administrative efficiency. However, this  
17 approach has failed to substantially reduce the pretrial  
18 population in Hawaii's jails, and the continued overcrowding  
19 that was a primary contributing factor in the large-scale  
20 COVID-19 outbreak at the Oahu community correctional center  
21 during the summer of 2020.



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1           The legislature accordingly intends to implement certain  
2 recommendations of the criminal pretrial task force that were  
3 accompanied by proposed legislation authored by the task force  
4 but not adopted in Act 179.

5           The purpose of this Act is to amend chapter 804, Hawaii  
6 Revised Statutes, to:

7           (1) With certain exceptions, eliminate the use of monetary  
8 bail and require defendants to be released on their  
9 own recognizance for traffic offenses, violations,  
10 nonviolent petty misdemeanor offenses, and nonviolent  
11 misdemeanor offenses; and

12           (2) Create rebuttable presumptions regarding both release  
13 and detention for certain offenses and specify  
14 circumstances in which these presumptions apply.

15           SECTION 2. Chapter 804, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:

18           "§804-       Monetary bail; nonviolent offenders.   (a) Any  
19 defendant arrested and charged with a traffic offense,  
20 violation, nonviolent petty misdemeanor offense, or nonviolent



1 misdemeanor offense shall be released on the defendant's own  
2 recognizance conditioned upon:

- 3     (1) The defendant's appearance in court; and  
4     (2) Any other least restrictive, non-financial condition  
5     necessary to:

- 6         (A) Ensure the defendant's appearance in court; and  
7         (B) Protect the public.

8     (b) This section shall not apply if:

- 9         (1) The offense involves:  
10             (A) Assault;  
11             (B) Terroristic threatening;  
12             (C) Sexual assault;  
13             (D) Abuse of family or household members;  
14             (E) Violation of a temporary restraining order;  
15             (F) Violation of an order for protection;  
16             (G) Violation of a restraining order or injunction;  
17             (H) Operating a vehicle under the influence of an  
18             intoxicant;  
19             (I) Negligent homicide; or  
20             (J) Any other crime of violence; or



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- 1        (2) One or more of the following apply:
- 2            (A) The defendant has a history of non-appearance in  
3            the last twenty-four months;
- 4            (B) The defendant has at least one prior conviction  
5            for a misdemeanor crime of violence or felony  
6            crime of violence within the last ten years;
- 7            (C) The defendant was pending trial or sentencing at  
8            the time of arrest;
- 9            (D) The defendant was on probation, parole, or  
10           conditional release at the time of arrest;
- 11           (E) The defendant is also concurrently charged with a  
12           violent petty misdemeanor, a violent misdemeanor,  
13           or any felony offense arising from the same or  
14           separate incident; or
- 15           (F) The defendant presents a risk of danger to any  
16           other person or to the community.
- 17        (c) If any of the exceptions in subsection (b) apply, bail  
18        may be set in a reasonable amount. If the defendant is unable  
19        to post the amount of bail, the defendant shall be entitled to a  
20        prompt hearing under section 804-7.5. If the defendant is



1 unable to post bail in the amount of \$99 or less, the director  
2 of public safety shall be authorized to release the defendant."

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

6 "(a) For purposes of this section [~~, "serious~~]:

7 "Serious crime" means murder or attempted murder in the  
8 first degree, murder or attempted murder in the second degree,  
9 [~~or~~] a class A [~~or B~~] felony, [~~except forgery in the first~~  
10 ~~degree and failing to render aid under section 291C-12, and~~  
11 ~~"bail"~~] or a class B or C felony involving violence or threat of  
12 violence to any person.

13 "Bail" includes release on one's own recognizance,  
14 supervised release, and conditional release.

15 (b) [~~Any person charged with a criminal offense shall be~~  
16 ~~bailable by sufficient sureties; provided that bail may be~~  
17 ~~denied where the charge is for a serious crime, and:] There  
18 shall be a rebuttable presumption that a person charged with a  
19 criminal offense, other than a serious crime, shall be released  
20 or admitted to bail under the least restrictive conditions  
21 required to ensure the person's appearance and to protect the~~



1 public, unless the prosecution demonstrates by clear and  
2 convincing evidence that:

3 (1) There is a serious risk that the person will flee;

4 (2) There is a serious risk that the person will obstruct  
5 or attempt to obstruct justice, or [~~therefore,~~]  
6 injure[~~7~~] or intimidate, or attempt to thereafter[~~7~~]  
7 injure[~~7~~] or intimidate, a prospective witness or  
8 juror;

9 (3) There is a serious risk that the person poses a danger  
10 to any person or the community; or

11 (4) There is a serious risk that the person will engage in  
12 illegal activity.

13 If the prosecution demonstrates by clear and convincing evidence  
14 that one or more of the foregoing serious risks exists, the  
15 person shall be detained if the court finds that no condition or  
16 combination of conditions is sufficient to reasonably eliminate,  
17 reduce, or mitigate the risks presented.

18 (c) Under subsection (b)(1) a rebuttable presumption  
19 arises that there is a serious risk that the person will flee or  
20 will not appear as directed by the court where the person is  
21 charged with a criminal offense punishable by imprisonment for



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1 life with or without possibility of parole. For purposes of  
2 subsection (b)(3) and (4) a rebuttable presumption arises that  
3 the person poses a serious danger to any person or community or  
4 will engage in illegal activity where the court determines that:

5 (1) The defendant has been previously convicted of a  
6 serious crime involving violence or threat of violence  
7 against a person within the ten-year period preceding  
8 the date of the charge against the defendant;

9 (2) The defendant is [~~already on bail on~~] pending trial or  
10 sentencing for a felony charge involving violence or  
11 threat of violence against a person; or

12 (3) The defendant is on probation or parole for a serious  
13 crime involving violence or threat of violence to a  
14 person."

15 SECTION 4. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 5. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.





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1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

*Karl Rhoads*



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**Report Title:**

Bail; Rebuttable Presumptions; Release; Detention

**Description:**

Eliminates the use of monetary bail and requires defendants to be released on their own recognizance for traffic offenses, violations, and nonviolent petty misdemeanor and misdemeanor offenses, with certain exceptions. Creates rebuttable presumptions regarding release and detention for certain offenses and specifies circumstances in which these presumptions apply.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

