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## A BILL FOR AN ACT

RELATING TO CRIME.

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

1 SECTION 1. Section 804-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§804-3 [~~Bailable~~] Pretrial release; bailable offenses.

4 (a) For purposes of this section, "serious crime" means murder  
5 or attempted murder in the first degree, murder or attempted  
6 murder in the second degree, or a class A or B felony, except  
7 forgery in the first degree and failing to render aid under  
8 section 291C-12, and "bail" includes release on one's own  
9 recognizance, supervised release, and conditional release.

10 (b) Any person charged with a criminal offense shall be  
11 [~~bailable by sufficient sureties,~~] ordered released by a court  
12 of competent jurisdiction on the person's personal recognizance;  
13 provided that [~~bail~~] unconditional release may be denied where  
14 the charge is for a serious crime, and:

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

16 (2) There is a serious risk that the person will obstruct  
17 or attempt to obstruct justice, or therefore, injure,



1 or intimidate, or attempt to thereafter, injure, or  
2 intimidate, a prospective witness or juror;

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

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

7 (c) [~~Under subsection (b)(1)~~] There shall be a rebuttable  
8 presumption [~~arises that there is a serious risk~~] that the  
9 person [~~will flee or will not appear as directed by the court~~  
10 ~~where the person~~] is [~~charged with a criminal offense punishable~~  
11 ~~by imprisonment for life without possibility of parole. For~~  
12 ~~purposes of subsection (b)(3) and (4) a rebuttable presumption~~  
13 ~~arises that the person poses a serious danger to any person or~~  
14 ~~community or will engage in illegal activity where the court~~  
15 ~~determines that:~~

16 ~~(1) The defendant has been previously convicted of a~~  
17 ~~serious crime involving violence against a person~~  
18 ~~within the ten year period preceding the date of the~~  
19 ~~charge against the defendant;~~



1       ~~(2) The defendant is already on bail on a felony charge~~  
2           ~~involving violence against a person; or~~

3       ~~(3) The defendant is on probation or parole for a serious~~  
4           ~~crime involving violence to a person.~~

5       ~~(d)~~ entitled to unconditional release, and that the person  
6 will appear in court when required. Before a court grants  
7 unconditional release, a hearing shall be held within forty-  
8 hours after the person's arrest. The burden of proof shall be  
9 upon the State to establish, by clear and convincing evidence,  
10 that unconditional release under this subsection is  
11 inappropriate based on the criteria in subsection (b).

12       (d) If the court finds than an unconditional release will  
13 not reasonably assure the appearance of the person when  
14 required, and if bail is recommended by the State, the court  
15 shall first consider non-financial alternatives to bail that  
16 would allow release while ensuring a return to court and the  
17 protection of public safety.

18       (e) If the court finds that the release described in  
19 subsection (d) will not reasonably assure the appearance of the



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1 person when required, the person shall be bailable by sufficient  
2 sureties, except as provided in subsection (f).

3 (f) If, after a hearing the court finds that no condition  
4 or combination of conditions will reasonably assure the  
5 appearance of the person when required or the safety of any  
6 other person or community, bail may be denied."

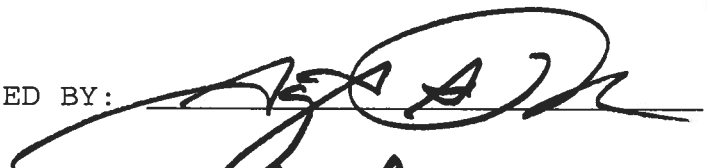
7 SECTION 2. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect on July 1, 2019.

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**Report Title:**

Crime; Unconditional Release; Bail

**Description:**

Establishes a presumption that a person charged with a crime is entitled to unconditional release unless proven otherwise. Requires the consideration of nonfinancial conditions of release before bail is ordered.

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

