

---

---

# A BILL FOR AN ACT

RELATING TO PRETRIAL RELEASE.

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

1           SECTION 1. The legislature finds that Hawaii's current  
2 bail system needs to be reformed to address the disproportionate  
3 number of pretrial inmates under state custody. In 2016,  
4 approximately forty-one per cent of the total inmate population  
5 in the Oahu community correctional system were pretrial inmates.

6           The legislature further finds that the majority of  
7 individuals detained until case disposition are detained due to  
8 an inability to afford bail. The New York Times found that in  
9 cases where bail is \$500 or less, only fifteen per cent of  
10 defendants are able to come up with enough money to avoid jail.  
11 In addition to the loss of liberty, pretrial detainees who  
12 cannot afford bail often suffer the loss of employment, custody  
13 of minors, housing, vehicles, and standing within the community  
14 regardless of innocence.

15           The purpose of this Act is to reform Hawaii's criminal  
16 justice system by:



- 1 (1) Requiring courts to order any person charged with a
- 2 criminal offense to be released on personal
- 3 recognizance or on the execution of an unsecured bond,
- 4 unless the person is unlikely to appear for trial; and
- 5 (2) Requiring the judiciary to establish a statewide court
- 6 appearance reminder system for criminal cases.

7 SECTION 2. Chapter 601, Hawaii Revised Statutes, is  
 8 amended by adding a new section to be appropriately designated  
 9 and to read as follows:

10 "§601- Court appearance reminder system. The judiciary  
 11 shall establish a statewide court appearance reminder system to  
 12 notify any person charged with a criminal offense of the date,  
 13 time, and place at which the person to whom the notice was  
 14 issued shall appear in court."

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

17 "§804-3 [Bailable] Pretrial release; bailable offenses.  
 18 [~~(a) For purposes of this section, "serious crime" means murder~~  
 19 ~~or attempted murder in the first degree, murder or attempted~~  
 20 ~~murder in the second degree, or a class A or B felony, except~~  
 21 ~~forgery in the first degree and failing to render aid under~~



1 ~~section 291C 12, and "bail" includes release on one's own~~  
2 ~~recognizance, supervised release, and conditional release.~~

3 ~~(b) Any person charged with a criminal offense shall be~~  
4 ~~bailable by sufficient sureties; provided that bail may be~~  
5 ~~denied where the charge is for a serious crime, and:~~

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

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

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

13 ~~(4) There is a serious risk that the person will engage in~~  
14 ~~illegal activity.~~

15 ~~(c) Under subsection (b) (1) a rebuttable presumption~~  
16 ~~arises that there is a serious risk that the person will flee or~~  
17 ~~will not appear as directed by the court where the person is~~  
18 ~~charged with a criminal offense punishable by imprisonment for~~  
19 ~~life without possibility of parole. For purposes of subsection~~  
20 ~~(b) (3) and (4) a rebuttable presumption arises that the person~~



1 ~~poses a serious danger to any person or community or will engage~~  
2 ~~in illegal activity where the court determines that:~~

3 ~~(1) The defendant has been previously convicted of a~~  
4 ~~serious crime involving violence against a person~~  
5 ~~within the ten year period preceding the date of the~~  
6 ~~charge against the defendant;~~

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

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

11 (a) Any person charged with a criminal offense shall be  
12 ordered released by a court of competent jurisdiction on the  
13 person's personal recognizance or on the execution of an  
14 unsecured bond, unless the court determines by clear and  
15 convincing evidence that unconditional release will not  
16 reasonably assure the appearance of the person when required.  
17 There shall be a rebuttable presumption that any person charged  
18 with a criminal offense will appear when required. The State  
19 shall bear the burden of proof of establishing that release will  
20 not reasonably assure the appearance of the person when



1 required. The court shall issue a written order documenting its  
2 reasons for denying any person's release under this subsection.

3 (b) If, after a hearing the court finds that the release  
4 described in subsection (a) will not reasonably assure the  
5 appearance of the person when required, the court may order the  
6 release of the person subject to any of the conditions  
7 authorized under section 804-7.1.

8 (c) If, after a hearing the court finds that the release  
9 described in subsection (a) or (b) will not reasonably assure  
10 the appearance of the person when required, the person shall be  
11 bailable by sufficient sureties.

12 (d) If, after a hearing the court finds that no condition  
13 or combination of conditions will reasonably assure the  
14 appearance of the person when required or that release will not  
15 reasonably assure the safety of any other person or community,  
16 bail may be denied. For the purposes of this subsection, "bail"  
17 includes release on one's own recognizance, supervised release,  
18 and conditional release."

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



1           "§804-7.1 Conditions of release on bail, recognizance, or  
2 supervised release. (a) Upon a showing that there exists a  
3 danger that the defendant will commit a serious crime or will  
4 seek to intimidate witnesses, or will otherwise unlawfully  
5 interfere with the orderly administration of justice, the  
6 judicial officer named in section 804-5 may deny the defendant's  
7 release on bail, recognizance, or supervised release. The  
8 judicial officer shall issue a written order documenting the  
9 reasons for denying the defendant's release.

10           (b) Upon the defendant's release on bail, recognizance, or  
11 supervised release, [~~however,~~] the court may enter an order:

- 12           (1) Prohibiting the defendant from approaching or  
13           communicating with particular persons or classes of  
14           persons, except that no such order should be deemed to  
15           prohibit any lawful and ethical activity of  
16           defendant's counsel;
- 17           (2) Prohibiting the defendant from going to certain  
18           described geographical areas or premises;
- 19           (3) Prohibiting the defendant from possessing any  
20           dangerous weapon, engaging in certain described



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



1 person as required and to assure the safety of any  
 2 other person or community; or  
 3 (10) Imposing any combination of conditions listed  
 4 above [-] ;  
 5 provided that no defendant shall be required to submit to  
 6 substance abuse testing as a condition for release unless the  
 7 defendant is charged with a crime involving possession or use,  
 8 not including to distribute or manufacture as defined in section  
 9 712-1240, of any dangerous drug, detrimental drug, harmful drug,  
 10 intoxicating compound, marijuana, or marijuana concentrate, as  
 11 defined in section 712-1240, methamphetamine trafficking as  
 12 provided in section 712-1240.7, or involving possession or use  
 13 of drug paraphernalia under section 329-43.5; provided further  
 14 that the court shall order the least restrictive condition or  
 15 combination of conditions that the court determines will  
 16 reasonably assure the appearance of the defendant when required.

17 (c) The judicial officer may revoke a defendant's bail  
 18 upon proof that the defendant has breached any of the conditions  
 19 imposed."

20 SECTION 5. Section 804-9, Hawaii Revised Statutes, is  
 21 amended to read as follows:



1           "§804-9 Amount. The amount of bail rests in the  
2 discretion of the justice or judge or the officers named in  
3 section 804-5; but should be so determined as not to suffer the  
4 wealthy to escape by the payment of a pecuniary penalty, nor to  
5 render the privilege useless to the poor. In all cases, the  
6 officer letting to bail should consider the punishment to be  
7 inflicted on conviction, and the pecuniary circumstances of the  
8 party accused. Under no circumstances shall a justice, judge,  
9 or officer utilize a bail schedule as a standard to set bail in  
10 lieu of the discretion accorded by this section."

11           SECTION 6. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14           SECTION 7. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16           SECTION 8. This Act shall take effect on July 1, 2050.



**Report Title:**

Pretrial Release; Court Appearance Reminder System; Risk Assessment

**Description:**

Requires courts to order any person charged with a criminal offense to be released on personal recognizance or on the execution of an unsecured bond, unless the person is unlikely to appear for trial. Requires the Judiciary to establish statewide court appearance reminder system. (HB1436 HD1)

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

