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| HOUSE OF REPRESENTATIVES | H.B. NO. |  |
| THIRTY FIRST LEGISLATURE, 2021 |  |
| STATE OF HAWAII |  |
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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:**

PART I

SECTION 1. (a) The legislature finds that house concurrent resolution no. 134, house draft 1 (2017), requested the judiciary to convene a criminal pretrial task force to:

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

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

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

Although a substantial number of the task force’s recommendations were enacted by Act 179, Session Laws of Hawaiʻi (2019), two critical recommendations were not included in Act 179, as passed. These recommendations would substantially change the process for pretrial determinations and would offer the greatest potential to maximize pretrial release. This legislature elected a measured approach to pretrial reform in 2019, first enacting the recommendations which would improve fairness and administrative efficiency. However, this approach has failed to result in a substantial reduction in the pretrial population and resulting overcrowding in Hawaiʻi’s jails.

(b) The purpose of this Act is to implement certain recommendations of the criminal pretrial task force that were accompanied by proposed legislation authored by the task force, with only technical, nonsubstantive changes to the task force's language for the purposes of clarity, consistency, and style.

PART II

SECTION 2. The purpose of this part is to amend chapter 804, Hawaii Revised Statutes, to:

(1) With certain exceptions, eliminate the use of monetary bail and require defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses; and

(2) Create rebuttable presumptions regarding both release and detention and to specify circumstances in which these presumptions apply.

SECTION 3. Chapter 804, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**§804-\_\_ Monetary bail; non-violent offenders.** (a) Any defendant arrested and charged with a traffic offense, a violation, a non-violent petty misdemeanor offense, or a non-violent misdemeanor offense shall be released on the defendant's own recognizance conditioned upon:

(1) The defendant's appearance in court; and

(2) Any other least restrictive, non-financial condition necessary to:

(A) Ensure the defendant's appearance in court; and

(B) Protect the public.

(b) This section shall not apply if:

(1) The offense involves:

(A) Assault;

(B) Terroristic threatening;

(C) Sexual assault;

(D) Abuse of family or household members;

(E) Violation of a temporary restraining order;

(F) Violation of an order for protection;

(G) Operating a vehicle under the influence of an intoxicant;

(H) Negligent homicide; or

(I) Any other crime of violence; or

(2) One or more of the following apply:

(A) The defendant has a history of non-appearance in the last twenty-four months;

(B) The defendant has at least one prior conviction for a misdemeanor crime of violence or felony crime of violence;

(C) The defendant was pending trial or sentencing at the time of arrest;

(D) The defendant was on probation, parole, or conditional release at the time of arrest;

(E) The defendant is also concurrently charged with a violent petty misdemeanor, a violent misdemeanor, or any felony offense arising from the same or separate incident; or

(F) The defendant presents a risk of danger to any other person or to the community.

(c) If any of the exceptions in subsection (b) apply, bail may be set in a reasonable amount. If the defendant is unable to post the amount of bail, the defendant shall be entitled to a prompt hearing under section 804-7.5."

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

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

"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"~~] or a class B or C felony involving violence or threat of violence to any person.

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

(b) [~~Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and:~~] There shall be a rebuttable presumption that a person charged with a criminal offense, other than a serious crime, shall be released or admitted to bail under the least restrictive conditions required to ensure the person's appearance and to protect the public, unless the prosecution demonstrates by clear and convincing evidence that:

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

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

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

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

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

(c) Under subsection (b)(1) a rebuttable presumption arises that there is a serious risk that the person will flee or will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life with or without possibility of parole. For purposes of subsection (b)(3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:

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

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

(3) The [~~defendant~~] person is on probation or parole for a serious crime involving violence or threat of violence to a person."

PART III

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. In codifying the new section added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 8. This Act shall take effect upon its approval.

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