
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 PART I

2 SECTION 1. The legislature finds that independent
3 oversight of the State's correctional system ensures
4 transparency, supports safe conditions for employees, inmates,
5 and detainees, and provides positive reform towards a
6 rehabilitative and therapeutic correctional system.

7 The legislature further finds that an increasing number of
8 states are calling for independent oversight of their
9 correctional systems with at least eight states already having
10 established independent oversight mechanisms to monitor and
11 improve their correctional systems.

12 The legislature further finds that the reentry commission
13 and the corrections population management commission have
14 overlapping responsibilities and consolidating the commissions
15 into a single, independent oversight commission led by an
16 oversight coordinator and guided by an experienced group of
17 commission members will promote efficiency and provide greater
18 opportunities for member participation.



1 The purpose of this part is to support best practices for
2 an effective correctional system by:

3 (1) Establishing the Hawaii correctional system oversight
4 commission; and

5 (2) Consolidating the reentry commission and corrections
6 population management commission into the Hawaii
7 correctional system oversight commission and
8 transferring the rights, powers, functions, and duties
9 of the consolidated commissions to the Hawaii
10 correctional system oversight commission.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION

16 § -1 Hawaii correctional system oversight commission;
17 membership; appointment; chairperson; reimbursement of expenses.

18 (a) There is established within the department of the attorney
19 general for administrative purposes only a Hawaii correctional
20 system oversight commission consisting of five members who shall
21 be residents of this State and appointed as follows:



- 1 (1) One member shall be appointed by the governor;
- 2 (2) One member shall be appointed by the president of the
- 3 senate;
- 4 (3) One member shall be appointed by the speaker of the
- 5 house of representatives;
- 6 (4) One member shall be appointed by the chief justice;
- 7 and
- 8 (5) One member shall be appointed by the chairperson of
- 9 the board of trustees of the Office of Hawaiian
- 10 Affairs.

11 The commission members shall annually elect one of the
12 members to serve as chairperson of the commission.

13 (b) Preferred qualifications for commission members shall
14 be possessing knowledge in:

- 15 (1) Criminal justice or correctional systems;
- 16 (2) Native Hawaiian culture-based practices with an
- 17 emphasis on healing and reducing recidivism;
- 18 (3) Best practices for effective correctional systems; or
- 19 (4) Crime victim specialization.



1 (c) Any member of the commission may be removed from
2 office by the governor for cause upon notice and opportunity to
3 be heard at a public hearing.

4 (d) The members of the commission shall receive
5 reimbursement for expenses, including travel expenses, that are
6 necessary for the performance of their duties. No member of the
7 commission shall be made subject to the financial disclosure
8 requirements of sections 84-13 and 84-17 solely because of that
9 member's participation as a member of the commission. The terms
10 of the commissioners shall be as provided in section 26-34.

11 **§ -2 Oversight coordinator; appointment; term.** (a) The
12 governor shall appoint an oversight coordinator from a list of
13 three nominees submitted by the commission. The oversight
14 coordinator shall be a person qualified by training and
15 experience to administer the Hawaii correctional system
16 oversight commission and shall be well-versed in criminal
17 justice reform and maintain a firm commitment to the
18 correctional system's transition to a rehabilitative and
19 therapeutic model. The oversight coordinator shall serve a two-
20 year term.



(b) Effective December 1, 2019, the oversight coordinator of the commission shall be paid a salary set at one hundred per cent of the salary of the director of human resources development. The oversight coordinator shall be exempt from chapters 76 and 89, but shall be a member of the state employees' retirement system and shall be eligible to receive benefits of any state employee benefits program generally applicable to officers and employees of the State, including those under chapter 87A.

(c) The oversight coordinator shall devote the oversight coordinator's entire time and attention to the administration of the Hawaii correctional system oversight commission and shall not be engaged in any other profession or occupation.

(d) The oversight coordinator may employ persons not subject to chapter 76 to perform and execute the functions of the commission.

§ -3 Hawaii correctional system oversight commission; powers and duties. (a) The commission shall meet with the oversight coordinator not less than once each quarter to make recommendations and set policy, receive reports from the



1 oversight coordinator, and transact other business properly
2 brought before the commission.

3 (b) The commission shall:

- 4 (1) Oversee the State's correctional system and have
5 jurisdiction over investigating complaints at
6 correctional facilities and facilitating a
7 correctional system transition to a rehabilitative and
8 therapeutic model;
- 9 (2) Establish maximum inmate population limits for each
10 correctional facility and formulate policies and
11 procedures to prevent the inmate population from
12 exceeding the capacity of each correctional facility;
- 13 (3) Work with the department of public safety in
14 monitoring and reviewing the comprehensive offender
15 reentry program, including facility educational and
16 treatment programs, rehabilitative services, work
17 furloughs, and the Hawaii paroling authority's
18 oversight of parolees. The commission may make
19 recommendations to the department of public safety,
20 the Hawaii paroling authority, and the legislature
21 regarding reentry and parole services; and



(4) Ensure that the comprehensive offender reentry system under chapter 353H is working properly to provide programs and services that result in the timely release of inmates on parole when the maximum terms have been served instead of delaying the release for lack of programs and services.

To achieve these ends, the commission shall authorize the oversight coordinator to adopt rules in accordance with chapter 91.

§ -4 Powers and duties of the oversight coordinator. In addition to any other powers and duties authorized in this chapter, the oversight coordinator shall:

(1) Supervise and administer the operation of the commission in accordance with this chapter and the rules adopted under this chapter, subject to the continuous duty to take into account the particularly sensitive and responsible nature of the commission's functions;

(2) Enforce this chapter and the rules adopted under this chapter. The oversight coordinator shall receive allegations of any violations of the laws of this



- 1 State or rules pertaining to the correctional system
2 or conduct of the commission;
- 3 (3) Be authorized to hire staff necessary to accomplish
4 the purpose of this chapter, including a minimum of
5 two researchers and one clerical assistant. Employees
6 of the oversight coordinator's office shall be exempt
7 from chapter 76 and shall not be considered civil
8 service employees but shall be entitled to any
9 employee benefit plans normally inuring to civil
10 service employees;
- 11 (4) Act as secretary and executive officer of the
12 commission;
- 13 (5) Confer regularly as necessary or desirable and not
14 less than once every quarter with the commission on
15 the operation and administration of the commission;
- 16 (6) Make available for inspection by the commission, upon
17 request, all books, records, files, and other
18 information and documents of the commission; and
- 19 (7) Advise the commission and recommend matters as are
20 necessary and advisable to improve the operation and
21 administration of the commission.



1 § -5 Access to records by oversight coordinator and
2 commission. The department of public safety shall provide full
3 access to all information requested by the oversight coordinator
4 and commission.

5 § -6 Monthly reports; annual reports. (a) The
6 oversight coordinator shall submit a monthly report to the
7 commission, the governor, and the legislature. The monthly
8 report shall include actions taken by the commission and
9 expenses for the preceding month.

10 (b) The commission shall submit an annual report to the
11 governor and the legislature no less than twenty days before the
12 convening of each regular session. The annual report shall
13 include a full and complete statement of actions taken by the
14 commission for the preceding years, and recommendations,
15 including any proposed legislation, that the commission deems
16 necessary or desirable.

17 § -7 Studies and investigations; procedures. (a) The
18 oversight coordinator shall conduct an ongoing study and
19 investigation of the correctional system for the following
20 purposes:



1 (1) To ascertain any provisions in this chapter or rules
2 adopted pursuant to this chapter through which any
3 abuses in the administration and operation of the
4 correctional system or any evasion of this chapter or
5 its rules may arise or be practiced;

6 (2) To formulate recommendations for changes to this
7 chapter; and

8 (3) To ensure that this chapter and rules adopted pursuant
9 to this chapter are formalized and are administered to
10 serve the true purposes of this chapter.

11 (b) The oversight coordinator shall conduct an ongoing
12 study and investigation of the operation and the administration
13 of correctional system laws in effect in other states or
14 countries, any literature on the subject that may be published
15 or available, any federal laws that may affect the operation of
16 the correctional system, and the reaction of residents to
17 existing and potential features of the correctional system in
18 order to recommend or effect changes that will tend to serve the
19 purposes of this chapter.

20 (c) In an investigation, the oversight coordinator may
21 make inquiries and obtain information as the oversight



1 coordinator thinks fit, enter without notice to inspect the
2 premises of an agency or correctional facility, and hold private
3 hearings in accordance with chapter 91.

4 (d) The oversight coordinator shall be required to
5 maintain confidentiality in respect to all matters and the
6 identities of the complainants or witnesses coming before the
7 oversight coordinator except so far as disclosures may be
8 necessary to enable the oversight coordinator to carry out the
9 oversight coordinator's duties and to support the oversight
10 coordinator's recommendations."

11 SECTION 3. Act 24, Special Session Laws of Hawaii 2009, as
12 amended by section 4 of Act 76, Session Laws of Hawaii 2012, as
13 amended by section 1 of Act 66, Session Laws of Hawaii 2013, as
14 amended by section 1 of Act 15, Session Laws of Hawaii 2015, is
15 amended by amending section 3, subsection (d) to read as
16 follows:

17 "(d) The commission shall cease to exist on [~~December 1,~~
18 ~~2019-~~] January 1, 2020."

19 SECTION 4. Chapter 353F, Hawaii Revised Statutes, is
20 repealed.



1 SECTION 5. The chairpersons of the reentry commission and
2 corrections population management commission and the oversight
3 coordinator shall create a plan to ensure a smooth transition
4 for the consolidation of commissions and the transfer of all
5 rights, powers, functions, and duties prior to the repeal of the
6 reentry commission and corrections population management
7 commission on January 1, 2020.

8 SECTION 6. All rights, powers, functions, and duties of
9 the reentry commission are transferred to the Hawaii
10 correctional system oversight commission.

11 SECTION 7. All appropriations, records, equipment,
12 machines, files, supplies, contracts, books, papers, documents,
13 maps, and other personal property heretofore made, used,
14 acquired, or held by the reentry commission relating to the
15 functions transferred to the Hawaii correctional system
16 oversight commission shall be transferred with the functions to
17 which they relate.

18 SECTION 8. All rights, powers, functions, and duties of
19 the corrections population management commission are transferred
20 to the Hawaii correctional system oversight commission.



1 SECTION 9. All appropriations, records, equipment,
2 machines, files, supplies, contracts, books, papers, documents,
3 maps, and other personal property heretofore made, used,
4 acquired, or held by the corrections population management
5 commission relating to the functions transferred to the Hawaii
6 correctional system oversight commission shall be transferred
7 with the functions to which they relate.

8 SECTION 10. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$158,946 or so much
10 thereof as may be necessary for fiscal year 2019-2020 and
11 \$330,000 or so much thereof as may be necessary for fiscal year
12 2020-2021 for the operations of the Hawaii correctional system
13 oversight commission.

14 The sums appropriated shall be expended by the department
15 of the attorney general for the purposes of this part.

16 PART II

17 SECTION 11. (a) The legislature finds that House
18 Concurrent Resolution No. 134, House Draft 1 (2017), requested
19 the judiciary to convene a criminal pretrial task force to:

- 20 (1) Examine and, as needed, recommend legislation and
21 revisions to criminal pretrial practices and



1 procedures to increase public safety while maximizing
2 pretrial release of those who do not pose a danger or
3 a flight risk; and

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

8 Accordingly, the judiciary convened a criminal pretrial
9 task force that consisted of twenty-nine members from various
10 agencies and organizations with a broad spectrum of knowledge
11 and experience. The task force membership included judges from
12 circuit and district courts; the chair of the senate committee
13 on public safety, intergovernmental, and military affairs; the
14 chair of the house of representatives committee on judiciary;
15 court administrator representatives from each circuit court; a
16 representative from the department of the attorney general; a
17 representative from the department of health; a representative
18 from the department of public safety; a representative of the
19 office of Hawaiian affairs; the police chiefs of the counties of
20 Hawaii, Kauai, Maui, and the city and county of Honolulu; the
21 prosecuting attorneys for the counties of Hawaii, Kauai, and



1 Maui; a representative of the prosecuting attorney for the city
2 and county of Honolulu; a representative of the office of the
3 public defender; representatives of the criminal defense bar
4 from each of the four counties; and a member of the public. Six
5 subcommittees were formed, and each subcommittee met or
6 otherwise exchanged information numerous times to facilitate the
7 work of the task force. The task force met in plenary session a
8 total of twelve times between August 11, 2017, and July 6, 2018.
9 The task force submitted its report to the legislature on
10 December 14, 2018. The report contains twenty-five
11 recommendations, some of which were accompanied by proposed
12 legislation that was authored by the task force.

13 (b) The purpose of parts III through IX of this Act is to
14 implement the recommendations of the criminal pretrial task
15 force as follows:

16 (1) Parts III and IV of this Act implement recommendations
17 of the task force that were accompanied by proposed
18 legislation authored by the task force, with
19 amendments; and

20 (2) Parts V through IX of this Act implement
21 recommendations of the task force for which no



1 proposed legislation was provided; however, these
2 parts incorporate much of the substantive language
3 contained in the task force's recommendations.

4 PART III

5 SECTION 12. The purpose of this part is to improve clarity
6 and consistency in the criminal pretrial system by requiring
7 that intake service centers:

- 8 (1) Conduct pretrial risk assessments and prepare bail
9 reports within three working days of the offender's
10 admission to a community correctional center;
- 11 (2) Inquire and report on the offender's financial
12 circumstances;
- 13 (3) Evaluate the offender's risk of violence;
- 14 (4) Include the fully executed pretrial risk assessment as
15 part of the bail report; and
- 16 (5) Periodically review and further validate the pretrial
17 risk assessment tool at least every five years to
18 evaluate the effectiveness of the tool and the
19 procedures associated with its administration, and
20 publicly report the findings of periodic reviews.



SECTION 13. Section 353-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Conduct internal pretrial risk assessments on adult offenders within three working days of admission to a community correctional center ~~[which shall then be provided to the court for its consideration]~~; provided that this paragraph shall not apply to persons subject to county or state detainers~~[,]~~ or holds, ~~[or]~~ persons detained without bail, persons detained for probation violation, persons facing revocation of bail or supervised release, and persons who have had a pretrial risk assessment completed prior to admission to a community correctional center. For purposes of this ~~[t]~~paragraph~~[t]~~, "pretrial risk assessment" means an objective, research-based, validated assessment tool that measures ~~[a defendant's]~~ an offender's risk of flight, ~~[and]~~ risk of criminal conduct, and risk of



1 violence or harm to any person or the general public
2 while on pretrial release pending adjudication[+].

3 The pretrial risk assessment tool and procedures
4 associated with its administration shall be
5 periodically reviewed and subject to further
6 validation at least every five years to evaluate the
7 effectiveness of the tool and the procedures
8 associated with its administration. The findings of
9 periodic reviews shall be publicly reported;

10 (4) Provide correctional prescription program planning and
11 security classification;

12 (5) Provide other personal and correctional services as
13 needed for both detained and committed persons;

14 (6) Monitor and record the progress of persons assigned to
15 correctional facilities who undergo further treatment
16 or who participate in prescribed correctional
17 programs;

18 (7) Provide continuing supervision and control of persons
19 ordered to be placed on pretrial supervision by the
20 court and persons ordered by the director; [and]



1 (8) Make inquiry with the offender concerning the
2 offender's financial circumstances and include this
3 information in the bail report; provided that the
4 department of public safety's pretrial services
5 officers shall be provided limited access for the
6 purpose of viewing other state agencies' relevant data
7 related to an offender's employment wages and taxes;

8 ~~[-(8)-]~~ (9) Provide pretrial bail reports to the courts on
9 adult offenders, within three working days of
10 admission of the offender to a community correctional
11 center, that are ~~[consented to by the defendant or~~
12 ~~that are]~~ ordered by the court~~[-]~~ or consented to by
13 the offender. A complete copy of the executed
14 pretrial risk assessment delineating the scored items,
15 the total score, any administrative scoring overrides
16 applied, and written explanations for administrative
17 scoring overrides, shall be included in the pretrial
18 bail report. The pretrial bail reports shall be
19 confidential and shall not be deemed to be public
20 records. A copy of a pretrial bail report shall be
21 provided only:



- 1 (A) To the defendant or defendant's counsel;
2 (B) To the prosecuting attorney;
3 (C) To the department of public safety;
4 (D) To any psychiatrist, psychologist, or other
5 treatment practitioner who is treating the
6 defendant pursuant to a court order;
7 (E) Upon request, to the adult client services
8 branch; and
9 (F) In accordance with applicable laws, persons, or
10 entities doing research. The research entity
11 must be approved and contracted by the department
12 of public safety to protect the confidentiality
13 of the information, insofar as the information is
14 not a public record."

PART IV

16 SECTION 14. The purpose of this part is to amend chapter
17 804, Hawaii Revised Statutes, to:

- 18 (1) Require a prompt bail hearing that occurs at the time
19 of the defendant's arraignment, or as soon as
20 practicable;



(2) Require the release of a defendant under the least restrictive conditions required to ensure:

(A) The defendant's appearance; and

(B) The protection of the public;

(3) Require monetary bail to be set in reasonable amounts based on all available information, including information concerning the defendant's financial circumstances; and

(4) Establish a statewide program that permits the posting of monetary bail twenty-four hours a day, seven days a week for defendants for whom a monetary amount of bail has been set by the police, other law enforcement agency, or the court. For defendants in the custody of the department of public safety, the judiciary shall contract with a single vendor to post bail seven days a week.

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

"§804- Right to a prompt hearing; release or detention.

(a) For the purposes of this section, "prompt hearing" means a



1 hearing that occurs at the time of the defendant's arraignment,
2 or as soon as practicable.

3 (b) Upon formal charge and detention, a defendant shall
4 have the right to a prompt hearing concerning:

5 (1) Release or detention; and

6 (2) Whether any condition or combination of conditions
7 will reasonably ensure:

8 (A) The defendant's appearance as required; and

9 (B) The safety of any other person and the community.

10 (c) At the hearing, the defendant shall have the right to
11 be represented by counsel and, if financially unable to obtain
12 representation, to have counsel appointed. The defendant shall
13 be afforded an opportunity to testify at the hearing. The
14 defendant and the prosecution shall both be afforded an
15 opportunity to present information by proffer or otherwise.

16 (d) The rules concerning the admissibility of evidence in
17 criminal trials shall not apply to the presentation and
18 consideration of information at the hearing.

19 (e) The defendant may be detained pending completion of
20 the hearing."



1 SECTION 16. Section 804-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§804-4 When a matter of right.** (a) If the charge is for
4 an offense for which bail is allowable under section 804-3, the
5 defendant may be admitted to bail before conviction as a matter
6 of right[-] and under the least restrictive conditions required
7 to ensure the defendant's appearance and to protect the public.

8 Except for section 712-1207(7), bail shall be allowed for any
9 person charged under section 712-1207 only subject to the
10 mandatory condition that the person observe geographic
11 restrictions that prohibit the defendant from entering or
12 remaining on public property, in Waikiki and other areas in the
13 State designated by county ordinance during the hours from 6
14 p.m. to 6 a.m.; and provided further that nothing contained in
15 this subsection shall be construed as prohibiting the imposition
16 of stricter geographic restrictions under section 804-7.1. The
17 right to bail shall continue after conviction of a misdemeanor,
18 petty misdemeanor, or violation, and release on bail may
19 continue, in the discretion of the court, after conviction of a
20 felony until the final determination of any motion for a new
21 trial, appeal, habeas corpus, or other proceedings that are



1 made, taken, issued, or allowed for the purpose of securing a
2 review of the rulings, verdict, judgment, sentence, or other
3 proceedings of any court or jury in or by which the defendant
4 has been arraigned, tried, convicted, or sentenced; provided
5 that:

6 (1) No bail shall be allowed after conviction and prior to
7 sentencing in cases where bail was not available under
8 section 804-3, or where bail was denied or revoked
9 before conviction;

10 (2) No bail shall be allowed pending appeal of a felony
11 conviction where a sentence of imprisonment has been
12 imposed; and

13 (3) No bail shall be allowed pending appeal of a
14 conviction for a violation of section 712-1207, unless
15 the court finds, based on the defendant's record, that
16 the defendant may be admitted to bail subject to the
17 mandatory condition that the person observe geographic
18 restrictions that prohibit the defendant from entering
19 or walking along the public streets or sidewalks of
20 Waikiki or other areas in the State designated by



1 county ordinance pursuant to section 712-1207 during
2 the hours from 6 p.m. to 6 a.m.

3 Notwithstanding any other provision of law to the contrary, any
4 person who violates these bail restrictions shall have the
5 person's bail revoked after hearing and shall be imprisoned
6 forthwith.

7 (b) The court shall order that a person who has been found
8 guilty of an offense and sentenced to a term of imprisonment,
9 and who has filed an appeal or a petition for a writ of
10 certiorari, be detained, unless the court finds:

11 (1) By clear and convincing evidence that the person is
12 not likely to flee or pose a danger to the safety of
13 any other person or the community if released; and

14 (2) That the appeal is not for purpose of delay and raises
15 a substantial question of law or fact likely to result
16 in reversal or an order for a new trial.

17 If the court makes these findings, the court shall order the
18 release of the person in accordance with section 804-7.1[-]
19 under the least restrictive conditions required to ensure the
20 defendant's appearance and to protect the public. No defendant
21 entitled to bail, whether bailed or not, shall be subject,



1 without the defendant's written consent, to the operation of any
2 sentence passed upon the defendant, while any proceedings to
3 procure a review of any action of the trial court or jury in the
4 premises are pending and undetermined, except as provided in
5 section 641-14(a) or section 712-1207."

6 SECTION 17. Section 804-5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§804-5 By whom allowed. In cases where the punishment
9 for the offense charged may be imprisonment for life not subject
10 to parole, or imprisonment for a term more than ten years with
11 or without fine, a judge or justice of a court of record,
12 including a district judge, shall be competent to admit the
13 accused to bail, in conformity with sections 804-3 to 804-6. In
14 all other cases, the accused may be so admitted to bail by any
15 judge or justice of a court of record, including a district
16 judge, and in cases, except under section 712-1207, where the
17 punishment for the offense charged may not exceed two years'
18 imprisonment with or without fine, the sheriff, the sheriff's
19 deputy, the chief of police or any person named by the chief of
20 police, or the sheriff of Kalawao, regardless of the circuit
21 within which the alleged offense was committed, may admit the



1 accused person to bail. The court shall impose conditions of
2 release or bail that are the least restrictive conditions
3 required to ensure the accused's appearance and to protect the
4 public."

5 SECTION 18. Section 804-7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§804-7 Release after bail.** ~~[When bail is offered and~~
8 ~~taken the prisoner shall be discharged from custody or~~
9 ~~imprisonment.]~~ The judiciary, in consultation with the
10 department of public safety and the department of the attorney
11 general, shall establish and administer a statewide program that
12 permits the posting of monetary bail seven-days-a-week for
13 defendants who remain in the custody of the director of public
14 safety. This program shall be made available to any defendant
15 for whom a monetary amount of bail has been set by the police,
16 other law enforcement agency, or the court. The judiciary may
17 contract with a single vendor to administer the program. The
18 vendor may charge users of the program a service fee. Upon
19 posting of bail, the defendant shall be released from custody
20 forthwith."



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

3 "**§804-7.1 Conditions of release on bail, recognizance, or**
4 **supervised release.** Upon a showing that there exists a danger
5 that the defendant will commit a serious crime or will seek to
6 intimidate witnesses, or will otherwise unlawfully interfere
7 with the orderly administration of justice, the judicial officer
8 named in section 804-5 may deny the defendant's release on bail,
9 recognizance, or supervised release.

10 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



activities, or indulging in intoxicating liquors or
certain drugs;

(4) Requiring the defendant to report regularly to and
remain under the supervision of an officer of the
court;

(5) Requiring the defendant to maintain employment, or, if
unemployed, to actively seek employment, or attend an
educational or vocational institution;

(6) Requiring the defendant to comply with a specified
curfew;

(7) Requiring the defendant to seek and maintain mental
health treatment or testing, including treatment for
drug or alcohol dependency, or to remain in a
specified institution for that purpose;

(8) Requiring the defendant to remain in the jurisdiction
of the judicial circuit in which the charges are
pending unless approval is obtained from a court of
competent jurisdiction to leave the jurisdiction of
the court;

(9) Requiring the defendant to satisfy any other condition
reasonably necessary to [~~assure~~] ensure the appearance



1 of the ~~[person]~~ defendant as required and to ~~[assure]~~
2 ensure the safety of any other person or community; or
3 (10) Imposing any combination of conditions listed
4 above~~[-]~~;
5 provided that the court shall impose the least restrictive non-
6 financial conditions required to ensure the defendant's
7 appearance and to protect the public.

8 The judicial officer may revoke a defendant's bail upon
9 proof that the defendant has breached any of the conditions
10 imposed."

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

13 "**§804-9 Amount.** The amount of bail rests in the
14 discretion of the justice or judge or the officers named in
15 section 804-5~~[- but]~~ and shall be set in a reasonable amount
16 based upon all available information, including the offense
17 alleged, the possible punishment upon conviction, and the
18 defendant's financial ability to afford bail. The bail amount
19 should be so determined as not to suffer the wealthy to escape
20 by the payment of a pecuniary penalty, nor to render the
21 privilege useless to the poor. ~~[In all cases, the officer~~



~~letting to bail should consider the punishment to be inflicted
on conviction, and the pecuniary circumstances of the party
accused.] "~~

PART V

SECTION 21. The purpose of this part is to afford pretrial detainees greater and continuing opportunities to be released by:

- (1) Requiring the relevant community correctional centers to conduct regular reviews and surveys of the jail population to identify pretrial defendants who may be appropriate for pretrial release or supervision; and
- (2) Providing the results of these reviews to the courts who may then consider modifying the previously issued bail order.

SECTION 22. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§353- Community correctional centers; periodic reviews of pretrial detainees. (a) The relevant community correctional centers, on a periodic basis but no less frequently than every three months, shall conduct reviews of pretrial detainees to



1 reassess whether a detainee should remain in custody or whether
2 new information or a change in circumstances warrants
3 reconsideration of a detainee's pretrial release or supervision.

4 (b) For each review conducted pursuant to subsection (a),
5 the relevant community correctional center shall transmit its
6 findings and recommendations by correspondence or electronically
7 to the appropriate court, prosecuting attorney, and defense
8 counsel.

9 (c) If a motion to modify bail is filed pursuant to a
10 recommendation made pursuant to subsection (b), a hearing shall
11 be scheduled at which the court shall consider the motion."

12 PART VI

13 SECTION 23. The purpose of this part is as follows:

- 14 (1) Under the office of the chief justice, create a
15 permanently funded criminal justice research institute
16 that is dedicated to examining all aspects of the
17 criminal justice system;
- 18 (2) Appropriate funds for the establishment and staffing
19 of the criminal justice research institute, including
20 the hiring of necessary staff and for the securing of
21 any necessary facilities or equipment; and



(3) Create a centralized statewide criminal pretrial justice data reporting and collection system.

SECTION 24. The Hawaii Revised Statutes is amended by adding a new chapter to title 32 to be appropriately designated and to read as follows:

"CHAPTER

CRIMINAL JUSTICE RESEARCH INSTITUTE

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

"Board" means the board of directors of the criminal justice research institute.

"Institute" means the criminal justice research institute.

§ -2 **Establishment of the criminal justice research institute.** (a) There is established within the office of the chief justice a criminal justice research institute dedicated to examining all aspects of the criminal justice system, for the purpose of assisting the State in understanding the system in a more comprehensive way and ensuring the protection of individual rights, increasing efficiencies, and controlling costs. The institute shall have the authority to examine all areas of the criminal justice system, including police, prosecutors, defense



1 counsel, courts, pretrial services, probation and parole, jails,
2 and prisons, as well as examine the manner in which related
3 areas, including mental health services and drug treatment
4 services, intersect with the criminal justice system.

5 (b) The institute's duties and functions shall include:

6 (1) Collecting data to monitor the overall functioning of
7 the criminal justice system;

8 (2) Monitoring evidence-based practices and reporting on
9 the effectiveness of practices and policies
10 implemented as a result of the recommendations of the
11 criminal pretrial task force established by House
12 Concurrent Resolution No. 134, House Draft 1 (2017);

13 (3) Conducting cost-benefit analysis on various areas of
14 operation;

15 (4) Monitoring national trends in criminal justice; and

16 (5) Issuing public reports to inform all criminal justice
17 stakeholders and the public about the functioning of
18 the criminal justice system.

19 (c) The institute shall be overseen by a board of
20 directors, which shall consist of the chief justice, or the
21 chief justice's designee, a representative of the office of the



1 governor, an appointee of the senate president and an appointee
2 of the speaker of the house, and the director of public safety.
3 The board of directors shall be chaired by the chief justice, or
4 the chief justice's designee.

5 (d) The chief justice shall appoint as director of the
6 institute a researcher with a doctoral degree and experience in
7 the criminal justice field. The director shall hire staff
8 necessary to accomplish the purposes of this chapter, including
9 a minimum of two assistant researchers and one clerical
10 assistant. The institute may seek the assistance of the
11 University of Hawaii or another appropriate entity when
12 conducting large or complex research projects that require more
13 staff.

14 (e) Employees of the institute shall be exempt from
15 chapter 76 and shall not be considered civil service employees,
16 but shall be entitled to any employee benefit plan normally
17 inuring to civil service employees.

18 (f) The board of directors shall meet with the director
19 not less than once each quarter to receive reports from the
20 director and make recommendations and set policy. The initial



1 report shall include suggestions, if any, for additional duties
2 and functions of the institute.

3 § -3 Centralized statewide criminal pretrial justice
4 data reporting and collection system. (a) The institute shall
5 establish and maintain a centralized statewide criminal pretrial
6 justice data reporting and collection system.

7 (b) In establishing the system, the institute shall take
8 all necessary and appropriate steps, including:

9 (1) Identifying all current databases utilized by various
10 state agencies to track criminal pretrial information;

11 (2) Determining the administrative and technological
12 feasibility of aggregating and sharing current data;
13 and

14 (3) Identifying critical gaps in data and information
15 collection that are required for a robust assessment
16 of criminal pretrial justice matters, which may
17 include information relating to:

18 (A) Arrests;

19 (B) Monetary and non-monetary conditions of release;

20 (C) Bail amounts;

21 (D) Risk assessments;



- 1 (E) Risk assessment scores;
- 2 (F) Bail report recommendations;
- 3 (G) Information gathered in risk assessments or bail
- 4 reports;
- 5 (H) Bail hearings;
- 6 (I) Judicial decisions to release and conditions
- 7 imposed on release;
- 8 (J) Judicial decisions to detain;
- 9 (K) Concordance between the bail report
- 10 recommendation and decision, length of stay, and
- 11 pretrial supervision; and
- 12 (L) The degree to which a defendant's assessed risk
- 13 correlates with the defendant's actual risk,
- 14 including an assessment of whether the defendant
- 15 appears in court, commits other crimes, or
- 16 engages in violent conduct when released from
- 17 custody.

18 (c) The institute shall develop and track performance

19 indicators that accurately reflect the effectiveness of the

20 State's criminal pretrial system. Performance indicators may

21 include but shall not be limited to:



- 1 (1) The percentage of supervised defendants who make all
- 2 scheduled court appearances;
- 3 (2) The percentage of supervised defendants who are not
- 4 charged with a new offense during the pretrial stage;
- 5 (3) The ratio of defendants whose supervision level or
- 6 detention status corresponds with each respective
- 7 defendant's assessed risk of pretrial misconduct;
- 8 (4) The percentage of released defendants who:
- 9 (A) Do not have their release revoked for technical
- 10 violations of the conditions of their release;
- 11 (B) Appear for all scheduled court appearances; and
- 12 (C) Are not charged with a new offense during
- 13 pretrial supervision;
- 14 (5) The average length of stay in jail for pretrial
- 15 detainees who are eligible by statute for pretrial
- 16 release;
- 17 (6) The percentage of defendants who remain arrest-free
- 18 during the pretrial release period; and
- 19 (7) The percentage of defendants who remain on release at
- 20 the conclusion of their pretrial period without a



1 pending request for removal or revocation due to non-
2 compliance.

3 (d) The institute shall compile an annual report that
4 reviews and analyzes data from the system to evaluate the
5 effectiveness of the State's criminal pretrial system and
6 identify possible improvements. The institute shall submit the
7 report, including any proposed legislation, to the legislature
8 no later than twenty days prior to the convening of each regular
9 session.

10 (e) As used in this section, unless the context otherwise
11 requires, "system" means the centralized statewide criminal
12 pretrial justice data reporting and collection system
13 established by this section."

14 SECTION 25. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$181,388 or so much
16 thereof as may be necessary for fiscal year 2019-2020 and
17 \$314,376 or so much thereof as may be necessary for fiscal year
18 2020-2021 for the establishment and staffing of the criminal
19 justice research institute pursuant to this part, including the
20 hiring of one full-time equivalent (1.0 FTE) director, two full-
21 time equivalent (2.0 FTE) assistant researchers, and one full-



1 time equivalent (1.0 FTE) clerical assistant, and for any
2 necessary facilities and equipment.

3 The sums appropriated shall be expended by the judiciary
4 for the purposes this part.

5 PART VII

6 SECTION 26. The purpose of this part is to implement and
7 expand alternatives to pretrial detention by:

- 8 (1) Expressly including electronic monitoring and home
9 detention as alternatives to incarceration in chapter
10 804, Hawaii Revised Statutes; and
- 11 (2) Requiring the judiciary, in consultation with the
12 department of public safety, to develop and adopt a
13 policy for courts to use when assessing whether a
14 defendant's risk of non-appearance or recidivism may
15 be mitigated by home detention or electronic
16 monitoring.

17 SECTION 27. Section 804-7.1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§804-7.1 Conditions of release on bail, recognizance, or**
20 **supervised release.** Upon a showing that there exists a danger
21 that the defendant will commit a serious crime or will seek to



1 intimidate witnesses, or will otherwise unlawfully interfere
2 with the orderly administration of justice, the judicial officer
3 named in section 804-5 may deny the defendant's release on bail,
4 recognizance, or supervised release.

5 Upon the defendant's release on bail, recognizance, or
6 supervised release, however, the court may enter an order:

- 7 (1) Prohibiting the defendant from approaching or
8 communicating with particular persons or classes of
9 persons, except that no such order should be deemed to
10 prohibit any lawful and ethical activity of
11 defendant's counsel;
- 12 (2) Prohibiting the defendant from going to certain
13 described geographical areas or premises;
- 14 (3) Prohibiting the defendant from possessing any
15 dangerous weapon, engaging in certain described
16 activities, or indulging in intoxicating liquors or
17 certain drugs;
- 18 (4) Requiring the defendant to report regularly to and
19 remain under the supervision of an officer of the
20 court;



1 (5) Requiring the defendant to maintain employment, or, if
2 unemployed, to actively seek employment, or attend an
3 educational or vocational institution;

4 (6) Requiring the defendant to comply with a specified
5 curfew;

6 (7) Requiring the defendant to seek and maintain mental
7 health treatment or testing, including treatment for
8 drug or alcohol dependency, or to remain in a
9 specified institution for that purpose;

10 (8) Requiring the defendant to remain in the jurisdiction
11 of the judicial circuit in which the charges are
12 pending unless approval is obtained from a court of
13 competent jurisdiction to leave the jurisdiction of
14 the court;

15 (9) Requiring the defendant to submit to the use of
16 electronic monitoring and surveillance;

17 (10) Requiring the confinement of the defendant in the
18 defendant's residence;

19 ~~[(9)]~~ (11) Requiring the defendant to satisfy any other
20 condition reasonably necessary to assure the



1 appearance of the person as required and to assure the
2 safety of any other person or community; or
3 ~~[-(10)]~~ (12) Imposing any combination of conditions listed
4 above.

5 The judicial officer may revoke a defendant's bail upon
6 proof that the defendant has breached any of the conditions
7 imposed."

8 SECTION 28. The judiciary, in consultation with the
9 department of public safety, shall develop and adopt a policy
10 for courts to use when assessing whether a defendant's risk of
11 non-appearance or recidivism may be mitigated by home detention
12 or electronic monitoring. The policy shall include:

13 (1) Specific criteria for the court to consider when
14 making this decision; and

15 (2) A requirement for a court to provide specific findings
16 explaining the court's determination that home
17 detention or electronic monitoring is not appropriate
18 for a defendant.

19 PART VIII

20 SECTION 29. The purpose of this part is to integrate
21 victims' rights into the criminal pretrial system by requiring



1 that intake service centers consider victims' concerns when
2 making pretrial release recommendations.

3 SECTION 30. (a) No later than December 31, 2020, and in
4 accordance with section 353-10(b)(3), Hawaii Revised Statutes,
5 the department of public safety shall revise the pretrial risk
6 assessment processes currently used by its intake service
7 centers with respect to offenses committed against persons,
8 including offenses involving domestic violence and violation of
9 restraining orders and protective orders, to ensure integration
10 of victims' rights into the criminal pretrial system by
11 requiring consideration of the following factors in making
12 pretrial release recommendations:

- 13 (1) Whether the defendant has a history of involvement
14 with the victim of the offense, including any prior
15 police contact that involved both the victim and the
16 defendant, and the status of the relationship between
17 the victim and the defendant, if any;
- 18 (2) Whether the defendant has any prior criminal history;
- 19 (3) Whether there is a risk that the defendant will re-
20 victimize, stalk, or otherwise harm the victim; and



1 (4) Any concerns raised by the victim with respect to the
2 defendant's potential release from custody.

3 (b) The department shall submit a report to the
4 legislature, no later than twenty days prior to the convening of
5 the regular session of 2021, on the progress made in revising
6 the pretrial risk assessment processes, as required by
7 subsection (a).

8 PART IX

9 SECTION 31. The purpose of this part is to appropriate
10 moneys to the department of public safety to provide intake
11 service centers with necessary funding, personnel, training,
12 facilities, access, information, and technical support to meet
13 current and projected future responsibilities in conducting
14 timely risk assessments, efficiently disseminating bail reports,
15 and supervising pretrial defendants.

16 SECTION 32. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$305,138 or so much
18 thereof as may be necessary for fiscal year 2019-2020 and
19 \$502,476 or so much thereof as may be necessary for fiscal year
20 2020-2021 for necessary personnel, training, facilities, access,
21 information, and technical support for intake service centers to



1 meet current and projected responsibilities in conducting timely
2 risk assessments, efficiently disseminating bail reports, and
3 supervising pretrial defendants.

4 The sums appropriated shall be expended by the department
5 of public safety for the purposes of this part.

6 PART X

7 SECTION 33. This Act does not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun before its effective date.

10 SECTION 34. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 35. This Act shall take effect upon its approval;
13 provided that:

- 14 (1) Section 3 shall take effect on November 30, 2019;
15 (2) Section 4 shall take effect on January 1, 2020;
16 (3) Section 10 shall take effect on July 1, 2019;
17 (4) Parts II through VIII shall take effect on January 1,
18 2020; provided further that section 25 of part VI
19 shall take effect on July 1, 2019; and
20 (5) Part IX shall take effect on July 1, 2019.



Report Title:

Hawaii Correctional System Oversight Commission; Oversight Coordinator; Reentry Commission; Corrections Population Management Commission; Criminal Pretrial Reform; Criminal Pretrial Practices and Procedures; Criminal Pretrial Task Force

Description:

Part I: Establishes the Hawaii Correctional System Oversight Commission. Creates a position for an Oversight Coordinator for the Commission. Extends the sunset date of the Reentry Commission to 1/1/2020. Repeals the Reentry Commission and Corrections Population Management Commission on 1/1/2020 and transfers all rights, powers, functions, and duties of those commissions to the Hawaii Correctional System Oversight Commission. Parts II through IX: Implements certain recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. (HB1552 CD1)

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