

RE: S.B. No. 1244
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii
Sir:

Your Committee on Public Safety, Intergovernmental, and Military Affairs, to which was referred S.B. No. 1244 entitled:
"A BILL FOR AN ACT RELATING TO THE MODERNIZATION OF CRIMINAL JUSTICE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

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

(2) Create a rebuttable presumption regarding both release and detention for certain offenses and specify circumstances in which these presumptions apply; and

(3) Require the Judicial Council to appoint a committee to review and recommend changes to the Hawaii Penal Code.

Your Committee received testimony in support of this measure from the Hawai'i Correctional System Oversight Commission, Office of the Public Defender, Office of the Prosecuting Attorney of Kaua'i County, Community Alliance on Prisons, Imua Alliance, and three individuals. Your Committee received testimony in opposition to this measure from the Department of the Attorney General, Department of the Prosecuting Attorney of the City and County of Honolulu, and Retail Merchants of Hawaii. Your Committee received comments on this measure from the Legislative Reference Bureau and Hawaii Disability Rights Center.

Your Committee finds that there is an urgent need to comprehensively reform and modernize the State's criminal justice system. Though there have been valiant efforts during the last decade to reform the criminal justice system, these reforms have not been thorough enough to end the State's practice of mass incarceration. Your Committee further finds that in order to adequately address jail and prison overcrowding and ensure that the State's criminal justice system is effectively rehabilitating inmates, the State must also examine other aspects of the criminal justice system beyond pretrial procedures. This measure will require a committee to scrutinize the Hawaii Penal Code in a full and deliberative manner to ensure that the Code remains effective in achieving the objectives of the State's criminal justice system.

Your Committee has amended this measure by:

(1) Removing language that would have eliminated the use of monetary bail, with certain exceptions, and required defendants to be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor offenses, and non-violent misdemeanor offenses;

(2) Removing language that would have created a rebuttable presumption regarding both release and detention for certain offenses and specified circumstances in which these presumptions would apply;

(3) Restoring statutory language that requires any person charged with a criminal offense shall be bailable by sufficient sureties;

(4) Specifying that the court is to determine whether bail may be denied where the charge is for a serious crime;

(5) Clarifying that a rebuttable assumption arises that a person poses a serious danger to any person or community or will engage in illegal activity where the court determines that the defendant is pending trial or sentencing for a felony charge or the defendant is on probation or parole for a felony charge;

(6) Inserting an effective date of July 1, 2025, to encourage further discussion;

(7) Amending section 1 to reflect its amended purpose; and

(8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that this measure should be amended to specify that the request to draft proposed legislation by the Legislative Reference Bureau to effectuate the purposes of this measure be submitted to the Bureau no later than

September 1, 2021.

As affirmed by the record of votes of the members of your Committee on Public Safety, Intergovernmental, and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1244, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1244, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on behalf of the members of the Committee on Public Safety, Intergovernmental, and Military Affairs,

CLARENCE K. NISHIHARA, Chair