

JAN 21 2022

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# A BILL FOR AN ACT

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RELATING TO PAROLE.

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

1       SECTION 1. The legislature finds that current state laws  
2 relating to certain violations of community supervision are  
3 resulting in unnecessary, counterproductive, skyrocketing rates  
4 of incarceration and severe overcrowding in local jails and  
5 prisons. Based on the Final Report of the House Concurrent  
6 Resolution No. 85 Task Force on Prison Reform, which was  
7 submitted to the legislature before the 2019 regular session,  
8 the incarcerated population is increasing at a much faster rate  
9 than the State's general population. From 1978 to 2016, the  
10 State's overall population increased by fifty-three per cent,  
11 while the State's combined jail and prison population increased  
12 by six hundred seventy per cent. In 2018, more than twenty-  
13 eight thousand Hawaii residents were incarcerated or under some  
14 form of probation, parole, or other form of community  
15 supervision. According to States of Incarceration: The Global  
16 Context 2021, a report of the Prison Policy Initiative, Hawaii  
17 has four hundred thirty-nine incarcerated persons for every one



1 hundred thousand overall persons, or an incarcerated population  
2 at 0.439 per cent of the overall population, which is higher  
3 than in the Philippines (0.200 per cent), South Africa (0.248  
4 per cent), Vermont (0.288 per cent), Russia (0.329 per cent),  
5 Turkey (0.332 per cent) and New York (0.376 per cent).

6 The legislature also finds that based on weekly population  
7 reports, typically one-fourth of all jail and prison admissions  
8 in Hawaii are the result of probation or parole technical  
9 violations, which are violations of the terms of legal  
10 supervision, other than the commission of certain crimes.

11 Technical violations include: missing an appointment with a  
12 parole officer; working at a job during times that extended past  
13 curfew; using alcohol or drugs; failing to report a change in  
14 address; or associating with another person under legal  
15 supervision, even if that other person had no involvement in the  
16 defendant's crime. According to Confined and Costly: How  
17 Supervision Violations are Filling Prisons and Burdening  
18 Budgets, June 2019, a report of the Council of State Governments  
19 Justice Center, in 2017 fifty-three per cent of all prison  
20 admissions in the State were the result of technical violations.  
21 According to the Hawaii paroling authority's 2020 Annual



1 Statistical Report for fiscal year 2020, three hundred  
2 twenty-one of the three hundred ninety-four parole revocation  
3 hearings held resulted in the revocation of parole and the  
4 parolee's return to prison. Significantly, all of the three  
5 hundred twenty-one reincarcerated persons had committed  
6 technical violations of parole, meaning none of the violations  
7 were the result of new felony convictions.

8 The legislature further finds that the foregoing practices  
9 have unequal impacts. Native Hawaiians, Pacific Islanders,  
10 Black people, and poor people are disproportionately  
11 overrepresented at every stage of the criminal justice system,  
12 including the overcrowded jails and prisons. Research shows  
13 that incarceration interferes with employment, housing, health  
14 care, child custody, and other life opportunities, and results  
15 in negative impacts to families and communities.

16 The legislature also finds that incarceration for technical  
17 violations of parole is expensive. The State currently spends  
18 \$219 per day, or \$79,935 per year, to incarcerate just one  
19 person. Research shows that, in contrast, community-based  
20 services are a fraction of the cost of incarceration. Research  
21 also shows that investment in access to employment; housing;



1 social services; and voluntary, community-based substance use  
2 treatment, mental health, and re-entry programs reduce  
3 recidivism more effectively than incarceration.

4 The purpose of this Act is to reform parole procedures to  
5 reduce the incarcerated population. Specifically, this Act:

6 (1) Creates a good time credit system, by which a parolee  
7 may reduce the parolee's sentence through compliance  
8 with conditions of parole;

9 (2) Provides that a condition of parole that prohibits  
10 unnecessary associations may only apply with respect  
11 to certain persons having a connection to the  
12 parolee's underlying crime or the prosecution of the  
13 crime;

14 (3) Provides that a condition of parole that prohibits the  
15 possession or use of alcohol or unauthorized drugs may  
16 only be imposed if it is reasonably related to the  
17 crime for which the parolee was convicted;

18 (4) Provides that substance abuse treatment shall not be  
19 required of a parolee if a program is not in the  
20 county of the parolee's residence and if the parolee  
21 has not been accepted into a program; and



(5) Prohibits incarceration for certain technical violations.

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

**"§706- Good time credit system.** (1) Notwithstanding any law to the contrary, there shall be a good time credit system through which a parolee may earn credit for compliance with the conditions of parole.

(2) A parolee shall earn a credit that is worth a reduction of days from the parolee's sentence for every days the parolee is in compliance with the conditions of parole.

(3) Credits may be forfeited, but only for failure to comply with a condition of parole, and only in proportion to the severity of the parolee's failure to comply with the condition.

(4) Credits earned under this section shall be earned in addition to any other credits for a criminal sentence that may be earned under applicable law."



1       SECTION 3. Section 353-1, Hawaii Revised Statutes, is  
2 amended by adding two new definitions to be appropriately  
3 inserted and to read as follows:

4       "Substance abuse treatment program" means drug or  
5 substance abuse treatment services provided outside a  
6 correctional facility by a public, private, or nonprofit entity  
7 that specializes in treating persons who are diagnosed with  
8 having substance abuse or dependency and preferably employs  
9 licensed professionals or certified substance abuse counselors."

10       "Technical violation" means any conduct that violates a  
11 condition of community supervision, other than the commitment of  
12 a new misdemeanor offense under chapter 134, chapter 707, or  
13 section 709-906, or a new felony offense."

14       SECTION 4. Section 353-63.5, Hawaii Revised Statutes, is  
15 amended to read as follows:

16       **"[+]§353-63.5[+] Intermediate sanctions; eligibility;**  
17 **criteria and conditions.** (a) The Hawaii paroling authority  
18 shall implement alternative programs that place, control,  
19 supervise, and treat selected parolees in lieu of incarceration.

20       (b) The authority may impose participation in alternative  
21 programs as a condition of parole or as an amended condition of



1 parole[-]; provided that conditions relating to substance abuse  
2 treatment programs shall be subject to the limitations of  
3 section 353-66(g).

4 (c) As used in this section, "alternative programs" mean  
5 programs which, from time to time, are created and funded by  
6 legislative appropriation or federal grant naming the Hawaii  
7 paroling authority or the department of public safety on behalf  
8 of the Hawaii paroling authority as the expending agency and  
9 which are intended to provide an alternative to incarceration.

10 Alternative programs may include:

11 (1) Home detention, curfew using electronic monitoring and  
12 surveillance, or both;

13 (2) Intensive supervision, residential supervision,  
14 work-furlough, and structured educational or  
15 vocational programs;

16 (3) Therapeutic residential and nonresidential programs;  
17 [~~and~~]

18 (4) Substance abuse treatment programs; and

19 ~~[(4)]~~ (5) Similar programs created and designated as  
20 alternative programs by the legislature, the  
21 chairperson of the Hawaii paroling authority, or the



1 director of public safety for parolees who do not pose  
2 significant risks to the community."

3 SECTION 5. Section 353-65, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§353-65 Paroles; rules.** The Hawaii paroling authority  
6 may establish rules, with the approval of the governor and the  
7 director of public safety not inconsistent with this part, under  
8 which any prisoner may be paroled but shall remain, while on  
9 parole, in the legal custody and under the control of the  
10 paroling authority, and be subject, at any time until the  
11 expiration of the term for which the prisoner was sentenced, to  
12 be taken back within the enclosure of the prison[-] if the  
13 prisoner commits a violation of the terms and conditions of  
14 parole, other than a technical violation. The rules shall have  
15 the force and effect of law. Full power, subject to this part,  
16 to enforce the rules, to grant, and to revoke paroles is  
17 conferred upon the paroling authority. The power to retake and  
18 reimprison a paroled prisoner is conferred upon the  
19 administrative secretary or the administrative secretary's  
20 designee, who may issue a warrant authorizing all of the  
21 officers named therein to arrest and return to actual custody





1 any paroled prisoner[+] for any parole violation other than a  
2 technical violation. The superintendent of Hawaii state prison,  
3 the chief of police of each county and all police officers of  
4 the State or of any county, and all prison officers shall  
5 execute any such order in like manner as ordinary criminal  
6 process.

7 If any prisoner so paroled leaves the State without  
8 permission from the paroling authority, the prisoner shall be  
9 deemed to be an escaped prisoner, and may be arrested as such."

10 SECTION 6. Section 353-66, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§353-66 Terms and conditions of parole; suspension and**  
13 **revocation.** (a) Every parole granted under this part to any  
14 prisoner shall be subject to the express condition, to be set  
15 forth in the official written notification of parole to the  
16 prisoner, but to be binding upon the prisoner in any event, that  
17 all or any portion of the prisoner's credits earned or to be  
18 earned may be forfeited by order of the Hawaii paroling  
19 authority in the event that the prisoner [~~breaks the prisoner's~~  
20 ~~parole or violates any law of the State or rule of the paroling~~  
21 ~~authority or any of the terms or conditions of the prisoner's~~



1 ~~parolee.]~~ commits any violation of parole other than a technical  
2 violation.

3 (b) No parole shall be revoked and no credits forfeited  
4 without cause, which cause must be stated in the order revoking  
5 the parole, or forfeiting the credits after notice to the  
6 paroled prisoner of the paroled prisoner's alleged offense and  
7 an opportunity to be heard; provided that when a person is  
8 convicted in the State of a crime committed while on parole and  
9 is sentenced to imprisonment, or when it is shown by personal  
10 investigation that a parolee has left the State without  
11 permission from the paroling authority and due effort is made to  
12 reach the parolee by registered mail directed to the parolee's  
13 last known address, no hearing shall be required to revoke the  
14 parolee's parole; and provided further that when any duly  
15 licensed psychiatrist or licensed psychologist finds that  
16 continuance on parole will not be in the best interests of a  
17 parolee or the community, the paroling authority, within the  
18 limitations of the sentence imposed, shall order the detention  
19 and treatment of the prisoner until such time as the prisoner  
20 shall be found by any duly licensed psychiatrist or licensed  
21 psychologist to be eligible for continuance on parole.



1 (c) If any paroled prisoner leaves the State without  
2 permission from the paroling authority, or if the whereabouts of  
3 any paroled prisoner is not known to the paroling authority  
4 because of the neglect or failure of the prisoner to so inform  
5 it, the paroling authority may order the parole suspended  
6 pending apprehension. From and after the suspension of the  
7 parole of any paroled prisoner and until the paroled prisoner's  
8 return to custody, the paroled prisoner shall be deemed an  
9 escapee and a fugitive from justice, and no part of the time  
10 during which the paroled prisoner is an escapee and a fugitive  
11 from justice shall be part of the paroled prisoner's term.

12 (d) The paroling authority may at any time order the  
13 arrest and temporary return to custody of any paroled prisoner,  
14 as provided in section 353-65, for any parole violation other  
15 than a technical violation, for the purpose of ascertaining  
16 whether or not there is sufficient cause to warrant the paroled  
17 prisoner's reimprisonment or the revoking of the paroled  
18 prisoner's parole or other action provided for by this part.

19 (e) Any paroled prisoner retaken and reimprisoned as  
20 provided in this chapter shall be confined according to the  
21 paroled prisoner's sentence for that portion of the paroled



1 prisoner's term remaining unserved at time of parole, but  
2 successive paroles may, in the discretion of the paroling  
3 authority, be granted to the prisoner during the life and in  
4 respect of the sentence. If the paroled prisoner [~~is retaken~~  
5 ~~and reimprisoned for violating~~] has violated a condition of  
6 parole but [~~has not~~—

7       ~~(1) Been charged with a new felony offense or a new~~  
8           ~~misdemeanor offense under chapter 134, chapter 707, or~~  
9           ~~section 709-906,~~

10       ~~(2) Absconded or left the State without permission from~~  
11           ~~the paroling authority,~~

12       ~~(3) Violated conditions applicable to sex offenders, such~~  
13           ~~as registering as a sex offender or conditions related~~  
14           ~~to proximity to specified locations or persons, or~~

15       ~~(4) Been previously reimprisoned for violating the~~  
16           ~~conditions of parole on the current offense,]~~

17 ~~the paroled prisoner shall be confined for no more than six~~  
18 ~~months or for that portion of the paroled prisoner's term~~  
19 ~~remaining unserved at the time of parole, whichever is shorter,~~  
20 ~~so long as the paroling authority has approved a parole plan as~~  
21 ~~set forth under section 706-670(3) and (4). The] the violation~~



1 is a technical violation, the paroled prisoner shall not be  
2 reimprisoned for the parole violation but shall be subject to  
3 subsection (f). For any other type of parole violation, minimum  
4 term of imprisonment shall be as determined by the court or the  
5 paroling authority, as the case may be. The prisoner shall be  
6 given credit for time served in custody pending a hearing on  
7 revocation of parole as it relates to the six-month parole  
8 revocation. No prisoner shall be incarcerated beyond the  
9 expiration of the prisoner's maximum terms of imprisonment.

10 (f) The paroling authority, having probable cause to  
11 believe that a parolee has failed to comply with a requirement  
12 imposed as a condition of parole, if the failure to comply was a  
13 technical violation, may issue the parolee a written notice of a  
14 hearing that states the parolee's alleged violation and the  
15 date, time, location, and purpose of the hearing.

16 (g) The paroling authority shall not revoke parole based  
17 on the parolee's failure to undergo and complete a substance  
18 abuse treatment program if there is no qualifying substance  
19 abuse treatment program available in the county in which the  
20 parolee resides, or if no qualifying substance abuse program  
21 accepted the parolee, in spite of the parolee's submission of



1 complete and timely applications to enter qualifying substance  
2 abuse treatment programs.

3 (h) The paroling authority shall not revoke parole based  
4 on the parolee's failure to refrain from the use of alcohol, or  
5 any use of narcotic drugs or controlled substances without a  
6 prescription, unless the possession or use of alcohol or  
7 prohibited drugs is reasonably related to the offense for which  
8 the parolee was convicted.

9 ~~[+f+]~~ (i) The Hawaii paroling authority may require a  
10 paroled prisoner to undergo and complete a substance abuse  
11 treatment program when the paroled prisoner has committed a  
12 violation of the terms and conditions of parole involving  
13 possession or use, not including to distribute or manufacture as  
14 defined in section 712-1240, of any dangerous drug, detrimental  
15 drug, harmful drug, intoxicating compound, marijuana, or  
16 marijuana concentrate, as defined in section 712-1240, unlawful  
17 methamphetamine trafficking as provided in section 712-1240.6,  
18 or involving possession or use of drug paraphernalia under  
19 section 329-43.5. If the paroled prisoner fails to complete the  
20 substance abuse treatment program or the Hawaii paroling  
21 authority determines that the paroled prisoner cannot benefit



1 from any substance abuse treatment program, the paroled prisoner  
2 shall be subject to revocation of parole, except as provided in  
3 subsection (g), and return to incarceration[-], unless the  
4 parolee's parole violation consists solely of a technical  
5 violation. As a condition of parole, the Hawaii paroling  
6 authority may require the paroled prisoner to:

7 (1) Be assessed by a certified substance abuse counselor  
8 for substance abuse dependency or abuse under the  
9 applicable Diagnostic and Statistical Manual and  
10 Addiction Severity Index;

11 (2) Present a proposal to receive substance abuse  
12 treatment in accordance with the treatment plan  
13 prepared by a certified substance abuse counselor  
14 through a substance abuse treatment program that  
15 includes an identified source of payment for the  
16 treatment program;

17 (3) Contribute to the cost of the substance abuse  
18 treatment program; and

19 (4) Comply with any other terms and conditions for parole.

20 ~~[As used in this subsection, "substance abuse treatment~~  
21 ~~program" means drug or substance abuse treatment services~~



~~provided outside a correctional facility by a public, private,  
or nonprofit entity that specializes in treating persons who are  
diagnosed with having substance abuse or dependency and  
preferably employs licensed professionals or certified substance  
abuse counselors.]~~

Nothing in this subsection or subsection (g) shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider."

SECTION 7. Section 706-670, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (2) to read:

"(2) Parole conditions. The authority, as a condition of parole, may impose reasonable conditions on the prisoner as provided under section 706-624[~~-~~]; provided that:

(a) Notwithstanding section 706-624(2)(g), the authority shall not prohibit association with any person unless the person has or had any involvement in the crime for which the parolee was convicted, or in any events leading to the arrest, prosecution, or conviction of the parolee; including any victim of the crime, any witness, regardless of whether the witness actually





1        testified in the prosecution; any law enforcement  
2        officer; any co-defendant; or any other relevant  
3        individual;

4        (b) Notwithstanding section 706-624(2)(h), the authority  
5        shall not require the parolee to refrain from the use  
6        of alcohol, or any use of narcotic drugs or controlled  
7        substances without a prescription, unless the  
8        possession or use of alcohol or prohibited drugs is  
9        reasonably related to the offense for which the  
10       parolee was convicted; and

11       (c) Notwithstanding section 706-624(2)(j), the authority  
12       shall not require the parolee to undergo a substance  
13       abuse treatment program if no qualifying substance  
14       abuse treatment program is available in the county in  
15       which the parolee resides, or if no qualifying  
16       substance abuse program accepts the parolee, in spite  
17       of the parolee's submission of complete and timely  
18       applications to enter qualifying substance abuse  
19       treatment programs."

20       2. By amending subsections (7) and (8) to read:



1           (7) ~~[Revocation hearing.]~~ Hearing on alleged parole  
2 violation. When a parolee has been ~~[recommitted,]~~ of violating  
3 a condition of parole the authority shall hold a hearing within  
4 sixty days after the parolee's return to prison or the date of  
5 the written notice specified in section 353-66(f), whichever is  
6 applicable, to determine whether parole should be revoked. The  
7 parolee shall have reasonable notice of the grounds alleged for  
8 revocation of the parolee's parole. The institutional parole  
9 staff shall render reasonable aid to the parolee in preparation  
10 for the hearing. In addition, the parolee shall have, with  
11 respect to the revocation hearing, those rights set forth in  
12 subsection (3)(a), (3)(b), (3)(c), and (3)(d). A record of the  
13 hearing shall be made and preserved as provided in subsection  
14 (4).

15           (8) ~~[Length of recommitment and reparole after revocation]~~  
16 Revocation of parole. If a parolee's parole is revoked~~[,]~~ for a  
17 technical violation, the authority may impose any sanctions upon  
18 the parolee other than reimprisonment. If the parolee's parole  
19 is revoked for any other type of violation, the term of further  
20 imprisonment upon ~~[such]~~ recommitment and of any subsequent  
21 reparole or recommitment under the same sentence shall be fixed



1 by the authority but shall not exceed in aggregate length the  
2 unserved balance of the maximum term of imprisonment."

3 SECTION 8. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 9. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect upon its approval.

9

INTRODUCED BY: \_\_\_\_\_



**Report Title:**

Parole; Crimes; Conditions; Revocation; Substance Abuse

**Description:**

Creates a good time credit system, by which a parolee may reduce the parolee's sentence through compliance with conditions of parole. Provides that a condition of parole that prohibits unnecessary associations may only apply with respect to certain persons having a connection to the parolee's underlying crime or the prosecution of the crime. Provides that a condition of parole that prohibits the possession or use of alcohol or unauthorized drugs may only be imposed if it reasonably related to the crime for which the parolee was convicted. Provides that substance abuse treatment shall not be required of a parolee if a program is not available in the county of the parolee's residence or if the parolee has not been accepted into a program. Prohibits incarceration for certain technical violations.

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

